

**BID FORM**

MISSOURI DEPARTMENT OF TRANSPORTATION

GENERAL SERVICES

830 MoDOT DRIVE – P.O. BOX 270

JEFFERSON CITY, MO 65102

REQUEST NO.	2-081223FR		
DATE	December 10, 2008		
PAGE NO.	1	NO. OF PAGES	10

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

2:00 PM, LOCAL TIME, DECEMBER 23, 2008

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

**QUOTATIONS TO BE BASED F.O.B. MISSOURI DEPARTMENT OF TRANSPORTATION**

Submit net bid as cash discount stipulations will not be considered

Locations statewide

**ALL BIDS SHOULD BE EXTENDED AND TOTALED.**

**BUYER: FRANKIE J. RYAN**

**BUYER TELEPHONE: 573-522-9481**

**SUPPLIES OR SERVICES**

Contract for furnishing **“POLYETHYLENE TRASH BAGS”** for a contract period beginning January 1, 2009 through December 31, 2009.

**PLEASE SEE ATTACHED PRICING PAGES**

**Note to Respondent:** A vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The compliance to conduct business in the state shall include but may not be limited to: Registration of business name - vendors **MUST** submit a bid/proposal that correctly and accurately identifies the company name that is registered to do business in the State of Missouri. All vendors who are required to execute a contractual agreement **MUST** submit a copy of their certificate with the signed copy of the contract agreement before the purchasing department can proceed with Missouri Highway and Transportation Commission (MHTC) legal contract approval.

**VENDOR MUST SIGN AND SUBMIT**

**THIS FORM WITH THE PRICING PAGES**

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

*In compliance with the above request for bids, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were quoted within the time frame outlined in this bid document.*

Date: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

Email: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Type/Print Name \_\_\_\_\_

Title: \_\_\_\_\_

Is your firm MBE certified?  Yes  No

Is your firm WBE certified?  Yes  No

List all agencies your firm is currently certified with. \_\_\_\_\_

**BID SUBMITTAL:**

Your written bid must be mailed in a sealed envelope or box, or else delivered by hand or courier service (UPS, Federal Express, DHL, etc.) to be *received on or before the date and time specified on the front page of this bid document*, at the office of:

Ms. Frankie Ryan  
Missouri Department of Transportation  
General Services - Procurement  
830 MoDOT Drive; P.O. Box 270  
Jefferson City, MO 65102

All documents must be sealed and the outmost wrapping should be clearly marked **"Bid for Polyethylene Trash Bags"**.

**ADDITIONAL DOCUMENT SUBMITTAL REQUIREMENTS:**

For the bid to be considered the two (2) below referenced attachments "Preference in Purchasing Products" and "Missouri Domestic Product Procurement Act" must be submitted to this office prior to any contract being awarded for this bid.

- Preference In Purchasing Products (to be signed and submitted with bid)
- Missouri Domestic Products Procurement Act (to be signed and submitted with bid)

**SPECIFICATIONS & LOGO**

Please refer to the attached "POLYETHYLENE BAGS MGS 90-06Q" specifications for information regarding the trash bags. **NOTE: CHANGE TO SPECIFICATION MGS 90-06Q FOR THIS BID: HEIGHT AND WIDTH OF LOGO:** Paragraph 2.3.6, third sentence, change the approximate size of the logo to *11 inches wide by 12 inches tall*. This change is to allow for random printing of the logo onto the bags, as required by the specifications published herein. All other specifications and terms shall remain the same. Please see **Attachment A** for a representative sample of the logo for the Type II bags. The "camera ready" logo will be provided to the Contractor upon award of the contract.

**PRICES & QUANTITIES:**

Prices submitted by the bidder MUST remain firm for the period starting January 1, 2009 through April 1, 2009. Refer to the attached pricing page for additional information on estimated statewide quantities. Refer to **Attachment B "Estimated Quantities by District"** for additional information on general quantities estimated by location.

**PRICE ESCALATION CLAUSE:**

In the event the Contractor requests a price increase during the contract period (original contract period or contract renewal period, if applicable), the Contractor must provide a written request and documentation justifying the need for a price increase, and the amount of such price increase. MoDOT will review the Contractor's written request and documentation, and decide if a price increase is to be granted at that particular time. The Contractor shall understand and agree that MoDOT's decision shall be final and without recourse.

- a. No price increase shall be granted during the first 3 months of the original contract period, or if applicable, first 3 months of a contract renewal period.
- b. In the event a price increase is granted due to an approved escalation, the renewal percentage shall be based upon the current contract value.

**PURCHASE ORDER DATE AND DELIVERY INFORMATION:**

The initial order quantities from MoDOT’s various statewide locations will be issued to the contractor for receipt by the contractor on or before January 31, 2009.

Bids shall be quoted with delivery F.O.B throughout the state of Missouri. The delivery location will be provided to the contractor at time of order. Contractor agrees to furnish and deliver any or all the items on which prices were quoted on or before March 16, 2009. Orders received by the contractor after January 31, 2009 will be delivered to the location noted on the purchase order within 45 days of receipt of the purchase order by the contractor.

**COMPLIANCE WITH BID REQUIREMENTS:**

Failure to comply with the requirements published in this bid may result in the bid being subject to rejection. Product that does not meet specifications will cause all of the shipments to be returned at the bidders expense. In the event the contractor does not package the trash/liner bags in accordance with the requirements specified herein, the Missouri Highway and Transportation Commission (MHTC) shall have the right to return the entire shipment to the contractor for repackaging. However, if delivery is critical as determined by the MHTC and the MHTC elects to accept the shipment, the contractor shall be assessed liquidated damages in the amount as noted below:

**Specification parameters:**

Minimum mil thickness	Logo artwork
Average mil thickness (more than 1% low)	Ink durability
Finished size	Flat bottom seal
Logo dimensions	Packaging

**Deduction Rate Table**

Minor	1%
Slight	5%
Moderate	15%
Severe	30%

**Parameters out of Specification**

1 or 2
3 or 4
5 or 6
7

In the event the quality of the printing in the trash/ liner bags or the construction of the trash/liner bags either fails to comply with the printing or construction requirements specified herein, the Missouri Highway and Transportation Commission (MHTC) shall have the right to reject all or part of the trash/liner bags. If requested by the MHTC, the contractor shall reprint the trash/liner bags at no additional cost to the MHTC. However, if delivery of the trash/liner bags is critical, as determined by the MHTC, and the MHTC elects to accept the printed trash/liner bags, the contractor shall be assessed liquidated damages as noted above.

The MHTC shall have the final decision concerning (1) the acceptability of the printing and construction, (2) the rejection of the printing and re-printing of the trash/liner bags versus the assessment of liquidated damages, and (3) the amount of the liquidated damages.

The contractor shall further understand and agree that such liquidated damages shall either be deducted from the total amount due the contractor or paid by the contractor as a direct payment to the MHTC, at the sole discretion of the MHTC. The contractor shall understand and agree that all assessments of liquidated damages shall be within the discretion of the MHTC and shall be in addition to, not in lieu of, the rights of the MHTC to pursue other appropriate remedies.

The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.

**NON-EXCLUSIVITY:**

The Missouri Highway and Transportation Commission (MHTC) reserves the right to obtain like or similar products of this or other manufacturers when use of such products is deemed in the best interest of MHTC.

**VENDOR NAME REGISTRATION:**

On all bid documents, the bidder must use the firm name under which he/she is registered to do business in the state of Missouri. As required by Missouri state statute, the bidder must ensure that his/her firm name is registered with the office of the Missouri Secretary of State.

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**PRICING PAGE**

(Two pages with a total of 5 items)

Contract for furnishing “Polyethylene Trash Bags” for a **contract period beginning January 1, 2009 through December 31, 2009**. COMPLETE, SIGN WHERE INDICATED ON 2<sup>ND</sup> PAGE AND SUBMIT WITH YOUR SIGNED BID FORM AND OTHER REQUIRED DOCUMENTATION.

**NOTE ON ESTIMATED QUANTITIES:** Actual ordered quantities will be adjusted to make even rolls per information you provide as to quantity per roll. Bids for trash bags packaged in boxes, instead of *rolls*, will not be considered. Please provide pricing for the following items:

Item #	Description	MFG. # OR BRAND	EST. QTY	UNIT	UNIT PRICE/BAG	Total
001	<p><b>Polyethylene Trash Bags, Type II</b>, to meet the attached specifications, complete with paper cover wire ties. Size: 28” x 35” (± 2” in either direction); Thickness: 3 Mils; Type: Flat Bottom Seal; <b>Color: Non-Heavy Metal Yellow Concentrate</b>. Packaging: bag roll weight should not exceed 50 lbs per roll. <b>Minimum</b> number of bags per roll will be 100 bags. State the number of bags per roll being proposed: _____.</p> <p><b>NOTE: Bids for trash bags packaged in boxes, instead of rolls, will not be considered.</b></p>		<b>306,000</b>	<b>Per Bag</b>	\$ _____	\$ _____
002	<p><b>Polyethylene Trash Bags, Type II</b>, to meet the attached specifications, complete with paper cover wire ties. Size: 28” x 35” (± 2” in either direction); Thickness: 3 Mils; Type: Flat Bottom Seal; <b>Color: Non-Heavy Metal Blue Concentrate</b>; Packaging: bag roll weight should not exceed 50 lbs per roll. <b>Minimum</b> number of bags per roll will be 100 bags. State the number of bags per roll being proposed: _____.</p> <p><b>NOTE: Bids for trash bags packaged in boxes, instead of rolls, will not be considered.</b></p>		<b>89,000</b>	<b>Per Bag</b>	\$ _____	\$ _____
003	<p><b>Drum Liner Bags, for 55-gallon drums</b> to meet the attached specifications, <b>Polyethylene Bags Type III</b>. Size: 38” x 65”; Thickness: 3.75 Mils; Type: Flat Bottom Seal; Color: Natural; Packaging: bag roll weight should not exceed 50 lbs per roll. <b>Minimum</b> number of bags per roll will be 100 bags. State the number of bags per roll being proposed: _____.</p> <p><b>NOTE: Bids for trash bags packaged in boxes, instead of rolls, will not be considered.</b></p>		<b>107,000</b>	<b>Per Bag</b>	\$ _____	\$ _____

Item #	Description	MFG. # OR BRAND	EST. QTY	UNIT	UNIT PRICE/BAG	Total
004	<b>Drum Liner Bags, for 20-gallon drums</b> to meet the attached specifications for 55 gallon except for size, <b>Type III</b> . Size: 28" x 38"; Thickness: 3.75 Mils; Type: Flat Bottom Seal; Color: Natural; Packaging: bag roll weight should not exceed 50 lbs per roll. <b>Minimum</b> number of bags per roll will be 100 bags. State the number of bags per roll being proposed: _____. <b>NOTE: Bids for trash bags packaged in boxes, instead of rolls, will not be considered.</b>		<b>48,000</b>	<b>Per Bag</b>	\$ _____	\$ _____
005	<b>Drum Liner Bags for Rest Areas</b> to meet the attached specifications for 55 gallon except for size, <b>Type III</b> . Size: 33" x 60"; Thickness: 3.75 Mils; Type: Flat Bottom Seal; Color: Natural; Packaging: bag roll weight should not exceed 50 lbs per roll. <b>Minimum</b> number of bags per roll will be 100 bags. State the number of bags per roll being proposed: _____. <b>NOTE: Bids for trash bags packaged in boxes, instead of rolls, will not be considered.</b>		<b>55,000</b>	<b>Per Bag</b>	\$ _____	\$ _____
			<b>Extended Total</b>		\$ _____	

**NOTE ON AWARD:** For the purposes of this bid, items will be awarded on an “**ALL OR NONE**” basis.

**NOTE ON SAMPLES:** MoDOT reserves the right to request a sample of the product from the bidders if deemed necessary before award of bid. Bidder will have five (5) working days, from date of request, to provide sample. Unless otherwise noted herein, samples shall be furnished to MoDOT at no charge, will become the property of MoDOT, and will not be returned.

**IF SAMPLES ARE SUBMITTED WITH BID,** they must meet the attached “POLYETHYLENE BAGS MGS 90-06Q” specifications in all respects, including size, color and materials. However, any samples submitted with the bid will not be required to have the attached representative logo printed on the bag, but will need have some type of appropriately sized logo printed on the bag so that MoDOT can review the logo for adherence to placement requirements.

**OTHERWISE, DO NOT SUBMIT SAMPLES WITH YOUR BID.**

**NOTE ON QUANTITIES AND DESCRIPTIVE LITERATURE:** the quantities shown *are estimated* for the period specified. MoDOT reserves the right to increase or decrease the quantity as needed. **All bids should indicate the Brand and/or Part Number to be considered. Please submit descriptive literature for each product bid.**

\_\_\_\_\_  
*Bidder's Firm Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

## Attachment A

### Representative Sample of Logo For Type II Bags

The below logo is a representative sample only. Please refer to “Polyethylene Bags-MGS 90-06Q” specifications and the SPECIFICATIONS & LOGO section referred to herein, for details on this logo for the Type II bags.



## Attachment B

### Estimated Quantities by District

### Delivered Statewide

The below are estimated quantities and are not a representation of the exact quantities that will be ordered by or delivered to each District. Deliveries are to be made statewide. The below map represents which counties are within the boundaries of each District.

Item #	Description	D1 NW	D2 NC	D3 NE	D4 KC Area	D5 Cent.	D6 St.L Area	D7 SW	D8 Spfld Area	D9 SC	D10 SE
1	Polyethylene trash bags, Type II, non-heavy metal yellow, 28" x 35"	10,000	21,900	44,000	47,300	40,300	48,500	6,000	14,700	60,000	13,300
2	Polyethylene trash bags, non-heavy metal blue, Type II, 28" x 35"	1,500	0	4,000	0	0	0	0	0	60,000	23,500
3	Drum Liner Bags, 55 gallon drums, Type III, 38" x 65"	15,500	7,600	11,500	7,000	8,400	9,500	2,400	6,000	15,000	24,100
4	Drum Liner Bags, 20 gallon drums, Type III, 28" x 38"	15,000	0	15,500	10,000	4,000	0	1,000	0	0	2,500
5	Drum Liner Bags, for Rest Areas, Type III, 33" x 60"	12,000	0	15,600	0	5,700	3,000	0	0	10,000	8,700



**PREFERENCE IN PURCHASING PRODUCTS**

DATE: \_\_\_\_\_

The bidders attention is directed to Section 34.076 RSMo 2000 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

**All vendors submitting a bid/quotation must furnish ALL information requested below.**

**FOR CORPORATIONS:**

State in which incorporated:

\_\_\_\_\_

**FOR OTHERS:**

State of domicile:

\_\_\_\_\_

**FOR ALL VENDORS:**

List address of Missouri offices or places of business:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS SECTION MUST BE COMPLETED AND SIGNED:**

**FIRM NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
(signature required) (printed name)

**Federal Tax I.D. #:** \_\_\_\_\_ **if not available list Social Security #:** \_\_\_\_\_

**NOTE:** For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

## MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34/359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

Section 34.355, RsMO, requires the vendor or contractor to certify his compliance with Section 34.353 and, if applicable, Section 34.359, RsMO, at the time of bidding **and** prior to payment. Failure to comply with Section 34.353, RsMO, during the performance of the contract **and** to provide certification of compliance prior to payment will result in nonpayment for those goods or commodities.

Section 34.353.2, RsMO, specifies that it does not apply where the total contract is less than Twenty-Five Thousand Dollars (\$25,000.00). If your total bid is Twenty-Five Thousand Dollars (\$25,000.00) or more, you **must** complete this form as directed below.

**Failure to complete and return this document with this bid will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis. Please read the certification appearing below on this form.**

If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left.

If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:

\_\_\_\_\_

\_\_\_\_\_

If any or all of the goods or products specified in the attached bid which the bidder proposes to supply to the State **are not** manufactured or produced in the "United States" as defined in Section 34.350, RsMO, then: (a) check the box at left; (b) list below, by item (or item number), the country other than the United States where each good or product is manufactured or produced; and (c) check the boxes to the left of the paragraphs below if applicable and list the corresponding items (or item numbers) in the spaces provided.

Item (or number)	Location Where Item Manufactured or Produced

(attach an additional sheet if necessary)

The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to meet the contract specifications. Items (or item numbers): \_\_\_\_\_

The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers): \_\_\_\_\_

### CERTIFICATION

By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document is true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.

The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.

**Vendor Name:** \_\_\_\_\_

**Vendor Address:** \_\_\_\_\_



## POLYETHYLENE BAGS MGS 90-06Q

**1.0 Description.** These specifications cover the requirements for polyethylene bags for various uses.

**2.0 Materials.** Polyethylene bags shall meet the following requirements for the type specified in the bid request.

### **2.1 General.**

**2.1.1** Polyethylene bags manufactured using 100 percent "Super Hexene" linear low density polyethylene resin will be permitted as a substitute for the specified mil thickness. The thickness of bags manufactured using "Super Hexene" may be 1.0 mil less than that specified for the average and minimum thickness.

**2.1.2** Other linear low density polyethylenes or other "equivalent strength" bags will not be accepted with less thickness than specified, as a substitute for the specified mil thickness.

**2.1.3** When measured in accordance with ASTM D 4397, or latest revision, the average thickness and the minimum thickness at any point shall not be less than that specified.

**2.1.4** All bags shall have a flat bottom seal.

**2.1.5** The manufacturer shall provide a certification with the bid quotation stating that the polyethylene resin is first run (virgin) material or contains recycle. If recycled, the percentage of recycle material is to be stated. The certification shall also include the type of linear low density polyethylene resin, if any, used in the manufacture of the bags.

**2.2 Type I Bags.** Type I polyethylene bags are for various uses.

**2.2.1** The bags shall be clear in color.

**2.2.2** The average thickness shall be 4 mils with no point less than 3.2 mils.

**2.2.3** Bags for use as liners for soil, cement, and other materials shall have a finish size of 6 inches width x 20 inches height ( $\pm 1/4$  inch in either direction).

**2.2.4** Bags for use in covering concrete cylinders and other uses shall have a finish size of 12 inches width x 21 inches length ( $\pm 1$  inch in either direction).

**2.2.5** Bags for use as liners for aggregates and other materials shall have a finish size of 14 inches width x 29 inches length ( $\pm 1$  inch in either direction).

**2.2.6** Bags with other specified length and width dimensions shall have a tolerance of  $\pm 1$  inch in either direction.

**2.3 Type II Bags.** Type II polyethylene bags are for trash bags and other uses.

**2.3.1** Paper covered wire ties shall be furnished with these bags.



**2.3.2** The color of the bags shall be as specified in the bid request.

**2.3.3** The finish size shall be 28 inches width by 35 inches length ( $\pm 2$  inches in either direction).

**2.3.4** Unless otherwise specified, the average thickness shall be 3 mils with no point less than 2.4 mils.

**2.3.5** When biodegradable polyethylene trash bags are specified in the bid request, the bags shall meet the material and thickness requirements of Section 2.4.2 and 2.4.5 of this specification.

**2.3.6** The logo to be provided to the vendor by MoDOT, in the form of camera ready art, shall be imprinted in black ink across one side of each bag, centered in width with a tolerance of  $\pm 2$  inches. If a random printing method is used, each bag shall contain at least one complete image of the provided logo. For estimation purposes the approximate size of the logo shall be 14 by 16 inches in width and height. MoDOT will provide the exact dimensions of the logo to the vendor upon award of the contract. The total width and height of the logo shall be within  $\pm 1$  inch of the dimensions specified by MoDOT.

**2.3.7** The plastic film of the bag is to be treated for ink retention with the ink to be formulated for use on the plastic bag. The logo ink shall be permanent black ink that will not transfer, run, peel, or fade during storage or use of the printed bag.

**2.3.8** The bags shall be furnished in perforated rolls.

**2.4 Type III Bags.** Type III bags are for drum liners and other uses.

**2.4.1** The color shall be natural.

**2.4.2** The average thickness shall be 3.75 mils with no point less than 3.0 mils.

**2.4.3** The finish size of the bags for 55 gallon drums shall be 38 inches width by 65 inches length ( $\pm 2$  inches in either direction).

**2.4.4** The finish size of the bags for 20 gallon drums shall be 28 inches width by 38 inches length ( $\pm 2$  inches in either direction).

**2.4.5** When biodegradable polyethylene drum liner bags are specified in the bid request, the bags shall be made of biodegradable polyethylene film from polyethylene resins and the proper cornstarch additives to achieve a film containing 6 percent cornstarch. The manufacturer shall furnish a certification with the bid quotation that the bags are biodegradable and contain 6 percent cornstarch.

**2.4.6** The bags shall be packaged in rolls.

**3.0 Packaging.** As stated for type.

**3.1** Packages or rolls of bags shall not exceed 50 pounds in net weight. Packages or rolls shall be clearly labeled with the number of bags and approximate package weight.



**4.0 Acceptance.** Acceptance of polyethylene sample bag liners purchased under these specifications will be based on visual examination and any tests deemed necessary by the department.

**5.0 Ordering.** Polyethylene bags are to be ordered by type, size, and color (if desired).



Missouri Highways and Transportation Commission  
Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions

**STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/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 bid/quote/proposal, unit prices will govern.
- b. All bids/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. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. 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 Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted.
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/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 Contractor 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 Contractor 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 bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

**Nondiscrimination**

- a. The Contractor 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.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor'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 Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT 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/proposal, the Bidder/Offeror 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 proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- 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 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 Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor 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

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in writing to MoDOT and accompanied by documentation 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 Contractor 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 subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

**Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor 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 Bidder/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 purchase order 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 Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

**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.
- b. The Contractor 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 Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) 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 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.

**Executive Order**

- a. 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 (6<sup>th</sup>) 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/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled "**PREFERENCE IN PURCHASING PRODUCTS**" should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

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**Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied, as 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 Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor 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 Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Cancellation of Contract**

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the 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.
- b. 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 Contractor for any additional costs incurred thereby.

**Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor 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 Contractor responsible for damages.

**Inventions, Patents, and Copyrights**

- a. The Contractor 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 Contractor'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 Contractor 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 Contractor'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 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 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.

**Status of Independent Contractor**

- a. 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.

**Indemnification**

- a. The Offeror shall defend, indemnify and hold harmless the Commission, 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 Offeror's performance of its obligations under this Agreement.