



**MISSOURI DEPARTMENT OF TRANSPORTATION  
BID GUIDELINES AND DOCUMENTATION**

***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 subsequent attachments shall supersede all confirmation forms, receipts, or any other paperwork needed to secure materials, equipment, or services.

<b>TODAY'S DATE:</b> MARCH 18, 2009	<b>BID DUE BY:</b> <b>APRIL 1, 2009 @ 1 P.M.</b> <b>LOCAL TIME</b>	<b>F.O.B. REQUIREMENTS:</b> DESTINATION
<b>CONTRACT PERIOD:</b> APRIL 2, 2009 TO MARCH 31, 2010	<b>BID #: D8PP-9040</b> THIS BID NUMBER SHOULD BE REFERENCED ON ALL MAILING LABELS, ENVELOPES, AND ANY OTHER CORRESPONDENCE.	<b>BUYER NAME:</b> RICHARD GARDNER, CPPB SENIOR GENERAL SERVICES TECHNICIAN (417) 895-7811– PHONE (417) 895-6704 – FAX E-MAIL: RICHARD.GARDNER@MODOT.MO.GOV
<b>DISTRICT MAILING ADDRESS:</b> MISSOURI DEPT. OF TRANSPORTATION – DISTRICT 8 P.O. BOX 868 SPRINGFIELD, MO 65803	<b>DELIVERY LOCATION:</b> TO THE FOLLOWING COUNTIES THE SPRINGFIELD AREA CHRISTIAN, DALLAS, DOUGLAS, GREENE, HICKORY, LACLEDE, OZARK, POLK, STONE, TANEY, WEBSTER, WRIGHT	

Bids are being requested to establish pricing for **Bulk Motor oil**. Please use all forms provided with this bid.

Prices submitted by vendors must remain firm until March 31, 2010 unless a vendor elects to submit a new revised price by contacting MoDOT. Price changes must be faxed or emailed to the buyer and fax number listed above by the last Monday of a month in order to go into effect the following month.

This bid request is not a guarantee of materials that will be purchased.

The attachments entitled "Preference in Purchasing Products" and "Missouri Domestic Products Procurement Act" must be completed and returned with the bid in order to be considered responsive.

**Bids should be submitted in a sealed envelope.** Faxed bids will **NOT** be accepted.

**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):** \_\_\_\_\_

**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.**

DATE: March 18, 2009

TO: All Bidders

SUBJECT: Bids on Bulk Delivery of 15W40 Motor Oil, 10W30 Motor Oil, 5W20 Motor Oil, 5W30 Motor Oil, and Universal Hydraulic Transmission Fluid (UHTF).

Sealed bids for supplying 15W40 Motor Oil, 10W30 Motor Oil, 5W20 Motor Oil, 5W30 Motor Oil, and Universal Hydraulic Transmission Fluid (UHTF) in bulk delivery. District-wide to include thirty-nine (39) buildings in the following counties: Christian, Dallas, Douglas, Greene, Hickory, Laclede, Ozark, Polk, Stone, Taney, Webster, and Wright. **Sealed bids will be received until 1:00 p.m., Central Standard Time, April 1, 2009**

**Sealed bids should be delivered in an envelope plainly marked "Sealed Bid on D8PP-9040 Bulk Motor Oil".**

The date specified for receiving of bids is a firm deadline and all bids must be received at the designated office by that time. The department does not recognize the U.S. Mail, United Parcel Service, Air Express or any other organization, as its agent for purposes of accepting proposals. Any bids arriving at the designated office after the time specified will not be considered.

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 opening prior to the time specified for the 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.

Awards will be made to the lowest responsible bidder on a "All or nothing" basis provided the prices are acceptable to the department. In the event of tie between low bids, the Missouri Department of Transportation reserves the right to establish the method to be used in determining the award.

Each bidder shall submit with his proposal a sworn statement, executed by or on behalf of the bidder to whom a contract may be awarded, certifying that such bidder 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 proposal or any contract which may result from its acceptance.

Contract period will be for twelve consecutive months, starting on April 1, 2009. Prices shall remain firm for purchase of materials until March 31, 2010. Two (2) one-year extensions are available upon consideration by MoDOT and the successful bidder.

The products furnished must comply with attached Specifications MGS-92-12J.

API Service Standards SM/SL/SJ/SH shall apply for products listed in this bid document without Specifications.

**BIDS ARE NOT DESIRED AND WILL NOT BE CONSIDERED UPON MATERIALS WHICH DO NOT MEET THESE SPECIFICATIONS AND DO NOT HAVE THE REQUESTED INFORMATION ATTACHED.**

Samples of the delivered products may be taken by the department and tested for compliance with the specifications during the contract period.

Each bidder must submit with their bid the information requested in the specifications for the products to be furnished, including the brand name, manufacturer, required qualification numbers and approvals. Upon request, the low bidder shall supply samples of the products to the department for testing, one-quart of each oil.

The Missouri Department of Transportation is exempt from Missouri State Sales Tax and Federal Excise Tax. **DO NOT INCLUDE THESE TAXES IN THE BID, AS AN EXEMPTION CERTIFICATE WILL BE FURNISHED UPON REQUEST.**

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.

The attached form identified as "PREFERENCE IN PURCHASING PRODUCTS" must be on file in this office and must be dated in the current calendar year. Bidders must also complete and return with their bid the form identified as "MISSOURI PRODUCTS PROCUREMENT ACT". Each bidder must complete and return with their bid the attached form identified as

The Missouri Department of Transportation reserves the right to reject any or all bids and no award is final until formally approved by the department.

For additional information, contact Richard Gardner, Senior General Services Technician, at (417) 895-7811

I (we) agree to supply Bids on Bulk Delivery of 15W40 Motor Oil, 10W30 Motor Oil, 5W20 Motor Oil, 5W30 Motor Oil, and Universal Hydraulic Transmission Fluid. It is understood that the quantities shown below are estimated requirements for the twelve-month period of the contract and that these quantities may be increased or decreased during the contract period. Any requirements in excess of the estimated quantities shown shall be supplied at the same quoted unit price during the contract period.

Contract period will be for twelve consecutive months, starting on April 2, 2009. Prices shall remain firm for purchase of materials until March 31, 2010. Two (2) one-year extensions are available upon consideration by MoDOT and the successful bidder.

Prices quoted are to remain **FIRM** for the period of the contract.

Shop Location	Estimated Quantities in Gallons of Products				
	15W40	10W30	5W20	5W30	UHTF
802 BOLIVAR MAINT. FACILITY	<b>300</b>	N/A	N/A	N/A	<b>120</b>
803 BRADLEYVILLE MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
804 BRANSON MAINT. FACILITY	<b>240</b>	N/A	N/A	N/A	<b>130</b>
805 BUFFALO MAINT. FACILITY	<b>210</b>	N/A	N/A	N/A	<b>160</b>
807 CLEVER MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
808 CONWAY MAINT. FACILITY	<b>120</b>	N/A	N/A	N/A	<b>50</b>
810 DOVE MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>100</b>
813 FAIR GROVE MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
814 FORDLAND MAINT. FACILITY	<b>150</b>	N/A	N/A	N/A	<b>100</b>
815 GALENA MAINT. FACILITY	<b>120</b>	N/A	N/A	N/A	<b>70</b>
817 HUMANSVILLE MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
818 LAMPE MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
819 LEBANON MAINT. FACILITY	<b>500</b>	N/A	N/A	N/A	<b>200</b>
820 MARSHFIELD MAINT. FACILITY	<b>250</b>	N/A	N/A	N/A	<b>200</b>
821 NEBO MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
822 OZARK MAINT. FACILITY	<b>320</b>	N/A	N/A	N/A	<b>120</b>
823 PLAD MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>70</b>
824 PRESTON MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
825 REPUBLIC MAINT. FACILITY	<b>120</b>	N/A	N/A	N/A	<b>150</b>
828 RUETER MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
831 SEYMOUR MAINT. FACILITY	<b>150</b>	N/A	N/A	N/A	<b>150</b>
833 SPRINGFIELD MAINT. FACILITY	<b>400</b>	N/A	N/A	N/A	<b>120</b>
835 WALNUT GROVE MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
837 WHEATLAND MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
838 SUNSHINE MAINT. FACILITY	<b>220</b>	N/A	N/A	N/A	<b>70</b>
839 AVA MAINT. FACILITY	<b>200</b>	N/A	N/A	N/A	<b>120</b>
840 DORA MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
841 DRURY MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
842 GAINESVILLE MAINT. FACILITY	<b>200</b>	N/A	N/A	N/A	<b>50</b>
844 HARTVILLE MAINT. FACILITY	<b>150</b>	N/A	N/A	N/A	<b>150</b>
845 MANES MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>100</b>
847 MOUNTAIN GROVE MAINT. FACILITY	<b>320</b>	N/A	N/A	N/A	<b>200</b>
848 WASOLA MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>60</b>

849	HOLLISTER MAINT. FACILITY	<b>100</b>	N/A	N/A	N/A	<b>50</b>
8X2	D8 - DISTRICT GARAGE	<b><u>300</u></b>	<u>150</u>	<u>150</u>	<u>200</u>	<b><u>250</u></b>
TOTALS		5970	150	150	200	3044

The contract will require the supplier to top off the building tanks as per notification from the Procurement Office or Shop Location and delivery within two (2) working days in case of emergencies. Current building storage holds approximately 40 oil changes per month. Payment will be made monthly from meter readings. **The contractor must supply a copy of certification of pump meter by Weights and Measures during the past twelve months. The contractor must supply to each location a copy of the Materials Safety Data Sheet for each product. The contractor is responsible for all clean up of over filled tanks.**

**PRICING**

I (we) propose to furnish Motor Oil, Hydraulic Fluid, and Gear Oil to the Missouri Department of Transportation in accordance with the attached proposal, general provisions and specifications, at the **UNIT PRICES SHOWN F.O.B. DESTINATION**. Bids will be received until 1:00 p.m., Central Standard Time, April 1, 2009

Product	Qualification	Brand Name	Manufacturer	Unit Price X Total Estimated Quantity	Total
Lubricating Oil, 15W40		Bulk		\$ X 5,970 gal = \$	
Lubricating Oil, 10W30		Bulk		\$ X 150 gal. = \$	
Lubricating Oil, 5W20		Bulk		\$ X 150 gal. = \$	
Lubricating Oil, 5W30		Bulk		\$ X 200 gal. = \$	
Universal Hydraulic Transmission Fluid (UHTF)		Bulk		\$ X 3,044 gal = \$	
				<b>TOTAL</b>	\$

Award of this bid will be made on a “all or nothing” basis using the “lowest and best” principle of award. **BIDS WILL BE AWARDED BASED ON THE LOW BID SUM OF EACH Product.**

**CONTRACT EXTENSION - PER PERCENTAGE**

In the event that MHTC exercises its options to renew the contract for two (2) additional two-year periods pursuant to the applicable provisions outlined in the this document, the Bidder shall provide below the maximum percentage of increase or minimum percentages of decrease for each renewal period. The Bidder is cautioned that the percentages shall be computed against the ORIGINAL contract prices during renewal periods. Furthermore, the Bidder is advised that the MHTC does not automatically grant increases at the time of renewing the contract and that if an increase is requested, documentation of need must be provided at the time of renewal.

**First Renewal Period**

**\_\_\_\_\_ % of maximum increase or**

**\_\_\_\_\_ % of maximum decrease**

**Second Renewal Period**

**\_\_\_\_\_ % of maximum increase or**

**\_\_\_\_\_ % of maximum decrease**

**Escalation Clause** - In the event the contractor requests a price increase during the original or renewal period, the contractor must provide a written request and documentation justifying the need for a price increase, and the amount of such price increase. MoDOT will review the contractor's written request and documentation for a price increase, and decide if a price increase is to be granted at that particular time. The contractor shall understand and agree that MoDOT's decision shall be final and without recourse.

**VENDOR NOTES**

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**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 must 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 #:  Fax #:  Cellular #:
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 Formal Competitive Advertised Sealed Bid MUST be submitted on this form and all pages MUST be returned to the Buyer listed above at the District mailing address shown.**

### **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.
- c. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

### **Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A 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.
  - d. Pursuant to RSMo 285.530 (1), no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall sign an affidavit affirming that it does not knowingly employ any person who is unauthorized alien in connection with the contracted services. [RSMO 285.530 (2)] A copy of the affidavit referenced above is provided within this document.

### **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 (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/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.
  - 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.

