

MISSOURI DEPARTMENT OF TRANSPORTATION
GENERAL SERVICES
1320 CREEK TRAIL DRIVE – P.O. BOX 270
JEFFERSON CITY, MO 65109

REQUEST NO.	2-100112BT
DATE	December 31, 2009
PAGE NO.	1 NO. OF PAGES

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

2:00 p.m., Local Time, January 12, 2010

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

BIDS TO BE BASED F.O.B. MISSOURI DEPARTMENT OF TRANSPORTATION

Submit net bid as cash discount stipulations will not be considered
Various MoDOT Locations

DEFINITE DELIVERY DATE SHOULD BE SHOWN. THE BIDDER MUST SIGN AND RETURN BEFORE DATE AND TIME SET FOR OPENING. **ALL BIDS SHOULD BE EXTENDED AND TOTALED.**

BUYER: Brenda Tyree
BUYER EMAIL:
Brenda.Tyree@modot.mo.gov

BUYER TELEPHONE: 573- 751-7482

SUPPLIES OR SERVICES

TRAFFIC MARKING PAINT

To establish a contract to furnish “Traffic Marking Paint” with an effective date of Notice to Proceed and ending December 31, 2010 in accordance with the following pages.

Components of Agreement: The Agreement between MHTC and the successful Bidder shall consist of: the RFB and any written amendments thereto, the "Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions" that are attached to this RFB, the bid submitted by the Bidder in response to the RFB and the post-award contract agreement signed between the parties. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFB or the Bidder's bid. The Bidder is cautioned that its bid shall be subject to acceptance by MHTC without further clarification.

Return sealed bid to the address shown at the top of this page.

(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: _____
Telephone No.: _____
Fax No.: _____
Federal I.D. No. _____
Email Address: _____

Firm Name: _____
Address: _____
By (Signature): _____
Type/Print Name _____

Is your firm MBE certified? Yes No

Title: _____
Is your firm WBE certified? Yes No

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

- 1.1.1 This Request For Bid seeks bids from qualified organizations to provide Traffic Marking Paint located throughout the State of Missouri with an effective contract period of Notice to Proceed through December 31, 2010, to the Missouri Highways and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT). Each bid must be mailed in a sealed envelope to Ms. Brenda Tyree, General Services Procurement Unit, 1320 Creek Trail, P.O. Box 270, Jefferson City, Mo 65109, or hand-delivered in a sealed envelope to the General Services Procurement Office in the Highway and Transportation Building at 1320 Creek Trail, Jefferson City, Missouri. All questions regarding the RFB shall be submitted to Ms. Brenda Tyree. Bids must be returned to the office of Ms. Brenda Tyree no later than 2:00 p.m., CST, January 12, 2010.

RFB Coordinator:

**Ms. Brenda Tyree, Procurement Agent
Missouri Department of Transportation
1320 Creek Trail
Jefferson City, MO 65109**

PHONE: 573-751-7482

FAX: 573-526-1218

1.2 General Information:

1.2.1 This document constitutes an invitation for competitive, sealed bids for the procurement of traffic marking paint as set forth herein.

1.2.2 Organization - This document, referred to as a Request for Bid (RFB), is divided into the following parts:

1) Introduction and General Information

2) Scope of Work

3) Bid Submission

4) Pricing Page(s)

5) Attachment A & B

Attachment A - MGS specifications - (Click on separate link to view Attachment)

Attachment B – State Map of Missouri - (Click on separate link to view Attachment)

6) Signature Page(s)

6) Terms and Conditions

2. SCOPE OF WORK

2.1 General Requirements:

- 2.1.1 The contractor shall provide traffic marking paint on an as needed, if needed basis for the Missouri Highway and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT), in accordance with the provisions and requirements stated herein.
- 2.1.2 The contractor shall provide all deliverables/services to the sole satisfaction of the MoDOT.
- 2.1.3 The contractor shall agree and understand the gallons of traffic marking paint specified herein is the estimated requirement for the striping season and is based on ideal conditions and therefore, subject to change due to weather and mechanical problems that may develop during the course of the striping season. MoDOT estimates, but does not guarantee, that the estimated quantities specified herein may be required/purchased.
- 2.1.4 MoDOT reserves the right to obtain “like or similar” products as specified herein from other manufacturers, exclusive of the contract, when use of such products is deemed in the best interest of the MoDOT.
- 2.1.5 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to provide the deliverables/services required herein.

2.2 Specific Requirements:

- 2.2.1 The contractor shall insure all materials, equipment, and/or services comply with the Specifications #MGS-91-06N (Attachment A) and any other provisions outlined in the solicitation document.
- 2.2.2 The contractor shall insure that all containers are labeled with the appropriate hazardous material marking in accordance with the U.S. Department of Transportation regulation 173.115.
- 2.2.3 The contractor shall agree and understand that each bulk storage tank site may require an initial fill up.
 - a. Actual quantities shall be ordered on an as needed basis, and delivery dates shall be subject to district notification.
- 2.2.4 Prior to providing the traffic marking paint as specified herein, the contractor shall insure the contractor’s tankers or totes are cleaned to insure no loose particles of paint are passed into MoDOT’s striping equipment.

2.3 Field Performance Requirements:

- 2.3.1 The contractor shall provide traffic marking paint which meets the following minimum field performance requirements.
 - a. No-Track Time/Field Drying Time Requirements - The reflectorized line, when applied with the provided ratio of specified glass spheres to binder, 15 mils and 8 pounds of beads per gallon, shall dry to no tracking in 3 minutes or less. The line for the test shall be applied with MoDOT’s equipment as to the paint and equipment manufacturer’s recommendation which is not to exceed 120° F maximum at the heat exchanger. The 3 minute time shall not be exceeded under any humidity conditions provided that the pavement is dry and the pavement temperature is between 60°F and 120°F. “No Tracking in 3 minutes” shall be the time, not to exceed 3 minutes, required for the line to withstand the running of a standard automobile over the line at a speed of approximately 40 mph, simulating a passing procedure without tracking of the reflectorized line when viewed from a distance of 50 feet.
 - b. Over Spray Requirements - Overspray is defined as that amount of paint that is beyond the width of the line being applied. The reflectorized line, when applied with the provided ratio of specified glass spheres to

binder, 15 mils and 8 pounds of beads per gallon, shall not have overspray exceeding one-half inch on either side of the applied line. The line for the test shall be applied with MoDOT's equipment as to the paint and equipment manufacturer's recommendation, which is not to exceed 120°F maximum at the heat exchanger. The line will be applied at paint pressures ranging from 1000 to 1200 psi. Tip sizes used in the paint application guns shall be used to accomplish the width of the applied line that is required. Overspray shall be measured within 15 minutes of the line being applied and documented with photographs showing the line and the measurement.

- c. Striper Paint Flow Requirements - Striper paint flow requirements are a measure of how well the paint flows through MoDOT's striping application trucks. This measure evaluates the amount of cleaning of the truck paint system required.
- d. During normal striping operations, the paint shall not cause the striper to require cleaning of the paint filter system more than once per 10-hour day or per 1,500 gallons of paint applied per color whichever is greater. The paint filters used shall be the standard 60 mesh filters included by the manufacturer of the striping truck.
- e. The MoDOT striping trucks are thoroughly cleaned prior to the start of the striping season. Bulk paint systems shall be thoroughly cleaned in at least two-year intervals.

2.4 Delivery Requirements:

- 2.4.1 The contractor shall deliver traffic marking paint as specified herein to all MoDOT Districts located throughout the State of Missouri (Attachment B). The contractor shall deliver such traffic marking paint F.O.B. destination.
- 2.4.2 The contractor shall not deliver any traffic marking paint to MoDOT until being notified by MoDOT by telephone or purchase order.
- 2.4.3 The contractor shall have a maximum of 8 full working days from time of notification to deliver traffic marking paint. Full working days shall be defined as a 24 hour period, Monday through Friday, excluding Saturday, Sunday, and Holidays.
 - a. In the event traffic marking paint is not delivered within the 8 full working day period, MoDOT shall be compensated at a rate of \$500 per day until the traffic marking paint is delivered.
- 2.4.4 The contractor shall agree and understand that any traffic marking paint that has been contaminated with any form of material or constituents not approved for use or any traffic marking paint pumped into MoDOT's storage tanks, thus causing existing traffic marking paint to be contaminated, shall be disposed of by the contractor.
 - a. The contractor shall be responsible for cleaning MoDOT's storage tanks and related plumbing at no additional cost.
 - b. Replacement with acceptable material shall be delivered within 8 full working days.
 - c. If replacement traffic marking paint is not delivered within an 8 full working day period, the contractor shall compensate MoDOT at a rate of \$500 per day until the traffic marking paint is delivered.
- 2.4.5 The contractor shall deliver traffic marking paint in bulk or totes. When delivering traffic marking paint in bulk, the contractor shall deliver traffic marking paint using a tanker truck. MoDOT reserves the right to request portions of the traffic marking paint specified for delivery to their locations to be delivered in totes rather than bulk. Some of these totes shall be used as back up supplies on hand and may not be returned to the contractor until the end of the striping season.
 - a. Tanker truck delivery - Bottom port loading and unloading shall be required. MoDOT shall furnish the

necessary hoses and pumps to unload the tanker into MoDOT's 10,000 gallon traffic marking paint tanks at the designated delivery sites.

- 1) The minimum bulk delivery for one (1) color shall be 3,000 gallons unless a smaller quantity is ordered. MoDOT personnel shall pump the traffic marking paint from the contractor's tanker trucks.
- 2) Verification of the amount of traffic marking paint delivered shall be based on a weight ticket from a certified scale and using the weight per gallon as established by the MoDOT laboratory.
- 3) Traffic marking paint arriving by tanker truck shall be delivered within 24 hours from the time of loading. Traffic marking paint arriving at the designated MoDOT site after 24 hours of loading will be rejected.

b. Tote delivery - Delivery by totes shall be an option for each district.

- 1) Totes shall be off-loaded at the locations specified by MoDOT.
- 2) Empty totes shall remain at the MoDOT location that received the tote until MoDOT notifies the contractor there are sufficient quantities of empty totes to be picked up.
- 3) The contractor shall pick up empty totes at no additional cost to MoDOT.

2.4.6 In the event MoDOT delays the contractor from unloading material, the contractor shall be compensated at the rate of \$24.00 per hour, computed to the nearest 15 minutes (One hour and 30 minutes shall be allowed for unloading material free of demurrage).

- a. If the contractor's material does not arrive at the time specified, the contractor shall compensate MoDOT at a rate of \$80.00 per hour, computed to the nearest 15 minutes.
- b. If the contractor arrives prior to the specified time of delivery, unloading shall begin as soon as practical and allowed unloading time shall start when actual unloading begins, or at the specified arrival time, whichever is the earliest.

2.4.7 The contractor shall agree and understand that when more than one shipment of traffic marking paint is ordered for the same general location on the same day, the first shipment to arrive shall be unloaded first.

- a. If an earlier scheduled shipment does not arrive at the scheduled time, no demurrage shall be due the contractor on subsequent shipments, unless more than one hour and 30 minutes is required to unload each subsequent shipment.
- b. If a shipment that did not arrive at the scheduled time arrives after unloading has begun on a subsequent shipment, the late shipment shall not be unloaded until all "on time" shipments have been unloaded. Demurrage due MoDOT shall be discontinued on the "late" shipment while the "on time" shipments are being unloaded.
- c. Unloading of an earlier scheduled shipment shall not begin after 2:30 P.M. and demurrage due to MoDOT shall be discontinued at that time.
- d. The contractor shall agree and understand the traffic marking paint belongs to the contractor and is the contractor's responsibility.

2.5 Additional Requirements:

- 2.5.1 The contractor shall furnish the truck driver a copy of the bill of lading, manifest or truck ticket that is to be presented to MoDOT personnel at destination prior to unloading. A copy is also to be available to the MoDOT representative at the shipping point. The bill of lading, manifest or truck ticket shall show the following information: Type and color of traffic marking paint, batch or lot number, purchase order number, truck number, weights of truck before and after loading, destination, date and time loaded, name and location of source and a certification statement.
- 2.5.2 The contractor shall retain all records throughout the duration of the contract and for a period of three (3) years following the final payment by MoDOT to the contractor, including, but not limited to, shipping tickets, invoices, and batch tickets, indicating the origin and components of every batch of traffic marking paint provided under the contract. The contractor shall make these records available to MoDOT upon request and without cost to MoDOT, Federal Highway Administration, or their designees. In addition, the contractor shall compile and provide to MoDOT any other documentation MoDOT deems necessary to determine the origin, ingredients, and components of each batch of traffic marking paint.
- 2.5.3 The contractor shall include a certified batch card with each sample submitted to the Central Laboratory located at 1617 Missouri Blvd, Jefferson City, MO 65109, that clearly shows the date and time of manufacture and the manufacturer's batch or lot number. The batch card shall include the exact formulation used to manufacture the batch or lot of traffic marking paint represented. The quantity in pounds of each constituent or raw material used in the manufacture of that batch shall be listed on the card, along with the manufacturer and lot number for that constituent. If a batch or lot is composed of different mixers or blend tanks of traffic marking paint that are combined to create a single batch or lot for shipping, the quantities of each constituent shall be shown for each mixer or blend tank of traffic marking paint produced. In addition, the batch card shall show the following certification statement:

This is to certify that the paint in this shipment complies with Missouri Department of Transportation specifications for acrylic waterborne traffic marking paint and that this paint is formulated to the exact formula as that applied to the National Transportation Product Evaluation Program (NTPEP) test deck used to qualify the paint.

2.6 Liquidated Damage Requirements:

- 2.6.1 The contractor shall agree and understand that providing traffic marking paint in accordance with the requirements stated herein is considered critical to the efficient operations of the MoDOT. However, since the amount of actual damages would be difficult to establish in the event the contractor fails to comply with the contractual requirements, the contractor shall agree and understand that the percentages identified below as liquidated damages shall be reasonable and fair under the circumstances.
 - a. In the event the contractor fails to provide traffic marking paint in accordance with the contractual requirements specified herein, the contractor shall agree and understand that MoDOT shall solely determine which of the following percentages of deduction shall be assessed against the contractor for the contractor's noncompliance, and such shall be final and without recourse.

Minor	5 %
Slight	10 %
Moderate	25 %
Severe	50 %

- b. The contractor shall agree and understand that in the event 10 or more batches in a contract year are determined not to comply with the contractual requirements, MoDOT reserves the right to increase the percentages listed above.
- c. The contractor shall agree and understand 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 MoDOT, at the sole discretion of the MoDOT.
- d. The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.
- e. The contractor shall agree and understand that all assessments of liquidated damages shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies.
- f. The contractor shall understand and agree that all assessments of liquidated damages shall be within the discretion of each District as a separate entity, and shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies. The contractor shall understand and agree that each District's decision shall be individual, final, and without recourse.

2.7 Invoicing and Payment Requirements:

- 2.7.1 The contractor shall submit an itemized invoice to the applicable requesting address for the completion of deliverables, as specified herein.
- 2.7.2 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.
- 2.7.3 The contractor shall be paid in accordance with the firm, fixed prices stated on the pricing page(s) of this document after completion of deliverables specified herein and acceptance by MoDOT.
- 2.7.4 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.
- 2.7.5 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 upon request.
- 2.7.6 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.
- 2.7.7 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.
- 2.7.8 The MHTC reserves the right to purchase goods and services using the state-purchasing card.

2.8 Other Contractual Requirements:

- 2.8.1 Contract Period - The contract shall commence from the date of award until December 31, 2010 with up to two (2) one-year renewal option periods. If the option for renewal is exercised by MoDOT, the contractor shall agree to all terms and conditions of the RFB and all subsequent amendments. Renewal options are at the sole discretion of MoDOT.
- 2.8.2 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.
- a. If renewal prices are not provided, the prices during renewal periods shall be the same as during the original contract period.
 - b. 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.
 - c. In the event MoDOT exercises its option(s) to renew the contract, the requirements for future years shall be basically similar.
- 2.8.3 Escalation Clause - 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 3 months of the original contract period, or if applicable, first 3 months of a contract period for a renewal.
 - 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.
- 2.8.4 Contract Bond - In the event a price increase is granted due to an approved escalation, the contractor shall increase their 100% contract bond, as specified elsewhere herein, to reflect the current contract value.
- 2.8.5 Inspection Specifications - MoDOT reserves the right to inspect the material at the point of manufacture, intermediate storage point, or at a destination which shall be at the discretion of MoDOT.

3. BID SUBMISSION

3.1 Bid Submission Information:

- 3.1.1 All bids must be received in a sealed envelope clearly marked “Traffic Marking Paint”.
- 3.1.2 All bids must be received at the following address no later than January 12, 2010 at 2:00 p.m., CST.

The Missouri Department of Transportation
General Services – Procurement Division
Attn: Brenda Tyree
1320 Creek Trail
Jefferson City, MO 65109

- 3.1.3 The bidder may withdraw, modify or correct his bid after it has been deposited with the Department provided such request is submitted in writing and received at the location designated for the bid opening prior to the time specified for opening bids. Such a request received as specified will be attached to the bid and the bid will be considered to have been modified accordingly. No bid may be modified after the time specified for the opening of bids.

3.1.4 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 MoDOT, unless the RFB specifically refers the bidder to another contact. Such communication should be received at least three (3) working days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFB, any questions received less than three (3) working days prior to the RFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the MoDOT is that which is issued by MoDOT in the RFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. MoDOT monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

3.1.5 Proposal/Bid Guaranty/Contract Bond:

- a. Each bid/proposal shall be accompanied by a Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue – Credit State Road Fund for an amount equal to Five Percent (5%) of the amount of the BID submitted. This is to act as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment bond (Contract Bond) or a cashier's check, a bank money order or a certified check made payable to "Director of Revenue--Credit State Road Fund" in an amount equal to One Hundred (100%) of the contract price.
- b. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the MoDOT as surety. The agent executing the same on behalf of the surety company must attach a

current Power of Attorney setting forth his authority to execute the bond involved.

- c. Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder(s) will be retained until the contract is executed and a satisfactory Performance and Payment (Contract Bond) is furnished. Bid Bonds will not be returned except on specific request of the bidder.

3.1.6 *Prequalification of Bidder:* The bidder must provide proof of the following conditions to be considered for an award of contract.

- a. Bidder must have a plant in operation and devoted to manufacturing the travel marking paint being proposed for this bid. Such plant must be capable of producing batch sizes of at least 3500 gallons (13,250 liters).
- b. Bidder must maintain a laboratory to scientifically control the travel marking paint being proposed for this bid to assure accuracy and quality of formulation.
- c. Bidder must have produced fast drying waterborne traffic marking paint over the past year (1) with a successful application record.
- d. Bidder's travel marking paint must successfully complete the durability testing required elsewhere herein.

3.1.7 *Prequalification of Paint:*

- a. Prior to the bid opening date, the bidder must submit three (3) one-quart samples of each paint being bid. Each paint sample must be accompanied by a one (1) pint can of acrylic emulsion, and certified test results for all of the tests stipulated elsewhere herein. Each sample shall be identified by manufacturer's code number and type of paint to permit easy reference and identification. Samples are to be submitted to the Chemical Laboratory Director, Missouri Department of Transportation, Materials Laboratory, 1617 Missouri Blvd., Jefferson City, MO 65109.
- b. Prior to the bid opening date, the bidder shall submit documentation indicating the most recent NTPEP report that provides the data required elsewhere herein. The bidder shall also submit certification that the paint offered for conformance to the applicable specification is manufactured to the same formulation as the paint applied on the NTPEP test deck. The only deviations from this formulation that are permitted are a slight variation in the amount of thickener used in order to adjust the viscosity to the required level and the addition of sufficient water to replace that lost in processing of the paint. The manufacturer's identification code for the submitted paint shall be the same as that submitted for application to the test decks and that is shown on the appropriate NTPEP report.

3.1.8 Bids will be reviewed to determine if the bid complies with the mandatory requirements, and to determine the lowest and best bid.

3.1.9 *Cost Determination* - The low bid shall be determined by multiplying the estimated quantity with the applicable unit price to obtain a total price.

3.1.10 *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 “District-by-District” basis using the “lowest and best” principle of award.
- b. No award of contract shall be made until the traffic marking paint has successfully complied with all of the requirements specified herein, and has been tested in the MoDOT Central Laboratory. **NOTE:** Normal-testing time is a minimum of thirty (30) calendar days.

c. MoDOT reserves the right to reject any or all bids, and no award is final until formally approved.

3.1.11 ***NOTE:*** The bidder must be in compliance with the laws regarding conducting business in the MoDOT. Within ten (10) business days of notification, the bidder will need to provide a copy of his/her Missouri Secretary of State's "Certificate of Good Standing" prior to the issuance of any contract or initial purchase order by MoDOT.

4. PRICING PAGE

4.1 Traffic Marking Paint - The bidder shall provide a firm, fixed price in the table below for the original contract period for providing the deliverables/services in accordance with the provisions and requirements of this RFB. All costs associated with providing the required deliverables/services shall be included in the price stated below.

TRAFFIC MARKING PAINT - DISTRICT 1 – ST. JOSEPH					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
1	White Water Borne - C/S Code - 6306686890	33,000	\$	\$	\$
2	Yellow Water Borne - C/S Code - 6306686950	67,000	\$	\$	\$
<i>Totes Delivery</i>					
3	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
4	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 2 – MACON					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
5	White Water Borne - C/S Code - 6306686890	40,000	\$	\$	\$
6	Yellow Water Borne - C/S Code - 6306686950	90,000	\$	\$	\$
<i>Totes Delivery</i>					
7	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
8	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 3 – HANNIBAL					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
9	White Water Borne - C/S Code - 6306686890	60,000	\$	\$	\$
10	Yellow Water Borne - C/S Code - 6306686950	70,000	\$	\$	\$
<i>Totes Delivery</i>					
11	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
12	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 4 – KANSAS CITY					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
13	White Water Borne - C/S Code - 6306686890	90,000	\$	\$	\$
14	Yellow Water Borne - C/S Code - 6306686950	60,000	\$	\$	\$
<i>Totes Delivery</i>					
15	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
16	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 4 – WARRENSBURG					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
17	White Water Borne - C/S Code - 6306686890	36,000	\$	\$	\$
18	Yellow Water Borne - C/S Code - 6306686950	56,000	\$	\$	\$
<i>Totes Delivery</i>					
19	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
20	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 5 – JEFFERSON CITY					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
21	White Water Borne - C/S Code - 6306686890	75,000	\$	\$	\$
22	Yellow Water Borne - C/S Code - 6306686950	90,000	\$	\$	\$
<i>Totes Delivery</i>					
23	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
24	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 6 – ST. LOUIS					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
25	White Water Borne - C/S Code - 6306686890	42,000	\$	\$	\$
26	Yellow Water Borne - C/S Code - 6306686950	33,000	\$	\$	\$
<i>Totes Delivery</i>					
27	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
28	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 7 – JOPLIN					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
29	White Water Borne - C/S Code - 6306686890	56,000	\$	\$	\$
30	Yellow Water Borne - C/S Code - 6306686950	89,000	\$	\$	\$
<i>Totes Delivery</i>					
31	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
32	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 8 – SPRINGFIELD					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
33	White Water Borne - C/S Code - 6306686890	100,000	\$	\$	\$
34	Yellow Water Borne - C/S Code - 6306686950	118,000	\$	\$	\$
<i>Totes Delivery</i>					
35	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
36	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 9 – WILLOW SPRINGS					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
37	White Water Borne - C/S Code - 6306686890	33,600	\$	\$	\$
38	Yellow Water Borne - C/S Code - 6306686950	42,000	\$	\$	\$
<i>Totes Delivery</i>					
39	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
40	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 9 – ROLLA					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
41	White Water Borne - C/S Code - 6306686890	28,000	\$	\$	\$
42	Yellow Water Borne - C/S Code - 6306686950	33,600	\$	\$	\$
<i>Totes Delivery</i>					
43	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
44	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 10 – SIKESTON					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
45	White Water Borne - C/S Code - 6306686890	75,000	\$	\$	\$
46	Yellow Water Borne - C/S Code - 6306686950	50,000	\$	\$	\$
<i>Totes Delivery</i>					
47	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
48	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

TRAFFIC MARKING PAINT - DISTRICT 10 – PARK HILLS

Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1st Renewal Period <i>Maximum Price Per Gallon</i>	2nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Bulk Delivery</i>					
49	White Water Borne - C/S Code - 6306686890	31,200	\$	\$	\$
50	Yellow Water Borne - C/S Code - 6306686950	24,600	\$	\$	\$
<i>Totes Delivery</i>					
51	White Water Borne - C/S Code - 6306686890	0	\$	\$	\$
52	Yellow Water Borne - C/S Code - 6306686950	0	\$	\$	\$
TOTAL:					\$

Signature

Date

Exhibit A

ANTI-COLLUSION STATEMENT

STATE OF _____)

COUNTY OF _____)

SS.

_____ being first

duly sworn, deposes and says that he is _____

Title of Person Signing

of _____

Name of Bidder

that all statements made and facts set out in the bid for the above project are true and correct; and that the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

By _____

By _____

By _____

Sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires _____

Exhibit B

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 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.

Exhibit C

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 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.

Exhibit E

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

_____,
as Principal and _____, as Surety are held and firmly bound
unto the **STATE OF MISSOURI** (acting by and through the **Missouri Highways and Transportation Commission**) in
the penal sum of:

_____ **Dollars**
(\$ _____) to be paid to the **State of Missouri or to the Missouri Highways and Transportation Commission**, to be credited to the State Road Fund, the Principal and Surety binding themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this _____

THE CONDITION OF THIS OBLIGATION is such that:

WHEREAS, the Principal is submitting herewith a bid to the Missouri Highways and Transportation Commission for furnishing Traffic Marking Paint as set out in the bid to which this bond is attached.

NOW THEREFORE, if the Missouri Highways and Transportation Commission shall accept the bid of the Principal and if said Principal shall properly execute and deliver to the Missouri Highways and Transportation Commission the contract and contract bond in compliance with the requirements of the bid, the specifications and the provisions of law, to the satisfaction of the Highways and Transportation Commission, then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

In the event the said Principal shall, in the judgment of the Missouri Highways and Transportation Commission, fail to comply with any requirement as set forth in the preceding paragraph, then the State of Missouri acting through the Missouri Highways and Transportation Commission shall immediately and forthwith be entitled to recover the full penal sum above set out, together with court costs, attorney's fees and any other expense of recovery.

(SEAL)

Principal

By

Signature

(SEAL)

Surety

By

Attorney-in-Fact

NOTE: This bond must be executed by the PRINCIPAL and by a CORPORATE SURETY authorized to conduct surety business in the State of Missouri.

Exhibit F

Cooperative Procurement

MoDOT is interested in assisting Missouri governmental entities, etc. in purchasing equipment, various materials, and supplies that meet MoDOT specifications.

Each bidder is asked to indicate below whether they would be willing to offer Traffic Marking Paint listed in the attached "Request for Bid" for sale to these local political entities at the same bid price offered to MoDOT.

It is understood MoDOT will not issue purchase orders, accept delivery nor make payment for these items ordered by any of these agencies. It is further understood the price is based on the Traffic Marking Paint meeting MoDOT specifications. Any added options, deletions, or extra freight costs would be negotiated between the local agency and the successful vendor.

Indicate below whether your company is willing to offer such cooperative purchasing for Missouri counties, cities or other political entities.

YES _____ NO _____

If the price varies throughout the state on MoDOT bids because of different delivery destinations, please indicate the price f.o.b. your location that would be offered as described.

F.O.B. Location _____

Indicate the deadline date that orders will be accepted. _____

COMPANY NAME _____

ADDRESS _____

PHONE NUMBER _____

SIGNATURE _____

TITLE _____

DATE _____

Exhibit G

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 a bidder 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 bidder **must** provide the following with the bid 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 bids, in their entirety, are comparable:

- a. A copy of a letter from the Department of Veterans Affairs (VA), or a copy of the bidder's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) from the branch of service the bidder was in, stating that the bidder 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 bidder'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 Business Name

Service-Disabled Veteran's Signature

Missouri Address of Service-Disabled Veteran
Business

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 in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and

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

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.

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 (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/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.
 - 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.

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

- 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.

SPECIAL TERMS AND CONDITIONS

Insurance

The Contractor shall maintain or cause to be maintained at Contractor's own expense commercial general liability, automobile liability, worker's compensation insurance against negligent acts, errors or omissions of the Contractor, or its subcontractors and anyone directly or indirectly employed by any of them. Any insurance policy required as specified in this Section shall be written by a company that is licensed and authorized to issue such insurance in the state of Missouri and shall provide insurance coverage for not less than the following limits of liability:

- a. General Liability: Not less than \$500,000 for any one person in a single accident or occurrence, and not less than \$3,000,000 for all claims arising out of a single occurrence;

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

- b. Automobile Liability: Not less than \$500,000 for any one person in a single accident or occurrence, and not less than \$3,000,000 for all claims arising out of a single occurrence;
- c. Missouri State Workmen's Compensation policy or equivalent in accordance with state law.

Upon request from the Commission, the Contractor shall provide the Commission with certificates of insurance evidencing the required coverage and that such insurance is in effect.

Required Specifications

- a. The material to be supplied under the contract will comply with the quality and gradation requirements of the **Missouri Standard Specifications for Highway Construction, Edition of 2004**, and any revisions thereto, unless modified by these specifications.

Information and Reports

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

Permits, Licenses and Safety Issues

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

Failure to Execute Contract

- a. Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check, bank money order or certified check within **15 days** after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been executed by all parties thereto.

Notice to Proceed

- a. Within **30 days** after the execution of the contract, a "**Notice to Proceed**" will be issued by the Department. A purchase order will be attached to the "Notice to Proceed," which will specify the date or dates that the Contractor can start delivery, roadway or stockpile delivery and will also include the completion dates. These dates will be in accordance with the dates shown in the proposal.

Delivery – Additional Requirements

- a. The Contractor shall furnish the Missouri Department of Transportation with a planned delivery schedule at least 16 hours before starting delivery.
 - 1) Notification should be during the normal workday preceding the day on which the Contractor desires to initiate delivery.
 - 2) It will be necessary for a representative of the Missouri Department of Transportation to be present when the material is delivered.
 - 3) No material will be accepted that has been dumped in the absence of the department's aggregate materials checker.
- b. Unless otherwise specified in the proposal, deliveries will be a minimum of **500 Tons Per Day**. No deliveries will be made during the period from **30 minutes before sundown to sunrise**. No deliveries will be made on **Saturdays, Sundays and holidays** unless specifically authorized by the engineer.
- c. The following days shall be construed as **official holidays** under the terms of the contract:

January 1	New Year's Day
Third Monday in January	Martin Luther King, Jr.'s Birthday
February 12	Lincoln's Birthday
Third Monday in February	Washington's Birthday
May 8	Truman's Birthday
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veteran's Day
Fourth Thursday in November	Thanksgiving Day
December 25	Christmas Day

- d. When any of the above **holidays falls** on a **Sunday**, the holiday will be observed on the following **Monday**; when any of the above **holidays falls** on a **Saturday**, the **holiday** will be observed on the immediately preceding **Friday**.

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

Legal Weights

- a. Provisions of the Missouri Statutes relative to legal weights in regard to axle and gross weights, gross weights in relation to axle spacing and Supplementary Bridge limits all contained in **Sections 304.180 and 304.190 RSMo** are understood and will be abided by. The Department will not accept loads, which exceed legal weights.
- b. It is understood and agreed that the Missouri Department of Transportation may prohibit the use of large trucks hauling heavy loads of material over low type bituminous roads and during adverse weather conditions.

Basis of Measurement for Payment

- a. For truck delivery, the quantities for basis of payment are to be determined as provided in **Section 310** of the **Missouri Standard Specifications for Highway Construction, Edition of 2004**, and any revisions thereto.

Temporary Suspension of Work

- a. The **District Engineer** shall have authority to suspend work wholly or in part for such period or periods as may be deemed necessary when weather or other conditions are such that in the opinion of the engineer, the work may be done at a later time with advantage to the Department or for failure on the part of the Contractor to comply with any of the provisions of the Contract.
- b. If the Department suspends the work for its own advantages and not because of the Contractor's failure to comply with the Contract, the Contractor will be allowed an equal number of calendar days after the completion date for the completion of the work. The Department may at its discretion give the Contractor an extension of time for completing the work where the Contractor incurs delays for causes beyond his control.
- c. Normal rainfall is not considered a cause qualifying for an extension of time. Claim for extension of time for all causes must be submitted by the Contractor in writing within **30 Days** after the claimed cause for the delay has ceased to exist.

Cancellation of Contract

- a. If the Contractor/supplier fails to carry out the performance of the work with sufficient workmen and equipment to insure the completion of the delivery within the time specified or becomes insolvent or is adjudicated a bankrupt or commits any act of bankruptcy or insolvency or allows any final judgment to stand against him for a period of ten (10) days, the Missouri Department of Transportation may give notice in writing by registered mail to the Contractor/supplier and the surety of such delay, neglect or default.
- b. If, within ten (10) days after such notice the Contractor/supplier does not proceed to remedy to the satisfaction of the Department's representatives the faults specified in said notice, or the surety does not proceed to take over the deliveries, the Department shall have full power and authority, without impairing the obligation of the Contractor/supplier under the contract or the surety under the bond, to take over the completion of the work and arrange for the shipment of any materials necessary to complete the work and the Contractor/supplier and the surety will be responsible for any additional costs incurred by the Department in obtaining the completion of the deliveries.

Environmental Issues

Attention of the bidder is invited to the **Land Reclamation Act, Chapter 444, Laws of 1971, (House Bill 519)** and the necessity for compliance if applicable.

The Contractor shall take necessary precautions and shall schedule and conduct his operations so as to avoid or minimize siltation of streams while removing gravel there from.