Missouri Department of Transportation ~ Statewide Fuel Bid by District

INVITATION TO BID

TO FUEL VENDORS:

The Missouri Department of Transportation (MoDOT) desires to establish pricing for the purchase of bulk fuel Ethanol meeting the listed specifications within the bid document for our District Offices and Maintenance facilities.

The structure of this bid will be based on a supplier's margin above/below the daily Oil Price Information Service (OPIS) Rack Closing Average price for the Ethanol fuels net delivered F.O.B. Destination to listed delivery sites broken down by the listed zones in the bid sheets.

The bidder may withdraw, modify or correct their bid after it has been deposited with the department, provided such request is submitted in writing and received before the time specified for opening bids. Such a request received within the time specified will be accepted, attached o the bid, and to have been considered modified accordingly. No bid may be modified, corrected, or withdrawn after the time specified for the opening of bids.

Bids must be typed or written in ink, and must show the bidders complete company name and address, and signature of the authorized representative of the company in the spaces provided on the bid sheet. In the event of a tie of low bids, the Commission reserves the right to establish the method to be used in determining the award.

By virtue of statutory authority, preference will be given to materials, products, supplies, provisions, and all other articles produced, manufactured, made, or grown, within the State of Missouri, if as low in cost and as desirable as any for outside the State.

The bidder's attention is directed to Section 34.076 RS Mo which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products, and also to the Missouri Domestic Procurement Act, Sections 34.350 to 34.359, RS Mo, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontracts to be manufactured or produced in the United States.

The Missouri Highways and Transportation Commission reserves the right to waive technicalities and to reject any or all bids and from the best and most economical source. No bid is final until formally accepted by the Commission.

If you have any questions, please give me a call.

Sincerely yours,

Amy Bailey
GHQ General Services Procurement
Missouri Department of Transportation
(573) 522-6188

BID SHEETS

SCOPE OF WORK
The intent of this contract is designed to establish a contractual agreement with one supplier, by which the best purchasing practices and prices are achieved based on the daily OPIS pricing in addition to the supplier's margin. MoDOT desires to establish a relationship with a supplier in which MoDOT can offer higher volume, consistent delivery requirements and less overhead of personnel time in return for a supplier's acceptance of responsibility to provide MoDOT with a certified mixture of Ethanol fuels, as well as, to include all MoDOT District fuel locations as a primary customer.

BID OPENING DATE
MoDOT will host a bid opening on October 17, 2007, local time at the Central Office, General Services Division, 830 MoDOT Drive Jefferson City, Missouri. All sealed bid submittals must be received and in hand no later than 2:00 P.M., Central Standard Time where they will be publicly opened and read. The time will be determined using a MoDOT predetermined clock. Bids will be accepted on time if time stamped using one of the following methods: 1) electronically time stamped, 2) handwritten initials and timestamp of a MoDOT representative, and 3) verification that any Fed-X, UPS or USPS certified mail, time stamped mail that clearly indicates that the sealed bid was received at the listed address prior to the closing bid time. No award will be made at this time until final review of all documents is complete.

CONTRACT PERIOD AND CONDITIONS
This contract shall be in place for one (1) year from the date of award with the option to renew (upon mutual agreement of both parties) for two (1) additional one (1) year periods, starting November 1, 2007. At the time for renewal, Suppliers will be asked to submit any price changes that will be mutually agreed upon by both parties. MoDOT will not be obligated or required to purchase any of the Supplier's surplus inventories resulting from the expiration of this contract agreement.

TRANSITION PERIOD
In the event a replacement contract is not established before the expiration of this contract or upon termination by the State, it is the responsibility of the Supplier to continue the contract under the same terms and conditions until a new contract is in place. At no time shall this transition period be more than 90 days beyond the original expiration date of the contract.

EXCEPTION TO USE
All MoDOT District Maintenance sheds and facilities will obtain all bulk fuels from this contract. However, MoDOT reserves the right to purchase product elsewhere on an emergency basis, or in situations where a supplier's delivery requirements are burdensome or restrictive. An emergency basis may be defined as but not limited to snow storms, or greater than normal usage.

CLOSING OF DELIVERY SITES
MoDOT reserves the right to close or open any delivery site(s), or discontinue any fuel product at anytime without penalty.

ADDING OF OTHER FUEL/FUEL TANKS

If additional types of fuel are needed at any delivery site, the supplier agrees to provide the fuel at a mutually agreed upon price consistent with existing margin prices for like fuels. If the district adds additional tanks of same fuel type, the supplier shall provide at the same margin rate of that zone.

ORDERING PROCEDURE

1. It will be the sole responsibility of MoDOT Sheds to keep accurate levels of fuel tanks. All maintenance facilities shall fax or call in orders when deemed necessary.

2. The supplier shall round gallons to the nearest 50 gallon increments. This practice will help MoDOT's inventory control (*not applicable when delivery is by transport truck*).

   a) If MoDOT orders 870 gallons, it is the supplier's responsibility to round down to the nearest 50 gallons: the amount of fuel that shall be delivered is 850 gallons.

3. No supplier will be allowed to deliver fuel to a shed on a suppliers return route unless pre-authorized by the District's General Services Division. **This will only be allowed on rare occasions and will not be permitted on an ongoing basis.**

DELIVERY REQUIREMENTS

1. The supplier shall deliver fuel within 24 hours after receipt of order. Supplier shall give approximate timeline of fuel delivery within a two (2) hour time frame. *All orders from MoDOT personnel shall be given prior to 11:00 a.m. to guarantee meeting the 24 hour, next day delivery time frame.*

2. Deliveries exceeding 24 hours may be allowed at the discretion of MoDOT at the time of order if arranged and approved by the ordering personnel. Otherwise:

   a) In the event the supplier fails to deliver fuel within the time specified, MoDOT and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain. In order to liquidate such damage in advance, it is agreed that the sum of two hundred dollars ($200) per day, per item, for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages; and it is therefore agreed that the said amount will be withheld from payment due the supplier, or otherwise collected from the supplier as liquidated damages.

3. Prior to fueling, the Supplier shall determine that the fuel tank system to be filled is able to hold the volume of fuel being delivered; as well as, capable for handling the appropriate type of delivery method (Transport or smaller tankers.)

   a) Transport Truck deliveries will be allowed only at the District Headquarters Building if pre-approved by the General Services Division.

4. The Supplier is responsible for providing telephone numbers and contact names to MoDOT facilities, in which orders can be placed by telephone or by fax.

5. Fuel metering devices must be utilized to provide accurate delivery quantities. Supplier's delivery truck must have a metering device. Split loads will be accepted if all fuel from the distribution point/terminal is for delivery to multiple MoDOT facilities, in the event that transport trucks are used.

6. Delivery ticket/invoice must be presented at time of product delivery. Bill of lading/metered quantity may be transferred to delivery ticket by hand at time of delivery. Bill of lading must also be attached to the delivery ticket. MoDOT will pay only for the actual amount of fuel delivered as shown on the delivery vehicle's metering device or on the bill of lading at the OPIS Closing Average price for that day, in addition to the contract margin price listed per the bid.

7. The Supplier must advise MoDOT of the approximate arrival time within a two (2) hour period. For all deliveries, a MoDOT representative must be: (1) informed of the delivery truck arrival; (2) afforded an opportunity to observe/confirm off-loading; and (3) be given a numbered delivery receipt to sign confirming delivered quantities. Practical procedures for accomplishing these requirements will be at the discretion of MoDOT General Services and the Supplier.

   a) MoDOT will be responsible for providing all suppliers with shed contact names and numbers.

8. Unless authorized by the ordering agency at the time of the order, the fuel must be delivered during normal working hours between 7:30 am and 3:00 pm.

9. The Supplier shall perform all deliveries to facilities in a safe and professional manner. The supplier's equipment shall be in good working order and all personnel shall be trained in safety measures to preclude accidents from endangering personnel on the property.

10. The Supplier must provide systems necessary to prevent spills and overfills from occurring during the product transfer. The Supplier must also provide the systems necessary to prevent product from reaching streets, catch basins or other drainage structures during product transfers. The Supplier will be responsible for cleaning up any spill in accordance to state and federal environmental regulations.

11. A Supplier's delivery truck operator <u>must</u> be present during delivery and take an active part in the prevention of spills. The fuel truck operator will take immediate action to stop the flow of product when the working capacity of the tank has been reached or when an emergency or spill occurs. Prior to transfer of product and also prior to departure of the delivery truck, the fuel truck operator shall examine the lowermost drain and all outlets for leakage, and if necessary, tighten, adjust or replace to prevent any fuel from leaking.

12. In the event the Supplier subcontracts to another fuel supplier, the subcontractor shall comply with all conditions of this contract.

13. In the event the Supplier fails to meet expectations for delivery according to this contract, MoDOT reserves the right to order elsewhere in the best interest of MoDOT operations.

14. A Supplier's inability to <u>continuously</u> meet the requirements of this contract is subject to contract termination or a temporary discontinuation of doing business until they can prove that they meet the requirements of this contract.

15. ***See attached ZONE Map***

INVOICES

1. MoDOT reserves the right to withhold payment without penalty until properly executed invoice/delivery tickets are submitted.

   a) All invoices/delivery tickets must be left in a 'Fuel Mailbox' by the fuel tanks or at a MoDOT designated delivery location in the event a MoDOT representative is not there.

2. All fuel receipts must be on a supplier's invoice or a company identified delivery ticket, and it **must** be itemized in these formats at a minimum. Each district has the right to request a more thorough breakdown that includes daily OPIS pricing and the supplier's margin.

   E85
   - % of gallons for unleaded x (a per/gallon minus the State tax (.17 cents))
   - % of gallons for ethanol x (a per/gallon price minus the State tax (.17 cents))
   - Total # of gallons x (.17 cents) State Tax

   OTHER REQUIRED INFORMATION
   - Date of delivery
   - Shed location

3. MoDOT will not accept invoices from subcontracted suppliers nor will any invoice be paid to a subcontractor. Therefore, the Supplier must provide an invoice with the required information reflecting the date of delivery. The invoice must be received by 3:00 pm at the end of the next business day.

PRICING

1. MoDOT's intention is to establish a fuel contract whereby the purchase price per gallon of fuel can be directly reconciled to the published OPIS prices FOB Terminal(s) *(See 'Terminals' Attachment page)* in ct/gal for diesel, unleaded, ethanol, and the OPIS Gross Price Market Index prices FOB Terminal in ct/gal will be used for Bio-Diesel. All Contract Pricing will based on the following formula:

   - **Contract Price per gallon** = OPIS Closing Average Price** in effect on date of delivery + Supplier Margin

   - **See Pricing Sheet for more information**

2 Contract pricing will be based from the following:

   a. The daily OPIS CLOSING AVERAGE prices identified as OPIS GROSS PURE ETHANOL PRICES for Ethanol fuel shall be used to reference changes in contract prices for unleaded/ethanol fuels.

      - ***The Missouri Department of Transportation reserves the right to change its OPIS benchmark pricing when 1) it is found that other pricing reflects the local market more comparable, and 2) to adjust to any change in industry reflection of fuel descriptions.***

3 The District office will pay invoices based on the 'Closing Average' (last Rack Avg. of the day) from the prior day. *E.g.) The 'Closing Average' at 6:00 pm on July 24, 2006 will be used for delivery prices on July 25, 2006. Fuel delivered on Mondays will be based from prices at the closing time on Saturday.* For clarity, MoDOT will use pricing that is published Monday thru Saturday. Regarding holidays, MoDOT will use the latest published pricing for deliveries in the event OPIS doesn't publish pricing due to Federal Holidays.

4. The contract base prices will be per the Oil Price Information Services (OPIS) and OPIS SME Biodiesel Gross Price Market Index as published daily by UCG, 11300 Rockville Pike, Suite 1100, Rockville, MD 20852-3030. MoDOT's OPIS representative is Beth Winters. She will be able to set each supplier up with their own account and subscription. Her number is (732) 730-2540. Her email address is bwinter@opisnet.com.

5. **Pricing will be based from listed terminal(s) on the attached 'Terminals' Page**

6. Taxes
   - MoDOT does not pay Federal Excise Tax. Do not include on invoices.
   - It is agreed and understood that the Supplier shall be responsible for filing all necessary claims for tax refunds due to the Supplier.
   - The Missouri Tax may be broken out separately on all invoices.

9. In reference to *DELIVERY REQUIREMENTS, 2a*, regarding **late delivery** of fuel, pricing will be based on the lowest of fuel, either posted on OPIS on the day of delivery or any day between date of order and actual date of delivery, which ever is less.

FUEL QUALITY, SAMPLING AND ACCEPTANCE

1. It will be the responsibility of the supplier to guarantee by certification that fuel fully complies with the specification requirements, prior to dumping in MoDOT tanks.

2. MoDOT reserves the right to take a sample of fuel from the supplier's delivery truck at the time of delivery for purpose of compliance.

   a) Sampling will be taken after 50 gallons of fuel are dispensed. It shall be taken directly into a metal sample can if feasible due to the safety of individuals, or placed in a clean pail or bucket and then transferred into the metal sample can. All samples shall be directly from the delivery truck and not from our storage tanks.

   b) All fuels delivered are subject to testing by a certified laboratory approved by the State of Missouri to determine acceptability. If delivered fuel is contaminated or does not comply with contract specifications, all costs for testing shall be paid by the supplier.

      I. In the event a random sample is pulled and later found non-compliant, <u>liquidated damages</u> will be assessed. Since it would be hard to determine exactly how much fuel was used by MoDOT and other agencies vehicles or equipment in the duration that the fuel was being tested, and the unknown damage to vehicles that might occur as a result of these acts, liquidated damages will be assessed in the amount no less than that of the respective invoice if it has already been paid.

      II. Also, the supplier shall be responsible for the cost of thoroughly cleaning the tank of any remaining fuel and for the disposal of any non-compliant fuel. Once the tank is deemed clean, acceptable and free of contaminants, the supplier will be allowed to refill the tank with acceptable fuel. A $200/day penalty will be assessed from the time the fuel is deemed bad and for every day the tank remains idle up to and including the day the tank is refilled. Any supplier who does not clean the contaminated fuel from the tank within five (5) business days from notification, will be subject for suspension by the Missouri Department of Transportation.

3. Fuel can be rejected at any MoDOT facility by visual inspection if the MoDOT representative has reason to believe the delivered fuel does not meet specification and/or may cause damage to MoDOT vehicles or equipment. A sample will be taken and sent off to a certified lab for analysis. All deliveries will be halted until further testing is done.

   a) If the fuel is found unacceptable, MoDOT will <u>not</u> be responsible for paying for the fuel dispensed prior to the visual inspection, nor will they be responsible for acceptance or payment of the fuel on the delivery truck at that time. Any fuel dispensed prior to the testing shall be subject for removal by the supplier at <u>no cost</u> to MoDOT. *Refer to section 3.b.II) above*.

4. Deliveries and/or payment may be refused if quality is unacceptable.

5. Notification will be given to the supplier when fuel is found unacceptable.

6. Liquidated damages listed above are in line with how the Uniform Commercial Code (UCC) Article 2 reviews assessment of them. *Sections referred to, but not inclusive are: Section 2-301, 2-708, 2-710, 2-715 and 2-718*

FUEL SPECIFICATIONS

1 Supplier must not blend in MoDOT's fuel storage tanks. Any blending and/or splash blending must be done prior to delivery.

2 All fuel must meet the requirements of the attached specifications, formulated for use in motor vehicles.

- E85
  Must be in accordance to the State of Missouri regulations American Society for Testing and Materials (ASTM) D5798 and its latest revision.

CONTRACT CANCELLATION CONDITIONS

MoDOT has the right to terminate this contract in part or in its entirety within 48 hours upon written or verbal notice for any reason. Reasons might be due to violations of any of the following conditions, but not limited to:

- Delivery of any contaminated fuel or delivery that does not meet the bid specifications for a fuel type. A certified laboratory approved by the State of Missouri will make the determination for fuel contamination or any fuel not meeting specification.
- Inability to deliver product or deliver fuel on time per the contract.
- Supplier does not provide the correct information on invoices/delivery tickets.

METHOD OF AWARD

1. **Method of award will be made to the Supplier(s) offering the lowest margin of pricing per line item per individual zones**. The lowest bidder for the ethanol portions of the bid will be evaluated and awarded to the supplier who offers the lowest evaluation number. The 'Total Sum' will be used for evaluation purposes only to determine low bidder. *See PRICING PAGES for final review of pricing determination.*
2. Awards will be made on the ability of the supplier to deliver fuel for a complete zone parcel per type of fuel. Partial zone bid offerings will be considered 'Non-responsive'.

PRICING PAGE SPECIAL NOTES

- Specified fuels must meet its respective specifications and any certification required.

- All bid price margins must include the Missouri State Fuel Tax, other Taxes and Fees, all blending fees, additives, and all applicable fees. Suppliers are not allowed to charge MoDOT with Federal Exercise Taxes, which is consistent with IRS Publication 378 which specifically indicates if un-dyed diesel fuel is used by a state, the claim must be made by the registered ultimate supplier. **Taxes *and Fees are subject to Government change; it is the responsibility of the supplier to notify their respective Missouri Department of Transportation General Service District Office.*

- The lowest bidder for the will be evaluated and awarded to the supplier who offers the lowest evaluation number by taking the weighted average sums of the 'PRICING PAGES'. The 'Total Sum' will be used for evaluation purposes only to determine low bidder.

- Margins shall be listed to the fourth (4th) decimal place; *e.g. $.0000*. Margins listed in the form of percentages will not be accepted and considered 'Non-Responsive'**.**

- All pricing is FOB Destination

- Method of award will be made to the supplier(s) offering the lowest margin of pricing per line item per individual zone.

- In the event clerical mathematical mistakes are found during tabulation, allowance will be made for correction by the Missouri Department of Transportation to determine accurate evaluation numbers. However, no allowance will be made for changes to the 'Margin' prices submitted.

- ZONES, (See attached Map)

D6

Missouri Department of Transportation ~ Statewide Fuel Bid by District

NOTE: For bids to be considered, the attachment entitled "PREFERENCE IN PURCHASING PRODUCTS" must be either attached to the bid or on file in this office and must be dated in the current year.

NOTE: The attachment entitled "MISSOURI DOMESTIC PRODUCT PROCUREMENT ACT" certificates of compliance must be completed and submitted with your bid for it to be considered responsive.

NOTE: Pay special attention to Terms and Conditions attached. ***Please submit 'Accord, Certificates of Liability Insurance' with bid***. See Terms and Conditions for required amounts. Awarded bidder must carry the required amount and will have the opportunity to comply.

NOTE: All suppliers **must** be in good standing with the Secretary of State's office prior to issuance of 'Notice to Proceed.'

NOTE: All suppliers must also be in compliance with House Bill 600, Section 34.040.6 RSMo, which states MoDOT is precluded from contracting with a supplier or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in RSMo 144.

The undersigned, as bidder, understands that this project involves state funds and the bidder awarded the contract will be required to comply with Executive Order 94-03 of the Governor of the State of Missouri dated January 14, 1994. This order stipulates that there shall be no discriminatory employment practices by the Supplier or his subcontractors, if any, based on race, color, religion, creed, national origin, sex, or age. The undersigned Supplier or his subcontractors, if any, shall give written notice of their commitments under this clause to any labor union which they have bargaining or other agreements.

SEALED BIDS TO BE MAILED TO:
Missouri Department of Transportation
General Services Procurement
830 MoDOT Drive
Jefferson City, Missouri 65109
Clearly marked
Bid Request No. 1-071017A
Bid opening 2:00 PM, Local Time
October 17, 2007

FIRM_____

STREET_____

CITY_____

STATE_____ZIP_____

TELEPHONE _____

PRINT NAME_____

Signature _____

Email _____

Missouri Department of Transportation ~ Statewide Fuel Bid by District

TERMINALS LOCATIONS FOR PRICE BENCHMARKING

The Missouri Department of Transportation will be using the following cities for its pricing of fuel for the listed Districts. We will work closely with each awarded supplier for exact terminals to subscribe to; as well as, which product description will be used in relation to the fuel type being purchased.

Districts 1 and 4	~	Kansas City
Districts 3 and 6	~	St. Louis
Districts 2 and 5	~	Columbia/Jefferson City
Districts 7 and 8	~	Carthage/Brookline
Districts 9 and 10	~	Cape Girardeau

D6

SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual Bidder, (2) each partner or joint ventures (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the Bidder or Bidders; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a

( ) sole individual ( ) partnership ( ) joint venture

( ) corporation, incorporated under laws of state of _____

Dated _____, _____.

Name of individual, all partners, or joint ventures:

Address of each:

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

doing business under the name of:

Address of principal place of business in Missouri

_____ _____

(If using a fictitious name, show this name above in addition to legal names)

_____ _____

(If a corporation, show its name above)

ATTEST: (SEAL)

_____ _____

Secretary Title

(NOTE: If the Bidder is doing business under a FICTITIOUS NAME, the Proposal shall be executed in the legal name of the individual, partners, joint venturers, or corporation, with the legal address shown, and REGISTRATION OF FICTITIOUS NAME filed with the Secretary of State, as required by Sections 417.200 to 417.230, RS Mo. If the Bidder is a CORPORATION NOT ORGANIZED UNDER THE LAWS OF MISSOURI, it shall procure a CERTIFICATE OF AUTHORITY TO DO BUSINESS IN MISSOURI, as required by Section 351.570 and following, RS Mo. A CERTIFIED COPY of such Registration of Fictitious Name or Certificate of Authority to do Business in Missouri shall be filed with the Missouri Highway and Transportation Commission, as required by the Standard specifications, Sec 102.6.6 and 102.6.7.

ANTI-COLLUSION STATEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

_____

_____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 proposal 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 _____

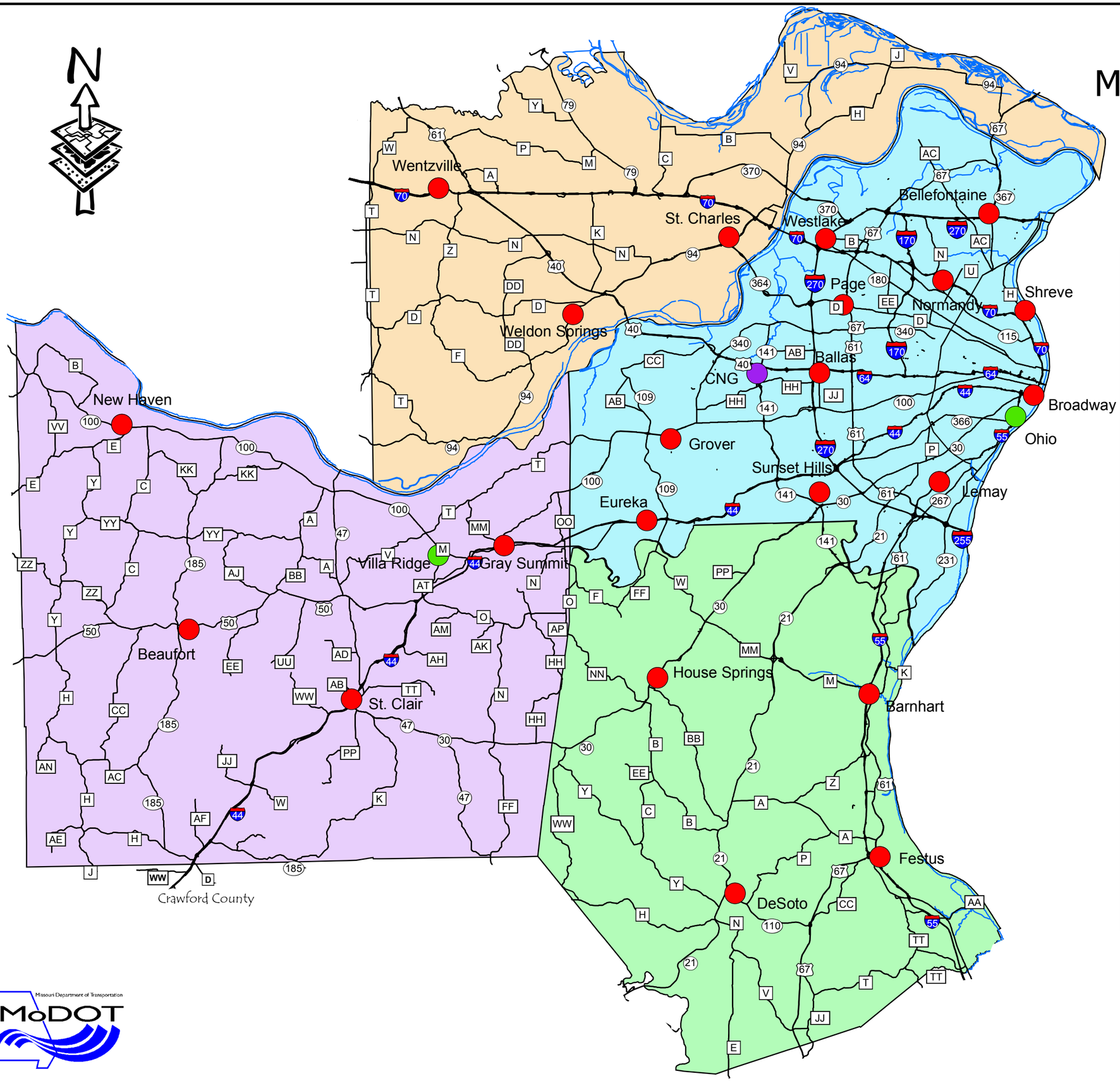
ATTACHMENTS

The listing of shed locations and fuel tank sizes, as well as what type of fuel is at each location is provided. Other attachments include:

- A map showing the different zones for the District being bid.
- Terminal locations for each District
- Tank Capacity Information
- COOP Purchasing Option
- Terms and Conditions
- Preference in Purchasing Products

D6

District 6
Maintenance Fuel Stations



REGIONS

- St. Louis City
- St. Louis
- Jefferson
- Franklin
- St. Charles

- Maintenance Building
- CNG Lot
- Bridge Crew

Missouri Department of Transportation
MoDOT

MoDOT~District Six
Maintenance
June 2006

MISSOURI DEPARTMENT OF TRANSPORTATION
DISTRICT # 6
TANK CAPACITIES BY FUEL PER SHED

					E85
ZONE	CONTACT NAME	SHED PHONE #	CELL PHONE #	SHEDS	TANK SIZE
St. Louis	Bob Zahner	314-340-4257	314-301-1400	Chesterfield	6,000

NOTICE

The Department is interested in assisting Missouri governmental entities, etc. in purchasing equipment, various materials and supplies that meet the Highway and Transportation Department specifications.

Each bidder is asked to indicate below whether they would be willing to offer **Unleaded, and Ethanol** listed in the attached "Request for Bid" for sale to these local political entities at the same bid price offered to this Department.

It is understood the Department 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 **Unleaded, and Ethanol** meeting the Department 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 Department 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 _____

(Each vendor should complete the appropriate sections of their form and submit with their bid.)

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

equipped for such work.

b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.

c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

Invoicing and Payment

a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request.

b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.

c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.

d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.

e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

Applicable Laws and Regulations

a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.

b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

Executive Order

a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (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. 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.

SPECIAL TERMS AND CONDITIONS

Insurance

a. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them.

b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:

1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained **if** required by law.

2) Public Liability (includes property damage and personal injury):

i. Not less than $400,000 for any one person in a single accident or occurrence.

ii. Not less than $2,500,000 for all claims arising out of a single occurrence.

3) Special Hazard Insurance: As required.

4) Builder's Risk: Not less than the full Contract amount.

Required Specifications

a. All materials, equipment, and/or services bid upon must comply any provisions outlined in the solicitation documents.

Award

a. Award of this bid/quote/proposal will be made on an “All Or Nothing” basis using the “lowest and best” principle of award.

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 l	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.**

e. Contractor will not be required to provide dozers, loaders, motor graders, or other equipment for shaping of stockpiles, constructing ramps or runways, or leveling of the top of a completed lift, unless otherwise noted herein.

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.

Liquidated Damages

a. In the event the successful Contractor fails to deliver the material within the time specified, the Department and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain, and in order to liquidate such damage in advance it is agreed that the **sum of two-hundred dollars ($200.00) per day, per item,** for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages, and it is therefore agreed that said amount will be withheld from payments due the Contractor or otherwise collected from the Contractor as liquidated damages.

b. **Saturdays, Sundays, holidays and days whereas the Department has suspended work** shall not be assessable days.

Environmental Issues

a. 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.

b. 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.

c. 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.

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 <u>ALL</u> 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.