

**BID FORM**

MISSOURI DEPARTMENT OF TRANSPORTATION

GENERAL SERVICES

830 MoDOT DRIVE – P.O. BOX 270

JEFFERSON CITY, MO 65102

REQUEST NO.	1-091229CN		
DATE	December 9, 2009		
PAGE NO.	1	NO. OF PAGES	9

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

2:00 PM, LOCAL TIME, December 29, 2009

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

Jefferson City, Missouri

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

**BUYER: CINDY NORMAN**

**BUYER TELEPHONE: 573-522-9746**

SUPPLIES OR SERVICES					
<p>Contract for furnishing <b>“BATTERIES”</b> for a contract period beginning January 1, 2010 (or date of award) through December 31, 2010. (4) One (1) Year Renewals</p> <p><b>PLEASE SEE ATTACHED PRICING PAGE</b></p> <p><b>Note to Respondent:</b> 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 <b>MUST</b> 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 <b>MUST</b> submit a copy of their certificate with the signed copy of the contract agreement before the purchasing department can proceed with MoDOT legal contract approval.</p> <p><b>VENDOR MUST SIGN AND SUBMIT THIS FORM WITH THE PRICING PAGES</b></p>					

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

*In compliance with the above invitation 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 THIRTY (30) days after receipt of formal purchase order.*

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

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

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

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

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. Cindy Norman  
Missouri Department of Transportation  
General Services - Procurement  
1320 Creek Trail Drive; P.O. Box 270  
Jefferson City, MO 65102

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

## **PRICES:**

Prices **MUST** remain firm for the entire contract period stated herein.

## **DELIVERY:**

**Bids shall be quoted with delivery F.O.B Missouri Department of Transportation, Jefferson City, Missouri.** Bidder agrees to furnish and deliver any or all the items on which prices were quoted within THIRTY (30) calendar days after receipt of formal purchase order. MoDOT will issue purchase orders on an as needed basis and in full-case quantities.

## **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. To prevent misunderstanding and litigation, it shall be a condition of this bid and of its acceptance that the present Chief Engineer of the Missouri Department of Transportation, or his/her successor, shall in all cases determine any and all questions which may arise concerning the quality, quantity and acceptability of all anti-freeze supplied, the time, place and manner of delivery, the correct interpretation of the specifications, bid and orders, all compensations, damages or claims of any character whatsoever for the performance of breach of the contract, and his/her decision shall be final, binding and conclusive upon all parties.

## **NON-EXCLUSIVITY:**

The Missouri Department of Transportation 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 MoDOT.

## **CONTRACT PRICE ESCALATION**

In the event the contractor requests a price increase during the contract period (original contract period or contract renewal period), 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 three (3) months of the original contract period, or if applicable, first three (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.

**RENEWAL PERIODS:**

If the option for renewal is exercised by MoDOT, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated herein. If renewal prices are not provided, the prices during renewal periods shall be the same as during the original contract period.

MoDOT does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated. In the event MoDOT exercises its option(s) to renew the contract, the requirements for future years shall be basically similar.

**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. The bidder must ensure that his/her firm name is registered with the office of the Secretary of State.

**ADDITIONAL DOCUMENT SUBMITTAL REQUIREMENTS:**

For the bid to be considered the two (2) 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.

**PRICINGPAGE**  
**(Three (3) pages, including six (6) bid items)**

Contract for furnishing “Batteries” for a **contract period beginning January 1, 2010 (or date of award) and ending December 31, 2010**. COMPLETE, SIGN AND SUBMIT WITH YOUR SIGNED BID FORM AND OTHER REQUIRED DOCUMENTATION.

**NOTE ON QUANTITIES AND BRAND IDENTIFICATION:** 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 & Part Number to be considered.* PLEASE INCLUDE DESCRIPTIVE LITERATURE FOR ALL ITEMS BID. Any bids received without the required information will be subject to rejection.

Item #:	Description:	Mfg. No. or Brand	Quantity:	Unit of Issue:	Unit Price:	Extended Total:
#1	<p>4500611428            Battery, 6-Volt, alkaline, spiral spring terminal, approximately 12 per case.</p> <p>Bids will be considered on the following brands only: Ray-O-Vac #806, Energizer #529, Panasonic and Procell by Duracell #PC908.</p> <p>Please indicate Brand &amp; Model Number you propose to furnish.</p>		320	EACH		
#2	<p>4500611242            Battery, D-size, alkaline, 6 per package, approximately 72 per case.</p> <p>Bids will be considered on the following brands only: Ray-O-Vac #AL-D, Energizer, Panasonic and Procell by Duracell #PC1300.</p> <p>Please indicate Brand &amp; Model Number you propose to furnish.</p>		12,100	EACH		

Item #:	Description:	Mfg. No. or Brand	Quantity:	Unit of Issue:	Unit Price:	Extended Total:
#3	<p>4500611107 Battery, AA-size, alkaline, 4 per package, approximately 96 per case.</p> <p>Bids will be considered on the following brands only: Ray-O-Vac #AL-AA, Energizer, Interstate, Panasonic and Procell by Duracell #PC1500.</p> <p>Please indicate Brand &amp; Model Number you propose to furnish.</p> <p><b>NOTE: PLEASE PRICE THIS ITEM BY THE PACKAGE OF 4, NOT PER EACH.</b></p>		4,075	PACKAGE		
#4	<p>4500611130 Battery, AAA-size, alkaline, 4 per package.</p> <p>Bids will be considered on the following brands only: Ray-O-Vac #AL-AAA, Energizer, Interstate, Panasonic and Procell by Duracell #PC2400.</p> <p>Please indicate Brand &amp; Model Number you propose to furnish.</p> <p><b>NOTE: PLEASE PRICE THIS ITEM BY THE PACKAGE OF 4, NOT PER EACH.</b></p>		1,905	PACKAGE		

Item #:	Description:	Mfg. No. or Brand	Quantity:	Unit of Issue:	Unit Price:	Extended Total:
#5	<p>4500611157 Battery, C-size, alkaline, 6 per package.</p> <p>Bids will be considered on the following brands only: Ray-O-Vac #AL-C, Energizer, Interstate, Panasonic and Procell by Duracell #PC1400.</p> <p>Please indicate Brand &amp; Model Number you propose to furnish.</p>		1,690	EACH		
#6	<p>4500611605 Battery, 9-Volt, alkaline, 6 per packaged.</p> <p>Bids will be considered on the following brands only: Ray-O-Vac #AL-9V, Energizer, Interstate, Panasonic and Procell by Duracell #PC1604.</p> <p>Please indicate Brand &amp; Model Number you propose to furnish.</p>		960	EACH		

**RENEWAL:** *In the event that MoDOT exercises its options to renew the contract for one (1), 12 month period* pursuant to the applicable provisions outlined in this document, the Bidder shall provide below the maximum percentage of increase or minimum percentages of decrease for each renewal period. The Bidder is cautioned that the percentages shall be computed against the ORIGINAL contract prices during the renewal period. Furthermore, the Bidder is advised that MoDOT does not automatically grant increases at the time of renewing the contract and that if an increase is requested, documentation of need must be provided at the time of renewal.

- 1<sup>st</sup> Renewal Period \_\_\_\_\_% of maximum increase  
2<sup>nd</sup> Renewal Period \_\_\_\_\_% of maximum increase  
3<sup>rd</sup> Renewal Period \_\_\_\_\_% of maximum increase  
4<sup>th</sup> Renewal Period \_\_\_\_\_% of maximum increase

**NOTE ON PACKAGING:** Product shall be shipped in the original manufacturer packaging and be clearly marked as to manufacturer, quantity, brand, and size. The month and year the battery was manufactured must be marked on each battery box/case. If this requirement is fulfilled utilizing a date code, the supplier must furnish the date code, along with the bid.

**NOTE ON SAMPLES:** MoDOT reserves the right to request a sample of the products from the bidders if deemed necessary before award of bid. Bidder will have five (5) working days, from date of request, to provide sample. Samples shall be furnished to MoDOT at no charge, will not be returned. Unless otherwise stated herein, all samples will become the property of MoDOT. Bidders are encouraged to provide descriptive literature of the products they are quoting along with the bid. **MoDOT reserves the right to reject any sample and related bids, which do not meet specifications.**

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

\_\_\_\_\_  
Name of the Bidder’s Firm

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date Signed

**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):** \_\_\_\_\_

**Federal Tax I.D. #:** \_\_\_\_\_ **if no Federal Tax I.D. # - 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.

n (or item 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 BUSINESS NAME: \_\_\_\_\_

VENDOR SIGNATURE: \_\_\_\_\_

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.

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

**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 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 Project Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request if applicable.
- 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. By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.

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

1) If attached, the document entitled "**MISSOURI SERVICE-DISABLED VETERAN PREFERENCE**" should be completed and returned with the solicitation documents.

d. 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

**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.

**MISSOURI SERVICE-DISABLED VETERAN BUSINESS PREFERENCE**

By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.

Definitions:

**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.

If an offeror meets the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and is either doing business as a Missouri firm, corporation, or individual; or maintains a Missouri office or place of business, the offeror **must** provide the following with the proposal in order to receive the Missouri service-disabled veteran business preference over a non-Missouri service-disabled veteran business when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing proposals, in their entirety, are comparable:

- a. A copy of a letter from the Department of Veterans Affairs (VA), or a copy of the offeror's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) from the branch of service the offeror was in, stating that the offeror has a service-connected disability rating ranging from 0 to 100% disability; and
- b. A completed copy of this exhibit

(NOTE: For ease of evaluation, please attach copy of the above-referenced letter from the VA or a copy of the offeror's discharge paper to this Exhibit.)

By signing below, I certify that I meet the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and that I am either doing business as a Missouri firm, corporation, or individual; or maintain Missouri offices or places of business at the location(s) listed below.

**Veteran Information**

**Business Information**

---

Service-Disabled Veteran's Name, (Please Print)

---

  

---

*Service-Disabled Veteran's Signature*

---

---

Service-Disabled Veteran Business Name

---

---

---

Missouri Address of Service-Disabled Veteran Business

---