

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

REQUEST NO.	2-101207BT
DATE	November 19, 2010
PAGE NO.	1 NO. OF PAGES

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

2:00 p.m., Local Time, December 7, 2010

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

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

Submit net bid as cash discount stipulations will not be considered
Various MoDOT Locations

DEFINITE DELIVERY DATE SHOULD BE SHOWN. THE BIDDER MUST SIGN AND RETURN BEFORE DATE AND TIME SET FOR OPENING. ALL BIDS SHOULD BE EXTENDED AND TOTALED.

BUYER: Brenda Tyree
BUYER EMAIL:
Brenda.Tyree@modot.mo.gov

BUYER TELEPHONE: 573- 751-7482

SUPPLIES OR SERVICES

COLD WEATHER TRAFFIC MARKING PAINT

To establish a contract to furnish “Cold Weather Traffic Marking Paint” with an effective date Notice to Proceed and ending December 31, 2011 in accordance with the following pages.

Return sealed bid to the address shown at the top of this page.

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

In compliance with the above Request For Bid, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were bid within the timeframe specified herein, after receipt of formal purchase order.

Date: _____
Telephone No.: _____
Fax No.: _____
Email Address: _____

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

Is your firm MBE certified? Yes No

Title: _____
Is your firm WBE certified? Yes No

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

- 1.1.1 This Request for Bid seeks bids from qualified organizations to provide cold weather traffic marking paint located throughout the State of Missouri with an effective contract period of Notice to Proceed through December 31, 2011, to the Missouri Highways and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT). Each bid must be mailed in a sealed envelope to Ms. Brenda Tyree, General Services Procurement Unit, 830 MoDOT Drive, P.O. Box 270, Jefferson City, Mo 65109, or hand-delivered in a sealed envelope to the General Services Procurement Office in the Highway and Transportation Building at 830 MoDOT Drive, Jefferson City, Missouri. All questions regarding the RFB shall be submitted to Ms. Brenda Tyree. Bids must be returned to the office of Ms. Brenda Tyree no later than 2:00 p.m., CST, December 7, 2010.

RFB Coordinator:

**Ms. Brenda Tyree, Senior Procurement Agent
Missouri Department of Transportation
830 MoDOT Drive
Jefferson City, MO 65109**

PHONE: 573-751-7482

FAX: 573-526-1218

1.2 General Information:

1.2.1 This document constitutes an invitation for competitive, sealed bids for the procurement of cold weather traffic marking paint 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 Pages
- 5) Attachment A & B

Attachment A - MGS specifications - (Click on separate link to view Attachment)

Attachment B – State Map of Missouri - (Click on separate link to view Attachment)

- 6) Signature Pages
- 7) Terms and Conditions

2. SCOPE OF WORK

2.1 General Requirements:

- 2.1.1 The contractor shall provide cold weather traffic marking paint on an as needed, if needed basis for the Missouri Highway and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT), in accordance with the provisions and requirements stated herein.
- 2.1.2 The contractor shall provide all deliverables/services to the sole satisfaction of the MoDOT.
- 2.1.3 The contractor shall agree and understand the gallons of cold weather traffic marking paint specified herein is the estimated requirement for the striping season and is based on ideal conditions and therefore, subject to change due to weather and mechanical problems that may develop during the course of the striping season. MoDOT estimates, but does not guarantee, that the estimated quantities specified herein may be required/purchased.
- 2.1.4 MoDOT reserves the right to obtain "like or similar" products as specified herein from other manufacturers, exclusive of the contract, when use of such products is deemed in the best interest of the MoDOT.
- 2.1.5 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to provide the deliverables/services required herein.

2.2 Specific Requirements:

- 2.2.1 The contractor shall insure all materials, equipment, and/or services comply with the Specifications #MGS-09-02B (Attachment A) and any other provisions outlined in the solicitation document.
- 2.2.2 The contractor shall insure that all containers are labeled with the appropriate hazardous material marking in accordance with the U.S. Department of Transportation regulation 173.115.
- 2.2.3 Prior to providing the cold weather traffic marking paint as specified herein, the contractor shall insure the contractor's totes are cleaned to insure no loose particles of paint are passed into MoDOT's striping equipment.
- 2.2.4 The contractor's totes shall be 250 gallon capacity and compatible with the waterborne paint specified herein. The contractor's totes shall be stainless steel or plastic containers surrounded by a supporting metal frame, and shall be capable of properly containing and delivering the paint.

2.3 Delivery Requirements:

- 2.3.1 The contractor shall deliver cold weather traffic marking paint as specified herein to all MoDOT Districts located throughout the State of Missouri (Attachment B). The contractor shall deliver such cold weather traffic marking paint F.O.B. destination.
- 2.3.2 The contractor shall not deliver any cold weather traffic marking paint to MoDOT until being notified by MoDOT by telephone or purchase order.
- 2.3.3 The contractor shall have a maximum of 8 full working days from time of notification to deliver cold weather traffic marking paint. Full working days shall be defined as a 24 hour period, Monday through Friday, excluding Saturday, Sunday, and Holidays.
 - a. In the event cold weather traffic marking paint is not delivered within the 8 full working day period, MoDOT shall be compensated at a rate of \$500 per day until the cold weather traffic marking paint is delivered.

- b. The contractor shall agree and understand that such late delivery charge shall not be construed as a penalty.
- 2.3.4 The contractor shall deliver cold weather traffic marking paint in totes. Some of these totes shall be used as back up supplies on hand and may not be returned to the contractor until the end of the striping season.
- a. Tote delivery - Delivery by totes shall be required for each district.
 - 1) Totes shall be off-loaded at the locations specified by MoDOT.
 - 2) Empty totes shall remain at the MoDOT location that received the tote until MoDOT notifies the contractor there are sufficient quantities of empty totes to be picked up.
 - 3) The contractor shall pick up empty totes at no additional cost to MoDOT.
- 2.3.5 In the event MoDOT delays the contractor from unloading material, the contractor shall be compensated at the rate of \$24.00 per hour, computed to the nearest 15 minutes (One hour and 30 minutes shall be allowed for unloading material free of demurrage).
- a. If the contractor's material does not arrive at the time specified, the contractor shall compensate MoDOT at a rate of \$80.00 per hour, computed to the nearest 15 minutes.
 - b. If the contractor arrives prior to the specified time of delivery, unloading shall begin as soon as practical and allowed unloading time shall start when actual unloading begins, or at the specified arrival time, whichever is the earliest.
- 2.3.6 The contractor shall agree and understand that when more than one shipment of cold weather traffic marking paint is ordered for the same general location on the same day, the first shipment to arrive shall be unloaded first.
- a. If an earlier scheduled shipment does not arrive at the scheduled time, no demurrage shall be due the contractor on subsequent shipments, unless more than one hour and 30 minutes is required to unload each subsequent shipment.
 - b. If a shipment that did not arrive at the scheduled time arrives after unloading has begun on a subsequent shipment, the late shipment shall not be unloaded until all "on time" shipments have been unloaded. Demurrage due MoDOT shall be discontinued on the "late" shipment while the "on time" shipments are being unloaded.
 - c. Unloading of an earlier scheduled shipment shall not begin after 2:30 P.M. and demurrage due to MoDOT shall be discontinued at that time.
 - d. The contractor shall agree and understand the cold weather traffic marking paint belongs to the contractor and is the contractor's responsibility.

2.4 Additional Requirements:

- 2.4.1 The contractor shall furnish the truck driver a copy of the bill of lading, manifest or truck ticket that is to be presented to MoDOT personnel at destination prior to unloading. A copy is also to be available to the MoDOT representative at the shipping point. The bill of lading, manifest or truck ticket shall show the following information: Type and color of cold weather traffic marking paint, batch or lot number, purchase order number, truck number, weights of truck before and after loading, destination, date and time loaded, name and location of source and a certification statement.
- 2.4.2 The contractor shall retain all records throughout the duration of the contract and for a period of three (3) years

following the final payment by MoDOT to the contractor, including, but not limited to, shipping tickets, invoices, and batch tickets, indicating the origin and components of every batch of cold weather traffic marking paint provided under the contract. The contractor shall make these records available to MoDOT upon request and without cost to MoDOT, Federal Highway Administration, or their designees. In addition, the contractor shall compile and provide to MoDOT any other documentation MoDOT deems necessary to determine the origin, ingredients, and components of each batch of cold weather traffic marking paint.

2.4.3 The contractor shall include a certified batch card with each sample submitted to the Central Laboratory located at 1617 Missouri Blvd, Jefferson City, MO 65109, that clearly shows the date and time of manufacture and the manufacturer's batch or lot number. The batch card shall include the exact formulation used to manufacture the batch or lot of cold weather traffic marking paint represented. The quantity in pounds of each constituent or raw material used in the manufacture of that batch shall be listed on the card, along with the manufacturer and lot number for that constituent. If a batch or lot is composed of different mixers or blend tanks of cold weather traffic marking paint that are combined to create a single batch or lot for shipping, the quantities of each constituent shall be shown for each mixer or blend tank of cold weather traffic marking paint produced.

2.5 Liquidated Damage Requirements:

2.5.1 The contractor shall agree and understand that providing cold weather traffic marking paint in accordance with the requirements stated herein is considered critical to the efficient operations of the MoDOT. However, since the amount of actual damages would be difficult to establish in the event the contractor fails to comply with the contractual requirements, the contractor shall agree and understand that the percentages identified below as liquidated damages shall be reasonable and fair under the circumstances.

a. In the event the contractor fails to provide cold weather traffic marking paint in accordance with the contractual requirements specified herein, the contractor shall agree and understand that MoDOT shall solely determine which of the following percentages of deduction shall be assessed against the contractor for the contractor's noncompliance, and such shall be final and without recourse.

Minor	5 %
Slight	10 %
Moderate	25 %
Severe	50 %

- b. The contractor shall agree and understand that in the event 10 or more batches in a contract year are determined not to comply with the contractual requirements, MoDOT reserves the right to increase the percentages listed above.
- c. The contractor shall agree and understand that such liquidated damages shall either be deducted from the total amount due the contractor or paid by the contractor as a direct payment to the MoDOT, at the sole discretion of the MoDOT.
- d. The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.
- e. The contractor shall agree and understand that all assessments of liquidated damages shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies.
- f. The contractor shall understand and agree that all assessments of liquidated damages shall be within the discretion of each District as a separate entity, and shall be in addition to, not in lieu of, the rights of the

State of Missouri to pursue other appropriate remedies. The contractor shall understand and agree that each District's decision shall be individual, final, and without recourse.

2.6 Invoicing and Payment Requirements:

- 2.6.1 The contractor shall submit an itemized invoice to the applicable requesting address for the completion of deliverables, as specified herein.
- 2.6.2 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.
- 2.6.3 The contractor shall be paid in accordance with the firm, fixed prices stated on the pricing page(s) of this document after completion of deliverables specified herein and acceptance by MoDOT.
- 2.6.4 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.
- 2.6.5 MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful bidder upon request.
- 2.6.6 Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- 2.6.7 The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the contractor's expense.
- 2.6.8 The MHTC reserves the right to purchase goods and services using the state-purchasing card.

2.7 Other Contractual Requirements:

- 2.7.1 Contract Period - The contract shall commence from the date of award until December 31, 2011 with up to two (2) one-year renewal option periods. If the option for renewal is exercised by MoDOT, the contractor shall agree to all terms and conditions of the RFB and all subsequent amendments. Renewal options are at the sole discretion of MoDOT.
- 2.7.2 Renewal Periods - If the option for renewal is exercised by MoDOT, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated herein.
 - a. If renewal prices are not provided, the prices during renewal periods shall be the same as during the original contract period.
 - b. MoDOT does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.
 - c. In the event MoDOT exercises its option(s) to renew the contract, the requirements for future years shall be basically similar.

- 2.7.3 Escalation Clause - In the event the contractor requests a price increase during the contract period (original contract period or contract renewal period), the contractor must provide a written request and documentation justifying the need for a price increase, and the amount of such price increase. MoDOT will review the contractor's written request and documentation, and decide if a price increase is to be granted at that particular time. The contractor shall understand and agree that MoDOT's decision shall be final and without recourse.
- a. No price increase shall be granted during the first 3 months of the original contract period, or if applicable, first 3 months of a contract period for a renewal.
 - b. In the event a price increase is granted due to an approved escalation, the renewal percentage shall be based upon the current contract value.
- 2.7.4 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.
- 2.7.5 Inspection Specifications - MoDOT reserves the right to inspect the material at the point of manufacture, intermediate storage point, or at a destination which shall be at the discretion of MoDOT.

3. BID SUBMISSION

3.1 Bid Submission Information:

3.1.1 All bids must be received in a sealed envelope clearly marked "Cold Weather Traffic Marking Paint".

3.1.2 All bids must be received at the following address no later than December 7, 2010 at 2:00 p.m., CST.

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

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 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 at least three (3) working days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFB, any questions received less than three (3) working days prior to the RFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the MoDOT 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.

3.1.5 Proposal/Bid Guaranty/Contract Bond:

- a. Each bid/proposal 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 MoDOT 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. Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder(s) will be retained until the contract is executed and a satisfactory Performance and Payment (Contract Bond) is furnished. Bid Bonds will not be returned except on specific request of the bidder.

3.1.6 *Prequalification of Bidder:* The bidder must provide proof of the following conditions to be considered for an award of contract.

- a. Bidder must have a plant in operation and devoted to manufacturing the travel marking paint being proposed for this bid. Such plant must be capable of producing batch sizes of at least 3500 gallons (13,250 liters).
- b. Bidder must maintain a laboratory to scientifically control the travel marking paint being proposed for this bid to assure accuracy and quality of formulation.
- c. Bidder must have produced fast drying waterborne cold weather traffic marking paint over the past year (1) with a successful application record.

3.1.7 *Prequalification of Paint:*

- a. Prior to the bid opening date, the bidder must submit three (3) one-quart samples of each paint being bid. Each paint sample must be accompanied by a one (1) pint can of acrylic emulsion, and certified test results for all of the tests stipulated elsewhere herein. Each sample shall be identified by manufacturer's code number and type of paint to permit easy reference and identification. Samples are to be submitted to the Chemical Laboratory Director, Missouri Department of Transportation, Materials Laboratory, 1617 Missouri Blvd., Jefferson City, MO 65109.

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

- a. The renewal pricing shall not be included in the calculation when determining the low bid.

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

- a. Award of this bid will be made on a “District-by-District” basis using the “lowest and best” principle of award.
- b. No award of contract shall be made until the cold weather traffic marking paint has successfully complied with all of the requirements specified herein, and has been tested in the MoDOT Central Laboratory. *NOTE:* Normal-testing time is a minimum of thirty (30) calendar days.
- c. MoDOT reserves the right to reject any or all bids, and no award is final until formally approved.

4. PRICING PAGE

4.1 Cold Weather Traffic Marking Paint - The bidder shall provide a firm, fixed price in the table below for the original contract period and a maximum price for each potential renewal period for providing the deliverables/services in accordance with the provisions and requirements of this RFB. All costs associated with providing the required deliverables/services shall be included in the prices stated below.

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 1 - ST. JOSEPH					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Totes Delivery</i>					
1	White Water Borne - C/S Code - 6306686700	2,000	\$	\$	\$
2	Yellow Water Borne - C/S Code - 6306686705	2,000	\$	\$	\$
TOTAL:					\$

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 2 - MACON					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Totes Delivery</i>					
3	White Water Borne - C/S Code - 6306686700	3,000	\$	\$	\$
4	Yellow Water Borne - C/S Code - 6306686705	3,000	\$	\$	\$
TOTAL:					\$

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 3 - HANNIBAL					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Totes Delivery</i>					
5	White Water Borne - C/S Code - 6306686700	8,000	\$	\$	\$
6	Yellow Water Borne - C/S Code - 6306686705	2,000	\$	\$	\$
TOTAL:					\$

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 4 -- KANSAS CITY						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
7	White Water Borne - C/S Code - 6306686700	8,000	\$	\$	\$	
8	Yellow Water Borne - C/S Code - 6306686705	5,000	\$	\$	\$	
TOTAL:					\$	\$

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 4 -- WARRENSBURG						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
9	White Water Borne - C/S Code - 6306686700	250	\$	\$	\$	
10	Yellow Water Borne - C/S Code - 6306686705	250	\$	\$	\$	
TOTAL:					\$	\$

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 5 -- JEFFERSON CITY						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
11	White Water Borne - C/S Code - 6306686700	250	\$	\$	\$	
12	Yellow Water Borne - C/S Code - 6306686705	250	\$	\$	\$	
TOTAL:					\$	\$

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 6 – ST. LOUIS						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
13	White Water Borne - C/S Code - 6306686700	6,000	\$	\$	\$	
14	Yellow Water Borne - C/S Code - 6306686705	6,000	\$	\$	\$	
TOTAL:					\$	

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 7 – JOPLIN						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
15	White Water Borne - C/S Code - 6306686700	9,000	\$	\$	\$	
16	Yellow Water Borne - C/S Code - 6306686705	9,000	\$	\$	\$	
TOTAL:					\$	

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 8 – SPRINGFIELD						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
17	White Water Borne - C/S Code - 6306686700	6,000	\$	\$	\$	
18	Yellow Water Borne - C/S Code - 6306686705	6,000	\$	\$	\$	
TOTAL:					\$	

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 9 - WILLOW SPRINGS						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
19	White Water Borne - C/S Code - 6306686700	250	\$	\$	\$	
20	Yellow Water Borne - C/S Code - 6306686705	250	\$	\$	\$	
TOTAL:					\$	

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 9 - ROLLA						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
21	White Water Borne - C/S Code - 6306686700	250	\$	\$	\$	
22	Yellow Water Borne - C/S Code - 6306686705	250	\$	\$	\$	
TOTAL:					\$	

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 10 - SIKESTON						
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>	
<i>Totes Delivery</i>						
23	White Water Borne - C/S Code - 6306686700	3,000	\$	\$	\$	
24	Yellow Water Borne - C/S Code - 6306686705	3,000	\$	\$	\$	
TOTAL:					\$	

COLD WEATHER TRAFFIC MARKING PAINT - DISTRICT 10 -- PARK HILLS					
Item #	Description and C/S Code	Estimated Qty.	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	1 st Renewal Period <i>Maximum Price Per Gallon</i>	2 nd Renewal Period <i>Maximum Price Per Gallon</i>
<i>Totes Delivery</i>					
25	White Water Borne - C/S Code - 6306686700	3,000	\$	\$	\$
26	Yellow Water Borne - C/S Code - 6306686705	3,000	\$	\$	\$
TOTAL:					\$

Signature

Date

Exhibit A

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 bid for the above project are true and correct; and that the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

By _____

By _____

By _____

Sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires _____

Exhibit B

PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

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

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

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

FOR CORPORATIONS:

State in which incorporated: _____

FOR OTHERS:

State of domicile: _____

FOR ALL VENDORS:

List address of Missouri offices or places of business:

THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME: _____

ADDRESS: _____

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

BY (signature required): _____

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

Exhibit C

MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

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

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

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

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

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

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

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

Item (or item number)	Location Where Item Manufactured or Produced

(attach an additional sheet if necessary)

[] The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to meet the contract specifications. Items (or item numbers): _____

[] The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers): _____

CERTIFICATION

By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document is true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.

The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.

Exhibit E

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 Cold weather traffic marking paint as set out in the bid 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 bid, 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 F

Cooperative Procurement

MoDOT is interested in assisting Missouri governmental entities, etc. in purchasing equipment, various materials, and supplies that meet MoDOT specifications.

Each bidder is asked to indicate below whether they would be willing to offer Cold Weather Traffic Marking Paint listed in the attached "Request for Bid" for sale to these local political entities at the same bid price offered to MoDOT.

It is understood MoDOT will not issue purchase orders, accept delivery nor make payment for these items ordered by any of these agencies. It is further understood the price is based on the Cold Weather Traffic Marking Paint meeting MoDOT specifications. Any added options, deletions, or extra freight costs would be negotiated between the local agency and the successful vendor.

Indicate below whether your company is willing to offer such cooperative purchasing for Missouri counties, cities or other political entities.

YES _____ NO _____

If the price varies throughout the state on MoDOT bids because of different delivery destinations, please indicate the price f.o.b. your location that would be offered as described.

F.O.B. Location _____

Indicate the deadline date that orders will be accepted. _____

COMPANY NAME _____

ADDRESS _____

PHONE NUMBER _____

SIGNATURE _____

TITLE _____

DATE _____

Exhibit G

MISSOURI SERVICE-DISABLED VETERAN BUSINESS PREFERENCE

By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.

Definitions:

Service-Disabled Veteran is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.

Service-Disabled Veteran Business is defined as a business concern:

- a. Not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and
- b. The management and daily business operations of which are controlled by one or more service-disabled veterans.

If a bidder meets the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and is either doing business as a Missouri firm, corporation, or individual; or maintains a Missouri office or place of business, the bidder **must** provide the following with the bid in order to receive the Missouri service-disabled veteran business preference over a non-Missouri service-disabled veteran business when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable:

- a. A copy of a letter from the Department of Veterans Affairs (VA), or a copy of the bidder's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) from the branch of service the bidder was in, stating that the bidder has a service-connected disability rating ranging from 0 to 100% disability; and
- b. A completed copy of this exhibit

(NOTE: For ease of evaluation, please attach copy of the above-referenced letter from the VA or a copy of the bidder's discharge paper to this Exhibit.)

By signing below, I certify that I meet the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and that I am either doing business as a Missouri firm, corporation, or individual; or maintain Missouri offices or places of business at the location(s) listed below.

<u>Veteran Information</u>	<u>Business Information</u>
Service-Disabled Veteran's Name, (Please Print)	Service-Disabled Veteran Business Name
<i>Service-Disabled Veteran's Signature</i>	Missouri Address of Service-Disabled Veteran Business

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STANDARD SOLICITATION PROVISIONS

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

GENERAL TERMS AND CONDITIONS

General Performance

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

Deliveries

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

Nondiscrimination

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

Contract/Purchase Order

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

Subcontracting

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.

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

Applicable Laws and Regulations

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

Executive Order

- a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.
 - 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
 - 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
 - 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Preferences

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
 - 1) If attached, the document entitled "PREFERENCE IN PURCHASING PRODUCTS" should be completed and returned with the solicitation documents.
 - 2) If attached, the document entitled "MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT" should be completed and returned with the solicitation documents. Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.
- c. By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.

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1) If attached, the document entitled "MISSOURI SERVICE-DISABLED VETERAN PREFERENCE" should be completed and returned with the solicitation documents.

- d. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

Remedies and Rights

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

Cancellation of Contract

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

Bankruptcy or Insolvency

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

Inventions, Patents, and Copyrights

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

Inspection and Acceptance

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

Warranty

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

Status of Independent Contractor

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

Indemnification

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