



MISSOURI DEPARTMENT OF TRANSPORTATION
D9 - Procurement
PO Box 220 - 910 Old Springfield Rd
Willow Springs, MO 65793

Pre-Qualification Submittal

PRE-QUALIFICATION SUBMITTALS WILL BE RECEIVED AT THIS OFFICE UNTIL

2:00 PM CST May 13, 2009

BUYER: Gloria Perkins

Request No. D9091962RY

Date: April 29, 2009

Page 1 of

BUYER TELEPHONE: 417-469-6256

District 9 Chip Seal Asphalt Material

Chip Seal Asphalt Material

By signing below, the vendor hereby certifies that all loads delivered to the Missouri Department of Transportation (MoDOT) comply with the MoDOT specifications for the asphalt material specified. Furthermore, the vendor agrees to supply all asphalt material in accordance with the attached Missouri Highways and Transportation Commission Standard Bid Provisions, General Terms and Conditions, and Special Terms and Conditions as well as all requirements of this pre-qualification document.

After the vendor is determined qualified for the D9 Chip Seal Asphalt Material bidding process, an electronic spreadsheet will be sent to your attention for use in our bi-monthly bidding. You must provide at least one (1) authorized e-mail address for submission of the asphalt material bid. Additional e-mail addresses may be listed. Failure to provide an e-mail address will result in immediate disqualification.

Note to Vendor:

Certificate of Good Standing

All respondents must use the firm name under which he/she is registered to do business in the state of Missouri. The bidder must ensure that his/her firm name is registered with the office of the Secretary of State. All bidders must be in good standing prior to issuance of "Notice to Proceed". Secretary of State (573) 751-4936 or <http://www.sos.mo.gov/business/corporations/onlineServices.asp>

HB600 Compliance

All respondents must be in compliance with House Bill 600, Section 23.060 RSM0, which states MoDOT is precluded from contracting with a vendor or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in RSM0 144. Department of Revenue (573) 751-9268 or <http://dor.mo.gov/tax/business/sales/hb600.htm>

Date: _____
Telephone No: _____
Fax No: _____
Federal ID No: _____
Authorized E-Mail Address(s):

Firm Name: _____
Address: _____

By (Signature): _____
Type/Print Name: _____
Title: _____



VENDOR PRE-QUALIFICATION FOR PROVISION OF ASPHALT MATERIALS

In order to become pre-qualified for submitting chip seal asphalt material pricing at a later date, the vendor must provide the following information no later than May 13, 2009 to: **MoDOT, D9 Procurement, PO Box 220, Willow Springs, MO 65793.**

- **COVER PAGE OF THIS DOCUMENT**
- **CERTIFICATE OF LIABILITY INSURANCE**
- **BID FORM STATEMENT - ATTACHMENT B**
- **ANTI-COLLUSION STATEMENT - ATTACHMENT C**
- **COMMUNITY RIGHT TO KNOW LAW - ATTACHMENT D**
- **PREFERENCE IN PURCHASING PRODUCTS**
- **MISSOURI SERVICE-DISABLED VETERAN BUSINESS PREFERENCE**
- **MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**

Bids on **CHIP SEAL ASPHALT MATERIAL** will be received by means of email only by D9 Procurement, Willow Springs, Missouri no later than **10:00 AM on bid dates specified on Attachment A.**

Contract Period: This pre-qualification shall commence May 20, 2009 and end five (5) months from the date the first award is made. The contract will be awarded no later than Friday of the bid week and will expire the Monday after the following bid week. The contract follows an open enrollment process, thus, vendors may join the process at any time.

Amendments: The Department reserves the authority to amend or terminate this contract with a minimum 30-day notice. Such amendments may include but are not limited to changes to the bid submission process, pricing period, type of material bid and geographical boundaries for bid prices.

Electronic Bid Submission:

Suppliers may withdraw all prices or submit complete updated pricing on the first and third Wednesday of May, June, July, August, September and October. The process and conditions for submitting bimonthly pricing are as follows:



- **Prices submitted are to be rounded to one tenth (1/10) cent. Prices expressed in cents per gallon containing more than one significant decimal place will not be considered.**
- **Any pricing change requires the same completed electronic spreadsheet as the original bid. All cells of the spreadsheet must contain current pricing or the words “no bid” in lowercase letters.**
- **Microsoft Excel is the Department’s standard spreadsheet software. Therefore, Microsoft Excel electronic spreadsheet pricing submissions are mandatory.**
- **The most recent bimonthly bid submitted shall remain in effect until superseded by another proper bimonthly bid is submitted or all prices are withdrawn.**
- **New suppliers will be accepted on the 15th day of each month and the submitted bid information will go into effect on the next bimonthly bid.**

Future bimonthly pricing must be submitted via electronic mail to d9procurement@modot.mo.gov.

- **A pricing spreadsheet will be provided bimonthly indicating the current location of the district chip seal operations along with the anticipated quantities for that pricing period weather permitting. The sequence of routes may be adjusted to accommodate weather or equipment failure. Additional locations with estimated dates and quantities will be provided to address the possibility of any such occurrence.**
- **The supplier’s bimonthly pricing shall be transmitted from one of the authorized e-mail addresses identified in your bid. Submission from other sources shall not be accepted. Changes to the suppliers authorized e-mail listing shall be made in writing and take up to two (2) business days to process. Signed, faxed authorized e-mail address listings are authorized.**
- **Updated pricing must be received by 10:00 AM on the stipulated bimonthly Wednesdays.**
- **LATE bimonthly bids will not be considered. Therefore, suppliers are encouraged to submit pricing early enough to provide time for alternative electronic spreadsheet delivery.**
- **D9 Procurement will maintain a master list of all prices. Electronic copies of the bimonthly master pricing will be provided via e-mail if requested by suppliers under this contract.**



When the Supplier updates pricing, the Missouri Department of Transportation reserves the right to review other sources and purchase the materials from the most economical source.

Combination and all or none bids will not be considered. Discounts offered for cash payment of invoice will not be considered in determining the low price per gallon.

Each bidder must submit a sworn statement certifying that they have not and shall not, either directly or indirectly, enter into any agreement, participate in any collusion or otherwise take action in restraint of free competitive pricing in connection with the Pre-Qualification Submittal.

Attention is called to **Sections 144.040 and 144.615, RSMo. 1971**, which exempts purchases made by the Department from the payment of Missouri Sales-Use Tax.

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 right is reserved by the Missouri Department of Transportation to reject any or all bids and to purchase material from the best and most economical source.

MISSOURI DEPARTMENT OF TRANSPORTATION

By _____
Gloria Perkins
D9 Procurement



BID FOR SUPPLYING
CHIP SEAL ASPHALT MATERIAL

To the State of Missouri
Acting by and through the
Missouri Highways and Transportation Commission
Jefferson City, Missouri 65101

I (We) (hereinafter referred to as the Supplier) propose and offer to supply the State of Missouri, (hereinafter referred to either as the State or Department of Transportation) in the manner hereinafter specified under General Conditions, the asphalt material described herein under Specifications for Liquid Asphalt, MGS-94-06E, and all applicable sections of the Missouri Standard Specifications for Highway Construction, 2004 Edition, more specifically Section 106 Control of Material, Section 310.4 Vehicle Scales, and Section 1015 Bituminous Material, unless otherwise amended herein.

I (We) will furnish, load and deliver the material in transport trucks to destinations as directed in individual orders placed by the State for not less than one full tank truck or distributor load. It is understood that when MoDOT picks up the asphalt material at the supplier's facility the price charged shall be the bid price, even if the quantity of asphalt material is less than one full tank truck or distributor load.

GENERAL CONDITIONS

1. The General Services Director shall in all cases decide any and all questions which may arise concerning the quality, quantity and acceptability of all materials furnished; the time, place and manner of delivery; the correct interpretation of the Specifications, Bid and Individual Orders, and the acceptable fulfillment of these orders in all respects; the compensation, damages or claims of any character whatsoever for the performance of orders issued under this bid; and that the General Services Director's decision shall be final, binding and conclusive upon all parties concerned.
2. The Department will only approve a source which has: (a) adequate facilities and is operated in such a manner as will insure proper control over the manufacture and blending of the materials; (b) the required laboratory equipment and trained personnel at the point of manufacture to make the standard tests required for determination of whether the materials meet the specifications; and (c) weighting facilities available which meet the requirements of the attached specifications. Suppliers wishing to know approved sources should contact: **David Ahlvers, State Construction and Materials Engineer, 573-751-7455.**
3. The asphalt material shall meet the requirements of the attached specification MGS-94-06E. Asphalt material to be used for mixing shall coat the aggregate at the point of use in a manner and to a degree satisfactory to the Department. The polymer modified emulsified asphalt for seal coats should cure and retain chips in a time frame satisfactory to the Department. The special type and grade or grades, and the quantity will be designated in individual orders placed by the district office.



4. Measurement of the **Liquid Asphalt and Emulsified Asphalt Materials** shall be based on the **volume at 60°F**. The volume shall be determined from the net weight mass of the material by weighing the truck before and after loading. The net weight mass shall be converted to gallons by using the unit weight mass in pounds per gallon at 60°F designated by the Department.
5. It is understood and agreed that the **Supplier** shall be responsible for loading the proper type, grade and quality of materials, and for the cleanliness of the tanks other than State-owned, into which it is loaded. Prior to loading all tanks shall be inspected by the **Supplier**, and if necessary to avoid contamination, tanks shall be drained and cleaned. If the wrong grade of material is loaded, or if the load is contaminated because of another product in the lines, pumps or tank at the time of loading, the **Supplier** shall assume responsibility for the cost and disposal of that load, as well as any material in the State-owned tank into which the unsatisfactory material is unloaded. No demurrage will be paid by the State for delays caused by contaminated or otherwise unsatisfactory material.
6. **DELIVERY BY TRANSPORT**
 - a. **Delivery Terms:** All prices shall be FOB Destination.

The Supplier may be required to pump the material into permanent storage tanks, pug mills, or State-owned distributors at destination. A flat fee of \$39.00 may be charged when pumping is required.
 - b. **Acceptance of Orders:** The Low Bid Suppliers must accept all orders for Chip Seal Asphalt Material based on the conditions of this IFB unless circumstances beyond their control prohibits the supplier from fulfilling the order. Low bid Suppliers that do not accept properly requested orders will be subject to temporary suspension and/or liquidated damages as district procurement staff sees fit and outlined in subparagraph (d) of this section.
 - c. **Information Required:** The Supplier shall furnish a delivery receipt with each load showing type and grade of material, the Supplier's name, source of material, destination of material (route and county) consignee, and purchase order number. In addition to the above information, the delivery receipt will also show specified delivery time, arrival time, time unloading started, time unloading was completed, and whether the unloading pump was ordered or used.
 - d. **Time of Delivery:**
 - The Supplier will be required to make deliveries to storage tanks, distributors or roadway destinations during the normal workday 6:30 A.M. to 5:00 P.M. Monday through Friday. The State will specify time of delivery when the order is placed. Delivery at the time specified is of utmost importance to the State. If the Supplier notifies the State at the time the order is placed that he cannot deliver at the specified time, the State may obtain the material elsewhere.
 - If the Low Bid Supplier (1) cancels orders after they have been accepted, (2) accepts orders and then fails to deliver when specified, or (3) refuses to accept orders, the State will notify the Supplier that no additional orders will be placed until the reason for the canceling of orders or unsatisfactory delivery has been rectified. In addition, Suppliers failing to satisfactorily meet delivery schedules



for material may be subject to (1) suspension for up to two bimonthly pricing periods and/or (2) monetary liquidated damages at the rate of \$50.00 per cancelled or declined truckload.

- **Liquidated damages and suspensions shall be assessed and imposed by district procurement staff.**
- If an order cannot be delivered at the scheduled time due to unforeseen plant or truck breakdown, the Supplier agrees to notify the district office immediately.
- When material is requested for delivery to State-owned storage facilities, the Supplier may deliver the material any time prior to the requested delivery time if approved by the State. A receptacle will be available at each of the storage sites for the deposit by the truck driver of the bill of lading, manifest, or truck ticket, covering the load placed in storage. **The Supplier must instruct the driver accordingly.**

- e. **Delivery to Roadway Destinations, Distributors and Storage Tanks: The Supplier may expect at least eighteen (18) hours notice prior to the specified hour material is desired, with the understanding that the order may be cancelled by the State not later than ten (10) hours prior to the specified hour of delivery. The Supplier must furnish the district office with telephone numbers for the purpose of canceling orders 24 hours a day. If multiple loads for roadway destinations, distributors and/or storage tanks are cancelled due to inclement weather or unforeseen equipment failure, it is understood State storage may be limited. If, for any reason, the Supplier is not permitted to unload the material at the specified destination, the material will be unloaded at the nearest available State-owned storage tank if possible and the additional cost, if any, will be computed on the basis of published tariff rates.**
- f. **If a load arrives at a lower temperature than specified in table (shown below), the State may either reject the load, or if agreeable to both the State and the driver, the State will accept the load and heat the asphalt to the specified temperature in its distributors with no demurrage being paid for the time needed to pump the cold asphalt and heat it to the specified temperature.**

The MINIMUM DELIVERY TEMPERATURE shall be as follows:

<u>TYPE OF MATERIAL</u>	<u>MINIMUM TEMPERATURE</u>
CRS-2P, EA-90P, Scrub Seal	150° F

- g. **DEMURRAGE: (The SUPPLIER agrees to notify the DISTRICT OFFICE when a delivery will be delayed.)**

The State will be allowed one and one-half (1½) hours for unloading each truckload of material free of demurrage.



If the state delays the Supplier/Carrier from unloading material, whether delivered to state distributors, storage tanks or pug mills, the Supplier will be compensated at the rate of **\$60 per hour**, computed to the nearest 15 minutes.

If the Supplier's material does not arrive by the time requested, the state will be compensated at the rate of **\$115 per hour**, computed to the nearest 15 minutes. No demurrage will be charged for loads that do not delay state crews.

If the Supplier or Carrier notifies the State before the scheduled delivery time that the tanker will be delayed, the maximum amount of time the State will charge the Supplier demurrage is **one hour**. If the Supplier or Carrier notifies the State after the scheduled delivery time that the material will be delayed, the State will stop charging the Supplier demurrage **one hour after** the State has been notified of the delay. The maximum amount of time the State will charge the Supplier demurrage for any late load, whether notified or not, is **two hours**.

If the Supplier's material arrives prior to the specified delivery time, unloading will begin as soon as practical and the 1½ hour unloading time will start when actual unloading begins or at the specified arrival time, whichever is the earliest.

When more than one tanker is ordered for the same location, the same day, the first tanker to arrive will be unloaded first. If an earlier scheduled tanker does not arrive at the scheduled time, no demurrage will be due the Supplier on subsequent tankers unless more than one hour and 30 minutes is required to unload each subsequent tanker. If a tanker that did not arrive at the scheduled time arrives after unloading has begun on a subsequent tanker, the "**late tanker**" will not be unloaded until all "**on time**" tankers have been unloaded. Demurrage due the State will be discontinued on the "**late tanker**" while the "**on time**" tankers are being unloaded.

Unloading of an earlier scheduled tanker will not begin after 2:30 P.M. and demurrage due the State will be discontinued at that time. The material and responsibility for the material belongs to the Supplier. We will make every effort to find a storage facility that will hold the material but no extra payment will be made to the Supplier if he elects to put the material in a state-owned storage tank.

If, for any reason other than the above, the State does not permit the Supplier to unload the material at the specified destination, the material will be unloaded at the nearest available state-owned storage tank and the additional cost, if any, will be computed on the basis of published tariff rates.

- h. **Invoices:** An invoice will be submitted by the Supplier for each load of material furnished. **Each invoice will show the complete transaction to include:** quantity, type and grade of material, unit price per gallon, purchase order number, destination, consignee, and pumping charge, if any. Delay time and cost for which the State is liable may be invoiced separately.



7. **SAMPLING, TESTING, AND ACCEPTANCE PROCEDURES**

7.1 It shall be the responsibility of the Supplier to guarantee by certification that the material fully complies with the specification requirements, after being loaded and delivered to the point of acceptance.

7.2 Truck Shipments: All truck shipments shall be loaded from approved storage tanks, which have been sampled, tested, and certified by the Supplier to the Department. If automatic blending equipment is used, blender materials will be approved for use providing the finished product fully complies with the specifications. **At least one complete test shall be conducted every two weeks on each grade of material furnished for the Missouri Department of Transportation from the blender.** A certified copy of the test results shall be furnished to the Engineer. After loading, the Supplier shall sample and make identifying tests on a sufficient number of truck shipments of material supplied to insure that proper quality control is being maintained and that all such shipments fully comply with the specification requirements. Identifying tests are: viscosity for liquid Asphalt materials; viscosity, sieve and particle charge for CSS-1, CSS-1h, CRS-2 and CMS-2M emulsified asphalt; viscosity and sieve for SS-1, SS-1h, scrub seal emulsion, and RS-2 emulsified asphalt; and sieve, distillation, penetration and float test for EA-90, EA-150 and EA-300 emulsified asphalt. It shall be the Supplier's responsibility to insure that any material failing to comply with specification requirements will not be used in the work.

7.2.1 The Supplier shall furnish the truck driver a copy of the bill of lading, manifest, or truck ticket that is to be available to Department personnel at destination prior to unloading. When delivery is made to storage sites the bill of lading, manifest, or truck ticket is to be deposited in the receptacles provided. A copy is also to be available to the Department's representative at the shipping point. The bill of lading, manifest, or truck ticket shall show the following information regarding the shipment: Type and Grade of material, purchase and confirmation order numbers, consignee, truck number, weights (masses) of truck before and after loading, specific gravity @ **60°F/60°F**, net gallons, destination, date loaded, name and location of the source and a certification statement.

The Certification Statement shall be substantially as follows:

"This certifies that the Asphalt material in this shipment complies with Missouri Department of Transportation specifications for the grade specified and the weights (mass) shown herein were obtained on Missouri Department of Transportation approved scales and are correct within the specified scale requirements."

The certification statement shall be signed by an authorized representative of the Supplier.

7.2.2 The engineer will at random observe the loading and weighing of trucks and the sampling and testing at the source of truck shipments and tanks, and will select representative samples of the material being supplied. These samples will be tested in the field or in the Central Laboratory. When test results of materials or weights (mass) certified by the Supplier are not representative of the material or quantity being shipped, the source approval will be withdrawn. A source may be reinstated when proof is furnished that the deficiency has been corrected and adequate controls are in effect to guarantee delivery of correct quantities and materials meeting specifications.



7.2.3 Verification of certified weights (mass) may be required by the weighing of a hauling unit, both loaded and empty, on scales other than those used by the Supplier and which have also been approved by the Department.

7.2.4 The Supplier shall furnish the required sampling equipment and shall sample the truck under the direction of the engineer. The Supplier shall be responsible for keeping all sampling equipment clean and in good condition. Sampling devices on truck transports will be approved provided an adequately insulated valve is used with a pipe or nipple inserted a suitable distance into the tank.

7.2.5 Each truck transport shall carry a log showing the types of materials and dates hauled, with respect to recent shipments, or the supplier shall furnish the engineer such information with respect to the previous load.

7.2.6 Intermediate storage tanks for storage and transfer of material between the source and the point of acceptance shall be equipped for sealing and shall be reserved exclusively for State work. Use of any material in unsealed tanks will be subject to delay until it can be sampled, tested and approved.

7.3 Proportioning and Blending Asphalt Material Constituents. All materials shall be properly proportioned and thoroughly blended in suitable tanks prior to delivery to transportation equipment, or may be proportioned and blended by use of automatic proportioning equipment. All automatic-proportioning blenders shall meet the approval of the Department and shall be equipped with precision instruments, including electrically interlocked motors, and automatic meters. Materials blended in quantities of less than 8,000 gallons without the use of automatic proportioning blenders will not be approved.

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "**Contractor**") agrees as follows:

- a. **Compliance with Regulations:** 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. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of **race, color, or national origin** in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **Regulations**, including employment practices when the contract covers a program set forth in **Appendix B of Regulations**.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In 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 relative to nondiscrimination on the grounds of **race, color, or national origin**.



- d. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- 1) **withholding of payments to the contractor under the contract until the contractor complies, and/or**
 - 2) **cancellation, termination or suspension of the contract, in whole or in part.**
- f. **Incorporation of Provisions:** The contractor shall include the provision of **Paragraphs a through e** above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or Directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the Missouri Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, 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 the Missouri Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



**ASPHALTIC MATERIALS
BID DATES**

BID DATE	STARTING PERIOD	ENDING PERIOD
May 20, 2009	May 25, 2009	June 7, 2009
June 3, 2009	June 8, 2009	June 21, 2009
June 17, 2009	June 22, 2009	July 5, 2009
July 1, 2009	July 6, 2009	July 19, 2009
July 15, 2009	July 20, 2009	August 9, 2009
August 5, 2009	August 10, 2009	August 23, 2009
August 19, 2009	August 24, 2009	September 6, 2009
September 2, 2009	September 7, 2009	September 20, 2009
September 16, 2009	September 21, 2009	October 11, 2009
October 7, 2009	October 12, 2009	October 25, 2009
October 21, 2009	October 26, 2009	November 8, 2009

ATTACHMENT (A)



BID

I (We) propose and offer to supply and deliver CHIP SEAL ASPHALT MATERIAL to District 9, in accordance with the Pre-Qualification Submittal, General Conditions, and meeting the Specifications at the quoted prices as shown on the bid form based on the following conditions:

Our bimonthly pricing shall be transmitted from one of the following authorized e-mail addresses:

Limitations: _____

Location of Refinery: _____

The quoted prices may be revised by proper notification as specified in the invitation for Bids.

Dated at _____ this _____ day of _____, 20 _____

Supplier _____

Address _____

Zip Code

By _____

Signature

Title _____

Telephone Number: _____

Fax Number: _____

Federal ID: _____

Email Address: _____

ATTACHMENT (B)



ANTI-COLLUSION STATEMENT

STATE OF _____)
) SS
COUNTY OF _____)

_____ being first duly sworn, deposes
and says that he is _____ of
Title of Person Signing

Name of Bidder

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

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

By _____
By _____
By _____

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

Notary Public

My Commission Expires _____

ATTACHMENT (C)



NOTICE TO BIDDERS

"COMMUNITY RIGHT TO KNOW LAW"

In order to implement provision of **Sections 292.600 - 292.620, RSMo.** relating to the communities and employees right to information concerning **"hazardous substances in the workplace"** the Missouri Department Of Transportation is required to furnish **"Material Safety Data Sheets"** to local fire departments and to the Department of Health.

If the product(s) you (**the bidder**) propose to furnish in response to the attached "Invitation to Bid" contains a "hazardous substance" as defined by **Section 292.600 RSMo.**, please so indicate and, if **YES**, attach a current **"Material Safety Data Sheet"**.

Yes _____

No _____

Signed

Title

Company

ATTACHMENT (D)

Missouri Highways and Transportation Commission
Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions

STANDARD SOLICITATION PROVISIONS

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

GENERAL TERMS AND CONDITIONS

General Performance

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

Deliveries

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

Nondiscrimination

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

Contract/Purchase Order

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

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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.

Executive Order

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

Preferences

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.

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- 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.

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Status of Independent Contractor

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

Indemnification

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

SPECIAL TERMS AND CONDITIONS

Insurance

- (1) Prior to contract signing, the Offeror may be asked about its ability to provide certificates of insurance which meet, or approach, the following coverages:

- a. General Liability Not less than \$500,000 for any one person in a single accident or occurrence, and not less than \$3,000,000 for all claims arising out of a single occurrence;
- b. Automobile Liability Not less than \$500,000 for any one person in a single accident or occurrence, and not less than \$3,000,000 for all claims arising out of a single occurrence;
- c. Missouri State Workmen's Compensation policy or equivalent in accordance with state law.

Required Specifications

- a. All materials, equipment, and/or services bid upon must comply with the attached MoDOT Specification #MGS-94-06E and any other provisions outlined in the solicitation documents.

Award

- a. Award of this bid/quote/proposal will be made on an "Item By Item" basis using the "lowest and best" principle of award.

Notice to Proceed

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

Delivery – Additional Requirements

- a. The Contractor shall furnish the Missouri Department of Transportation with a planned delivery schedule at least 16 hours before starting delivery.
 - 1) Notification should be during the normal workday preceding the day on which the Contractor desires to initiate delivery.
 - 2) It will be necessary for a representative of the Missouri Department of Transportation to be present when the material is delivered.
 - 3) No material will be accepted that has been dumped in the absence of the department's aggregate materials checker.
- b. Unless otherwise specified in the proposal, deliveries will be a minimum of **500 Tons Per Day**. No deliveries will be made during the period from **30 minutes before sundown to sunrise**. No deliveries will be made on **Saturdays, Sundays and holidays** unless specifically authorized by the engineer.
- c. The following days shall be construed as **official holidays** under the terms of the contract:

January 1	New Year's Day
Third Monday in January	Martin Luther King, Jr.'s Birthday
February 12	Lincoln's Birthday
Third Monday in February	Washington's Birthday
May 8	Truman's Birthday
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veteran's Day
Fourth Thursday in November	Thanksgiving Day
December 25	Christmas Day

- d. When any of the above **holidays falls** on a **Sunday**, the holiday will be observed on the following **Monday**; when any of the above **holidays falls** on a **Saturday**, the **holiday** will be observed on the immediately preceding **Friday**.