



**MISSOURI DEPARTMENT OF TRANSPORTATION  
NORTHEAST DISTRICT  
SOLICITATION GUIDELINES AND DOCUMENTATION**

**REQUEST FOR BID**

It is the vendor's responsibility to read and comply with all conditions, specifications, and instructions outlined in this document. This document and any subsequent attachments shall supersede all confirmation forms, receipts, or any other paperwork needed to secure materials, equipment, or services.

TODAY'S DATE: JUNE 30, 2014	<b>RESPONSES DUE NO LATER THAN: JULY 15, 2014 @ 1:00 PM CENTRAL TIME</b>	F.O.B. REQUIREMENTS: DESTINATION (SEE PROJECT LOCATION BELOW)
MATERIALS ARE TO BE SUPPLIED FOR WORK TO BE PERFORMED, AT A TIME TO BE DETERMINED, BETWEEN JULY 21, 2014, AND SEPTEMBER 18, 2014.	<b>REQUEST # NE15-01B-R2</b>  THIS NUMBER SHOULD BE REFERENCED ON ALL MAILING LABELS, ENVELOPES, AND ANY OTHER CORRESPONDENCE ABOUT THIS SOLICITATION.	BUYER NAME: WILLIAM D. "BILL" NOYES, CPPO, CPPB SENIOR PROCUREMENT AGENT PHONE NUMBER: (660)-385-8245 <b>No RFB RESPONSES ACCEPTED BY FAX</b>
Mailing Address: MoDOT – Northeast District – Macon Regional Office General Services (Procurement) Division 26826 U.S. Highway 63 Macon, MO. 63552	Project Locations: Schuyler County Route 202 To be applied from the Iowa State line to U.S. Hwy 63 MoDOT Northeast District: Lancaster Maintenance Area Lancaster, MO. 63548	

<b>VENDOR NAME:</b>	<b>(Enter your company name in this block)</b>
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**SURFACE SEALING TREATMENT MATERIAL**

**1.0 Description.** This work shall consist of furnishing and applying a surface sealing treatment to the existing roadway. The surface sealing material shall contain a mixture of cationic polymer modified asphalt emulsion, fine aggregate, water, and other additives as needed.

**2.0 Material Requirements.**

**2.1 Bituminous Material.** The bituminous material shall be a polymer modified asphalt emulsion in accordance with the following table. The bituminous material shall show no separation after mixing. The emulsion shall be sampled in accordance with AASHTO T 40.

<b>Asphalt Emulsion (CSS)</b>			
	<b>Min.</b>	<b>Max.</b>	<b>Test Method</b>
Viscosity, Saybolt Furol at 25 C, s	15	100	AASHTO T 72
Particle charge test	Positive <sup>b</sup>		AASHTO T 59
Residue, %	60	--	AASHTO T 59
<b>Test on Residue from Distillation</b>	<b>Min.</b>	<b>Max.</b>	<b>Test Method</b>
Penetration, 25 C, 100 g, 5 s,	15	150	AASHTO T 49

<sup>b</sup>If the particle charge test is inconclusive, material having a maximum pH value of 6.7 will be acceptable.

**2.2 Mineral Aggregate.** Fine aggregates materials shall be in accordance with Section 1002.3 of the Standard Specifications; except as modified herein:

**2.2.1 Noncarbonated Aggregate Requirement.** The aggregate blend shall contain a minimum of 50 percent non-carbonate aggregate. The aggregate blend shall have an acid insoluble residue (AIR), MoDOT Test Method TM 76, of at least 85 percent insoluble residue.

**2.2.2** Aggregate sources not meeting the absorption limits of Section 1002.3 shall be in accordance with the following lightweight aggregate requirements:

Property	Percent Maximum Limit
Absorption, AASHTO T 85, percent, max	n/a
Micro-Deval, AASHTO TP 58, percent, max	20
Los Angeles Abrasion for Lightweight Aggregate, MoDOT Test Method TM 78, percent, max	50

**2.2.3 Aggregate Gradation Requirement.** The aggregate blend shall have a 100% of the material passing the No. 8 (2.36 mm) sieve. For spraying applications, the following gradation shall be used:

Sieve	Percent Passing
No. 8 (2.36 mm)	100
No. 16 (1.18 mm)	95-100
No. 30 (600 µm)	85-100
No. 50 (300 µm)	40-70
No. 100 (150 µm)	30-60
No. 200 (75 µm)	25-65

**2.3 Water.** Water shall be potable and free of harmful soluble salts.

**2.4 Additives.** Any other material added to the mixture or to any of the component materials shall be listed in the job mix formula with the product certifications.

**2.5 Mix Design.** The mix design that lists the specific materials to be used on the project shall be submitted to the engineer at least 30 days (\* note on page 3) before the surface sealant treatment work commences. The mixture shall contain a minimum of 25% aggregate by weight of wet mixture (50% by weight after water is removed) and shall meet the following requirements:

	Min.	Max.	Test Method
Maximum Wet-Track Abrasion Loss (3 day soak), grams per square feet.	--	80 gr/m <sup>2</sup>	TB 100 (ISSA) Modified
Asphalt Content by Ignition Method, percent	30%	--	AASHTO T-308-08 <sup>c</sup>

<sup>c</sup>This method is modified to account for a fine emulsion mixture.

**3.0 Transportation Requirement.** Material supplier shall be responsible for providing a 3” hose capable of offloading the transport trailer into an onsite storage trailer.

**4.0 Basis of Payment.** The accepted quantity of surface sealer, delivered to the project, will be paid for at the contract unit (lbs) price. No separate payment will be made for transportation delivery costs. Onsite storage is not a requirement of this contract. Manufacturer shall report the unit weight (lbs/gallon) of the surface sealing material on the bill of lading.

**5.0 Scope of Work and Bid Pricing Submittal**

County	Route	Length (miles)	Width (feet)	Quantity (lbs)	Delivery Location	Estimated Delivery Dates*	Unit Price (\$/lb)
Schuylers	202	8.546	23	302,990	Lancaster Maintenance Facility (to be applied from Iowa State Line to US 63)	July 21, 2014 – September 18, 2014	\$

\* **Estimated project dates are an approximation and subject to change by MoDOT.** MoDOT will be issuing a separate Request For Bid for a Contractor to apply this material (NE15-02B-R2 Surface Sealing Treatment Equipment with Operator). **Specific dates/times/locations for the delivery of this material will be coordinated between the Materials vendor, MoDOT, and the Equipment with Operator vendor.**

**SPECIAL TERMS AND CONDITIONS**

**Required Specifications**

All materials bid upon must comply with the enclosed Surface Sealing Treatment specifications and any other provisions outlined in the solicitation documents. The material to be supplied shall comply with the quality and gradation requirements of the 2011 Edition of the Missouri Standard Specifications for Highway Construction and any revisions thereto, unless modified by these specifications.

**Award**

Award of this solicitation will be made on an “All Or Nothing” basis using the “lowest and best” principle of award. Notification of award will be at the time the tabulation is posted to the Internet. It is the sole responsibility for all vendors to check the website for any addendums and tabulation/award results.

**F.O.B. Requirements, Tax Exemption & Fees**

Price all materials as F.O.B. Destination. Delivery cost must be included in the unit price(s) & not listed separately. MoDOT is tax exempt. No additional fees, such as tire, battery, environmental fees, or fuel surcharges, will be accepted on any solicitation or purchase. Instead, these types of fees should to be buffered into your unit pricing.

**Increase or Decrease Quantities**

The quantities listed are MoDOT’s best estimate of needs at the time of the solicitation posting. MoDOT reserves the right to increase or decrease quantities based upon budget constraints or changes in project requirements. The final quantity ordered by MoDOT shall be furnished at the same unit price. Should another MoDOT district or division wish to purchase these same items/services, the vendor agrees to furnish these items/services at the same unit pricing, with negotiated adjustments, if agreed to by all parties, being allowed to account for slight differences in cost, such as due to changes in freight costs based on different delivery points than those detailed herein.

**Delivery – Additional Requirements**

The Contractor shall furnish MoDOT with a planned delivery schedule at least 24 hours before starting delivery. Notification should be during the normal workday preceding the day on which the Contractor desires to initiate delivery. It will be necessary for a MoDOT representative to be present when material is delivered. No deliveries will be made outside of normal working hours, Saturdays, Sundays, or holidays unless specifically authorized by the engineer or a designated representative. The following days shall be construed as official holidays under the terms of this solicitation: First Monday in September (Labor Day). During construction/maintenance seasons, many maintenance buildings work 4-10 shifts and deliveries may not be made on the “off” days for those buildings unless prior arrangement are made with and approved by the District Engineer or a designated representative.

**Temporary Suspension of Work**

The District Engineer or a designated representative 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 MoDOT or for failure on the part of the

Contractor to comply with any of the provisions of the solicitation. If MoDOT suspends the work for its own advantages and not because of the Contractor's failure to comply, the Contractor will be allowed an equal number of calendar days after the completion date to finish the work. MoDOT 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. Normal rainfall is not considered a cause qualifying for an extension of time. Claim for extension of time for all causes must be submitted promptly by the Contractor in writing and no later than within 30 Days after the claimed cause for the delay has ceased to exist.

**Liquidated Damages**

In the event the Contractor fails to deliver the material within the time specified, the Department and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain, and in order to liquidate such damage in advance it is agreed that **the sum of \$250.00 per day, per item**, for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages, and it is therefore agreed that said amount will be withheld from payments due the Contractor or otherwise collected from the Contractor as liquidated damages. Saturdays, Sundays, holidays and days whereas the Department has suspended work shall not be assessable days.

**Preferences**

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.

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.

**Spill Prevention/Cleanup**

The Contractor shall perform all deliveries to facilities in a safe and professional manner. The Contractor's equipment shall be in good working order and all personnel shall be trained in safety measures to prevent accidents from occurring. The Contractor must provide systems necessary to prevent spill and overfills from occurring during the product transfer. The Contractor will be responsible for cleaning up any spill in accordance with state and federal environmental regulations. The Contractor must prevent spills from reaching streets, catch basins or other drainage structures during transfers. A Contractor's delivery truck operator must be present during delivery and take an active part in the prevention of spills. The delivery truck operator will take immediate actions to stop the flow of product when the working capacity of the tank has been reached or when an emergency or spill occurs. Prior to transfer product and departure of the delivery truck, the delivery truck operator shall examine the lowermost drain and all outlets for leakage. If necessary, tighten, adjust or replace to prevent product from leaking.

**VENDOR NOTES**

VENDORS MAY ATTACH OTHER PERTINENT/SUPPORTING DATA WITH THEIR RESPONSE TO THIS SOLICITATION.

**All responses to this solicitation should be submitted on this form and returned to the buyer listed above at the district address shown. Responses must be mailed, or hand-delivered. Sealed bid responses may NOT be faxed or emailed. Bidder's should return pages 1 through 5.**

# VENDOR INFORMATION & PREFERENCE CERTIFICATION FORM

## Vendor Information

**All bidders must furnish ALL applicable information requested below**

<b>Vendor Name/Mailing Address:</b>  Email Address:	<b>Vendor Contact Information (including area codes):</b> Phone #: Cellular #: Fax #:
<b>Printed Name of Responsible Officer or Employee:</b>	<b>Signature:</b>
<b>For Corporations - State in which incorporated:</b>	<b>For Others - State of domicile:</b>

If the address listed in the Vendor Name/Mailing Address block above is not located in the State of Missouri, list the address of Missouri offices or places of business:

*If additional space is required, please attach an additional sheet and identify it as **Addresses of Missouri Offices or Places of Business.***

**M/WBE INFORMATION:** List all certified Minority or Women Business Enterprises (**M/WBE**) utilized in the fulfillment of this bid. Include percentages for subcontractors and identify the M/WBE certifying agency:

<u>M/WBE Name</u>	<u>Percentage of Contract</u>	<u>M/WBE Certifying Agency</u>

*If additional space is required, please attach an additional sheet and identify it as **M/WBE Information***

## Preference Certification

**All bidders must furnish ALL applicable information requested below**

**GOODS/PRODUCTS MANUFACTURED OR PRODUCED IN USA:** If any or all of the goods or products offered in the attached bid which the bidder proposes to supply to the MHTC are **not** manufactured or produced in the "United States", or imported in accordance with a qualifying treaty, law, agreement, or regulation, list below, by item or item number, the country other than the United States where each good or product is manufactured or produced.

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

*If additional space is required, please attach an additional sheet and identify it as **Location Products are Manufactured or Produced.***

**MISSOURI SERVICE-DISABLED VETERAN BUSINESS:** Please complete the following if applicable. Additional information may be requested if preference is applicable. See below definitions for qualification criteria:

**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.

Veteran Information

Business Information

Service-Disabled Veteran's Name (Please Print)

Service-Disabled Veteran Business Name

Service-Disabled Veteran's Signature

Missouri Address of Service Disabled Veteran Business

**IF NOT SUBMITTING A RESPONSE TO THIS SOLICITATION, PLEASE COMPLETE AND RETURN THIS FORM TO ASSIST PROCUREMENT STAFF IN OUR PROCESS EVALUATIONS AND TO HELP US KEEP OUR VENDOR LISTS UPDATED. THANK YOU.**

**NO BID / NO QUOTE**

DATE: \_\_\_\_\_

TO: Missouri Department of Transportation – Northeast District  
General Services (Procurement) Division  
26826 U.S. Highway 63  
Macon, MO. 63552  
(573)-526-3169 – fax #

FROM: \_\_\_\_\_ (Company Name)  
\_\_\_\_\_ (Contact Person)  
\_\_\_\_\_ (Mailing Address)  
\_\_\_\_\_ (City, State, Zip Code)  
\_\_\_\_\_ (Office Phone #)  
\_\_\_\_\_ (Cellular Phone #)  
\_\_\_\_\_ (Fax #)  
\_\_\_\_\_ (Email Address)

Our company is submitting “NO BID / NO QUOTE” on Request # \_\_\_\_\_ for the reasons indicated below (check all that apply):

- Product or service is not available or cannot meet the required specifications
- Cannot make required deadline
- The delivery point or work location is outside of our territory or coverage/service area
- Other – Please explain below:  
\_\_\_\_\_

- Please keep our name on the bidder’s list for future opportunities on this product or service.
- Please remove our name from your bidder’s list for this product or service.

FAILURE TO RETURN A RESPONSE OR THIS FORM MAY RESULT IN REMOVAL FROM OUR VENDOR DATABASE FOR FUTURE OPPORTUNITIES

**This “No Bid/No Quote” form may be faxed back to (573)-526-3169.**

**Note: The following pages detail further terms and conditions which apply to this solicitation document. However, it is not necessary to return these pages with your bid submission. If any “Standard Solicitation Provisions” and “General Terms and Conditions” below conflict with any requirements outlined on previous pages, the requirements above take precedence.**

#### **Tax Exempt Status**

The Missouri Highways and Transportation Commission (MHTC) 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 upon request, if applicable.

#### **Right of Acceptance/Rejection**

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 solicitation response, unit prices will govern.

#### **General Performance**

This work is to be performed under the general supervision and direction of MoDOT and, if awarded any portion of the work, the Contractor agrees to furnish at his/her 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 according to the scope of work and the requirements and specifications detailed within the solicitation documents.

#### **Invoicing and Payment**

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. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The MHTC shall not make any advance deposits. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

#### **Inspection and Acceptance**

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. 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. 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. 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.

### **STANDARD SOLICITATION PROVISIONS**

- a. The solicitation for the procurement of the supplies referenced therein, to which these “Standard Bid Provisions, General Terms and Conditions and Special Terms and Conditions” are attached, is being issued under, and governed by, the provisions of Title 7 – Missouri Department of Transportation, Division 10 – Missouri Highways and Transportation Commission, Chapter 11 – Procurement of Supplies, of the Code of State Regulations. The Missouri Highways and Transportation Commission (MHTC), acting by and through its operating arm, the Missouri Department of Transportation (MoDOT), draws the Bidder's attention to said 7 CSR 10-11 for all the provisions governing solicitation and receipt of bids/quotes and the award of the contract pursuant to this solicitation.
- b. All bids/quotes must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

### **GENERAL TERMS AND CONDITIONS**

#### **Definitions**

Capitalized terms as well as other terms used but not defined herein shall have the meaning assigned to them in section 7 CSR 10-11.010 Definition of Terms.

### **Nondiscrimination**

- a. The Contractor shall comply with all state and federal statutes applicable to the Contractor relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of 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.*)
- b. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MHTC 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, the Bidder 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 bid response, and (3) the MHTC's acceptance of the bid by post-award contract or purchase order.
- 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 notice to proceed and/or purchase order.

### **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. 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.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri, Missouri Department of Revenue, 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 MHTC a copy of their current Authority Certificate from the Secretary of State of the State of Missouri and/or a copy of their Certificate of No Tax Due from the Missouri Department of Revenue.
- c. 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 MHTC a copy of their current Transient Employer Certificate from the Missouri Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

### **Executive Order**

The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) 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, preferences shall be applied in accordance with 7 CSR 10-11.020(7). Contractors should apply the same preferences in selecting subcontractors. The attached document entitled "**VENDOR INFORMATION AND PREFERENCE CERTIFICATION FORM**" must be completed and returned with the solicitation documents.

- b. Bidders are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBEs. Bidders are encouraged to obtain 10% MBE and 5% WBE participation.

**Cancellation of Contract**

The MHTC may cancel the Contract at any time for a material breach of contractual obligations or for convenience by providing 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.

**Bankruptcy or Insolvency**

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

**Warranty**

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 the MHTC, (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.

**Status of Independent Contractor**

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.

**Non-Waiver**

If one of the parties agrees to waive its right to enforce any term of this Contract, that party does not waive its right to enforce such term at any other time or to enforce any or all other terms of this Contract.

**Indemnification**

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

(T&C's Version May 2011)

**Informational Note: For mailing bid responses, UPS deliveries are typically made to the Procurement office in Macon in the mid-morning, while FedEx and U.S. Postal Mail are not typically received until the late afternoon. Regardless of delivery method, check with the carrier to ensure the response will be delivered before the 1:00 PM deadline. Late responses cannot be accepted.**