

*Missouri  
Department  
of Transportation*



Pete K. Rahn, Director

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[www.modot.state.mo.us](http://www.modot.state.mo.us)

May 17, 2006

Dear Consultant:

The Missouri Highways and Transportation Commission is requesting the services of a consulting engineering firm to perform the described professional services for the project included on the attached list.

If your firm would like to be considered for these consulting services, you may express your interest by responding to the appropriate office, which is indicated on the attachments.

DBE firms must be certified by the Missouri Department of Transportation in order to be counted as participation towards an established DBE Goal. We encourage DBE firms to submit letters of interest as prime consultants for any projects they feel can be managed by their firm.

We request all letters be received by 2:00 pm, June 16, 2006 at the appropriate office.

Respectfully,

Brian Weiler  
Multimodal Operations Director

ma

Attachment

cc: Mr. Dave Nichols -de  
Mr. Steven Billings -mo  
Ms. Kathy Harvey-de  
Mr. Shyam Gupta-br  
Mr. Lester Woods-cm

**MULTIMODAL OFFICE**

Steven Billings, Administrator of Transit  
Multimodal Operations – Transit Section  
2217 St. Marys Blvd.  
PO Box 270  
Jefferson City, MO 65102-0270

## Summary

This document constitutes a RFQ for qualified organizations to provide Consultant Services for design and project management of a rural public transportation Intelligent Transportation System (ITS) project throughout the state of Missouri for the **MHTC** and the Missouri Department of Transportation (**MoDOT**) on behalf of Missouri's rural public transit providers.

## Schedule

<b>ACTION</b>	<b>DATE</b>	<b>TIME</b>
REQUEST FOR QUALIFICATIONS ISSUED	5/17/2006	4:00 PM
PRE-SUBMISSION CONFERENCE CALL	5/31/2006	NOON Central Daylight
RESPONSES DUE	6/16/2006	2:00 PM
NOTIFICATION FOR ORAL PRESENTATIONS	7/17/2006	4:00 PM
ORAL PRESENTATIONS TO MODOT	08/07- 08/14/06	9:00 AM

## 1.0 Introduction

### 1.1 Purpose

This document constitutes an RFQ for firms or individuals to provide Consultant services for the design and project management of a rural public transportation Intelligent Transportation System (ITS) project to the Missouri Department of Transportation (MoDOT) on behalf of the Missouri Rural Transportation Providers funded under the Federal Transit Administration (FTA) Section 5311 Non-urban Transportation Assistance Program (49 USC 5311) and/or FTA Section 5309 Transit Capital Program (49 USC 5309).

### 1.2 Background

MoDOT and the rural public transit providers recognize that Intelligent Transportation System applications can be beneficial to their services to increase efficiency and economy. However, the directors of these rural transit systems are generalists and do not have the expertise to develop detailed specifications for ITS projects. They also do not have adequate personnel to devote sufficient hours to manage the construction and installation of such systems.

The Transit Section in MoDOT's Multimodal Operations Division is responsible for administering the Federal Transit Administration's Section 5311 program in Missouri. The design portion of this project will be wholly funded from MoDOT's Section 5311

grant administration funds. The project management portion of this project will be funded either from FTA Section 5309 or FTA Section 5311 funds.

Rural public transit service in Missouri is provided by 31 rural transit systems. These systems range in size from one organization that serves 87 counties to a senior center with one vehicle. The successful firm or individual will develop specifications for an ITS project for all rural public transit systems in Missouri. Two regional systems (serving 87 counties and 20 counties) and 9 county-wide systems are expected to participate. Municipalities (which by number make up approximately half the rural transit providers) may choose to participate on a voluntary basis.

Most of the rural transit service provided is door-to-door, demand/response service using small buses and vans. The main users of the systems are senior citizens, persons with disabilities, low-income individuals, and welfare recipients needing non-emergency medical transportation (Medicaid). All of Missouri's rural counties have public transit services but in some areas, it is extremely limited. Many small communities have transportation only one or two days per month and it is transportation to larger cities, not internal circulation in the community.

## **2.0 Qualification Process**

This section describes components of the qualification process and states the basic conditions for response submission. Please refer to the schedule in the summary section above for essential steps and dates.

### **2.1 *Submission of Response***

This request for qualifications does not commit MoDOT to award a contract, to pay any costs incurred in the preparation of a response to this invitation, or to procure or contract for services or supplies. MoDOT reserves the right to accept or reject any or all of the responses received as a result of this request, or to cancel this request in part or in its entirety if deemed in the best interest of MoDOT. All response material submitted shall become property of MoDOT.

A pre-submission conference call will take place on Wednesday, May 31 starting at Noon, Central Daylight Time. The dial-in number is (573) 522-6043. The phone may ring for several minutes before the conference call begins.

To be evaluated and considered for award, responses must adhere to the following minimum criteria.

1. Project statement that provides in brief terms the understanding of the project presented in the RFQ and how the consultant plans to pursue and complete the work.
2. Respond to all subsections of Section 3.0 "Response Content" of this RFQ.
3. Provide the original response document and nine (9) copies in a sealed envelope.

4. Be received and officially checked in no later than 2:00 PM on June 16, 2006, at the following address:

Attention: Steven Billings, Administrator of Transit  
Multimodal Operations – Transit Section  
2217 St. Marys Blvd.  
PO Box 270  
Jefferson City, MO 65102-0270

## **2.2            *Modification or Withdrawal of Response***

The prospective consultant may modify or withdraw a response by Certified Mail, facsimile or telegraphic notice received prior to the official closing date and time of 2:00 PM on June 16, 2006. A response may also be withdrawn or modified in person by the firm's authorized representative provided proper identification is presented before this official closing date and time. MoDOT will NOT accept verbal phone requests to withdraw or modify a response. After 2:00 PM on June 16, 2006, no responses may be modified or withdrawn.

## **2.3            *Oral Presentation***

After the response submission deadline and before award of contract(s), MoDOT may interview firms in order to clarify the terms of top candidates' responses. The evaluation committee may ask firms to give oral presentations of responses and/or answer questions about the responses. MoDOT will use written responses to determine candidates for oral presentations. Oral presentations, only if conducted, will be used for final selection.

## **2.4            *Rejection/Acceptance of Offers***

The evaluation committee will score each response based on the evaluation criteria described in Section 4.0 "Response Evaluation Criteria." MoDOT will notify all responders in writing of their response status (win/declined) no later than July 17, 2006.

# **3.0    Response Content**

## **3.1    General Format**

Should be no more than 50 pages in length exclusive of appendices. Please address each of the following sections and subsections by name and provide a table of contents for your response.

### **3.1.1            Executive Summary**

Please provide an overview of the significant features of the response. Note any unique or distinguishing characteristics.

### **3.1.2 Professional Profiles**

Consultants should use this segment of their submission to demonstrate their financial and technical qualifications or those of their proposed team. Supply profiles for the team leader and all team members that will directly be involved with this project. Corporate profiles should discuss experience with public transportation activities and work done in ITS transit projects. Responding consultants should also supply brief professional biographies of the key staff that will participate in this project. The entire profiles section should be no more than five pages in length.

#### **3.1.2.1 Financial Qualifications**

As an appendix to each response, include certified corporate financial statements or published annual reports for the last two years for all team members. Project-specific financing information is requested.

#### **3.1.2.2 Key Personnel**

Responses should also include brief biographies of key individuals such as the lead ITS design professionals, project managers for implementation and other team members that will actively participate in this project.

#### **3.1.3 Letters of Commitment**

Each lead professional should attach a letter of commitment stating that he/she is financially and technically prepared to enter into a contract and complete the project if awarded a contract. Other team members should submit similar letters attesting to their ability to fulfill their portion of the proposed resource sharing partnership.

#### **3.1.4 Proposed Project Plan and Timeline**

The Missouri Department of Transportation is estimating the time to complete the design portion of this project to be from twelve (12) to eighteen (18) months, with the completion of the project to be within sixty (60) months after the issuance of the "Notice to Proceed." The consultant is to provide a timetable of each task and proposed hours to complete these tasks. This information is requested to better identify the timeline that the project will require to complete.

### **3.2 Deliverables**

**3.2.1** The Offeror shall provide the following professional services: Consultant services to resolve and satisfy regional and statewide ITS architecture requirements as those requirements relate to projects arising from the rural transit ITS project design; design and develop specifications for a Missouri rural public transit Intelligent Transportation System project as well as provide project management services for implementation of the project. The selected firm(s) or individual(s) may not bid to build and may not bid to install the ITS project.

**3.2.2 Specific Response Requirements:** The Offeror will provide to the Multimodal Operations Division, nine (9) copies of a their response which will include the following:

1. Description of the process for surveying the Section 5311 funded rural transit providers to determine their ITS needs,
2. Description of the methods to meet and work with rural transit providers to determine what components are needed for the project, including but not limited to:
  - a. database management
  - b. vehicle maintenance management
  - c. dispatching
  - d. vehicle/trip routing,
  - e. carpool and vanpool ride matching,
  - f. billing/accounting
  - g. reporting to funding sources
  - h. automatic vehicle location (AVL),
  - i. voice and data vehicle communications – including mobile data terminals (MDT's) with touch screens based on cell phone or two-way radio technology,
  - j. MDT's or other mobile devices able to accept signatures,
  - k. MDT's with passenger card reading capabilities,
  - l. Internet-based / web-based software,
  - m. Post-trip data entry capability,
  - n. GIS mapping component of state of Missouri with ability to accept map updates,
  - o. Video cameras with onboard video/data storage,
  - p. Interface to allow for real-time monitoring of vehicle engine and other vehicle systems,
3. Description of methods to develop system design, specifications and preliminary budget for an ITS project based on rural transit provider input that will serve multiple users, including but not limited to following attributes:
  - a. upgradeable,
  - b. ability to add new users without undue expense,
  - c. be user friendly,
  - d. capable of incorporating data from former systems,
  - e. ability to add commercial off-the-shelf application components,
  - f. with firewall and security of data,
  - g. disaster recovery functionality,
  - h. allow for-profit providers to pay for system access,
  - i. remote access,
  - j. speed, performance, and consistency.
4. Description of, and experience with, activities necessary for the project to conform with the statewide and regional ITS architectures,
5. Description of experience in developing and refining inter-agency agreements for transit agency participation in regional ITS architectures,

6. Description of activities necessary for the project and the project elements to meet the System Engineering Analysis requirements of the National ITS Architecture Policy,
7. Description of experience in developing project level architecture for public transit ITS projects,
8. Description of the Transit ITS standards applicable to this project,
9. Description of methods to assist MoDOT and the rural transit providers in developing vendor selection criteria to choose a contractor(s) for the system construction and installation,
10. Description of Strategies to develop a timeline for implementation of the system components in phases
11. Description of methods to work with the rural transit providers and MoDOT to manage the construction, installation of the project, and to implement the system and troubleshoot problems, including acceptance testing.
12. Submit experience and references for the design of transit ITS projects,
13. Submit experience and references for project management of transit ITS projects.
14. Submit experience and references for the construction and installation of transit ITS projects.

## **4.0 Evaluation Criteria**

### ***4.1 Procedure for Evaluation of Responses***

MoDOT will use written responses to determine candidates for optional oral presentations. Oral presentations, only if conducted, will be used for final response selection. The evaluation committee will score each response based on the evaluation criteria described in this section. MoDOT will notify all submitters in writing of their response's status (win/declined) no later than July 17, 2006.

MoDOT has identified five evaluation criteria. The evaluation committee has assigned a maximum number of possible points to each criterion and will score each response according to these criteria. Failure to submit completed certifications will automatically disqualify a response from further consideration.

## **4.1 Criteria Explanation**

The committee will evaluate responses to each of these categories.

### **4.1.1 Demonstration of understanding of the project as well as the capacity and capability to provide its deliverables,**

This scope of work is a new area for MoDOT and for many consulting firms. Therefore, it is imperative for the consultant to clearly articulate its understanding of, and its capacity and capability to provide, the project deliverables. (30% of evaluation)

### **4.1.2 Previous work in public transportation ITS design,**

MoDOT is interested in professionals that have previous experience in ITS design for public transportation and will award points to consultants that are willing to provide information of previous similar work in which they have been involved. The information from previous work will be kept with confidentiality. (25% of evaluation)

### **4.1.3 Approach and strategies used to provide RFQ deliverables**

MoDOT will award points to responses that clearly show how the consultant's approach and strategies will best provide the RFQ deliverables as described in Section 3.2. Proactive approaches and strategies are encouraged. (20% of evaluation)

### **4.1.4 Previous work in transit ITS project management,**

The evaluation committee will evaluate and reward points for responses that demonstrate previous experience in ITS project management. (20% of evaluation)

### **4.1.5 Proximity to, and familiarity with, project area,**

The evaluation committee will evaluate and reward points for responses that demonstrates the consultant's proximity to, and familiarity with rural Missouri. (5% of evaluation)

### **4.2.5 Required submission of certification on lobbying as well as certification on debarment and suspension (required)**

## 5.0 Contract Terms

### AGREEMENT REQUIREMENTS

This RFQ shall be governed by the following contract provisions. The award of this RFQ is subject to a post-award negotiated contract. These same contract provisions will appear in the post-award negotiated contract. If the parties are unable to agree to terms in the post-award contract, MHTC shall reserve the right to cancel the award of the RFQ and contract and select a different consultant.

- (A) **MHTC's Representative:** MoDOT's Multimodal Operations Director Brian Weiler, is designated as MHTC's representative for the purpose of administering the provisions of the Agreement as defined in Paragraph (E) of this section. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Agreement. The Consultant shall fully coordinate its activities for MHTC with those of the Multimodal Operations Division. As the work of the Consultant progresses, advice and information on matters covered by the Agreement shall be made available by the Consultant to the Multimodal Operations Division, throughout the effective period of the Agreement.
- (B) **Release to Public:** No material or reports prepared by the Consultant shall be released to the public without the prior consent of MHTC's representative.
- (C) **Assignment:** The Consultant shall not assign or delegate any interest, and shall not transfer any interest in the services to be provided (whether by assignment, delegation, or novation) without the prior written consent of MHTC's representative.
- (D) **Status as Independent Consultant:** The Consultant represents itself to be an independent Consultant offering such services to the general public and shall not represent itself or its employees to be an employee of MHTC or MoDOT. Therefore, the Consultant shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, or other such benefits or obligations.
- (E) **Components of Agreement:** The Agreement between MHTC and the Consultant shall consist of: the RFQ and any written amendments thereto, the proposal submitted by the Consultant in the response to the RFQ and the post-award contract agreement signed between the parties. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFQ or the Consultant's response. The Consultant is cautioned that its response shall be subject to acceptance by MHTC without further clarification.

(F) **Amendments:** Any change in the Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representative of the Consultant and MHTC.

**(G) DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:**

(A) DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is 0 % of the total Agreement dollar value.

(B) Consultant's Certification Regarding DBE Participation: The consultant's signature on this Agreement constitutes the execution of all DBE certifications which are a part of this Agreement.

1. Policy: It is the policy of the U.S. Department of Transportation and the Commission that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 26 and Section 1101(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) apply to this Agreement.

2. Obligation of the Consultant to DBE's: The Consultant agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any sub-consultant agreement financed in whole or in part with federal funds. In this regard the Consultant shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Consultant shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent sub-consultant agreement.

3. DBE Participation Obtained by Consultant: The Consultant has obtained DBE participation, and agrees to use DBE firms to complete, \_\_\_% of the total services to be performed under this Agreement, by dollar value. The DBE firms which the Consultant shall use, and the type and dollar value of the services each DBE will perform, is as follows:

DBE FIRM NAME, STREET AND COMPLETE MAILING ADDRESS	TYPE OF DBE SERVICE	TOTAL \$ VALUE OF THE DBE SUBCONTRACT	CONTRACT \$ AMOUNT TO APPLY TO TOTAL DBE GOAL	PERCENTAGE OF SUBCONTRACT DOLLAR VALUE APPLICABLE TO TOTAL GOAL
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- (H) **Law of Missouri to Govern:** The Agreement shall be construed according to the laws of the state of Missouri. The Consultant shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.
- (I) **Venue:** No action may be brought by either party concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of the Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that the Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place at or be delivered to Jefferson City, Missouri, by reason of which the Consultant consents to venue of any action against it in Cole County, Missouri.
- (J) **Ownership of Reports:** All documents, reports, exhibits, etc. produced by the Consultant at the direction of MHTC's representative and information supplied by MHTC's representative shall remain the property of MHTC.
- (K) **Confidentiality:** The Consultant shall not disclose to third parties confidential factual matters provided by MHTC's representative except as may be required by statute, ordinance, or order of court, or as authorized by MHTC's representative. The Consultant shall notify MHTC immediately of any request for such information.
- (L) **Nonsolicitation:** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure the Agreement, and that it has not paid or agreed to pay any percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MHTC shall have the right to annul the Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- (M) **Conflict of Interest:** The Consultant covenants that it presently has no actual conflict of interest or appearance of conflict of interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or

degree with the performance of the services under this Agreement. The Consultant further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in this Agreement.

**(N) Maintain Papers:** The Consultant must maintain all working papers and records relating to the Agreement. These records must be made available at all reasonable times at no charge to MHTC and/or the Missouri State Auditor during the term of the Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Agreement.

1. MHTC's representative shall have the right to reproduce and/or use any products derived from the Consultant's work without payment of any royalties, fees, etc.
2. MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.

**(O) Indemnification:** The Consultant shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement. In addition to the liability imposed upon the Consultant on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Consultant's performance under this Agreement, the Consultant assumes the obligation to save harmless MHTC, including its agents, employees and assigns, and to indemnify MHTC, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees. The Consultant also agrees to hold harmless MHTC, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any sub-consultant or other person employed by or under the supervision of the Consultant for any purpose under this Agreement, and to indemnify MHTC, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission. Any requirement of the Consultant that MHTC indemnify and hold harmless the Consultant in its response to this RFP or in the post-award contract will result in the Consultant's response being deemed non-responsive and will be rejected.

**(P) Compliance with General Conditions:** The Consultant shall comply with all provisions of the Standard Provisions, General Terms and Conditions, Applicable FTA Terms and Conditions and Special Terms and Conditions which are attached to this RFQ.

**(Q) Applicable Federal Transit Administration (FTA) Procurement Terms and Conditions:**

**No Federal Government Obligations to Third Parties:** The Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any grant recipient, sub-recipient, any third party Consultant, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the contract. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub-agreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any grant sub-recipient or any third party Consultant.

**False or Fraudulent Statements or Claims:** The Consultant acknowledges and agrees that: (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the grant funded project and this procurement. Accordingly, by executing the contract, the Consultant certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with this procurement. In addition to other penalties that may apply, the Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to MoDOT and/or the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant to the extent the Federal Government deems appropriate.

(2). If the Consultant makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. section 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. section 101 and 49 U.S.C. section 5307 (n)(1), to the extent the Federal Government deems appropriate.

**Access to Third Party Contract Records:** The Consultant agrees to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, access to all records as requested to conduct audits and inspections related to any contracts that have not been awarded on the basis of competitive bidding for a capital or improvement Project, as required by 49 U.S.C. section 5325 (a). The Consultant further agrees to provide sufficient access to procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

**Federal Laws and Regulations:** Federal law or laws authorizing project grant approval control project implementation. The Consultant acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the grant funded project on the date the authorized FTA official signs the grant agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when a grantee executes the Grant Agreement and might apply to that Grant Agreement. The Consultant agrees

that the most recent of such Federal requirements will govern the administration of the grant funded Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition, Requirement, or Provision or Condition of Award within the Grant Agreement, a change to an FTA directive, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a specific provision to the grant Master Agreement. To accommodate changing federal requirements, the Consultant is notified that Federal requirements may change and the changed requirements will apply to the grant funded project and procurement as required, unless the Federal Government determines otherwise.

**Civil Rights:** The Consultant agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

**Nondiscrimination in Federal Transit Programs.** The Consultant agrees to comply, and assures the compliance of each sub-Consultant at any tier under this grant funded procurement, with the provisions of 49 U.S.C. section 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age and prohibits discrimination in employment or business opportunity.

**Nondiscrimination - - Title VI of the Civil Rights Act.** The Consultant agrees to comply with the requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000d et seq., and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - - Effectuation of Title VI of the Civil Rights Act, "49 C.F.R. Part 21, and any implementing requirements the FTA may issue.

**Equal Employment Opportunity.** The Consultant agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000e, and 49 U.S.C. sections 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include by are not limited to, the following:

**General Requirements.** The Consultant agrees a follows:

The Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Consultant agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant also agrees to comply with any implementing requirements FTA may issue

Nondiscrimination on the Basis of Sex. The Consultant agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. sections 1681 et seq., with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

Nondiscrimination on Basis of Age. The Consultant agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. sections 6101 et seq., and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

Access Requirements for Persons with Disabilities. The Consultant agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. section 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. sections 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that ACT. In addition, the Consultant agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

- (7) U.S. Equal Employment Opportunity Commission. "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F, and;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections. The Consultant agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. sections 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. sections 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. sections 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

Access to Services for Persons with Limited English Proficiency. The Consultant agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. section 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Federal Register 6733 et seq., January 22, 2001.

Environmental Justice. The Consultant agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. section 4321 note.

Other Nondiscrimination Statutes. The Consultant agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to this contract.

**Clean Water** - (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. . The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**Clean Air** - (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**Cargo Preference - - Use of United States – Flag Vessels.** The Consultant agrees to comply with U.S. Maritime Administration regulations, “Cargo Preference - - U.S.-Flag Vessels,” 46 C.F.R. Part 381, to the extent those regulations apply to the contract.

**Fly America.** The Consultant understands and agrees that MoDOT and the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. section 40118, and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. sections 301-10.121 through 301-10.143.

**Employee Protections - - Non-construction.** The Consultant agrees to comply with employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. sections 327 – 332, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards provisions Applicable to Non-construction contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

**Energy Conservation.** The Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C sections 6321 et seq.

**Preference for Recycled Products.** To the extent applicable, the Consultant agrees to comply with U.S. EPA regulations, “Comprehensive Procurement Guidelines for Products Containing Recovered Materials,” 40 C.F.R. Part 247, implementing section 6062 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. section 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

**Rights in Data** – The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Consultant authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Consultant using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Consultant performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as

defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Consultant's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Consultant agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Consultant shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Consultant identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Consultant agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (*i.e.* , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Consultant agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Consultant also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Consultant

agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Consultant agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Consultant also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**Termination for Convenience or Default** - The Missouri Department of Transportation may terminate this contract in whole or in part, for the Department's convenience or because of the failure of the Consultant to fulfill the contract obligations. The Missouri Department of Transportation shall terminate by delivering to the Consultant a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Consultant shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Missouri Department of Transportation, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Consultant to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Consultant shall be liable for any additional cost incurred by the Missouri Department of Transportation.

If, after termination for failure to fulfill contract obligations, it is determined that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Missouri Department of Transportation.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Missouri Department of Transportation's Multimodal Operations Director. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the Multimodal Operations Director. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Multimodal Operations Director shall be binding upon the Consultant and the Consultant shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Missouri Department of Transportation, Consultant shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Missouri Department of Transportation and the Consultant arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in the Circuit Court of Cole County within the State of Missouri in which the Missouri Department of Transportation is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Missouri Department of Transportation, or Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**National Intelligent Transportation Systems Architecture and Standards** – The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. 502 note, and comply with FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 Federal Register 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E , dated June 19, 2003 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Missouri Department of Transportation requests which would cause Missouri Department of Transportation to be in violation of the FTA terms and conditions.

## **STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all offers/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the offer/quote/proposal, unit prices will govern.
- b. All offers/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Offeror and must be adhered to. If time varies on different items, the Offeror shall so state.
- d. If providing offers/quotes/proposals for commodities, the Offeror will state brand or make on each item. If offering or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- e. **For offers/proposals of \$25,000 or more**, no offers/proposals by telephone, telegram or telefax will be accepted. If provided, these offers/proposals should be returned in the MoDOT solicitation return envelope.
- f. If a solicitation return envelope is provided by MoDOT, the offer/quote/proposal should be returned in the envelope provided with the Offer/RFQ/RFP Request Number plainly indicated thereon.
- g. The date specified for the returning of offers/quotes/proposals is a firm deadline and all offers/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

## **GENERAL TERMS AND CONDITIONS**

### **General Performance**

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Consultant agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Consultant in performance of the work.

### **Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery,. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday

through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.

- b. If the prices offered herein include the delivery cost of the material, the Consultant agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price offered and not listed as a separate line item.
- c. Any demurrage is to be paid by the Consultant direct to the railroad or carrier.

### **Nondiscrimination**

- a. The Consultant understands that this project involves state administered funds and the Consultant awarded the contract will be required to comply with the Executive Order 94-03 of the Governor of the State of Missouri dated January 14, 1994. This order stipulates that there shall be no discriminatory employment practices by the Consultant or his sub-consultants, if any, based on race, color, religion, creed, national origin, sex or age. The undersigned Consultant or his sub-consultants, if any, shall give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements
- b. The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- c. All solicitations either by competitive proposal or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of the Consultant's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Consultant under the contract until the Consultant complies, and/or,
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

### **Contract**

- a. By submitting a offer/quote/proposal, the Consultant agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.

- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Consultant's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or offer by purchase order.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Consultant must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Consultant and the duly authorized representative of the MHTC, by a modified contract prior to the effective date of such modification. The Consultant expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by a showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Consultant of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a sub-consultant shall be made to the Consultant to whom the contract was awarded.

### **Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Consultant may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Offeror upon request.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the project number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.

- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Consultant's expense.

### **Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Consultant shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Consultant must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Consultant will be required to submit to MoDOT a copy their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Consultants providing services within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

### **Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Consultant's default or breach of contract.
- b. The Consultant agrees and understands that the contract shall constitute an assignment by the Consultant to the MHTC of all rights, title and interest in and to all causes of action that the Consultant may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Consultant in the fulfillment of the contract with the MHTC.
- c. In the event a Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the Consultant may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

### **Cancellation of Contract**

- a. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Consultant for any additional costs incurred thereby.

### **Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Consultant, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Consultant must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Consultant responsible for damages.

### **Inventions, Patents, and Copyrights**

- a. The Consultant shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Consultant's performance or products produced under the terms of the contract.

### **Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Consultant upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Consultant's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

### **Warranty**

- a. The Consultant expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.

- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

## **Insurance**

- a. The Consultant shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Consultant's operations under this Contract, whether such operations be by himself or by any sub-consultant or anyone directly or indirectly employed by any of them.
- b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Consultant's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:
  - 1) Workmen's Compensation: Full coverage, including "Occupational Disease Act" requirements.
  - 2) Public Liability (includes property damage and personal injury):
    - i. Not less than \$400,000 each individual per accident or occurrence.
    - ii. Not less than \$2,500,000 each accident or occurrence.
  - 3) Special Hazard Insurance: As required.
  - 4) Builder's Risk: Not less than the full Contract amount.

## **Status of Independent Consultant**

- a. The Consultant represents itself to be an independent Consultant offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Consultant shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

## **SPECIAL TERMS AND CONDITIONS**

### **Information and Reports**

- a. The Consultant shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information the Consultant shall so certify to the Missouri Department of Transportation, or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

### **Permits, Licenses and Safety Issues**

- a. The contract price shall include any necessary permits and licenses required by law incidental to the work. Local ordinances requiring building permits are not applicable to state agencies.
- b. The Consultant will comply with local laws involving safety in the prosecution of the work.

## **APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each offer exceeding \$100,000)

The undersigned [Consultant] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

**APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

The Consultant, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Consultant's Authorized Official

\_\_\_\_\_ Name and Title of Consultant's Authorized Official

\_\_\_\_\_ Date

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

**Lower Tier Covered Transactions** (Third Party Contracts over \$100,000).

**Instructions for Certification**

**1. By signing and submitting this offer or proposal, the prospective lower tier participant is providing the signed certification set out below .**

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which

it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.  
(<http://epls.arnet.gov>)

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

\_\_\_\_\_ Signature of Consultant's Authorized Official

\_\_\_\_\_ Name and Title of Consultant's Authorized Official

\_\_\_\_\_ Date

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary  
Exclusion - Lower Tier Covered Transaction"**

(1) The prospective lower tier participant certifies, by submission of this offer or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_ Signature of Consultant's Authorized Official

\_\_\_\_\_ Name and Title of Consultant's Authorized Official

\_\_\_\_\_ Date

*(Duplicate if necessary)*