

BID FORM

MISSOURI DEPARTMENT OF TRANSPORTATION

GENERAL SERVICES
830 MoDOT DRIVE - P.O. BOX 270
JEFFERSON CITY, MO 65109

Table with 2 columns: Field Name, Value. Includes REQUEST NO. (RFB 6-080404), DATE (March 21, 2008), PAGE NO. (1), NO. OF PAGES.

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

10:00 a.m., Local Time, April 04, 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
Glasgow, Missouri

BUYER: Leann Kottwitz
BUYER EMAIL: Leann.kottwitz@modot.mo.gov

BUYER TELEPHONE: 573-751-3685

SUPPLIES OR SERVICES

FERRY SERVICES

To establish a contract to furnish "Ferry Services" across the Missouri River at Glasgow, Mo., 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: _____

Firm Name: _____

Telephone No.: _____

Address: _____

Fax No.: _____

Federal I.D. No. _____

By (Signature): _____

Email Address: _____

Type/Print Name _____

Form E-103 (Rev. 11-04)

Title: _____

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

- 1.1.1 This Request For Bid seeks bids from qualified organizations to provide Ferry Services across the Missouri River, located at Glasgow, Missouri, 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. Leann Kottwitz, General Services Procurement Unit, P.O. Box 270, Jefferson City, Mo 65102, 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, Missouri 65109. All questions regarding the RFB shall be submitted to Ms. Leann Kottwitz. Bids must be returned to the office of Ms. Leann Kottwitz no later than 10:00 a.m., CDT, April 4, 2008.

RFB Coordinator:

Ms. Leann Kottwitz

Missouri Department of Transportation

830 MoDOT Drive

Jefferson City, MO 65109

PHONE: 573-751-3685

FAX: 573-526-1218

EMAIL: Leann.Kottwitz@modot.mo.gov

1.2 General Information:

- 1.2.1 This document constitutes an invitation for competitive, sealed bids for the procurement of Ferry Services 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) Signature Page(s)
 - 6) Exhibit(s)
 - 7) Terms and Conditions
- 1.2.3 Note to Respondent - A vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The compliance to conduct business in the state shall include but may not be limited to: Registration of business name, vendors MUST submit a bid that correctly and accurately identifies the company name that is registered to do business in the State of Missouri. All vendors who are required to execute a contractual agreement MUST submit a copy of their certificate with the signed copy of the contract agreement before the purchasing department can proceed with MoDOT legal contract approval.

2. SCOPE OF WORK

2.1 General Requirements:

- 2.1.1 The bidder shall provide Ferry Services 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 bidder shall provide all services to the sole satisfaction of MoDOT.
- 2.1.3 The Ferry Service across the Missouri River is in conjunction with a construction contract on Rte. 240 Missouri River Bridge at Glasgow. The bridge is scheduled to be closed for approximately 365 days at Glasgow, Mo for repairs. The expected closure date is June 30, 2008, however the exact date will be set by Jensen Construction Company, 5550 NE 22nd Street, Des Moines, IA 50313, (515-266-5173), which is the bridge contractor. The bridge closure cannot begin prior to June 1, 2008.
- 2.1.4 Infrastructure in place or to be constructed by bridge contractor:
 - a. East access through Stump Island Park and existing MDC boat ramp
 - b. West access through construction site – bridge contractor to construct and maintain access road and existing boat ramp, plans available upon request.
 - c. Bridge contractor can construct two mooring dolphin cluster piles at each ramp.
 - d. MHTC will provide necessary signing.

2.2 Specific Requirements:

- 2.2.1 The bidder shall provide Ferry Services in accordance with the requirements stated herein.

Hours Of Operation:

- a. The services shall be available 7 days per week, 12 hours a day beginning at 6:30 am through 6:30 pm, beginning on the first day of bridge closure, with the ability to flex the schedule by 1 hour starting and or ending on a seasonal basis as requested by the Glasgow City Council and approved by MHTC representative.
- b. The ferryboat pilot has sole discretion to determine when operations are to be suspended due to unsafe conditions. MHTC will underrun appropriate units of weekly operating costs for suspensions of service. Cost underrun shall be applied to the weekly operating costs using the ratio of number of full days out of service in relation to the required days of service in the week. Operation is to be continuous during the 12-hour period if demand exists.

2.2.2 Requirements Of Ferry Operator:

- a. Collect and deface tickets (tickets to be sold by the City of Glasgow). The fare structure has been set at six dollars (\$6) (one ticket) per passenger vehicle and twenty-four dollars (\$24) (four tickets) per oversize vehicle.
- b. Purchase from the City of Glasgow and sell tickets on an as needed basis to those passengers who have not otherwise purchased tickets. The ferry operator may charge a nominal handling fee not to exceed two dollars (\$2) per ticket for the sale of tickets. It is anticipated that the majority of tickets will be sold by the City or through other vendors.

- c. Provide collected tickets daily to designated MHTC representative.
- d. The ferry operator shall be required to meet all applicable federal and state regulations, including obtaining any required US Coast Guard permits and licenses.

2.2.3 Vessel Capacity:

- a. Minimum transporting requirements:
 - 1 – 80, 000 lb. semi-tractor/trailer per trip, or
 - 12 – passenger vehicles per trip, or
 - 1 – fully loaded school bus per trip, or
 - Emergency response vehicles as needed

2.2.4 Mobilization Costs:

The bidder shall outline all costs associated with Mobilization in their bid response and will be required to submit a detailed invoice of all costs associated with acquisition of equipment and mobilization to site. Mobilization shall be paid according to the following schedule: 25% of total upon receipt of invoice, 50% when services begin, 25% half way through term of contract. If the bid for Mobilization is more than 50% of the contract total any amount more than 50% of the contract total will not be paid until contract is complete.

2.2.5 Experience:

The bidder shall have no less than five years experience for the services specified herein or have provided such services on at least two previous contracts. Please refer to Exhibit A included with this RFB.

2.3 Invoicing and Payment Requirements:

- 2.3.1 The bidder shall submit an invoice to the applicable requesting address for the completion of weekly services, as specified herein.
- 2.3.2 The bidder shall be paid in accordance with the firm, fixed price stated on the pricing page of this document, after completion of services specified herein and acceptance by MoDOT.
- 2.3.3 All costs associated with Mobilization shall be paid in accordance with 2.2.4 Mobilization Costs listed above and based upon the amount listed on the pricing page.
- 2.3.4 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

2.4 Other Contractual Requirements:

- 2.4.1 Contract Period - The contract shall commence from the Notice to Proceed through one year with the possibility to under/overrun +/- 3 months.
- 2.4.2 Escalation Clause - In the event the contractor requests a price increase during the contract period (original contract period or 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 for a price increase, 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. In the event a price increase is granted due to an approved escalation, the renewal percentage shall be based upon the current contract value.

2.4.3 Contract Bond - In the event a price increase is granted due to an approved escalation, the contractor shall increase their 100% contract bond, as specified elsewhere herein, to reflect the current contract value.

2.4.4 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/ Jones Act. All workers' compensation/Jones Act Including "Occupational Disease", must be maintained as required by law.
 - 2) Protection and Indemnity Liability: (to include loading and unloading of passengers and vehicles). This coverage must be maintained with limits of at least \$400,000 per person and \$10,000,000 per occurrence.
 - 3) Cargo Liability: this coverage must be maintained with limits of at least \$400,000 per person and \$10,000,000 per occurrence.
 - 4) Vessel Pollution Liability: This coverage must be maintained with limits of at least \$400,000 per person and \$10,000,000 per occurrence.

All coverages must name the MHTC, MoDOT and all employees as "Additional Named Insured's"

3. BID SUBMISSION

3.1 Bid Submission Information:

3.1.1 All bids must be received in a sealed envelope clearly marked "Ferry Services".

3.1.2 All bids must be received at the following address no later than April 4, 2008 at 10:00 a.m., CDT.

The Missouri Department of Transportation (Physical Address)
General Services – Procurement Division
Attn: Leann Kottwitz
830 MoDOT Drive
Jefferson City, MO 65109

The Missouri Department of Transportation (Mailing Address)
General Services – Procurement Division
Attn: Leann Kottwitz
P.O. Box 270
Jefferson City, MO 65102

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

3.1.4 Proposal/Bid Guaranty/Contract Bond:

- a. Each bid shall be accompanied by a Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue – Credit State Road Fund for an amount equal to Five Percent (5%) of the amount of the BID submitted. This is to act as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment bond (Contract Bond) or a cashier's check, a bank money order or a certified check made payable to "Director of Revenue--Credit State Road Fund" in an amount equal to One Hundred (100%) of the contract price.
- b. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the State of Missouri as surety. The agent executing the same on behalf of the surety company must attach a current Power of Attorney setting forth his authority to execute the bond involved.
- c. The bid guaranty, whether check or bid bond, of the low bidder will be retained until the contract has been executed by the successful bidder, all insurance requirements have been met and a satisfactory contract bond furnished. The check of the low bidder will then be returned. The bid guaranty of the second low bidder will be returned when the Commission has determined that award will not be made to that firm. If errors or irregularities appear in the bid of either of the two lowest bidders that creates doubt as to the status of such a bid, the bid guaranties of other bidders may be retained. When the two lowest bidders have been definitely established, the checks of the other bidders will be returned. Any bid bond furnished as a bid guaranty will be returned only upon request of the bidder furnishing the bid bond. If an award is not made, all checks will be returned to the bidders.

~~3.1.5 Failure to Execute Contract~~

- a. Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check,

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

3.1.6 Contract Services Agreement

- a. Bidder shall agree to enter into a Contract Services Agreement at the time of award in the form attached here to as Exhibit B.

3.1.7 Open Competition / Request For Bid Document:

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise MoDOT if any language, specifications or requirements of an RFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from MoDOT, unless the RFB specifically refers the bidder to another contact. Such communication should be received no later than March 27, 2008, 2:00 p.m., CDT. ***It is the sole responsibility of the bidder to access MoDOT's website in order to obtain any and all addenda(s) issued during the course of this RFB process.***
- b. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by MoDOT in the RFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. MoDOT monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders, which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

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

3.1.9 *Award* – The contract will be awarded to the lowest responsive bidder determined as specified above.

- a. Award of this bid will be made on the basis of using the “lowest and best” principle of award. Line items 1 and 2 for the Original Contract Period will be the determination of cost.

4. PRICING PAGE

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

Ferry Services			
Item #	Description	Units Of Measure	Original Contract Period <i>Firm, Fixed Price</i>
001	Mobilization	1	\$ _____
002	Weekly Operating Costs	52	\$ _____ <i>per week</i>
GRAND TOTAL			\$ _____

Signature

Date

ANTI-COLLUSION STATEMENT

STATE OF _____)
)
COUNTY OF _____)

SS.

_____ being first

duly sworn, deposes and says that he is _____
Title of Person Signing

of _____
Name of Bidder

that all statements made and facts set out in the 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 _____

(FERRY SERVICES)
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

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

Dollars

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

Sealed with our seals and dated this _____

THE CONDITION OF THIS OBLIGATION is such that:

WHEREAS, the Principal is submitting herewith a bid to the Missouri Highways and Transportation Commission for furnishing (*Ferry Services*) as set out in the proposal to which this bond is attached.

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

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

(SEAL)

Principal

By

Signature

(SEAL)

Surety

By

Attorney-in-Fact

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

EXHIBIT A
BIDDER'S PRIOR EXPERIENCE

(Duplicate this page, or supply the information it requests, for each Firm and contract listed.)

PRIOR SERVICES PERFORMED FOR:

AGENCY NAME _____
CONTACT _____
PERSON _____ TITLE _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
TELEPHONE _____ FAX NUMBER _____
E-MAIL ADDRESS _____
DESCRIPTION OF PROFESSIONAL SERVICES CONTRACT: _____

CONTRACT PERIOD: FROM _____ TO _____

SUMMARY OF SERVICES PERFORMED:

EXHIBIT B

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
CONTRACT SERVICES AGREEMENT**

THIS AGREEMENT is entered into by (Contractor's Name) (hereinafter, "Contractor") and the Missouri Highways and Transportation Commission (hereinafter, "Commission").

WITNESSETH:

WHEREAS, the Commission has selected the Contractor to perform non-professional services in the nature of [Describe the services to be rendered]; and

WHEREAS, the Contractor represents that it is qualified in its field of expertise to competently provide such services.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations contained herein, the parties agree as follows:

(1) **SCOPE OF SERVICES:**

(A) The services covered by this Agreement shall include furnishing all personnel and the equipment, material and all other things necessary for [Describe the services to be rendered].

(B) The specific services to be provided by the Contractor are set forth in Exhibit I to this Agreement, titled "Scope of Services," which is attached hereto and made a part of this Agreement, which also referenced in RFP/RFB #####. In addition, the Contractor shall comply with Exhibit II to this Agreement, titled "General Terms and Conditions and Special Terms and Conditions," which is attached hereto and made part of this Agreement.

(2) **ADDITIONAL SERVICES:** The Commission reserves the right to direct additional services not described in Exhibit I as changed or unforeseen conditions may require. Such direction by the Commission shall not be a breach of this Agreement. In this event, a supplemental agreement will be negotiated and executed prior to the Contractor performing the additional or changed services, or incurring any additional cost therefore.

(3) **NONSOLICITATION:** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(4) **FEES:** The amount to be paid to the Contractor by the Commission as full remuneration for the performance of all services called for in this Agreement is _____ dollars (\$____), which is shown in Exhibit III, "Pricing Page", attached hereto and made a part of this Agreement.

(5) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all state and federal statutes applicable to the Contractor relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(6) EXECUTIVE ORDER: 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.

(A) 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.

(B) 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.

(7) INCORPORATION OF PROVISIONS: The Contractor shall include the provisions of paragraph 6 of this Agreement 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.

(8) DISPUTES UNDER THIS AGREEMENT: The Commission's representative will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Commission representative's decisions shall be conclusive, binding and incontestable.

(9) SUCCESSORS AND ASSIGNS: The Commission and the Contractor agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(10) INDEMNIFICATION: The Contractor 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 Contractor's performance of its obligations under this Agreement.

(11) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only

in the Circuit Court of Cole County, Missouri.

(12) AUDIT OF RECORDS: The Contractor must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(13) WORK PRODUCT: All documents, reports, exhibits, etc. produced by the Contractor at the direction of the Commission and information supplied by the Commission shall remain the property of the Commission.

(14) CONFIDENTIALITY: The Contractor shall not disclose to third parties confidential factual matter provided by the Commission except as may be required by statute, ordinance, or order of court, or as authorized by the Commission. The Contractor shall notify the Commission immediately of any request for such information.

(15) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Contractor.

(16) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Contractor and the Commission.

(17) ASSIGNMENT: The Contractor shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(18) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Contractor responsible for damages.

(19) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the Commission 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.

(20) COMMISSION REPRESENTATIVE: The Commission's (Authorized Person) is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(21) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(22) LAW OF MISSOURI TO GOVERN: This Agreement 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 relating to the performance of this Agreement.

(23) CONTRACT PERIOD: The initial contract period is from *(Insert date)* to *(Insert date)*.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below:

Executed by the Contractor the _____ day of _____, 20____.

Executed by the Commission the _____ day of _____, 20____.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

By _____

By _____

Title: _____

Title: _____

ATTEST:

ATTEST:

Secretary to the Commission

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Commission Counsel

Title: _____

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.

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

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furnished to the successful Bidder/Offeror upon request.

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.

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.

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.

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.

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.