

BID FORM

**MISSOURI DEPARTMENT OF TRANSPORTATION
SOUTHEAST DISTRICT
3956 E. MAIN STREET
WILLOW SPRINGS, MO 65793**

REQUEST NO.	SEW13-2310RY
DATE	April 30, 2013
PAGE NO.	1 OF 13 PAGES

SEALED BIDS, SUBJECT TO THE ATTACHED CONDITIONS WILL BE RECEIVED AT THIS OFFICE UNTIL

May 13, 2013 10:00 AM CST

AND THEN PUBLICLY OPENED AND READ FOR FURNISHING THE FOLLOWING SUPPLIES OR SERVICES.

**BIDS TO BE BASED F.O.B. DESTINATION
MISSOURI DEPARTMENT OF TRANSPORTATION**
Submit net bid as cash discount stipulations will not be considered

Various

SIGN AND RETURN BEFORE TIME SET FOR OPENING

BUYER:	Gloria Bunch	TELEPHONE:	(417) 469-6256
		EMAIL:	gloria.bunch@modot.mo.gov

SUPPLIES OR SERVICES

MoDOT is seeking bids from qualified bidders to provide **Plant Mix Oil Material**. Sealed bids will be accepted to supply, mix, haul and dump plant mix oil material at maintenance lots as described in this bid.

*****NOTE:** *It is the responsibility of the Bidder to access MoDOT's website in order to obtain any and all addendum(s) issued during the course of this RFB Process.*

This document constitutes a RFB, and solicits competitive sealed bids from qualified bidders to provide Plant Mix Oil Material. The issuance of this RFB in no way constitutes a commitment to award a contract or to pay any costs incurred in preparation of a response to this request.

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

In compliance with the above Request For Bid, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were bid within the timeframe specified herein, after receipt of formal purchase order.

Date: _____

Firm Name: _____

Telephone No.: _____

Address: _____

Fax No.: _____

Federal I.D. No. _____

By (Signature): _____

Email Address: _____

Type/Print Name _____

Is your firm MBE certified? Yes No

Title: _____

Is your firm WBE certified? Yes No



1. Introduction

- 1.1 This solicitation seeks qualified vendors to provide Plant Mix Oil Material for maintenance purposes. Sealed bids will be accepted to supply, mix, haul and dump plant mix oil material on roadways or stockpile and maintenance sites as stated in this bid. This work shall consist of mixing aggregate and liquid bituminous material in a stationary plant, hauling and dumping the mixture on the surface of the road or to stockpile and maintenance sites in accordance with these specifications or as directed by the engineer.
- 1.2 The contract period shall be from Notice to Proceed through the completion date of **May 30, 2013**.

2. Quantities

- 2.1 The quantities identified in the Pricing Page are estimates only. The quantities may or may not represent the actual quantities encountered on the job. The contractor may be requested to furnish more or less than the estimated quantities.
- 2.2 MoDOT may increase or decrease quantities by 40 percent.
- 2.3 The engineer or their representative will make any changes in the proportions of cutback asphalt and aggregates as he considers necessary to obtain satisfactory field performance within the limits specified in this request for composition of the mixture.
- 2.4 The engineer or their representative can make changes, including cancellation, at any time to any Group, listed on the Pricing Page.
- 2.5 MoDOT does not guarantee any specific quantities that may be required to be provided by the contractor.

3. Material

All material shall conform to **Missouri Standard Specifications for Highway Construction, 2011 Edition**, and any revisions thereto, except as revised herein:

- 3.1 **AGGREGATE.** The type and grade of aggregate shall be as specified on the District's Pricing Page.
 - a. **Mining By-Product Aggregates** - Aggregates produced as a by-product from lead or zinc-mining operations may be furnished under the following requirements. No blending or dilution of these aggregates with other material will be allowed in order to comply with these specifications
 - b. The supplier shall separate out all aggregate to be furnished into individual stockpiles not exceeding 5,000 cubic yards each. No material will be accepted that has not been moved at least once to a stockpile area specifically for this purpose. The supplier shall randomly sample each stockpile by combining several small samples from the pile into one sample. The sample shall be tested by an approved laboratory for the total lead content. A minimum of one test shall be performed for each individual stockpile. The total lead content shall be less than 4,500 ppm as determined by EPA Method 3050A, Acid Digestion of Sediments, Sludges, and Soils (particle size reduced to 1 mm or less). For aggregate meeting Sec. 1004 which is encapsulated in asphalt and delivered to MoDOT construction projects or property, there will be no limit on the leachable lead.
 - c. Prior to any approval, shipment or use of this material, the supplier shall furnish the engineer a report of the laboratory test results. The report shall specifically identify the stockpile, estimated quantity, location, date of the sample, date of test and the specific test results for each lead test. Attached to the report shall be a certification from the supplier that the material being furnished does not exceed the lead amounts specified. The supplier shall test as necessary beyond the requirements of this specification to ensure that this specification is met. All costs for setting the material aside for testing and the testing shall be borne by the supplier.



- 3.2 **LIQUID BITUMINOUS MATERIAL.** The liquid bituminous material shall meet the specifications contained in **Section 1015 of Missouri Standard Specifications for Highway Construction, 2011 Edition**, for the following alternate:

ALTERNATE D - MC250 Cutback Asphalt

The liquid bituminous material used shall coat the aggregate at the point of use in a manner and to a degree satisfactory to the engineer. Material that does not fully comply with these specifications will be rejected. The supplier shall be responsible for the cost and disposal of all rejected material.

- 3.2.1 **Approval of Source.** The contractor shall obtain approval of the source of liquid bituminous materials from the engineer before any shipments to the work are made.
- 3.2.2 **Sampling, Testing and Acceptance Procedures.** It shall be the responsibility of the supplier to guarantee by certification that the material fully complies with the specification requirements, after being loaded, and delivered to the point of acceptance.
- 3.3 **TRUCK SHIPMENTS.** Truck shipments shall be loaded from approved storage tanks, which have been sampled, tested, and certified by the Supplier to the Department. If automatic blending equipment is used, blender materials will be approved for use providing the finished product fully complies with specifications. At least one complete test shall be conducted on material furnished to the Missouri Department of Transportation from the blender. A certified copy of the tests results shall be furnished to the engineer. After loading, the supplier shall sample and make identifying tests on a sufficient number of truck shipments of material supplied to insure that proper quality control is being maintained and that all such shipments fully comply with the specification requirements. Identifying tests are viscosity for cutback asphalt. It shall be the Supplier's responsibility to insure that any material failing to comply with specification requirements will not be used in the work.
- 3.3.1 The supplier shall furnish the truck driver a copy of the bill of lading, manifest, or truck ticket that is to be presented to the Missouri Department of Transportation personnel at destination. The engineer or his representative at the source is also to be furnished a copy. The bill of lading, manifest, or truck ticket shall show the following information regarding the shipment: **Type and grade of material, purchase and confirmation order numbers, consignee, truck number, weights of truck before and after loading, specific gravity @ 60F/60F, net gallons, destination, date loaded, name and location of the source and a certification statement.** The certification statement shall be substantially as follows:
- "This certifies that the asphaltic material in this shipment complies with Missouri Department of Transportation specifications for the grade specified and the weights shown hereon were obtained on Department approved scales and are correct within the specified scale requirements."*
- An authorized representative of the supplier shall sign the certification statement.**
- 3.3.2 The engineer or his representative will at random observe the loading and weighing of trucks and the sampling, and testing at the source of truck shipments and tanks, and will select representative samples of the material being supplied. These samples will be tested in the field or in the Central Laboratory. When test results of materials or weights certified by the supplier are not representative of the material or quantity being shipped, the source approval will be withdrawn. A source may be reinstated when proof is furnished that the deficiency has been corrected and adequate controls are in effect to guarantee delivery of correct quantities and of materials meeting specifications.
- 3.3.3 Verification of certified weights may be required by the weighing of a hauling unit, both loaded and empty, on scales other than those used by the supplier and have also been approved by the engineer.
- 3.3.4 The supplier shall furnish the required sampling equipment and shall sample the truck under the direction of the engineer or his representative. The supplier shall be responsible for keeping all sampling equipment clean and in good condition. Sampling devices on truck transports will be approved provided an adequately insulated valve is used with a pipe or nipple inserted a suitable distance into the tank.



- 3.3.5 Each truck transport shall carry a log showing the types of materials and dates hauled, with respect to recent shipments, or the supplier shall furnish the engineer or his representative such information with respect to the previous load.
- 3.3.6 Intermediate storage tanks for storage and transfer of material between the source and the point of acceptance shall be equipped for sealing and shall be reserved exclusively for State work. Use of any material in unsealed tanks will be subject to delay until it can be sampled, tested and approved. **If excessive sampling is necessary the Missouri Department of Transportation may charge an additional amount to cover our expenses.**
- 3.3.7 Measurement of Liquid Bituminous Materials. Measurement of the Cutback Asphalt material shall be based on the volume at **60F**. The volume shall be determined from the net weight that shall be converted to gallons by using the unit weight in pounds per gallon at **60F** designated by the engineer or his representative.
- 3.3.8 Proportioning and Blending Liquid Bituminous Material Constituents. All materials shall be properly proportioned and thoroughly blended in suitable tanks prior to delivery to transportation equipment, or may be proportioned and blended by use of automatic proportioning equipment. All automatic proportioning blenders shall meet the approval of the engineer and shall be equipped with precision instruments, including electrically interlocked motors, and automatic meters. Materials blended in quantities of less than 8,000 gallons in either tanks or trucks without the use of automatic proportioning blenders will not be approved.
- 3.3.9 Platform Scales for Weighting Liquid Bituminous Material. Equipment for weighing of liquid bituminous material shall consist of accurate and reliable platform scales approved by the Department. Scales shall be accurate to **within an accuracy of 0.4 percent** of the net load applied, when tested for accuracy, regardless of the location of the load on the platform. The value of the smallest unit of graduation on a scale **shall not be greater than 20 pounds**. Sensitivity requirements of scales not equipped with balance indicators shall be twice the value of the minimum graduated interval on the weigh beam, or 0.2 percent of the nominal capacity of the scale, whichever is less. For scales equipped with balance indicators, the sensitivity requirement shall be the value of the minimum graduated interval on the weigh beam.

When equipment to be weighed is of such length that all axles cannot be weighed simultaneously, a level area of concrete or bituminous pavement shall be provided permitting those axles not on the scale platform to be on the pavement during the determinations. The weighing shall be performed with all brakes released. When equipment to be weighed is equipped with an air bag suspension unit on any axle, the equipment including semi-trailers or pup trailers shall be weighed on platform scales of sufficient size to weigh all axles of the combination simultaneously.

Scales shall have been calibrated within the six-month period immediately prior to any material being delivered or anytime the engineer or his representative has cause to question the accuracy of the scale. Scale acceptance shall be based on one of the following:

- (a) A valid certification or seal of approval by the Division of weights and Measures of the Missouri Department of Agriculture.
- (b) A valid certification or seal of approval by a State of Missouri duly appointed "sealer of weights and measures" in cities or counties of seventy-five thousand population or more.
- (c) Certification of calibration from a commercial scale service company showing that the scale meets the requirements of these specifications. The supplier shall furnish the certification of calibration to the engineer or his representative.

Regardless of the form of acceptance, the calibration shall be within the accuracy requirements specified herein and the scales shall meet all requirements of these specifications.

The weighing of a hauling unit on another recently calibrated and certified scale may require verification of a platform scale.

All costs incurred in obtaining a certification of calibration or verification shall be borne by the supplier.



4. Composition of Mixture

4.1 **GRADATION OF AGGREGATE.** The total aggregate, as determined from samples taken immediately prior to mixing with the liquid bituminous material, shall meet the particular type and grade described on **Page 8** within this document.

4.2 The composition of the mixture shall conform to the following limits by weight:

Total Mineral Aggregate	94.5% - 95%
Cutback Asphalt	5% - 5.5%

4.3 The percent liquid asphalt to be used for each item is described on **Page 8** within this document. **This is an estimate** and may be adjusted by the engineer to obtain satisfactory field performance of the mixture.

5. Mixing Plant

Mixing of liquid bituminous material and aggregate shall be by means of an approved mixer capable of producing a uniform, thoroughly mixed material free from segregation.

5.1 Equipment for heating liquid bituminous material shall meet the approval of the engineer or his representative, and shall be capable of heating the material to the required temperature without the introduction of moisture, localized overheating or otherwise changing the characteristics of the material. Plant equipment shall include a thermometer that will indicate the temperature of the liquid bituminous material at the time of mixing (refer to Section 6.3 below for actual temperatures). Pug mix material will not be acceptable.

6. Preparation of Mix

6.1 **Mixing Time.** The mixing time shall be of sufficient length to produce a homogenous mixture, uniform in color. The mixing time will be determined by the engineer or his representative and shall uniformly coat the aggregate.

6.2 **Drying of Aggregates.** Drying of the aggregate by mechanical means or by a rotating fuel oil or gas fired dryer will not be required. When using MC-250 Cutback Asphalt, mixing will be permitted when the aggregate is surface dry. **Allowable total moisture content will be a maximum limit of 4.5%.** Absorption will be based on a representative sample of the crushed material that has been tested.

6.3 **Mixing Temperature.** If the Contractor elects to dry the aggregate by means of a rotating fuel oil or gas fired dryer, the temperature of the aggregate at the time of mixing **shall not exceed 200F.**

The temperature of cutback asphalt at the time of mixing shall be **190F, plus or minus 20F.**

6.4 **Control of Material.** Aggregate may be proportioned by weight or volume.

6.4.1 If by Volume: Volumetric control of the aggregate feed to the mixer shall be positively controlled by means of a constant speed conveyor and an orifice having an adjustable gate opening capable of being calibrated. The conveyor shall deliver the aggregate to the mixer at a uniform rate and **shall not vary more than 2% by weight** from the required quantity.

The liquid bituminous material shall be proportioned by volume through an approved **continuously registering cumulative indicating meter by a pump specifically designed for liquid bituminous material.** The pump shall deliver the liquid bituminous material to the mixer at a uniform rate that shall not vary more than 2.0% by weight from the required quantity. The liquid bituminous material shall be sprayed on the aggregate as it is charged into the mixer. The aggregate feeder and the asphalt pump shall be interlocked or synchronized to deliver the proportions as required within the tolerances specified.

6.4.2 If by Weight: Scales for weighing aggregate may be either the beam or spring-less dial-type and shall be of standard make and design having tolerance not exceeding 0.4% of the indicated weight when tested for accuracy. The total weight of the batch shall be within 2.0% of the desired batch weight. When manual batching methods are used, beam-type scales shall be equipped with a device to indicate that the required load is being approached. Quantity indicators necessary for batching operations shall be in full view of the operator.



Satisfactory means, either by metering or weighting, shall be provided to obtain proper quantity of liquid bituminous material. Metering pumps for liquid bituminous material shall deliver to within plus or minus 2.0% of the required quantity when tested for accuracy. Where the quantity of liquid bituminous material is controlled by metering, provisions shall be made whereby the quantity through the meter may be checked by actual weight.

Scales for weighing liquid bituminous material shall conform to the requirements for aggregate scales, except that a device to indicate at least **20 pounds** of the approaching total load shall be provided. Liquid bituminous material shall be **measured within one-tenth percent** of the total batch weight of the mixture.

- 6.5 Plant Calibration Personnel, scales and equipment necessary for calibrating the plant and for verifying the accuracy of proportions shall be furnished by the Contractor and shall be available at all times. All equipment shall be calibrated by the Contractor in the presence of and subject to the approval of the engineer.

7. Delivery

- 7.1 The starting and completion dates for the delivery of the mixed material shall be upon award through **May 30, 2013**.
- 7.2 All deliveries are to be made during maintenance facilities normal working hours unless prior arrangements have been made with the appropriate MoDOT district office or other designated contact person(s). Deliveries will not be accepted on Holidays, Saturdays or Sundays unless a mutual agreement has been reached between the vendor or hauler and the appropriate MoDOT district office.
- 7.3 **All pre-mix material stockpiled for MoDOT use shall be protected from rain until it is delivered to the department.**
- 7.4 The plant mix material shall be delivered within 96 hours of mixing, unless notified by the engineer or their representative, or the roadway or weather conditions prevent delivery.
- 7.5 It will be necessary for the engineer or their representative to be present when the mixture is delivered. **No mixture will be accepted that has been dumped in the absence of the engineer or their representative.**
- 7.6 The Contractor shall furnish the appropriate engineer, or their representative, **with a planned delivery schedule within a minimum of 48 hours before delivery is to begin**, unless other suitable arrangements are made by MoDOT.
- 7.7 Once delivery is started on a day, it shall be continued on a consistent schedule throughout the day. If this schedule cannot be maintained due to plant breakdown, rain, etc., the contractor shall inform the engineer or their representative, so that MoDOT forces can be reassigned.
- 7.8 Deliveries made after the completion dates outlined in this bid will be accepted at the discretion of the engineer or their representative.
- 7.9 If the vendor is requested to delay deliveries based upon questionable material handling, and unknown material content or source, liquidated damages will not be waived.
- 7.10 The bidder represents he has a plant available for use in this work, which is capable of producing the type and grade of mixed material specified and guarantees that deliveries will be made at a daily rate sufficient to complete the work on or before the contract completion date, and will, if necessary to maintain this delivery rate, immediately install any additional equipment necessary to increase the rate of production or delivery to meet the minimum daily requirements.

8. Measurement

- 8.1 The weight of the mixture will be determined from batch weights when a batch-type plant is used, and will be determined by weighting each truck load in accordance with the requirements of SEC. 310 of Missouri Standard Specifications for Highway Construction, 2011 edition, and its supplements, when other types of plants are used except that the 2% moisture deduction will not apply.



- 8.2 Measurements of liquid bituminous material to the nearest 0.1 ton for the total tonnage used in the accepted work will be determined from the bill of lading, manifest, or truck ticket.
- 8.3 Measurement of the weight of mineral aggregate, to the nearest ton, will be determined by subtracting the weight of the liquid bituminous material from the weight of the mixture of aggregate and liquid bituminous material.

9. Payment

- 9.1 The accepted quantities of plant mix oil material will be paid for at the unit price for each of the pay items included in the contract.

10. Bid Submission

- 10.1 Each bid must be mailed or hand delivered in a sealed package to the Procurement Office. All questions regarding the RFB shall be submitted to the Coordinator. **All bids must be received no later than 10:00 a.m., CST, May 13, 2013.**

RFB Coordinator:

Gloria Bunch
MoDOT Southeast
3956 E. Main
Willow Springs, MO 65793
Phone: (417) 469-6256

- 10.2 All bids must be received in a sealed package clearly marked "**Plant Mix**".
- 10.3 MHTC reserves the right to reject any and all bids for any reason whatsoever.
- 10.4 Bids will be reviewed to determine if the bid complies with the mandatory requirements, and to determine the lowest and responsive bid.

10.5 Cost Determination – The low bid shall be determined by reviewing each line item separately.

10.6 Contract Award – The contract will be awarded to the lowest responsive bidder determined as specified above.

- a. Award of this bid will be made on a "**Per Delivery Location**" basis after reviewing all options, and by using the "lowest and best" principle of award, providing the prices are acceptable to the Commission. In the event of tie low bids, the Commission reserves the right to establish the method to be used in determining the award.

10.7 Open Competition/Request for Bid Document

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise MoDOT if any language, specifications or requirements of an RFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the MoDOT, unless the RFB specifically refers the bidder to another contact. Such communication should be received at least five (5) working days prior to the official bid opening date.



PRICING REQUIREMENTS

The amount of liquid bituminous material (Pay Item #2) as shown on all groups is an estimate only. The actual amount required may vary for each group depending on the type of asphalt used in the mix and the gradation and condition of the aggregate. The liquid bituminous material used shall coat the aggregate at the point of use in a manner and to a degree satisfactory to the engineer or his representative.

It is strongly encouraged that bidders submit individual pricing for both the aggregate and asphalt material. As the quality of aggregate materials and absorption rates vary, this will ensure accurate invoicing based upon the true quantities and costs of aggregate and liquid asphalt used.

All materials shall conform to Missouri Standard Specifications for Highway Construction, 2011 Edition, and any revisions thereto:

SPEC. 1004 – Graded aggregate for bituminous surfaces with a maximum limit of 4.5% absorption on stone ledges and gravel sources. Meeting the following gradation limits:

Sieve Size Percent Passing								
Grade	Material Type	3/4"	1/2"	3/8"	No. 4	No. 8	No. 30	No. 200
3	Crushed Chat	100	95-100		45-85	30-60	0-30	0-5

Estimated Percent Asphalt: 5.0% - 5.5% for all locations.



Delivery Locations

Gainesville Maintenance Lot

Rt. 5, 0.3 Miles North of Rt. 160
Ozark County

Dora Maintenance Lot

Rt. 181, 0.2 Miles North of Rt. H
Ozark County

Alton Maintenance Lot

Rt. 160, 1 Mile East of Rt. 19
Oregon County

VENDOR INFORMATION & PREFERENCE CERTIFICATION FORM

VENDOR INFORMATION

(All Bidders Must Furnish ALL Applicable Information Requested Below)

Vendor Name/Mailing Address: Email Address:	Vendor Contact Information (including area codes): Phone #: Cellular #: Fax #:
Printed Name of Responsible Officer or Employee:	Signature:
For Corporations - State in which incorporated:	For Others - State of domicile:

If the address listed in the Vendor Name/Mailing Address block above is not located in the State of Missouri, list the address of Missouri offices or places of business:

*If additional space is required, please attach an additional sheet and identify it as **Addresses of Missouri Offices or Places of Business.***

M/WBE INFORMATION: List all certified Minority or Women Business Enterprises (**M/WBE**) utilized in the fulfillment of this bid. Include percentages for subcontractors and identify the M/WBE certifying agency:

<u>M/WBE Name</u>	<u>Percentage of Contract</u>	<u>M/WBE Certifying Agency</u>

*If additional space is required, please attach an additional sheet and identify it as **M/WBE Information***

PREFERENCE CERTIFICATION

(All Bidders Must Furnish ALL Applicable Information Requested Below)

GOODS/PRODUCTS MANUFACTURED OR PRODUCED IN USA: If any or all of the goods or products offered in the attached bid which the bidder proposes to supply to the MHTC are **not** manufactured or produced in the "United States", or imported in accordance with a qualifying treaty, law, agreement, or regulation, list below, by item or item number, the country other than the United States where each good or product is manufactured or produced.

Item (or item number)	Location Where Item is Manufactured or Produced

*If additional space is required, please attach an additional sheet and identify it as **Location Products are Manufactured or Produced.***

MISSOURI SERVICE-DISABLED VETERAN BUSINESS: Please complete the following if applicable. Additional information may be requested if preference is applicable. See below definitions for qualification criteria:

Service-Disabled Veteran is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.

Service-Disabled Veteran Business is defined as a business concern:

- a. Not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and
- b. The management and daily business operations of which are controlled by one or more service-disabled veterans.

Veteran Information

Business Information

Service-Disabled Veteran's Name (Please Print)

Service-Disabled Veteran Business Name

Service-Disabled Veteran's Signature

Missouri Address of Service Disabled Veteran Business

STANDARD SOLICITATION PROVISIONS

- a. The solicitation for the procurement of the supplies referenced therein, to which these "Standard Bid Provisions, General Terms and Conditions and Special Terms and Conditions" are attached, is being issued under, and governed by, the provisions of Title 7 – Missouri Department of Transportation, Division 10 – Missouri Highways and Transportation Commission, Chapter 11 – Procurement of Supplies, of the Code of State Regulations. The Missouri Highways and Transportation Commission (**MHTC**), acting by and through its operating arm, the Missouri Department of Transportation (**MoDOT**), draws the Bidder's attention to said 7 CSR 10-11 for all the provisions governing solicitation and receipt of bids/quotes and the award of the contract pursuant to this solicitation.
- b. All bids/quotes must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

GENERAL TERMS AND CONDITIONS

Definitions

Capitalized terms as well as other terms used but not defined herein shall have the meaning assigned to them in section 7 CSR 10-11.010 Definition of Terms.

Nondiscrimination

- a. The Contractor shall comply with all state and federal statutes applicable to the Contractor relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).
- b. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MHTC shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
 - ii. cancellation, termination or suspension of the contract, in whole or in part.

Contract/Purchase Order

- a. By submitting a bid/quote, the Bidder 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 Contractor's bid response, and (3) the MHTC's acceptance of the bid by post-award contract or 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 Contractor must receive a properly authorized notice to proceed and/or purchase order.

Applicable Laws and Regulations

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract. 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.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri, Missouri Department of Revenue, 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 Contractor may be required to submit to MHTC a copy of their current Authority Certificate from the Secretary of State of the State of Missouri and/or a copy of their Certificate of No Tax Due from the Missouri Department of Revenue.
- c. Prior to the issuance of a purchase order and/or notice to proceed, all out-of-state Contractors providing services within the state of Missouri must submit to MHTC a copy of their current Transient Employer Certificate from the Missouri Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

Executive Order

The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.

- 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
- 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
- 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Preferences

- a. In the evaluation of bids/quotes, preferences shall be applied in accordance with 7 CSR 10-11.020(7). Contractors should apply the same preferences in selecting subcontractors. The attached document entitled "**VENDOR INFORMATION AND PREFERENCE CERTIFICATION FORM**" must be completed and returned with the solicitation documents.
- b. Bidders are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBES. Bidders are encouraged to obtain 10% MBE and 5% WBE participation.

Cancellation of Contract

The MHTC may cancel the Contract at any time for a material breach of contractual obligations or for convenience by providing Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.

Bankruptcy or Insolvency

Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Contractor responsible for damages.

Warranty

The Contractor 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 the MHTC, (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.

Status of Independent Contractor

The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor 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.

Non-Waiver

If one of the parties agrees to waive its right to enforce any term of this Contract, that party does not waive its right to enforce such term at any other time or to enforce any or all other terms of this Contract.

Indemnification

The Contractor shall defend, indemnify and hold harmless MHTC, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Contractor's performance of its obligations under the contract awarded pursuant to this solicitation.