



**MISSOURI DEPARTMENT OF TRANSPORTATION  
 BID GUIDELINES AND DOCUMENTATION  
 FOR PURCHASES \$25,000.00 AND OVER**

**THIS IS NOT AN ORDER**

**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: MAY 23, 2007	<b>BID DUE BY (DATE AND TIME):</b> JUNE 14, 2007 @ 1:00 PM CT	F.O.B. REQUIREMENTS: DESTINATION (SEE DELIVERY LOCATION BELOW)
TO BE DELIVERED OR COMPLETED BY:  60-90 DAYS ARO	<b>Bid #D207-052-RN</b>  THIS BID # SHOULD BE REFERENCED ON ALL MAILING LABELS, ENVELOPES, AND ANY OTHER CORRESPONDENCE.	BUYER NAME: JASON MILHOLLIN PROCUREMENT AGENT PHONE NUMBER: (660)-385-8243 NO FAXED RESPONSES TO THIS RFB
District Mailing Address: Missouri Department of Transportation – District 2 General Services (Procurement) Division 902 North Missouri Street P.O. Box 8 Macon, MO. 63552		Delivery Location: Missouri Department of Transportation – District 2 General Services (Procurement) Division 902 North Missouri Street P.O. Box 8 Macon, MO. 63552

**ALL BIDS SHOULD BE EXTENDED & TOTALED. DELIVERY TIME SHOULD BE LISTED**

QTY	U/M	DESCRIPTION	MONTHLY LEASE PRICE	12 MONTH LEASE EXTENSION	DELIVERY TIME
12	MO	12-month Lease of Excavator meeting specifications outlined on pages 5-6 of bid document. MoDOT District 2 will only accept bids for the lease of new Excavators  Please List the following information for the machine your company is bidding:  Make: _____ Model: _____  MoDOT reserves the right to view and inspect any or all units submitted for this bid request.	\$	\$	
			*END OF LEASE PURCHASE PRICE (see note on page 3 of bid document)		
			\$		
1	EA	Option 1: 2000-2750 Ft-LB Joules Breaker Class Hydraulic Breaker Hammer or Hammer capable of breaking 15" Concrete.	Additional Monthly Charge	Additional End-of-Lease Purchase Price	
			\$	\$	
1	EA	Option 2: Nitrogen Charge Hydraulic Breaker Hammer capable of breaking 15" concrete.	Additional Monthly Charge	Additional End-of-Lease Purchase Price	
			\$	\$	
1	EA	Option 3: 18"-24" Mechanical Thumb (Installed)	Additional Monthly Charge	Additional End-of-Lease Purchase Price	
			\$	\$	

**VENDOR NAME:**

(Please enter your company name in this block)

**Award**

For the District 2 Lease Trackhoe Bid, low bid will be determined on a weighted scale of 100 points maximum. The bidder with the highest amount of points on a scale of 1 to 100 will be awarded the bid. The monthly lease rate will be considered at 35 points, followed with the end-of-lease option pricing at 35 points as well. The required 60-90 delivery date will be considered at 15 points and the bid options, 1-3, will be considered at 15 points, 5 points each for the three options. Here is the formula MoDOT will use to determine the points in each respective category:

- A) The monthly cost points shall be determined using a scale of 35 possible points and using the following formula:

$$\frac{\text{Lowest Responsive Price}}{\text{Compared Price}} \times 35 = \text{Cost score points}$$

- B) The end-of-lease option cost points shall be determined using a scale of 35 possible points and using the following formula:

$$\frac{\text{Lowest Responsive Price}}{\text{Compared Price}} \times 35 = \text{Cost score points}$$

- C) The required 60-90 day delivery time weighted 15 points. If a vendor is able to provide a machine within that timeframe they will receive the full 15 points. If the vendor is unable to provide a machine within that timeframe they will receive 0 points. No additional points will be assigned for early delivery.

- D) The option pricing for options 1-3 will be assigned a value using a scale of 15 possible points and using the following formula:

$$\frac{\text{Option 1 Lowest Monthly Responsive Price} + \text{End-of Lease Option Price}}{\text{Compared Price (for both Monthly Price and End-of Lease Option Pricing)}} \times 5 = \text{Cost Score points}$$

$$\frac{\text{Option 2 Lowest Monthly Responsive Price} + \text{End-of Lease Option Price}}{\text{Compared Price (for both Monthly Price and End-of Lease Option Pricing)}} \times 5 = \text{Cost Score Points}$$

$$\frac{\text{Option 3 Lowest Monthly Responsive Price} + \text{End-of Lease Option Price}}{\text{Compared Price (for both Monthly Price and End-of Lease Option Pricing)}} \times 5 = \text{Cost Score Points}$$

\*MoDOT may or may not choose to get any of options 1-3. Only the options being considered will be used to calculate a final points value. The 15-point value will be excluded if MoDOT chooses not to get any of the options. If MoDOT chooses only 1 or 2 of the options, the 15-point value will be divided between the options chosen equally.

To better illustrate how this works we are providing an example below:

Award Criteria	Vendor	Vendor A Bid Response	Vendor A Points	Vendor B Bid Response	Vendor B Points
A	Monthly Lease Rate	3,000	29.16	2,500	35
B	End-of-Lease Option Pricing	100,000	31.5	90,000	35
C	Meet Delivery Date (YES or NO)	YES	15	NO	0
D1	Option 1 Monthly Rate + End-of-Lease Buyout	2200	5	3100	3.55
D2	Option 2 Monthly Rate + End-of-Lease Buyout	3300	3.48	2300	5.0
D3	Option 3 Monthly Rate + End-of-Lease Buyout	4400	5	4400	5
	<b>POINT TOTALS</b>		89.14		83.55

\* The Calculation of the example presented in the table above is shown on the next page.

**Vendor A Bid Response Calculation**

A)  $\frac{2,500}{3,000} \times 35$  (points) = 29.16

B)  $\frac{90,000}{100,000} \times 35$  (points) = 31.5

C) Vendor can meet 60-90 day delivery = 15 points

D)  $\frac{200 + 2000}{200 + 2000} \times 5$  (points) = 5.0

$\frac{300 + 2000}{300 + 3000} \times 5$  (points) = 3.48

$\frac{400 + 4000}{400 + 4000} \times 5$  (points) = 5.0

**Vendor B Bid Response Calculation**

A)  $\frac{2,500}{2,500} \times 35$  (points) = 35.0

B)  $\frac{90,000}{90,000} \times 35$  (points) = 35.0

C) **Cannot** meet 60-90 day delivery = 0 points

D)  $\frac{100 + 3000}{200 + 2000} \times 5$  (points) = 3.55

$\frac{300 + 2000}{300 + 2000} \times 5$  (points) = 5.0

$\frac{400 + 4000}{400 + 4000} \times 5$  (points) = 5.0

**OPTIONS ADDITIONAL CALCULATION:**

In the event that only option 1 and 3 are chosen, or any other combination of options, the point values will be reassigned similar to the example below:

**Award only options 1 and 3 (EXAMPLE ONLY)****VENDOR – A**

$\frac{200 + 2000}{200 + 2000} \times 7.5$  (points) = 7.5

$\frac{400 + 4000}{400 + 4000} \times 7.5$  (points) = 7.5

**VENDOR – B**

D)  $\frac{100 + 3000}{200 + 2000} \times 7.5$  (points) = 5.56

$\frac{400 + 4000}{400 + 4000} \times 7.5$  (points) = 7.5

**\*End of Lease Purchase Price**

The End of Lease Purchase Price is an option that MoDOT may or may not choose to utilize based upon the machine's ability to perform all required tasks and/or budget considerations.

**F.O.B.**

All materials quoted are F.O.B. Destination (as outlined above). Freight costs must be included in the unit price quoted and not listed as a separate line item.

**Certificate of Good Standing**

The Bidder must be in compliance with the laws regarding conducting business in the State of Missouri. Within ten (10) business days of notification, the Bidder will need to provide a copy of his/her Missouri Secretary of State's "Certificate of Good Standing" prior to the issuance of any contract or initial purchase order by the Missouri Department of Transportation (MoDOT). MoDOT reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Bidder's inability to provide this documentation will result in his/her bid being rejected.

**RsMO 34.040.6 Compliance**

The Bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The Bidder should ensure they are in good standing with the Missouri Department of Revenue. Prior to award MoDOT staff will check with the Missouri Department of Revenue to ensure compliance with the provisions of RsMO 34.040.6. If necessary a "Certificate of No Tax Due" may be requested of the successful Bidder. If such a certificate is requested, the Bidder's inability to provide this documentation will result in his/her bid being rejected.

## BASE LEASE REQUIREMENTS

### **1.0 BASE LEASE**

MoDOT will only accept bids on current model year new units. The unit delivered must be completely covered by a manufacturer's or lessor's warranty, which includes replacement/repair parts, labor and transportation costs for the entire length of the lease period. The complete units must be manufactured in accordance with the latest adopted OSHA or SAE Standards and amendments thereto. Parts and service availability MUST be within 24-48 hours of contact.

### **2.0 DELIVERY & INSPECTION**

Delivery will be by appointment only to allow the MoDOT Area Mechanic to do a complete inspection of the unit, at which time; photos will be taken to document the condition of the machine. An official representative of the successful bidding company shall be present to participate in the inspection. If a unit has not been provided by the 60-90 day delivery deadline, the compensation due the lessor will be reduced at a rate of \$150.00 per day for all working days a unit is not available during the lease period. If this exceeds 10 working days, MoDOT reserves the right to obtain another unit from the next low bidder or other resources. At the end of the lease period when the unit is to be picked up, no unit will be released to a freight hauling company, unless the successful bidding company representative has properly inspected the unit in the presence of a MoDOT Area Mechanic. All costs associated with delivery and pickup of leased units is the responsibility of the lessor.

### **3.0 MAINTENANCE AND REPAIR**

The department will furnish fuel, grease lubricant of chassis, and normal maintenance cleaning. The lessor will be responsible for all scheduled oil changes and periodic services required by manufacturer or lessor. The lessor shall furnish all necessary lubricants, replacement filters (oil, fuel, air filters, etc.), replacement/repair parts, labor and transportation. The lessor will supply MoDOT with the manufacturers and/or lessor's scheduled hourly maintenance chart(s), which MoDOT will use as a guide to contact lessor when unit needs serviced.

### **4.0 DOWNTIME**

If the unit is unavailable for use for **more than 48-hours**, at any time, **the lessor must substitute a loan unit of mutually agreed upon type.** The substitute unit must be provided within 3 days after the initial 2 days of downtime has accrued, unless a MoDOT representative agrees to a more flexible arrangement offered by the lessor. If after this time a substitute unit has not been provided or the original unit has not been repaired, the compensation due the lessor will be reduced at a rate of \$150.00 per day for all working days a unit is not available during the lease period, including the initial downtime. If this exceeds 10 working days, MoDOT reserves the right to obtain another unit from the next low bidder or other resources. If such a unit is obtained, MoDOT reserves the right to terminate the original lease with the first vendor and will continue with the second vendor for the duration of the original lease period. All costs associated with delivery and pickup of leased units is the responsibility of the lessor.

### **5.0 VEHICLE DAMAGE**

The department will be responsible for abuse or damage to the unit beyond normal expected wear and tear for highway maintenance operations. The maximum damage claim will be established at 75% of the manufacturers suggested retail price. A copy of the manufacturers suggested retail price is to be provided at the time of delivery and retained as part of the contract.

## DISTRICT 2 EXCAVATOR SPECIFICATIONS

**GENERAL** - The intent of this specification is to secure and set forth the minimum requirements for a new current factory production model self-propelled, one operator, one engine, multipurpose track mounted hydraulic excavator designed to provide precise operator control for excavating, trenching, ditch cleaning, bank sloping, custom grading, breaking and tamping. Any deviations from these specifications must be detailed in writing and submitted with bids.

**CAB** - All steel, SAE ROPS fully enclosed with full height doors, sliding side and rear windows, shatter resistant, tinted safety glass all around providing unrestricted operator visibility. Cab to have heat, defrosters and air conditioning. Am/fm radio. Seat will be cloth upholstered, fully adjustable suspension type with foam padded cushion and backrest. Appropriate restraints shall be provided with the seat/cab assembly. All controls for both upper and lower operation will be inside the cab providing ease of access for the operator. All instruments will be mounted to a panel[s] inside the cab or on the carrier and be readily visible to the operator. Unit shall have two [2] cab mounted front facing work lights and one cab mounted safety strobe light with 360-degree visibility. Rotation of cab shall be capable of complete 360-degree operability.

**CONTROLS** – Controls are to be SAE with a pattern changer. The controls for the Wrist-O-Twist shall be located in the handle.

**STEERING CONTROL** - provided thru rocker pedals with optional control thru hand levers.

**ENGINE** - Diesel powered, Turbocharged, minimum of four (4) cylinders with a minimum 105 horsepower at the flywheel under standard conditions. Engine equipment will include air cleaner, oil filter, fan, 110-volt block heater, water pump, oil pump, fuel injection system, cold-weather starting kit and engine protection system.

**ELECTRICAL SYSTEM** - Will be 24 volt with starter, alternator and battery [or batteries] as required for operation.

**ROAD TRAVEL** - Unit to be sized to be transported safely and securely on a 30 to 35 Ton Equipment trailer.

**OPERATING WEIGHT** – Unit shall have a minimum operating weight of 35,000 lbs and not exceed 39,000 lbs. The operating weight of the machine shall be comprised of the basic standard machine and shouldn't include additional counterweight added to machine to increase weight.

**TRACKS** - Shall be 28 inches wide and of a type to provide safe operation on dirt and on pavement. Tracks to be driven independently via auto shifting, two speed hydraulic motors using integral planetary drives, sized to the operating weight of the total machine.

**BRAKES** - Service and parking brakes to be wet type, multiple-disc on the final drive input shafts. Units are to be spring applied, hydraulically released. Brakes shall apply automatically when controls are released.

**HYDRAULIC SYSTEM** - Complete hydraulic system for all operations, double acting cylinders, oil filtering system in oil tank and 10 micron element for the system and oil coolers. System shall provide continuous 360-degree swing. Unit will include 110-volt hydraulic system heater. Hydraulic system shall be of a type to provide for the attachment and operation of accessories [breakers, grapples, tampers, thumbs etc] Auxiliary hydraulic lines to boom tip. In order to operate power tilt and other attachments, 2 sets of hydraulics will be required.

**COUNTER WEIGHT [S]** - To be sufficient to off set max. lift-capacity (5,700 lbs.) ground level front and/or (Min. 4,000 Lbs.) over side in a 20-foot radius lift

**BOOM AND BUCKET (S)** – Unit shall be equipped with an articulating boom that swings or rotates with the cab. It shall have a minimum of reach of 27 feet and maximum of 30 feet at ground level front and a minimum digging depth of 17 feet flat bottom. Stick shall be at least 10' 2" long.

One 60 inch smooth grading, ditching, contouring bucket and one 36 inch, toothed heavy duty plate digging bucket with quick attach systems or a "Wrist-O-Twist" type knuckle. Bucket capacities should be .78 to .90 cubic yards.

**ALARM SYSTEM** - Horn shall be in accordance with any OSHA standards that apply and shall be distinguishable from surrounding noise.

**VANDALISM PROTECTION** - Unit will have lockable doors, engine panels, fuel, hydraulic oil, radiator filler caps, tool storage and battery compartments.

**OPTIONS** - Useful additional options such as attachments or extended warranties are encouraged to be bid for this unit. Pricing for these options may be written in the "Vendor Notes" section on page 7 of this document or submitted with your bid.

**FUEL** – Unit shall be delivered with a full tank of fuel. MoDOT will be responsible for returning unit to vendor with a full tank of fuel.

**MISCELLANEOUS** - All Dealer advertisements to be left off completed machine delivered to the Missouri Department of Transportation.

Complete machine must be manufactured in accordance with latest adopted OSHA or SAE Standards and amendments.

MoDOT District 2 reserves the right to waive technicalities and to reject any or all bids and no bid is final until formally accepted by the District.

# PREFERENCE IN PURCHASING PRODUCTS

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

The bidders attention is directed to Section 34.076 RsMO 1986 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:

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

**FIRM NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**BY (signature required):** \_\_\_\_\_

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

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

## MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34.359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

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

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

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

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

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

(attach an additional sheet if necessary)

- [ ] The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to 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.**

## VENDOR NOTES

**Missouri Department of Transportation purchase orders must be issued to the invoicing company/address. If the invoicing company/address will be different from that listed in the vendor information section (below), the vendor should specify the “remit to” company/address in the vendor notes section (above).**

## VENDOR INFORMATION

Vendor Name/Mailing Address:	Vendor Contact Information (including area codes):
	Phone #:
	Cellular #:
Email Address:	Fax #:
Printed Name and Title of Responsible Officer or Employee:	Signature:
Is your company registered/certified with the State of Missouri as a (please circle):	
MINORITY BUSINESS ENTERPRISE (MBE) ?	YES                      NO
WOMEN BUSINESS ENTERPRISE (WBE) ?	YES                      NO
Would your company like information on becoming a registered/certified MBE/WBE vendor?	YES                      NO

**All responses to this Request For Bid should be submitted on this form and ALL pages should be returned to the Buyer listed above at the District mailing address shown. Bids should be mailed our hand-delivered. Responses by fax cannot be accepted or considered for award.**

**Note: If any of the “Standard Solicitation Provisions” and “General Terms and Conditions” on the following pages conflict with the requirements outlined in this Request For Bid, the RFB requirements will supersede those below.**

## STANDARD SOLICITATION PROVISIONS

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

## GENERAL TERMS AND CONDITIONS

### General Performance

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

### Deliveries

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

### Nondiscrimination

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

### Contract/Purchase Order

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order.

- 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 a showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

**Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be 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 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**" must be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" must 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 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 matter.

#### **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 obligation under this Agreement.

**IF NOT SUBMITTING A BID, PLEASE COMPLETE AND RETURN  
THE FOLLOWING "NO BID FORM" TO ASSIST THE  
PROCUREMENT STAFF IN OUR PROCESS EVALUATIONS.  
THANK YOU**

**NO BID**

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

TO: Missouri Department of Transportation – District 2  
General Services (Procurement) Division  
902 North Missouri Street P.O. Box 8  
Macon, MO. 63552  
(660)-385-1707 – fax #

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Our company is submitting "NO BID" on RFB # \_\_\_\_\_ for the reason(s) indicated below:

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company Contact Person: \_\_\_\_\_ Phone # \_\_\_\_\_

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

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