BID FORM

**MISSOURI DEPARTMENT OF TRANSPORTATION**
**GENERAL SERVICES**
**830 MoDOT DRIVE – P.O. BOX 270**
**JEFFERSON CITY, MO 65109**

| | |
|---|---|
| REQUEST NO. | 2-080916BT4 |
| DATE | August 26, 2008 |
| 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, September 16, 2008**

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 Controllers – Type 170

To establish a contract to furnish **"Traffic Controllers – Type 170"** with an effective date of Notice to Proceed and ending December 31, 2009 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** _____
**Title:**

**Is your firm MBE certified?** ☐ Yes ☐ No

**Is your firm WBE certified?** ☐ Yes ☐ No

Form E-103 (Rev. 11-04)

# 1. INTRODUCTION AND GENERAL INFORMATION

## 1.1 Introduction:

1.1.1 This Request For Bid seeks bids from qualified organizations to provide traffic controllers, with an effective contract period of Notice to Proceed through December 31, 2009, 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, 830 MoDOT Drive, 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 830 MoDOT Drive, Jefferson City, MO. 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., CDT, September 16, 2008.

**RFB Coordinator:**

**Ms. Brenda Tyree, Procurement Agent**
**Missouri Department of Transportation**
**830 MoDOT Drive**
**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 controllers 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) Attachments A – D

**Attachment A = Assembly Equipment List**

**Attachment B = Specifications**
**(Click on separate link to view this Attachment)**

**Attachment C = Order Forms**
**(Click on separate link to view this Attachment)**

**Attachment D = State of Missouri Map (by MoDOT District)**

6) Signature Page(s)

7) Terms and Conditions

## 2. SCOPE OF WORK

### 2.1 General Requirements:

2.1.1 The contractor shall provide Type 170 Traffic Signal Controllers (hereinafter referred to as "traffic controllers") 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 MoDOT estimates, but does not guarantee, the purchase of the estimated quantities stated herein.

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 MoDOT specifications specified on Attachment B, and as specified in any other provisions outlined in the solicitation document.

2.2.2 The contractor shall insure traffic controllers are built according to the attached specifications and wired according to the individual phasing sheets.

2.2.3 The contractor shall provide traffic controllers in which all boxes required to complete the traffic controller assembly are packaged together as one.

### 2.3 Delivery Requirements:

2.3.1 The contractor shall deliver the specified traffic controllers to the various MoDOT locations specified herein.

2.3.2 The contractor shall not deliver any traffic controllers to MoDOT until being notified by MoDOT by telephone or purchase order.

2.3.3 The contractor shall deliver traffic controllers at the specified location within 90 calendar days after the issue date of a purchase order.

2.3.4 The contractor shall agree and understand that MoDOT shall not receive any deliveries on a Saturday or Sunday.

### 2.4 Additional Requirements:

2.4.1 The contractor shall agree and understand that all traffic controllers shall be subject to a twenty (20) day acceptance period, which includes fifteen (15) days for testing the equipment and five (5) days for the contractor to repair or replace any defective equipment.

a. The test period shall begin no later than fifteen (15) days after the date the equipment is received. Any failure or malfunction of the equipment during the test period shall be corrected at the contractor's expense. The equipment shall then be tested for an additional fifteen (15) days. The procedure shall be repeated until the equipment has operated to the state's

satisfaction for fifteen (15) consecutive days.

## 2.5 Liquidated Damage Requirements:

2.5.1 The contractor shall agree and understand that providing traffic controllers 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 amount identified below as liquidated damages shall be reasonable and fair under the circumstances.

a. In the event the contractor fails to provide traffic controllers in accordance with the contractual requirements specified herein, the contractor shall be assessed liquidated damages in the amount of $50.00 per controller, per day for each such delinquent day after the twenty (20) day acceptance period.

b. The contractor shall further 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.

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

d. 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.

e. The contractor shall agree and understand that all assessments of liquidated damages shall be within the discretion of the State of Missouri and shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies.

## 2.6 Invoicing and Payment Requirements:

2.6.1 The contractor shall submit an itemized invoice to the applicable requesting address, as specified herein.

2.6.2 The contractor shall be paid in accordance with the firm, fixed price(s) stated on the pricing page of this document, after completion of deliverables specified herein, and accepted by MoDOT.

2.6.3 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

2.6.4 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.

2.6.5 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.

2.6.6 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.

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

**2.7 Other Contractual Requirements:**

2.7.1 Contract Period - The contract shall commence from the Notice to Proceed until December 31, 2009.

2.7.2 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 Controllers – Type 170"**.

3.1.2 All bids must be received at the following address no later than September 16, 2008 at 2:00 p.m., CDT.

The Missouri Department of Transportation
General Services – Procurement Section
Attn: Brenda Tyree
830 MoDOT Drive
Jefferson City, MO 65109

3.1.3 The bidder must complete and submit a copy of Attachment A with the bid, listing each component with the manufacturer name, and model number.

3.1.4 The bidder may withdraw, modify or correct his bid after it has been deposited with MoDOT 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. With the exception of the equipment list specified herein, no bid may be modified after the time specified for the opening of bids.

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

3.1.6 *Cost Determination* – The low bid shall be determined by multiplying the estimated quantity with the unit price, to obtain a total price.

3.1.7 *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 an "All-or-None" basis using the "lowest and best" principle of award.

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

3.1.8 *Open Competition / Request For Bid Document:*

a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the 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 the 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 State of Missouri is that which is issued by the 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. The 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.

3.1.9 ***NOTE***: The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. 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 the MoDOT.

## 4. PRICING PAGE

4.1 **Traffic Controllers** - The bidder shall provide a firm, fixed price in the table below 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 CONTROLLERS – Type 170**

| Item # | Description and C/S Code | Estimated Qty. | Firm, Fixed Price, *Per Unit* | Extended Price |
|---|---|---|---|---|
| 001 | Type 170 Traffic Signal Controllers - District 4 – Kansas City | 2 | $_____ *per unit* | $_____ |
| 002 | Type 170 Traffic Signal Controllers - District 8 – Springfield | 2 | $_____ *per unit* | $_____ |
| 003 | Type 170 Traffic Signal Controllers - District 8 – Springfield | 4 | $_____ *per unit* | $_____ |

_____ *Signature*

_____ *Date*

# ATTACHMENT A

# TYPE 170 TRAFFIC CONTROLLERS

TRAFFIC CONTROLLER ASSEMBLY EQUIPMENT LIST

The following list shall be completed and returned with the bid. Equipment shall be agreed to and approved prior to the contract award. All delivered equipment shall be the products listed below.

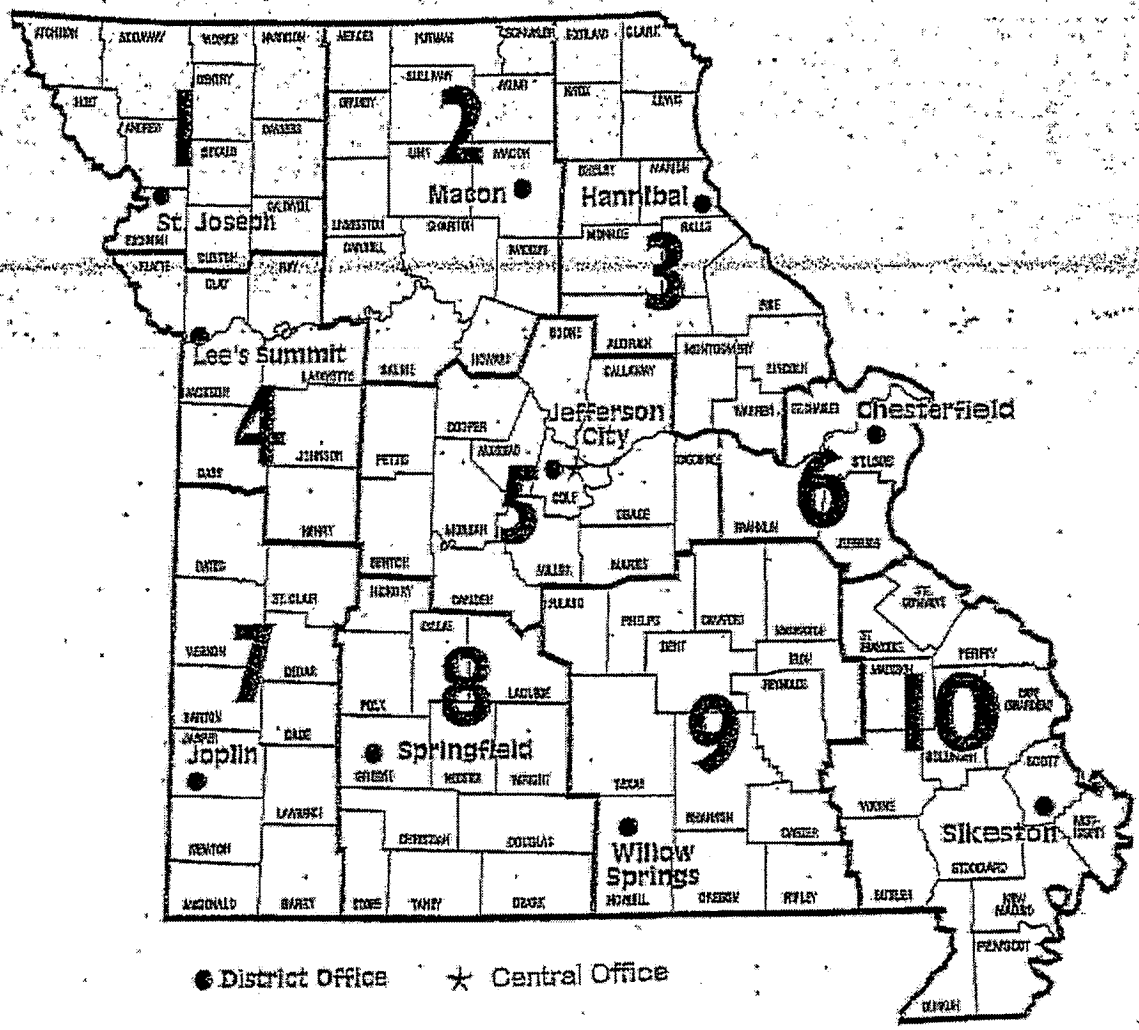
| Item | Manufacturer | Catalog Number |
|---|---|---|
| Cabinet and Rack Assembly | _____ | _____ |
| Type 170 Controller | _____ | _____ |
| Conflict Monitor | _____ | _____ |
| Load Switch | _____ | _____ |
| Flasher | _____ | _____ |
| Flash Transfer Relay | _____ | _____ |
| Surge Protector | _____ | _____ |
| Model 222 Detector | _____ | _____ |
| Model 242 Isolator | _____ | _____ |
| 252 Isolator Module | _____ | _____ |
| Dial-Up Modem<br>(Provide spec sheet with bid) | _____ | _____ |

Signed: _____ Title: _____ Date: _____

# ATTACHMENT D

Retain this Insert for your Information

## Missouri Department of Transportation
## District Outline Map




| COUNTY | DIST. |
|---|---|
| Adair | 2 |
| Andrew | 1 |
| Atchison | 1 |
| Auroria | 3 |
| Barry | 7 |
| Barton | 7 |
| Bates | 7 |
| Benton | 4 |
| Bollinger | 10 |
| Boone | 5 |
| Buchanan | 1 |
| Butler | 10 |
| Caldwell | 1 |
| Callaway | 5 |
| Camden | 5 |
| Cape Girardeau | 10 |
| Carroll | 3 |
| Carter | 9 |
| Cass | 4 |

| COUNTY | DIST. |
|---|---|
| Cedar | 7 |
| Clarkton | 2 |
| Christian | 8 |
| Clark | 2 |
| Clay | 4 |
| Clinton | 1 |
| Cole | 5 |
| Cooper | 5 |
| Crawford | 9 |
| Dade | 7 |
| Dallas | 8 |
| Daviess | 1 |
| Dekalb | 1 |
| Dent | 9 |
| Douglas | 8 |
| Dunklin | 10 |
| Franklin | 6 |
| Gasconade | 5 |
| Gentry | 1 |

| COUNTY | DIST. |
|---|---|
| Greene | 8 |
| Grundy | 2 |
| Harrison | 1 |
| Henry | 4 |
| Hickory | 7 |
| Holt | 1 |
| Howard | 5 |
| Howell | 9 |
| Iron | 9 |
| Jackson | 4 |
| Jasper | 7 |
| Jefferson | 6 |
| Johnson | 4 |
| Knox | 2 |
| Laclede | 9 |
| Lafayette | 4 |
| Lawrence | 7 |
| Lewis | 2 |
| Lincoln | 3 |

| COUNTY | DIST. |
|---|---|
| Linn | 2 |
| Livingston | 2 |
| McDonald | 7 |
| Macon | 2 |
| Madison | 10 |
| Maries | 5 |
| Marion | 3 |
| Mercer | 2 |
| Miller | 5 |
| Mississippi | 10 |
| Moniteau | 5 |
| Monroe | 2 |
| Montgomery | 3 |
| Morgan | 5 |
| New Madrid | 10 |
| Newton | 7 |
| Nodaway | 1 |
| Oregon | 9 |
| Osage | 5 |

| COUNTY | DIST. |
|---|---|
| Ozark | 8 |
| Pemiscot | 10 |
| Perry | 10 |
| Pettis | 5 |
| Phelps | 9 |
| Pike | 3 |
| Platte | 4 |
| Polk | 8 |
| Pulaski | 9 |
| Putnam | 2 |
| Ralls | 3 |
| Randolph | 2 |
| Ray | 4 |
| Reynolds | 9 |
| Ripley | 9 |
| St. Charles | 6 |
| St. Clair | 7 |
| St. Francois | 10 |
| Ste. Genevieve | 10 |

| COUNTY | DIST. |
|---|---|
| St. Louis | 6 |
| Saline | 2 |
| Schuyler | 2 |
| Scotland | 3 |
| Scott | 10 |
| Shannon | 9 |
| Shelby | 3 |
| Stoddard | 10 |
| Stone | 8 |
| Sullivan | 2 |
| Taney | 8 |
| Texas | 9 |
| Vernon | 7 |
| Warren | 3 |
| Washington | 9 |
| Wayne | 10 |
| Webster | 8 |
| Worth | 1 |
| Wright | 8 |

## 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 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 _____

# PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

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

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

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

**FOR CORPORATIONS:**

State in which incorporated: _____

**FOR OTHERS:**

State of domicile: _____

**FOR ALL VENDORS:**

List address of Missouri offices or places of business:

_____

_____

_____

_____

_____

_____

_____

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

**FIRM NAME:** _____

**ADDRESS:** _____

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

**BY (signature required):** _____

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

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

# MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

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

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

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

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

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

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

_____

_____

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

| 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 me 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 if 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.**

## NOTICE

**THE DEPARTMENT IS INTERESTED IN ASSISTING MISSOURI GOVERNMENTAL ENTITIES, ETC. IN PURCHASING EQUIPMENT, VARIOUS MATERIALS, AND SUPPLIES THAT MEET THE MISSOURI DEPARTMENT OF TRANSPORTATION SPECIFICATIONS.**

Each bidder is asked to indicate below whether they would be willing to offer **traffic controllers** 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 **traffic controllers** 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 _____

## 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. If provided, these bids/proposals should be returned in the MoDOT solicitation return envelope.

g. If a solicitation return envelope is provided by MoDOT, the bid/quote/proposal should be returned in the envelope provided with the Bid/RFQ/RFP Request Number plainly indicated thereon.

h. 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.

**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 contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

d. 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.

**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.

**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.

**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.

**Additional Delivery Requirements**

a. The Contractor shall notify Missouri Department of Transportation 24 hours prior to delivery.

b. The following days shall be construed as **official holidays** under the terms of the contract:

| | |
|---|---|
| January I | 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 |

c. 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.**

**Legal Weights**

a. Provisions of the Missouri Statues 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.

**Increase or Decrease Quantities**

a. The Highways and Transportation Commission reserves the right to increase or decrease the quantity of material twenty-five percent (25%), subject to the maximum quantity specified by the bidder in his proposal.

b. The quantity finally ordered by the Commission will be furnished by the bidder at the same unit price.

**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.

**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.