March 20, 2008

To: Equipment Dealers/Manufacturers

Dear Sir or Madam:

The Missouri Department of Transportation (MoDOT) is in the process of soliciting competitive bids for Excavators. Bids should be mailed to General Services-Fleet, P.O. Box 270, Jefferson City, MO 65102 and will be opened on April 10, 2008 at 2:00 p.m. Please note the enclosed Terms and Conditions that contain all "boiler plate" information and special notes.

If you have any questions about this bid, please feel free to contact me at 573-526-7932, or by email at jerry.dunn@modot.mo.gov.

Thank you.

Jerry Dunn
General Services Specialist

NOTIFICATION

In accordance with RSMo 414.365, MoDOT must use fuel with at least the biodiesel content of B-20. (http://www.moga.mo.gov/statutes/C400-499/4140000365.htm) By submitting a response to this bid, you agree to comply with all the terms of your company's standard equipment warranties, except to the extent the equipment problems are determined to be attributed to MoDOT's use of B-20 fuel.

PRICING SHEETS

Missouri Department of Transportation
General Services Division
Jefferson City, Missouri

The purpose of this document is to solicit competitive sealed bids from bidders for the purchase of excavators for the ten district offices (see page 21) in accordance with the requirements stated herein. **There is no guarantee as to how many units will be ordered.**

Bid prices should be firm for purchase until April 30, 2009. Three (3) one-year extensions are available upon mutual consideration by Missouri Department of Transportation and the successful bidder. Allowance for inflation increases will be considered at the time of offer of these extensions.

Submit descriptive literature and specifications showing exact equipment you propose to furnish. Bid price should include the cost of two (2) Operator's Manuals, two (2) Parts Books, and two (2) Technical Service Manuals.

A COMPLETE LIST OR CATALOG DESCRIBING ALL AVAILABLE TRAINING MATERIALS RELATED TO THE ITEMS YOU ARE BIDDING MUST BE INCLUDED IN YOUR BID.

Warranty information beyond the Missouri Department of Transportation's requirement must be submitted with your bid.

The vendor shall demonstrate to the District prior to acceptance by the District, that the equipment delivered complies fully with the enclosed specifications.

NET DELIVERED FIRM PRICE - the unit(s) shall be delivered complete and ready for use to the delivery destination.

BID AWARD This is a Multiple Award bid and there will be no 'one' bidder awarded each item within this bid. Each individual delivery destination will have sole responsibility for the discretion of all purchasing decisions. Criteria used to determine the Lowest and Best Bid are based on price, location of servicing dealers, past performance of servicing dealers, and past performance of different makes and models of excavators. This bid will not be awarded solely based on low price per delivery destination. You should indicate on the bid sheets which Districts you would like to provide services to in order for your bid to be considered. Units must be delivered to the listed delivery destinations but they will have to be serviced at other locations within the district.

Unit bid shall be currently advertised and produced model with all the latest standard features. Standard equipment shall be defined in current manufacturer's literature. (Provide current brochure / specifications of the unit bid)

Item # 1 Manufacturer's Standard Compact Excavator, meeting the net horsepower range of **40 to 60 with 4 to 6 metric ton operating weight rating as advertised in manufacturer's standard literature, NET DELIVERED PRICE** to any District in the State of Missouri, in care of the District General Services Manager (See page 21).
If bidding more than one make or model make copies of this pricing sheet and submit it with your bid.

I am bidding (MAKE)_____(MODEL)_____

Price $_____

Vendor must complete for each unit bid

Net Horse Power: _____
Engine Make: _____
Engine Model: _____
Operating Weight lbs: _____
Operating Weight (metric ton) _____
Max Dig Depth:(ft/in) _____
Tail overhang over side (in) _____
Length of track on ground (ft/in) _____
Reach @ground level (ft/in) _____
Dump Height (ft/in) _____
Track shoe or rubber shoe width (in) _____

OPTION	DESCRIPTION	Price
	Please list any vendor-recommended options relevant to this operation. Use additional sheets if necessary.	
Option 1		
Option 2		
Option 3		
Option 4		
Option 5		

Please indicate with an 'X' the districts (see page 21) for which you are bidding:

District 1 _____ District 2 _____ District 3 _____ District 4 _____ District 5 _____
District 6 _____ District 7 _____ District 8 _____ District 9 _____ District 10 _____

Please submit a complete parts and options list with detailed pricing information for each (make/model) your company would be willing to provide. Please indicate below the percent (%) discount off Manufacturers Suggested Retail Prices (MSRP) for all excavator options available in your data book or pricing guides.

% discount off MSRP for all Data Book or Pricing Guide Options: - % Discount _____

Delivery will be made _____ days after receipt of order

Item # 2 Manufacturer's Standard Crawler Excavator, meeting the net horsepower range of **85 to 100 with 10 to 15 metric ton operating weight rating as advertised in manufacturer's standard literature, NET DELIVERED PRICE** to any District in the State of Missouri, in care of the District General Services Manager (See page 21).
If bidding more than one make or model make copies of this pricing sheet and submit it with your bid.

I am bidding (MAKE)_____(MODEL)_____

Price $_____

Vendor must complete for each unit bid

Net Horse Power: _____
Engine Make: _____
Engine Model: _____
Operating Weight: (lbs) _____
Operating Weight (metric ton) _____
Max Dig Depth:(ft/in) _____
Depth @ 8' bottom: (ft/in) _____
Max. depth of vertical wall (ft/in) _____
Reach @ground level (ft/in) _____
Dump Height (ft/in) _____
Track shoe or rubber shoe width (in) _____
Tail overhang over side (in) _____
Length of track on ground (ft/in) _____

OPTION	DESCRIPTION	Price
	Please list any vendor-recommended options relevant to this operation. Use additional sheets if necessary.	
Option 1		
Option 2		
Option 3		
Option 4		
Option 5		

Please indicate with an 'X' the districts (see page 21) for which you are bidding:

District 1 _____ District 2 _____ District 3 _____ District 4 _____ District 5 _____
District 6 _____ District 7 _____ District 8 _____ District 9 _____ District 10 _____

Please submit a complete parts and options list with detailed pricing information for each (make/model) your company would be willing to provide. Please indicate below the percent (%) discount off Manufacturers Suggested Retail Prices (MSRP) for all excavator options available in your data book or pricing guides.

% discount off MSRP for all Data Book or Pricing Guide Options: - % Discount _____

Delivery will be made _____ days after receipt of order,

Item # 3 Manufacturer's Standard Crawler Excavator, meeting the net horsepower range of **100 to 130 with 15 to 25 metric ton operating weight rating as advertised in the manufacturer's standard literature, NET DELIVERED PRICE** to any District in the State of Missouri, in care of the District General Services Manager (See page 21).
If bidding more than one make or model, make copies of this pricing sheet and submit it with your bid.

I am bidding (MAKE)_____(MODEL)_____

Price $_____

Vendor must complete for each unit bid

Net Horse Power: _____
Engine Make: _____
Engine Model: _____
Operating Weight: (lbs) _____
Operating Weight (metric ton) _____
Max Dig Depth:(ft/in) _____
Depth @ 8' bottom: (ft/in) _____
Max. depth of vertical wall (ft/in) _____
Reach @ground level (ft/in) _____
Dump Height (ft/in) _____
Track shoe or rubber shoe width (in) _____
Tail overhang over side (in) _____
Length of track on ground (ft/in) _____

OPTION	DESCRIPTION	Price
	Please list any vendor-recommended options relevant to this operation. Use additional sheets if necessary.	
Option 1		
Option 2		
Option 3		
Option 4		
Option 5		

Please indicate with an 'X' the districts (see page 21) for which you are bidding:

District 1 _____ District 2 _____ District 3 _____ District 4 _____ District 5 _____
District 6 _____ District 7 _____ District 8 _____ District 9 _____ District 10 _____

Please submit a complete parts and options list with detailed pricing information for each (make/model) your company would be willing to provide. Please indicate below the percent (%) discount off Manufacturers Suggested Retail Prices (MSRP) for all excavator options available in your data book or pricing guides.

% discount off MSRP for all Data Book or Pricing Guide Options: - % Discount _____

Delivery will be made _____ days after receipt of order

Item # 4 Manufacturer's Standard Wheeled Excavator with One-Piece Boom, meeting the net horsepower range of **120 to 160 with 17 to 21 metric ton operating weight rating as advertised in the manufacturer's standard literature, NET DELIVERED PRICE** to any District in the State of Missouri, in care of the District General Services Manager (See page 21).

If bidding more than one make or model make copies of this pricing sheet and submit it with your bid.

I am bidding (MAKE)_____(MODEL)_____

Price $_____

Vendor must complete for each unit bid

Net Horse Power: _____
Engine Make: _____
Engine Model: _____
Operating Weight lbs: _____
Operating Weight: (metric ton) _____
Max Dig Depth:(ft/in) _____
Depth @ 8' bottom:(ft/in) _____
Max depth of vertical wall (ft/in) _____
Reach @ground level (ft/in) _____
Dump Height (ft/in) _____
Blade or Outrigger _____
Transport width:(ft/in) _____
Tailswing radius:(ft/in) _____

OPTION	DESCRIPTION	Price
	Please list any vendor-recommended options relevant to this operation. Use additional sheets if necessary.	
Option 1		
Option 2		
Option 3		
Option 4		
Option 5		

Please indicate with an 'X' the districts (see page 21) for which you are bidding:

District 1 _____ District 2 _____ District 3 _____ District 4 _____ District 5 _____
District 6 _____ District 7 _____ District 8 _____ District 9 _____ District 10 _____

Please submit a complete parts and options list with detailed pricing information for each (make/model) your company would be willing to provide. Please indicate below the percent (%) discount off Manufacturers Suggested Retail Prices (MSRP) for all excavator options available in your data book or pricing guides.

% discount off MSRP for all Data Book or Pricing Guide Options: - % Discount _____

Delivery will be made _____ days after receipt of order

Item # 5 Manufacturer's Standard Wheeled Excavator with Two-Piece and Telescopic Booms, meeting the net horsepower range of **120 to 160 with 17 to 21 metric ton operating weight rating as advertised in the manufacturer's standard literature, NET DELIVERED PRICE** to any District in the State of Missouri, in care of the District General Services Manager (See page 21).

If bidding more than one make or model make copies of this pricing sheet and submit it with your bid.

I am bidding (MAKE)_____(MODEL)_____

Price $_____

Vendor must complete for each unit bid

Net Horse Power: _____
Engine Make: _____
Engine Model: _____
Operating Weight lbs: _____
Operating Weight: (metric ton) _____
Max Dig Depth:(ft/in) _____
Depth @ 8' bottom:(ft/in) _____
Max depth of vertical wall (ft/in) _____
Reach @ground level (ft/in) _____
Dump Height (ft/in) _____
Blade or Outrigger _____
Transport width:(ft/in) _____
Tailswing radius:(ft/in) _____

OPTION	DESCRIPTION	Price
	Please list any vendor-recommended options relevant to this operation. Use additional sheets if necessary.	
Option 1		
Option 2		
Option 3		
Option 4		
Option 5		

Please indicate with an 'X' the districts (see page 21) for which you are bidding:

District 1 _____ District 2 _____ District 3 _____ District 4 _____ District 5 _____

District 6 _____ District 7 _____ District 8 _____ District 9 _____ District 10 _____

Please submit a complete parts and options list with detailed pricing information for each (make/model) your company would be willing to provide. Please indicate below the percent (%) discount off Manufacturers Suggested Retail Prices (MSRP) for all excavator options available in your data book or pricing guides.

% discount off MSRP for all Data Book or Pricing Guide Options: - % Discount _____

Delivery will be made _____ days after receipt of order

Training

Each excavator purchased by MoDOT shall have the minimum mandatory training supplied as outlined below:

Item A – Mandatory for each unit sold (if multiple, at MoDOT's discretion, training may be combined)

Four (4) hours safe operation and routine/preventive maintenance for mechanics and operators. Training time and location shall be coordinated with district personnel. The vendor shall supply training within one month of acceptance by MoDOT. All costs associated with training and materials supplied shall be the responsibility of the vendor. Training shall be provided by a factory or dealership personnel. The trainer must be approved by MoDOT. Training content shall be tailored to cover the specific units sold.

Item B - Price must be included for each item for the following optional training: **Price per student $_____**

Training shall be provided by a factory or dealership personnel. The trainer must be approved by MoDOT. Training content shall be tailored to cover the specific units sold.

Should the training not meet the requirements (needs of the employees being trained,) indicated below, the vendor shall come back to the location the training first took place and hold the training again.

a.) 8 hours Electronic Operation and Diagnostics

1. Engine
2. Transmission
3. HVAC
4. Hydraulics
5. Calibration Procedures

b.) 4 hours Hydraulic & Transmission Mechanical Diagnostic

1. Operation
2. Adjustments
3. Pressure/Flow Tests

Item C - Optional Software – Price must be included for the following: diagnostic software, cables, and interface. Price per set $ _____

Item D - Optional price $_____ for vendor to perform the first scheduled on-site maintenance. Vendor shall supply all labor associated with the maintenance. All materials used for maintenance will be supplied by MoDOT. At MoDOT's discretion, this first scheduled maintenance may be used as a training class for mechanics and maintenance employees.

Item E - Vendors must allow MoDOT technicians to attend any in-depth factory technical training as deemed necessary by MoDOT. Training shall be the same as received by dealership personnel with content tailored to cover specific units sold. Vendor must supply training to MoDOT at the same cost as dealership personnel.

Manuals

a. One set of service and parts CD's per unit sold.
b. Operator manuals must be hard copy and supplied with each individual unit.

All vendors shall provide toll free numbers for technical assistance on all components of the items bid. Toll free numbers shall be manned during normal working hours (8 AM to 5 PM).

NOTE: For bids to be considered, the attachment entitled "PREFERENCE IN PURCHASING PRODUCTS" must be either attached to the bid or on file in this office and must be dated in the current model year.

NOTE: The attachment entitled "MISSOURI DOMESTIC PRODUCT PROCUREMENT ACT" certificates of compliance must be completed and submitted with your bid for it to be considered responsive.

The undersigned, as bidder, understands that this project involves state funds and the bidder awarded the contract will be required to comply with Executive Order 94-03 of the Governor of the State of Missouri dated January 14, 1994. This order stipulates that there shall be no discriminatory employment practices by the contractor or his subcontractors, if any, based on race, color, religion, creed, national origin, sex, or age. The undersigned contractor or his subcontractors, if any, shall give written notice of their commitments under this clause to any labor union which they have bargaining or other agreements.

BIDS TO BE MAILED TO:
Missouri Department of Transportation
General Services - Fleet
P.O. Box 270
1320 Creek Trail Drive
Jefferson City, Missouri 65102
Clearly marked
Bid Request No. 3-080410

FIRM_____

STREET_____

CITY_____

STATE_____ZIP_____

TELEPHONE _____

SIGNATURE_____

PRINT NAME_____

E-MAIL _____

FEIN # _____

3-080410

NOTICE * * * * NOTICE * * * * NOTICE

The department is interested in assisting Missouri counties, cities, special road districts, etc. in purchasing equipment that meets the Missouri Department of Transportation's specifications.

Each bidder is asked to indicate below whether they would be willing to offer equipment for sale to these local political entities at the same bid price offered to this department.

It is understood the department will not issue purchase orders, accept delivery nor make payment for equipment ordered by any of these agencies. It is further understood the price is based on the unit meeting the department's specifications. Any added options, deletions, or extra freight costs would be negotiated between the local agency and the successful vendor.

Indicate below whether your company is willing to offer such cooperative purchasing for Missouri counties, cities, or other political entities.

YES_____ NO_____

If the price varies throughout the state on department bids, because of different delivery destinations please indicate the price f.o.b. your location that would be offered as described above.

$_____ _____
(Price) (Location)

Company Name_____

Address_____

Phone Number_____

Signature_____

Title_____

Date_____

(Each vendor should complete the appropriate sections of this form and submit with their bid.)

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:

_____

_____

_____

_____

_____

_____

_____

THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

BY (signature required): _____

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

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

MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34/359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

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

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

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

[] If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left.

[ ] If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:
_____
_____

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

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

(attach an additional sheet if necessary)

[ ] The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to me the contract specifications. Items (or item numbers): _____
_____

[ ] The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers): _____
_____

MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT CONTINUED

CERTIFICATION

By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document if true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.

The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.

All prices must include completed delivery to any of the below listed delivery destinations.

Missouri Department of Transportation
District 1 Garage
3602 N. Belt Highway
St. Joseph, Missouri 64502
Maint & Traffic Eng, **Koelle Barbour**
Koelle.barbour@modot.mo.gov
816-387-2446

Missouri Department of Transportation
District 2 Garage
902 N. Missouri St.
Macon, Missouri 63552
General Services Manager, **Joseph Hinton**
joseph.hinton@modot.mo.gov
660-385-8240

Missouri Department of Transportation
District 3 Garage
Highway 61 South
Hannibal, Missouri 63401
General Services Manager, **Darrell Barnes**
darrell.barnes@modot.mo.gov
573-248-2590

Missouri Department of Transportation
District 4 Garage
2050 N.E. Independence.
Lee Summit Missouri 64064
General Services Manager, **Cindy Beebe**
cynthia.beebe@modot.mo.gov
816-622-0053

Missouri Department of Transportation
District 5 Garage
1511 Missouri Blvd
Jefferson City, Missouri 65101
General Services Manager, **Coleen Welter**
coleen.welter@modot.mo.gov
573-751-3660

Missouri Department of Transportation
General Services Complex
830 MoDOT Drive
Jefferson City, Missouri 65101
Mechanic Supervisor, **Kenny Terry**
Kenny.terry@modot.mo.gov
573-751-8752

Missouri Department of Transportation
District 6 Garage
2309 Barrett Station Rd.
Ballwin, Missouri 63021
General Services Manager, **Robert Zahner**
robert.zahner@modot.mo.gov
314-301-1422

Missouri Department of Transportation
District 7 Garage
3901 East 32nd Street
Joplin, Missouri 64804
General Services Manager, **John Sinclair**
john.sinclair@modot.mo.gov
417-629-3220

Missouri Department of Transportation
District 8 Garage
3025 E. Kearney
Springfield, Missouri 65804
General Services Manager, **Brad Leonard**
bradley.Leonard@modot.mo.gov
417-895-7700

Missouri Department of Transportation
District 9 Garage
3956 East Main
Willow Springs, Missouri 65793
General Services Manager, **Jacky Traw**
jacky.traw@modot.mo.gov
417-469-9041

Missouri Department of Transportation
District 10 Garage
201 N. Main
Sikeston, Missouri 63801
General Services Manager, **Ronald Miller**
ronald.miller@modot.mo.gov
573-472-5318

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.

SPECIAL TERMS AND CONDITIONS

Insurance

a. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them.

b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:

1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained **if** required by law.

2) Public Liability (includes property damage and personal injury):

i. Not less than $400,000 for any one person in a single accident or occurrence.

ii. Not less than $2,500,000 for all claims arising out of a single occurrence.

3) Special Hazard Insurance: As required.

4) Builder's Risk: Not less than the full Contract amount.

Required Specifications

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

Award

This is a Multiple Award bid and there will be no 'one' bidder awarded each item within this bid. Each individual delivery destination will have sole responsibility for the discretion of all purchasing decisions. Criteria used to determine the Lowest and Best Bid are based on price, location of servicing dealers, past performance of servicing dealers, and past performance of different makes and models of excavators

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.

b. The following days shall be construed as **official holidays** under the terms of the contract:

January l	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

c. 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.**

Cancellation of Contract

a. If the Contractor/supplier fails to carry out the performance of the work with sufficient workmen and equipment to insure the completion of the delivery within the time specified or becomes insolvent or is adjudicated a bankrupt or commits any act of bankruptcy or insolvency or allows any final judgment to stand against him for a period of ten (10) days, the Missouri Department of Transportation may give notice in writing by registered mail to the Contractor/supplier and the surety of such delay, neglect or default.

b. If, within ten (10) days after such notice the Contractor/supplier does not proceed to remedy to the satisfaction of the Department's representatives the faults specified in said notice, or the surety does not proceed to take over the deliveries, the Department shall have full power and authority, without impairing the obligation of the Contractor/supplier under the contract or the surety under the bond, to take over the completion of the work and arrange for the shipment of any materials necessary to complete the work and the Contractor/supplier and the surety will be responsible for any additional costs incurred by the Department in obtaining the completion of the deliveries.

Liquidated Damages

a. In the event the successful Contractor fails to deliver the material within the time specified, the Department and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain, and in order to liquidate such damage in advance it is agreed that the **sum of one-hundred dollars ($100.00) per day, per item,** for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages, and it is therefore agreed that said amount will be withheld from payments due the Contractor or otherwise collected from the Contractor as liquidated damages.

b. **Saturdays, Sundays, holidays and days whereas the Department has suspended work** shall not be assessable days.