

**QUOTE
FORM**

MISSOURI DEPARTMENT OF TRANSPORTATION
GENERAL SERVICES
830 MoDOT DRIVE – P.O. BOX 270
JEFFERSON CITY, MO 65102

| | | | |
|-------------|----------------|--------------|---|
| REQUEST NO. | 4-080506FR | | |
| DATE | April 29, 2008 | | |
| PAGE NO. | 1 | NO. OF PAGES | 5 |

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

4:00 PM, LOCAL TIME, MAY 6, 2008

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

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

Submit net bid as cash discount stipulations will not be considered

JEFFERSON CITY, MISSOURI

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

BUYER: FRANKIE J. RYAN

BUYER TELEPHONE: 573-522-9481

| ITEM NO. | SUPPLIES OR SERVICES | | | | | |
|----------|---|--|--|--|--|--|
| | <p>Contract for furnishing “Highway Yellow Equipment Paint” for a contract period beginning from date of notice to proceed through April 30, 2009.</p> <p>PLEASE SEE ATTACHED PRICING PAGE. This is a re-bid for Sherwin Williams Paint</p> <p>QUOTES MAY BE FAXED TO 573-526-1218</p> <p>VENDOR NOTE: Prior to any contract issuance, the Bidder must be in compliance with the laws regarding conducting business in the State of Missouri.</p> | | | | | |

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

In compliance with the above invitation to quote, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were quoted within THIRTY (30)calendar days after receipt of formal purchase order.

Date: _____
Telephone No.: _____
Fax No.: _____
Federal I.D. No. _____

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

Is your firm MBE certified? Yes No

Is your firm WBE certified? Yes No

List all agencies your firm is currently certified with. _____

PRICING PAGE

Page 1 of 2

(Two (2) pricing pages with four (4) items)

Contract for furnishing “Highway Yellow Equipment Paint” for a contract period beginning date of notice to proceed through April 30, 2009. **SIGN WHERE INDICATED ON THE 2ND PRICING PAGE AND SUBMIT THE PRICING PAGES ALONG WITH THE SIGNED QUOTE FORM PAGE AND OTHER REQUESTED DOCUMENTATION.**

| Item #: | Description: | Mfg. No. or Brand | Qty: | Unit of Issue: | Unit Price: | Extended Total: |
|----------------|---|--------------------------|-------------|-----------------------|--------------------|------------------------|
| #1 | <p>6304965340 Paint, for metal, YELLOW, 1 gallon metal container.</p> <p>Bids will only be considered on the following: Sherwin Williams Fast Production Enamel, Rex No. F75YC4 – <i>NO SUBSTITUTIONS will be accepted.</i></p> <p>Criteria to meet: Full gloss; volume solids 28-34%; dry to touch 10 minutes; recoat 30 minutes.</p> <p>Color number needed to match equipment: International 100AGS4421</p> <p>Paint to be packaged in either 2 cans per carton or 4 cans per carton</p> | | 460 | GALLON | | |
| #2 | <p>6306410230 Paint, spray (aerosol), YELLOW, approximately 12 oz. net. wt. per can. Sherwin Williams Fast Production Enamel, Rex No. F75YC4 – <i>NO SUBSTITUTIONS will be accepted.</i></p> <p>NOTE: paint must meet the same color criteria as the yellow paint noted in item 1.</p> <p>NOTE: <i>Low price will be determined on cost per can, <u>not</u> cost per oz.</i></p> | | 1000 | CAN | | |

PRICING PAGE

Page 2 of 2

| | | | | | | |
|---------------|--|--|----|--------|--|-----------|
| #3 | 6309070455 Reducer; gallon can; to be packaged in either 2 cans per carton or 4 cans per carton. Bids will only be considered on the following: Sherwin Williams Hi Flash Naphtha-100, #154-8767. <i>NO SUBSTITUTIONS will be accepted.</i> | | 44 | GALLON | | |
| #4 | 6309070466 Reducer; gallon can; to be packaged in either 2 cans per carton or 4 cans per carton. Bids will only be considered on the following: Sherwin Williams Hi Flash Naphtha-150, 154-8809, slow drying. <i>NO SUBSTITUTIONS will be accepted.</i> | | 32 | GALLON | | |
| TOTAL: | | | | | | \$ |

NOTE ON QUANTITIES: The quantities shown are estimated requirements for the period specified. The Missouri Department of Transportation (MoDOT) reserves the right to increase or decrease quantities as needed.

NOTE ON FAILURE TO COMPLY: *Failure to comply with the above requirements may result in quote being subject to rejection.*

RENEWAL OPTION: *In the event that MoDOT exercises its option to renew the contract for two (2) 12-month periods, or any portion thereof, pursuant to the applicable provisions outlined in this document, the Bidder shall provide below the maximum percentage of increase. The Bidder is cautioned that the percentage shall be computed against the CURRENT contract prices during renewal period. Furthermore, the Bidder is advised that the MoDOT does not automatically grant increases at the time of renewing the contract and that if an increase is requested, documentation of need must be provided at the time of renewal. If the bidder does not enter a renewal period percentage of increase, MoDOT will assume the Bidder is offering the products specified herein at the current contract price during the entire referenced renewal period.*

First 12-Month Renewal Period: _____ % of maximum increase

Second 12-Month Renewal Period: _____ % of maximum increase

Name of the Bidder's Firm

Signature of Authorized Representative

Date Signed

QUOTE SUBMITTAL:

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

Ms. Frankie Ryan
Missouri Department of Transportation
General Services - Procurement
830 MoDOT Drive; P.O. Box 270
Jefferson City, MO 65102
FAX: 573-526-1218

All mailed documents must be sealed and should be clearly marked "Highway Yellow Equipment Paint"

SAMPLES:

MoDOT reserves the right to request a sample of the product from the bidders if deemed necessary before award. Bidder will have five (5) working days, from date of request, to provide sample. Samples shall be furnished to MoDOT at no charge, will become the property of MoDOT, and will not be returned.

AWARD:

For the purpose of this quote, items will be awarded on an "ALL OR NOTHING" basis.

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 three (3) months of the original contract period, or if applicable, first three (3) months of a contract renewal period.
- b. In the event a price increase is granted due to an approved escalation, the renewal percentage shall be based upon the current contract value.

COMPLIANCE WITH QUOTE REQUIREMENTS:

Failure to comply with the requirements published in this quote may result in the quote being subject to rejection. Product that does not meet specifications will cause all of the shipments to be returned at the bidders expense.

NON-EXCLUSIVITY:

The Missouri Department of Transportation reserves the right to obtain like or similar products of this or other manufacturers, exclusive of this contract, when use of such products is deemed in the best interest of MoDOT.

DOCUMENT SUBMITTAL REQUIREMENTS:

For the quote to be considered the bidder must submit both the first page (signature page) of the quote document and the Pricing Page within the time frame specified on the signature page of this quote.

PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

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

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

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

FOR CORPORATIONS:

State in which incorporated:

FOR OTHERS:

State of domicile:

FOR ALL VENDORS:

List address of Missouri offices or places of business:

THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME:

ADDRESS:

CITY: _____ **STATE:** _____ **ZIP:** _____

BY (signature required):

Federal Tax I.D. #: _____ if no Federal Tax I.D. # - list Social Security #: _____

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

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

STANDARD SOLICITATION PROVISIONS

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted.
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

GENERAL TERMS AND CONDITIONS

General Performance

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

Deliveries

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

Nondiscrimination

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
 - 1) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
 - ii. cancellation, termination or suspension of the contract, in whole or in part.

Contract/Purchase Order

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

Subcontracting

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be

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

- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

Invoicing and Payment

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

Applicable Laws and Regulations

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
 - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

Executive Order

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

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Remedies and Rights

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Cancellation of Contract

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

Bankruptcy or Insolvency

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

Inventions, Patents, and Copyrights

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

Inspection and Acceptance

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

Warranty

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

Status of Independent Contractor

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

Indemnification

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