



PETE K. RAHN  
Director

RICH TIEMEYER  
Chief Counsel

MARI ANN WINTERS  
Secretary

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# MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

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105 West Capitol, P.O. Box 270, Jefferson City, MO 65102 Telephone (573) 751-7454 Fax (573) 526-4408

CCO Form: GS14  
Approved: 02/06 (AR)  
Revised:  
Modified:

## REQUEST FOR PROPOSALS

### TIRE SERVICES RECAPPING, REPAIR D7- 08-012

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<b>MHTC</b>	Missouri Highways and Transportation Commission
<b>MoDOT</b>	Missouri Department of Transportation
<b>RFP</b>	Request for Proposals

## INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified organizations (**Offeror**) to furnish the described services to the Missouri Highways and Transportation Commission (**MHTC**). **One (1) original and Four (4) copies (for a total of 5 copies)** of each proposal must be mailed in a sealed envelope to Janet Doty, Missouri Department of Transportation (MoDOT), Post Office Box 1445 Joplin, Missouri 64801, or hand-delivered in a sealed envelope to the District 7 General Services Office located at 3901 East 32<sup>nd</sup> Joplin Missouri 64804. Proposals must be returned no later than 4:00 p.m., CDT, **September 19, 2007**.

NOTE: The Offeror must be in compliance with the laws regarding conducting business in the State of Missouri. Within (10) business days of notification, the offeror 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).

MHTC reserves the right to reject any and all bids for any reason whatsoever.

## PROPOSAL

- (1) The Offeror shall provide a fee proposal to MHTC on the **PRICE PAGE** in accordance with the terms of this RFP.
  
- (2) The Offeror agrees to provide the services at the fees quoted, under the terms of this RFP.

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Authorized Signature of Offeror: \_\_\_\_\_

Date of Proposal: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Name of Business: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Electronic Mail Address: \_\_\_\_\_

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## ACCEPTANCE

This proposal is accepted by MHTC.

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(Name and Title)

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Date

**SECTION (1):  
GENERAL DESCRIPTION AND BACKGROUND**

- (A) **Request for Proposal:** This document constitutes a RFP from qualified organizations to provide tire services to MHTC and the Missouri Department of Transportation (**MoDOT**).
- (B) **Background:** District 7 MoDOT in our effort to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri has made the decision to have one company provide us with complete tire services. MoDOT District 7 last purchased Recapped tires in 2002 at that time we were recapping 1000 R20 and 11R22.5. These were a hard tread recap tire and were not a favorable item to our end user. The historical usage of 11R22.5 all season non-recapped in 2005 was one hundred and ninety-nine (199) in 2006 it was one hundred seventy-two (172) so far in 2007 it has been one hundred and three (103). We generally use more tires during inspections in the month of October so demand should be greater at that time. This bid is seeking a vendor to provide complete tire recapping and service. The MoDOT District 7 stockroom will maintain a supply of six tires
- (C) **Fiscal Year:** The fiscal year runs from July 1-June 30.
- (D) **Contract Period:** September 1, 2007 thru September 31, 2008
- (E) **Renewals/Extensions:** The contract shall not bind, not purport to bind, MHTC for any contractual commitment in excess of the original contract period, The MHTC shall have the right at its sole option, to extend the contract for three (3) additional one-year periods, or a portion thereof. In the event MHTC exercises its options, all terms, conditions, and provisions of the original contract shall remain the same and apply during the extension period. If the options are exercised, the Offeror shall agree the prices stated in the original contract shall not increase in excess of the renewal periods pricing, if any, stated on the pricing page of the contract. If pricing page does not include such renewal prices or if applicable spaces are left blank, are not completed, prices during extension periods shall be the same as during the original contract period. MHTC does not automatically exercise its options based upon the maximum renewal price of increase without documented justification supporting an increase and reserves the right to offer or to request an extension of the contract at a price less than that price derived from the Offeror's renewal amounts.  
1<sup>st</sup> optional renewal period: October 1, 2008- September 31, 2009  
2<sup>nd</sup> optional renewal period: October 1, 2009 –Sept 31, 2010
- (F) **Pre-Proposal Conference:** A pre-proposal conference regarding this Request for Proposal will be held on August 8, 2007 at 1:00 PM, at MoDOT's General Services building located at 3901 East 32<sup>nd</sup>, Joplin MO. All potential Offeror's are encouraged to attend this conference, since information relating to this RFP will be discussed in detail. Offeror's should bring a copy of the RFP since it will be used as the agenda for the pre-proposal conference. **Refer to Clarification of Requirements in Section 4 for submitting questions prior to the conference.**

(G) **RFP Schedule OF Events:** The Following RFP Schedule of Events represents MoDOT's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 7:30 am to 4:00 pm Central Time. MoDOT reserves the right at its sole discretions to expand this schedule, as it deems necessary, without any notification except for the deadline date for submitting a proposal.

<b>Event</b>	<b>Date</b>	<b>Time</b>
MoDOT Issues RFP	July 30, 2007	4:00 pm
Pre-Proposal Conference	August 8, 2007	<b>1:00 pm- 2:00 pm</b>
Deadline for Written Comments	August 22, 2007	2:00 pm
Deadline for MoDOT's Issuing Responses to Written Comments	August 29, 2007	4:30 pm
Deadline for Submitting a Proposal	September 19, 2007	4:00 pm
Recommendation of Award	September 26, 2007	4:00 pm
Contract Effective Date	October 1, 2007	7:00 am

**SECTION (2):  
SCOPE OF WORK**

**(A) Services: The Offeror shall provide all the following services:**

- (1.) The Offeror shall provide recapped tire and repair services identified in the scope of work in accordance with the requirements and specifications stated herein. MoDOT reserves the right to terminate this service contract, if agreement is not reached between MoDOT and Offeror.
- (2.) The Offeror must perform all tire repair services as required herein in a manner satisfactory to and acceptable by MoDOT.
- (3.) The Offeror shall provide services for areas specified by MoDOT. Such areas are identified in the Specific Requirements throughout the Scope of Work.

**(B) Specific Requirements:** The Offeror will provide to the General Service Unit one (1) original and (4) Copies of a program proposal, which will include services relating to the repair and production of, including labor, method, materials, disposal of waste, and safety issue for items listed below:

- a.) Purchase our 315 and 11R22.5 casings
  - b.) Provide services for alignment, mounting, and balanceing wheel refurbishing, flat repair, both in shop and road repair
  - c.) Provide up to six tires in the same day turn around.
  - d.) Recapped tire casing training
- (1.) The vendors will supply the Missouri Department of Transportation 11 R22.5 Recapped Mold Cure tires.
    - a.) Mounted
    - b.) Not Mounted
  - (2.) The Vendor will provide services to MoDOT for the following
    - a.) alignment
    - b.) wheel refurbishing
    - c.) mount
    - d.) dismount
    - e.) Balancing
    - f.) Flat repair
    - g.) Flat road repair
  - (3.) Provide six recapped tires for same day turn around.
  - (4.) Provide warranty or road hazard.
  - (5.) Vendor will be expected to provide training to MoDOT personal in identifying and maintaining a good casing.

(C) **Administration of Program:** The Offeror will consult MHTC's representative regarding any problems involved with the administration of the services provided pursuant to this RFP.

### **SECTION (3): AGREEMENT REQUIREMENTS**

The following contract provisions shall govern this RFP. The award of this RFP is subject to a post-award negotiated contract. These same contract provisions will appear in the post-award negotiated contract. If the parties are unable to agree to terms in the post-award contract, MHTC shall reserve the right to cancel the award of the RFP and contract and select a different offeror.

- (A) **MHTC's Representative:** MoDOT's District Engineer Becky Baltz is designated as MHTC's representative for the purpose of administering the provisions of the Agreement as defined in Paragraph (E) of this section. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Agreement. The Offeror shall fully coordinate its activities for MHTC with those of the General Services Manager. As the work of the Offeror progresses, the Offeror shall make advice and information on matters covered by the Agreement available to the General Services Manager throughout the effective period of the Agreement.
- (B) **Release to Public:** No material or reports prepared by the Offeror shall be released to the public without the prior consent of MHTC's representative.
- (C) **Assignment:** The Offeror shall not assign or delegate any interest, and shall not transfer any interest in the services to be provided (whether by assignment, delegation) without the prior written consent of MHTC's representative.
- (D) **Status as Independent Contractor:** The Offeror 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 MHTC or MoDOT. Therefore, the Offeror shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, or other such benefits or obligations.
- (E) **Components of Agreement:** The Agreement between MHTC and the Offeror shall consist of: the RFP and any written amendments thereto, the Standard Solicitation Provisions and General Terms and Conditions that are attached to this RFP, the proposal submitted by the Offeror in the response to the RFP and the post-award contract agreement signed between the parties. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Offeror's proposal. The Offeror is cautioned that its proposal shall be subject to acceptance by MHTC without further clarification.
- (F) **Amendments:** Any change in the Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representative of the Offeror and MHTC.

**(G) DBE/WBE Participation Encouraged:**

- 1.) Bidders are encouraged to submit copies of existing affirmative action programs, if any. Bidders are also encouraged to directly hire minorities and women as direct employees of the bidder. MHTC reserves the right to consider the use of minority and female employee when making the award of the Agreement.
- 2.) Regardless of which persons or firms, if any, that the Offeror may use as subcontractors, sub consultants, or suppliers of goods or services for the services to be provided, the Offeror ultimately remains responsible and liable to MHTC for the complete, accurate and quality/performance of these services.

**(H) Nondiscrimination:** The Offeror shall comply with all state and federal statutes applicable to the Offeror relating to nondiscrimination, including, but not limited to Chapter 213, RSMo; Title VI and Title VII of civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the “Americans with Disabilities Act” (42 U.S.C. Section 12101, *et seq*)

**(I) Bankruptcy:** Upon filing for any bankruptcy or insolvency proceeding by or against the Offeror, whether voluntarily, or upon the appointment of a receiver, offeror, or assignee, for the benefit of creditors, MHTC reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Offeror responsible for damages.

**(J) Law of Missouri to Govern:** The Agreement shall be construed according to the laws of the state of Missouri. The Offeror shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.

**(K) Cancellation:** MHTC may cancel the Agreement at any time by providing the Offeror with written notice of cancellation. Should MHTC exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Offeror.

**(L) Venue:** No action may be brought by either party concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of the Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that the Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place at or be delivered to Jefferson City, Missouri, by reason of which the Offeror consents to venue of any action against it in Cole County, Missouri.

**(M) Ownership of Reports:** All documents, reports, exhibits, etc. produced by the Offeror at the direction of MHTC’s representative and information supplied by MHTC’s representative shall remain the property of MHTC.

**(N) Confidentiality:** The Offeror shall not disclose to third parties confidential factual matters provided by MHTC’s representative except as may be required by statute,



than \$2,500,000 for all claims arising out of a single occurrence;

- c.) Missouri State Workmen's Compensation policy or equivalent in accordance with state law.

**SECTION (4):  
PROPOSAL SUBMISSION INFORMATION**

**(A) SUBMISSION OF PROPOSALS**

- 1.) **Pricing and Signature:** Proposals should be priced, signed and returned (with necessary attachments) to Janet Doty as provided in this RFP. Specifically, any form containing a signature line in this RFP and **any** amendments, pricing pages, etc., **must** be manually signed and returned as part of the proposal.
- 2.) **Submission of All Data Required:** The Offeror must respond to this RFP by submitting all data required in paragraph (B) below for its proposal to be evaluated and considered for award. Failure to submit such data shall be deemed sufficient cause for disqualification of a proposal from further consideration.
- 3.) **Public Inspection:** The Offeror is hereby advised that all proposals and the information contained in or related thereto shall be open to public inspection and that MHTC does not guarantee nor assume any responsibility whatsoever in the event that such information is used or copied by individual person(s) or organization. Therefore, the Offeror must submit its proposal based on such conditions without reservations.
- 4.) **Clarification of Requirements:** Any and all questions regarding specifications, requirements, competitive procurement process, or other questions must be directed to Janet Doty, Missouri Department of Transportation, P. O. Box 1445, Joplin, Missouri, 64804, (417) 629-3227 or [janet.doty@modot.mo.gov](mailto:janet.doty@modot.mo.gov)

**(B) REQUIRED ELEMENTS OF PROPOSAL**

- 1.) **Experience, Expertise and Reliability** The proposal must clearly identify the Offeror's experience in offering the services requested in this RFP during the past three (3) years. The description should include a list of companies or agencies, which your institution has served or currently serves.
  - a.) Experience and reliability of the Offeror's organization is considered in the evaluation process. Therefore, the Offeror is advised to submit any information, which documents successful and reliable experience in past performances, especially those performances related to previous tire repair and retread services.
  - b.) The Offeror should provide the following information related to previous and current contracts, which are considered identical or similar to the requirement of this RFP.
    - a. Name, address and telephone number of contracting agency and a contact person who may be contacted for verification of all data submitted.
    - b. Dates of the Contract.

c. A brief, written description of the specific prior services performed and requirement thereof.

- c.) The qualifications (expertise) of the personnel proposed by the Offeror to perform the requirements of the RFP will be considered in the evaluation. Therefore, the Offeror should submit detailed information related to the expertise and qualification of the staff proposed.
- d.) Please indicate the name, location, telephone number, fax number and email address of the primary contact person for the Offeror. Information presented in this section should highlight the previous Offeror experience, as well as any work with major companies or other state agencies or local governments in Missouri. Offeror must furnish a complete listing of each subconsultant, if any, and complete contact information for that subconsultant.

**2) Proposed Method of Performance.**

- a.) Proposals will be evaluated based on the Offeror's distinctive plan for performing the requirements of the RFP. Since the evaluators have already read the Scope of Work as described in the RFP, it is not necessary for the Offeror to repeat the exact RFP language or to present a paraphrased version, as an original idea for a technical approach.
- b.) The Offeror should present a written narrative, which demonstrates the method, or manner in which the Offeror proposes to satisfy the requirement listed in the scope of work. The language of the narrative should be straightforward and limited to facts, solutions to problems and plans of proposed action. This should include performance time frames
- c.) The method by which the proposed method of performance is written is left to the discretion of the Offeror. However, the following method is recommended:

On plain white paper, identify each specific paragraph and subparagraph of the scope of work (see Part Two) by paragraph and page number as an item for discussion. Immediately below these number write a description of how, when, by whom, with, what, to what degree, why, where, etc., the requirements will be satisfied. The description should include the number of employee hours to be devoted to each area.

AS AN EXAMPLE:

Discussion item: Paragraph \_\_\_\_\_, Page \_\_\_\_\_

In this space describe a specific description of how this requirement will be met, who will do it, criteria for it, the goals and objectives of it. Also describe any other information you can possibly think of related to this requirement.

3) **Cost, Fees and Expenses**

The objective evaluation of cost shall be conducted based upon a total amount for all products and services.

Utilizing the total cost determined from above, cost points shall be determined using a scale of 50 possible points and the following formula:

Section A. Lowest Responsive Price X 25 = Total Cost score points

Section B. Lowest Responsive Price X 15 = Total Cost score points

Section C. Lowest Responsive Price X 10 = Total Cost score points

Compared Price

4) **Recommendations from References**

Proposals should indicate the name, title and telephone number of at least three officials or clients within the past three years. Please use Exhibit a for this information

5) **Overall Clarity and Quality of Proposals**

Proposals should be easy to follow and read. We expect some background information, however, marketing materials shall be limited. Proposals shall clearly identify processes and procedures, which directly relate to this specific RFP and its scope of services.

**(C) EVALUATION CRITERIA AND PROCESS**

1) **Evaluation Factors:**

Any agreement for services resulting from this RFP shall be awarded to the Offeror providing the best proposal to MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria:

- A. Experience, expertise and reliability; 10 points max
- B. Proposed Method of Performance; 20 points max
- C. Cost, Fees and Expenses; 50 points max
- D. Recommendations from references; 10 points max
- E. Overall clarity and quality of proposal; 10 points max

2). **Historic Information:** MHTC reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, question and answer conferences, references, or other sources, in the evaluation process.

3). **Responsibility to Submit Information:** The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation

categories and that MHTC's representative is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

**(D) PRICING**

- 1.) **Fee Schedule:** The Offeror must submit a proposed fee for all services defined in the Scope of Work. This fee must be shown on Section (5), Price Page, of this proposal, which must be completed, signed and returned with the Offeror's proposal.

**SECTION (5):  
PRICE PAGE**

**(A) FEE SCHEDULE:** The Offeror shall indicate below all fees for providing services in accordance with the provisions and requirements stated herein for to be issued:

Any applicable cap on out-of-pocket expense also should be noted.

	Original Contract Period	1 <sup>st</sup> Renewal	2 <sup>nd</sup> Renewal	3 <sup>rd</sup> Renewal
<b>A. Recapped Tires</b>				
11R22.5 Mounted	\$ _____	\$ _____	\$ _____	\$ _____
11R22.5 Un- mounted	\$ _____	\$ _____	\$ _____	\$ _____
<b>B. Purchase of casings</b>				
315	\$ _____	\$ _____	\$ _____	\$ _____
11R22.5	\$ _____	\$ _____	\$ _____	\$ _____
<b>C. Services</b>				
Alignment	\$ _____	\$ _____	\$ _____	\$ _____
Wheel refurbishing	\$ _____	\$ _____	\$ _____	\$ _____
Mount	\$ _____	\$ _____	\$ _____	\$ _____
Dismount	\$ _____	\$ _____	\$ _____	\$ _____
Balancing	\$ _____	\$ _____	\$ _____	\$ _____
Flat repair	\$ _____	\$ _____	\$ _____	\$ _____
Flat road repair	\$ _____	\$ _____	\$ _____	\$ _____

(B) **EXPENSES:** List the nature of expenses for which reimbursement would be sought and the estimated amount of such expenses.

<b>Expenses</b>	<b>Estimated Amount</b>
Miscellaneous (list-attach additional sheet if needed)	
Total	

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(Signature/Title)\*\*

(Date)

Exhibit A

Firms Prior Experience

*(Duplicate this page, or supply the information it requests, for each firm and contract listed)*

**Prior Services Performed for:**

Agency

Name \_\_\_\_\_

Contact

Person \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Telephone \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

Description of Services Contact \_\_\_\_\_

\_\_\_\_\_

Contract Period: FROM \_\_\_\_\_ TO \_\_\_\_\_

Summary of Services Performed \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# 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#:**

\_\_\_\_\_

### **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 or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

#### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- 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 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 contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.
- d. 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**" 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. 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.