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REQUEST FOR PROPOSALS INVESTMENT BANKING SERVICES TABLE OF CONTENTS

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LIST OF ACRONYMS

A-3	Constitutional Amendment 3
CFO	Chief Financial Officer
ET	Evaluation Team
MHTC	Missouri Highways and Transportation Commission
MoDOT	Missouri Department of Transportation
RFP	Request for Proposals
SRBF	State Road Bond Fund
SRF	State Road Fund

INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified firms (**Firms**) to furnish the described services in this RFP to the Missouri Highways and Transportation Commission (**MHTC**). Five (5) copies of each proposal must be mailed in a sealed envelope to Ms. Roberta Broeker, MoDOT's Chief Financial Officer at Missouri Department of Transportation, Post Office Box 270, Jefferson City, Missouri 65102, or hand-delivered in a sealed envelope to the Chief Financial Officer's Office in the Highway and Transportation Building at 105 West Capitol Avenue, Jefferson City, Missouri. Also, one (1) copy must be delivered to:

Ms. Jeanne Vanda
Public Financial Management
2600 Grand Avenue, Suite 214
Des Moines, Iowa 50312

AND

Mr. Robert Rich
Public Financial Management
60 Broad Street, Suite 3602
New York, NY 10004

Proposals must be returned to the offices of Ms. Broeker, Ms. Vanda and Mr. Rich no later than 4:00 p.m., October 26, 2007. Proposals are limited to fifteen pages, excluding the cover letter.

MHTC reserves the right to reject any and all bids for any reason whatsoever. Time is of the essence for responding to the RFP within the submission deadlines.

PROPOSAL

- (1) The Firm shall provide a fee proposal to MHTC on the **PRICE PAGE (ESTIMATED)** in accordance with the terms of this RFP.
- (2) However, final compensation for the services described in this RFP will be negotiated and agreed upon by contract executed prior to each debt financing with the MHTC. Compensation will be paid from bond proceeds and, unless otherwise provided in the contract, will be contingent upon the issuance of bonds.

Name of the Firm: _____

Authorized Signature for the Firm: _____

Date of Proposal: _____

Printed or Typed Name and Title of Person Authorized to Sign for the Firm: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Electronic Mail Address: _____

ACCEPTANCE

This proposal is accepted by MHTC.

Roberta Broeker, Chief Financial Officer

Date

**SECTION (1):
GENERAL DESCRIPTION AND BACKGROUND**

(A) Request for Proposal: This document constitutes a RFP from qualified firms to provide investment banking services to MHTC and the Missouri Department of Transportation (**MoDOT**) to implement its State Road Bond Program (**Program**) and serve as underwriter for any and all issuances of State Road Bonds (**Bonds**) for an initial period ending June 30, 2010 with an option to renew for two (2), additional 1-year periods at the sole discretion of MHTC. MHTC's Program consists not only of state road bonds, but also notes, commercial paper, certificates of participation and other debt obligations issued by MHTC to meet its future debt financing requirements.

MHTC currently anticipates issuing some portion of its **Bonds** under the Program as Grant Anticipation Revenue Vehicles (**GARVEE**) in fiscal year 2009 in the amount of approximately \$150 million par amount and a variable/auction rate debt issuance of state road bonds in fiscal year 2010 in the amount of approximately \$350 million par amount.

(B) Constitutional/Revenue Stream Background: On November 2, 2004, Missouri voters passed Constitutional Amendment 3 (**A-3**) to amend article IV, section 30(b) of the Missouri Constitution to require proceeds from the state's motor vehicle sales tax that were previously deposited into the General Revenue Fund to instead be deposited into the State Road Bond Fund (**SRBF**) in annual, increasing 25% increments beginning July 1, 2005, so that by July 1, 2008, all of these moneys shall be deposited into the SRBF.

Also, article IV, section 30(b)1 already provides that the first priority for expenditure of State Road Fund (**SRF**) revenues is for the repayment of Bonds. Also, MHTC's apportionment of federal-aid highway moneys shall be used as the primary revenue stream for repayment of any GARVEE bonds. Resulting bond proceeds will be used for the construction and reconstruction of the state highway system.

(C) Purpose: The RFP's purpose is to solicit your Firm's proposal to assist MHTC to select a pool of qualified investment banking firms that may be appointed to underwrite (as book-running senior manager, co-senior manager or as a co-manager) bonds, notes, certificates of participation, commercial paper and other debt obligations issued by MHTC to meet its future debt financing requirements. Firms selected may also be appointed as remarketing agent or broker/dealer on variable/auction rate debt instruments. MHTC has the sole discretion to use less than all of the Firms selected under this RFP for a particular bond issuance during the period covered by this RFP.

MHTC reserves the right to select separate investment banking firms for the variable/auction rate and GARVEE Bonds. MHTC further reserves the right to rotate the members of its investment banking pool on future financings. No joint proposals will be accepted.

(D) Fiscal Year: The fiscal year runs annually beginning July 1 and ending June 30.

**SECTION (2):
SCOPE OF WORK**

(A) Services: The Firm shall work as a team member with MHTC's representatives, trustee bond counsel, financial advisor and others to complete the Bond sale. In addition, Firms shall provide the following, specific professional services that result in a completed debt financing that is in the best interests of MHTC:

1. Assist in the structuring of any bond issue, including the evaluation of the mode of debt to be issued, fixed or variable rate debt, as well as the determination of need for capitalizing interest, the establishment of specific redemption provisions and use of serial versus term bonds.
2. Assist in the timely review and preparation of documents, including the Official Statement, Continuing Disclosure Agreement, indentures and other necessary bond-issuance related documents.
3. Market and underwrite the bonds. Lead bankers are expected to develop a marketing plan that results in the most favorable Bond terms to MHTC and prepare a pre-pricing analysis document for timely discussion prior to the bond sale. The marketing plan will address current market conditions and present approaches to ensure that in-state retail, out-of-state retail and institutional markets are thoroughly addressed in advance of the pricing to maximize investor interest and participation.
4. As requested, assist in obtaining credit ratings and enhancement for the Bonds, participate in credit strategy discussions and attend credit rating agency presentations.
5. Purchase the Bonds at interest rates appropriate to the structure, size, term, credit quality and market conditions at the time of sale of the Bonds.
6. Follow MHTC's policies, both oral and written, for liability and designation procedures, pricing procedures and the process of selling debt obligations authorized under MHTC's Program.
7. Provide remarketing or broker/dealer services on variable rate financings.
8. Participate in the closing and post-sale analysis of the Bond issue.
9. Participate in meetings/conference calls as requested.

Firms that propose only for a co-manager role will be limited to the following scope of services:

1. Participate, if requested, in informational and due diligence meetings.
2. Assist MHTC in the successful marketing and sale of debt obligations authorized under MHTC's Program to achieve the lowest possible borrowing cost.
3. Follow MHTC's policies, both oral and written, for liability and designation procedures, pricing procedures and the process of selling debt obligations authorized under MHTC's Program.

(B) Administration of Program: The Firm will consult MHTC's representative regarding any problems involved with the administration of the services provided pursuant to this RFP.

[**NOTE:** The remainder of this page is intentionally left blank.]

SECTION (3): AGREEMENT REQUIREMENTS

The following contract provisions shall govern this RFP. The award of this RFP is subject to a post-award negotiated contract. These same contract provisions will appear in the post-award negotiated contract. If the parties are unable to agree to terms in the post-award contract, MHTC shall reserve the right to cancel the award of the RFP and contract and select a different Firm.

- (A) **MHTC's Representative:** MoDOT's Chief Financial Officer (CFO) is designated as MHTC's representative for the purpose of administering the provisions of the Agreement as defined in Subsection (E) of this section. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Agreement. The Firm shall fully coordinate its activities for MHTC with those of the CFO. As the work of the Firm progresses, advice and information on matters covered by the Agreement shall be made available by the Firm to the CFO throughout the effective period of the Agreement.
- (B) **Release to Public:** No material or reports prepared by the Firm shall be released to the public without the prior consent of the CFO. The Firm shall not participate or comment on legislation that impacts MHTC or its operations without the CFO's prior written consent.
- (C) **Assignment:** The Firm shall not assign or delegate any interest and shall not transfer any interest in the services to be provided (whether by assignment, delegation or novation) without the prior written consent of MHTC's representative.
- (D) **Status as Independent Contractor:** The Firm 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 MHTC or MoDOT. Therefore, the Firm shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime or other such benefits or obligations.
- (E) **Components of Agreement:** The Agreement between MHTC and the Firm shall consist of: (1) the RFP and any written amendments thereto; (2) the proposal submitted by the Firm in the response to the RFP; and (3) the post-award contract agreement signed between the parties, including as such contract may be amended by supplementation or amendment in writing as provided in Subsection (F) of this section. In the event of a conflict in the language between the three above-referenced documents, the provisions and requirements set forth and/or referenced in the final contract shall govern. 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 RFP or the Firm's proposal. The Firm is cautioned that its proposal shall be subject to acceptance by MHTC without further clarification.
- (F) **Amendments:** Any change in the Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representatives of the Firm and MHTC.

(G) DBE/WBE Participation Encouraged:

1. Bidders are encouraged to submit copies of existing affirmative action programs, if any. Bidders are also encouraged to directly hire minorities and women as direct employees of the bidder. MHTC reserves the right to consider the use of minority and female employee when making the award of the Agreement.
2. Regardless of which persons or firms, if any, that the Firm may use as subcontractors, subconsultants, or suppliers of goods or services for the services to be provided, the Firm ultimately remains responsible and liable to MHTC for the complete, accurate and professional quality/performance of these services.

(H) Nondiscrimination: The Firm shall comply with all state and federal statutes applicable to the Firm relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of 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.*).

(I) Bankruptcy: Upon filing for any bankruptcy or insolvency proceeding by or against the Firm, whether voluntarily, or upon the appointment of a receiver, firm, or assignee, for the benefit of creditors, MHTC reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Firm responsible for damages.

(J) Law of Missouri to Govern: The Agreement shall be construed according to the laws of the state of Missouri. The Firm shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.

(K) Cancellation: MHTC may cancel the Agreement at any time by providing the Firm with written notice of cancellation. Should MHTC exercise its right to cancel the Agreement for such reasons, cancellation shall become effective upon the date specified in the notice of cancellation sent to the Firm.

(L) Venue: No action may be brought by either party concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of the Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that the Agreement is entered into at Jefferson City, Missouri and substantial elements of its performance will take place at or be delivered to Jefferson City, Missouri, by reason of which the Firm consents to venue of any action against it in Cole County, Missouri.

(M) Ownership of Reports: All documents, reports, exhibits, etc. produced by the Firm at the direction of MHTC’s representative and information supplied by MHTC’s representative shall remain the property of MHTC.

(N) Confidentiality: The Firm shall not disclose to third parties confidential factual matters provided by MHTC’s representative except as may be required by statute, ordinance, or order of court, or as authorized by MHTC’s representative. The Firm shall notify MHTC’s representative immediately of any request for such information.

- (O) **Nonsolicitation:** The Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Firm, to solicit or secure the Agreement, and that it has not paid or agreed to pay any percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. The Firm will not pay or agree to pay any percentage, brokerage fee, gift or any other consideration to any other person or entity, related to the sale of the Bonds, except with the written consent of MHTC's representative. The Firm will not accept any percentage, brokerage fee, gift or any other consideration from any other person or entity related to the making of any investment by MHTC, the acquisition of any credit enhancement facility or the execution of any swap, derivative or other similar agreement, except with the written consent of MHTC's representative. For breach or violation of this warranty, MHTC shall have the right to annul the Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee, together with any damages suffered or incurred by MHTC because of any such payments.
- (P) **Conflict of Interest:** By executing this RFP, the Firm covenants as follows: (1) that it presently has no actual conflict of interest or appearance of conflict of interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services under this Agreement; (2) that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in this Agreement by the Firm; (3) that it is in lawful compliance with all of the campaign contribution limitations, restrictions, reporting requirements and other campaign-related provisions of any state and federal securities laws, as well as all Missouri laws and regulations regarding campaign contributions, including, but not limited to, section 226.136, Revised Statutes of Missouri; and (4) that it will stay in compliance with all such state and federal securities laws and campaign contribution provisions during the duration of the RFP.

MHTC's Representative shall have the final determination as to what constitutes a conflict of interest pursuant to this subsection (P). The decision by MHTC's representative shall be final and without recourse; however, MHTC's representative will not make such decision without first presenting the Firm with an opportunity to present comments.

- (Q) **Maintain Papers:** The Firm must maintain all working papers and records relating to the Agreement. These records must be made available at all reasonable times at no charge to MHTC and/or the Missouri State Auditor during the term of the Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Agreement.
1. MHTC's representative shall have the right to reproduce and/or use any products derived from the Firm's work without payment of any royalties, fees, etc.
 2. MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.

**SECTION (4):
PROPOSAL SUBMISSION INFORMATION**

(A) SUBMISSION OF PROPOSALS

- 1. Pricing and Signature:** Proposals should be priced, signed and returned to the persons listed on page 4 of this RFP. Specifically, any form containing a signature line in this RFP and any amendments, pricing pages, etc., must be manually signed and returned as part of the proposal.
- 2. Submission of All Data Required:** The Firm must respond to this RFP by submitting all data required in subsection (B) below for its proposal to be evaluated and considered for award. Failure to submit such data shall be deemed sufficient cause for disqualification of a proposal from further consideration. Proposals should be limited to fifteen pages (excluding cover letter).
- 3. Public Inspection:** The Firm is hereby advised that all proposals and the information contained in or related thereto shall be open to public inspection and that MHTC does not guarantee nor assume any responsibility whatsoever in the event that such information is used or copied by individual person(s) or organization. Therefore, the Firm must submit its proposal based on such conditions without reservations.
- 4. Questions/Clarification of Requirements:** Any and all questions regarding specifications, requirements, competitive procurement process or other questions must be directed to:

Ms. Leann Kottwitz
Missouri Department of Transportation
830 MoDOT Drive, P.O. Box 270
Jefferson City, Missouri 65102-0270
Telephone No: (573) 751-3685
Facsimile No: (573) 526-1218
E-mail Address: leann.kottwitz@modot.mo.gov

(B) REQUIRED ELEMENTS OF PROPOSAL

- 1. Firm Description/Demographic Information/Missouri Presence:** Please give a brief description of the firm and indicate your firm's long-term commitment to Missouri and to public finance generally. This is accomplished by providing your firm's demographic information, including location of corporate headquarters, number of bankers or sales and trading professionals engaged in municipal securities, number of employees based in Missouri and the number of public finance/municipal securities professionals based in Missouri.

Also, provide a three-year history of your firm's capital levels. Also, please describe the level and types of insurance carried to cover errors and omissions, improper judgments or negligence

2. **Firm Role:** Indicate the role(s) your Firm is seeking consideration for in this RFP (book running senior, co-senior, co-manager positions relative to fixed rate bonds; remarketing agent and/or broker/dealer positions relative to variable rate/auction rate debt instruments, etc.).
3. **Experience and Expertise.** Please identify your firm's experience in offering the services requested in this RFP, specifically GARVEE and variable/auction rate debt instruments, during the past two (2) years. The description should include a list of the agencies and bond issues which your firm has served or currently serves including your firm's role (senior, co-senior, etc.). Include, at a minimum, the name of the issue, the name of the issuer, the sale date, the size of the issue, whether the interest rate was fixed or variable, percent sold retail and underlying ratings. Please also include the name, location, telephone number and email address of the person in your Firm that MHTC may contact to discuss particulars of these municipal issuances.

This element also includes information describing your firm's experience and expertise working with state departments of transportation who have issued bonds, including but not limited to municipal and GARVEE bonds, as well as any work with other state agencies or local governments in Missouri.

Also, please describe any pending investigation of your Firm, or enforcement or disciplinary actions taken within the past three years by the SEC or other regulatory bodies in regard to your Firm.

4. **Personnel Assigned to MHTC.** Please indicate the name, location, telephone number and email address of the primary contact person for the Firm, including a biography with particular attention to experience related to the development of a transportation financing program(s). In addition, please list other personnel that would be assigned to MHTC transactions and indicate their role. Information presented should highlight such personnel's previous experience in providing investment banking services for tax-exempt debt programs and also should include the length of time in: (i) current position, (ii) current firm and (iii) municipal industry. Please be advised that the inclusion of specific personnel will be considered by the MHTC to be a commitment by the Firm that those designated persons will be available to perform the roles represented in the proposal submitted.
5. **Distinguishing Attributes:** Please briefly describe any attributes/services that distinguish your firm from others offering similar services that would prove helpful to the MHTC in our selection process.
6. **Retail and Institutional Capabilities:** Please describe your firm's retail and institutional distribution capabilities nationally and in Missouri. Describe any industry surveys or recent reports that support your claims of capital market

penetration relative to your firm's competitors. If your firm desires consideration for potential variable/auction rate financings, please comment on the marketing and distribution capabilities of short-term interest rates products for your firm nationally and in Missouri.

7. **References:** Please provide a list of three municipal references, including name, address, telephone number and type of financing completed for these clients in the past three years.

(C) EVALUATION CRITERIA AND PROCESS

1. **Evaluation Factors:** Any agreement for services resulting from this RFP shall be awarded to the Firm(s) providing the best proposal to MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria as explained above, if applicable:
 - A. Overall clarity and organization of the proposal – 5 points
 - B. Personnel assigned to MHTC – 20 points
 - C. Experience and expertise – 20 points
 - D. Retail and institutional capabilities – 20 points
 - E. Firm Description/Demographic information/Missouri presence – 10 points
 - F. Distinguishing Attributes – 10 points
 - G. Price – 15 points
2. **Historic Information:** MHTC reserves the right to consider historic information and facts, whether gained from the Firm's proposal, question and answer conferences, references or other sources, in the evaluation process.
3. **Responsibility to Submit Information:** The Firm is cautioned that it is the Firm's sole responsibility to submit information related to the evaluation categories and that MHTC's representative is under no obligation to solicit such information if it is not included with the Firm's proposal. Failure of the Firm to submit such information may cause an adverse impact on the evaluation of the Firm's proposal.
4. **Interview Conference:** An interview conference with your Firm may be conducted prior to the award of the Agreement, if deemed necessary. In addition, the Firm may be asked to make an oral presentation of its proposal during the interview conference. Attendance cost at the conference shall be at the Firm's own expense. All arrangements and scheduling shall be coordinated by the CFO or the CFO's designee.
5. **No Joint/Unsolicited Proposals:** Firms may not submit joint proposals. MHTC shall not consider unsolicited proposals.
6. **Review and Selection Process:**
 - A. **Evaluation Team Review and Recommendation:** MoDOT shall create an Evaluation Team (ET) whose responsibility is to review, evaluate and score

the proposals received by Firms responding to this RFP. The ET will then make its recommendation for MHTC whose scores warrant inclusion in the pool of underwriters awarded contracts under this RFP.

- B. MHTC Final Determination:** The CFO will then make a presentation to MHTC at the December 12, 2007 meeting recommending the successful Firms that MHTC should award contracts to under this RFP. MHTC shall then make the final determination of the successful Firms to be awarded contracts under this RFP.

(D) OTHER INFORMATION

- 1. Sole Authority to Select Firm(s):** MHTC has the sole authority to select the investment banking firms that will be awarded contracts for investment banking services under this RFP. MHTC also reserves the right to select among those individual investment banking firms awarded contracts under this RFP for participation, or not, in each negotiated sale of Bonds under the Program, as MHTC deems necessary for such sale.
- 2. Request for Ideas/Advice:** MHTC or MoDOT may, from time to time, seek ideas, advice and proposals from investment banking firms that are awarded contracts under this RFP.
- 3. Option to Form Selling Group:** MHTC retains the option of forming a selling group for any transaction and members of the selling group need not be included in the investment banking services team selected via this RFQ.
- 4. Underwriter's Counsel:** If seeking selection as senior manager or co-senior manager, the Firm should propose the law firm(s) to serve as counsel to the investment bankers or offer a list of law firms from which counsel will be selected. MHTC reserves the right to approve the Firm's counsel and related compensation.
 - A. Conflict Check:** The Firm will require that the Firm's proposed counsel undertakes a conflict of interest check and that by executing this RFP, the Firm represents that such counsel has no actual conflict of interest or the appearance of a conflict of interest in undertaking this representation and that the Firm's proposed counsel agrees not to undertake any representation that may create an actual conflict of interest or give the appearance of a conflict of interest during the performance of the Agreement. The Firm further agrees to require its' proposed counsel to provide MHTC's representative with written notice of any representation which the counsel has or desires to undertake which may present a conflict of interest or the appearance of a conflict of interest during the term of the Agreement and any extension thereof.
 - B. MHTC Final Determination:** MHTC shall have the final determination as to what constitutes a conflict of interest pursuant to this Paragraph 4. of this Subsection (D). The decision by MHTC shall be final and without recourse;

however, MHTC will not make any such decision without first providing the Firm or Firm's counsel an opportunity to present comments.

5. **Competitive Sale of Bonds:** MHTC may, at any time, and in its sole and absolute discretion, competitively sell bonds.
6. **No Guarantee Firm Will Be Used:** Firms awarded a contract under this RFP are not guaranteed to participate in MHTC future Bond issuances. MHTC reserves the right to use the selected Firms awarded contracts under this RFP on an as needed basis.

(D) PRICING

1. **Estimated Fee Schedule:** The Firm must submit an estimated fee for all services defined in the Scope of Work. This estimated fee must be shown on Section (5): Price Page (Estimated) of this RFP and must be completed, signed and returned with the Firm's proposal.
2. **Compensation:** MHTC reserves the right to negotiate final compensation terms for investment banking services under this RFP, which will be negotiated at the time of each financing with the MHTC and its financial advisor and is subject to a written amendment to the contract awarded under this RFP. MHTC reserves the right to use incentive based compensation for variable and auction rate programs. Compensation will be contingent upon the issuance of bonds.

**SECTION (5):
PRICE PAGE (ESTIMATED)**

- (A) **ESTIMATED FEE SCHEDULE:** The Firm shall indicate below all estimated fees for providing investment banking services in accordance with the provisions and requirements stated in this RFP.

Any applicable cap on out-of-pocket expense also should be noted.

Par Amount Term Interest Rate Mode	\$150 Million (GARVEE) 10 Years Fixed	\$350 Million 20 Years Variable Rate	\$350 Million 20 Years Auction Rate
Management Fee			
Average Takedown			
Remarketing Fee			
Broker/Dealer Fee			

- (B) **ESTIMATED EXPENSES:** List the nature of expenses for which reimbursement would be sought and the estimated amount of such expenses.

Expenses	\$150 Million GARVEE Estimated Amount	\$350 Million Variable/Auction Rate Issuance
Underwriter's Counsel		
Travel		
Market Fees (MSRB, DTC, etc.)		
Day Loan		
Miscellaneous		
Total		

Cap on Out-of-Pocket Expenses \$ _____

Signature of Authorized Individual Representing the Firm: _____

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.

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.

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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.

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.

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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.

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

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.

Award

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

Notice to Proceed

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

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.

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Cancellation of Contract

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