BID FORM

MISSOURI DEPARTMENT OF TRANSPORTATION
GENERAL SERVICES
830 MoDOT DRIVE – P.O. BOX 270
JEFFERSON CITY, MO 65102

REQUEST NO.	1-060706
DATE	June 15, 2006
PAGE NO. 1	NO. OF PAGES 11

SEALED BIDS, SUBJECT TO THE ATTACHED CONDITIONS WILL BE RECEIVED AT THIS OFFICE UNTIL

2:00 PM, LOCAL TIME, JULY 6, 2006

AND THEN PUBLICLY OPENED AND READ FOR FURNISHING THE FOLLOWING SUPPLIES OR SERVICES.

QUOTATIONS TO BE BASED F.O.B. MISSOURI DEPARTMENT OF TRANSPORTATION
Submit net bid as cash discount stipulations will not be considered

Please refer to Delivery Requirements on Page 4

ALL BIDS MUST BE EXTENDED AND TOTALED.

BUYER: FRANKIE J. RYAN **BUYER TELEPHONE:** 573-522-9481

	SUPPLIES OR SERVICES					
	Contract for furnishing **"SURVEYOR AND SUPERVISOR VESTS"** for a contract period beginning July 1, 2006 and ending June 30, 2007. **PLEASE SEE ATTACHED PRICING PAGE** **Note to Respondent**: A vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The compliance to conduct business in the state shall include but may not be limited to: Registration of business name, vendors MUST submit a bid/proposal that correctly and accurately identifies the company name that is registered to do business in the State of Missouri. All vendors who are required to execute a contractual agreement MUST submit a copy of their certificate with the signed copy of the contract agreement before the purchasing department can proceed with MoDOT legal contract approval. ***VENDOR MUST SIGN AND SUBMIT THIS FORM WITH THE PRICING PAGES***					

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

In compliance with the above invitation for bids, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were quoted within THIRTY (30) days after receipt of formal purchase order.

Date: _____ **Firm Name:** _____

Telephone No.: _____ **Address:** _____

Fax No.: _____ _____

Federal I.D. No. _____ **By (Signature):** _____

Type/Print Name _____

Title: _____

Is your firm MBE certified? ☐ Yes ☐ No **Is your firm WBE certified?** ☐ Yes ☐ No

List all agencies your firm is currently certified with. _____

Form E-103 (Rev. 11-04)

BID SUBMITTAL:

Your written bid must be mailed in ***a sealed*** envelope or box, or else delivered by hand or courier service (UPS, Federal Express, DHL, etc.) to be *received on or before the date and time specified on the front page of this bid document,* at the office of:

Ms. Frankie Ryan
Missouri Department of Transportation
General Services - Procurement
830 MoDOT Drive; P.O. Box 270
Jefferson City, MO 65102

All documents must be sealed and the outmost wrapping should be clearly marked **"Bid for Surveyor and Supervisor Vests".**

PRICES:

Prices MUST remain firm for the entire contract period stated herein.

COMPLIANCE WITH BID REQUIREMENTS:

Failure to comply with the requirements published in this bid may result in the bid being subject to rejection. Product that does not meet specifications will cause all of the shipments to be returned at the bidders expense.

NON-EXCLUSIVITY:

The Missouri Department of Transportation reserves the right to obtain like or similar products of this or other manufacturers when use of such products is deemed in the best interest of MoDOT.

VENDOR NAME REGISTRATION:

On all bid documents, the bidder 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.

ADDITIONAL DOCUMENT SUBMITTAL REQUIREMENTS:

For the bid to be considered the two (2) attachments "Preference in Purchasing Products" and "Missouri Domestic Product Procurement Act" must be submitted to this office prior to any contract being awarded for this bid.

ORGANIZATION OF SCOPE OF WORK (SOW) - This SOW is divided into the following parts:

General Requirements
Bid Submission Information
Pricing Page
Exhibit A
Preference In Purchasing Products
Missouri Domestic Products Procurement Act
Terms and Conditions

GENERAL REQUIREMENTS

The contractor shall provide surveyor/supervisor vests on an as needed, if needed basis for the Missouri Department of Transportation (hereinafter referred to as MoDOT), in accordance with the provisions and requirements stated herein.

The contractor shall provide all deliverables/services to the sole satisfaction of MoDOT.

MoDOT estimates, but does not guarantee, *an annual quantity of approximately 300* surveyor/supervisor vests may be required.

MoDOT reserves the right to obtain "like or similar" products as specified herein from other manufacturers, exclusive of the contract, when use of such products is deemed in the best interest of MoDOT.

Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to provide the deliverables/services required herein.

Specific Requirements:

The contractor shall provide MoDOT with surveyor/supervisor vests. Each surveyor/supervisor vests shall:

- Be constructed of a high visibility background material and retro-reflective material that conforms to ANSI 107-1999 Standards. Where applicable, vest sizes in L, X-Large, and larger sizes shall conform to ANSI 107-1999 Class 2, Level 2 standards.
- Be constructed of durable materials.
- Show careful workmanship and be free from ragged edges, surface blemishes, loose stitches, uneven seams or other defects.
- Be available in the following sizes: Small, Medium, Large, X-Large, 2X-Large, 3X-Large, 4X-Large, and 5X-Large.
    - In addition, MoDOT shall accept surveyor/supervisor vests in individual sizes that have sizes combined (i.e. S/M (chest size: 32" – 34"), L/XL (chest size: 36" – 42"), 2XL/3XL (chest size: 44" – 52"), 4XL/5XL (chest size: 54" – 62")) as long as the vest allows for adequate adjustment to provide a proper fit.
- Be moisture wicking.
- Be constructed with high visibility lime green fabric that meets all of the ANSI/ISEA 107-1999 Class 2 Level 2 requirements, and pass the NFPA-701 flame test for flame-resistance and be ultraviolet-resistant.
- Be constructed with high visibility lime fabric that is solid all the way around or solid in front and mesh in the back.
- Have, at a minimum, four (4) pockets with either velcro or zipper closures located at the top of each pocket.
- Have retro reflective material made of 2" Scotchlite 8935 flame resistant retro reflective material (No substitutions).
- Have all edges bound and securely sewn with a single-stitched durable cloth binding. The cloth binding shall be folded in the sewing process to create a smooth edge on all sides and

edges of the surveyor/supervisor vests (Nylon coated bias tapes or plastic borders ***shall not*** be accepted).

- Be *single-stitched* type sewing unless otherwise noted. In addition, all thread used in the surveyor/supervisor vests shall be cotton-covered polyester to match the color of the binding/material being used.
- Be made utilizing a high quality front zipper closure, made of durable material. The front zipper color shall be high visibility lime green to match the mesh/fabric.
- Include two (2) outside, ***front chest pockets*** securely sewn.
  - One of the two (2) outside pockets shall include a minimum of two (2) or three (3) pencil holders.
  - One (1) of the two (2) outside pockets must accommodate a log book that has dimensions of 6.5" long x 4.5" wide x 1.5" thick, securely sewn. This pocket ***cannot*** have pencil holders included as part of the pocket.
- Include two (2) outside <u>or</u> two (2) inside ***front chest pockets*** with one of the pockets to be approximately 5" x 8", securely sewn.
- The contractor's garment label on each of the surveyor/supervisor vests shall include, but not be limited to, manufacturers identification, size, washing and drying instructions, and where applicable, the garment class and level of retro reflective material (i.e. Class 2, Level 2).
- The contractor shall package the surveyor/supervisor vests flat with *no folds or bends* to avoid damage to such vests.
- The contractor shall provide proper packaging material between the surveyor/supervisor vests to avoid the potential for such vests to be stuck together.
- The contractors shall deliver/ship the surveyor/supervisor vests in sturdy cardboard boxes and label the cardboard boxes as to the contents, size, and quantity.
- MoDOT reserves the right to order a single surveyor/supervisor vest.

<u>Optional Requirement:</u>

If requested by MoDOT, the contractor shall add an additional retro reflective panel to the surveyor/supervisor vests. Such additional retro reflective panel shall include a screen-printed "MoDOT" logo or the wording of "Supervisor". Such retro reflective panel shall be:

- Approximately four inches (4") in height by six inches (6") in length.
- Centered on the back of the surveyor/supervisor vests.
- Securely sewn along each edge.

<u>Delivery Requirements:</u>

The contractor shall deliver/ship the surveyor/supervisor vests FOB Missouri Department of Transportation to the following locations:

- St. Joseph, Missouri 64502
- Macon, Missouri 63552
- Hannibal, Missouri 63401
- Lee's Summit, Missouri 64064-8002
- Jefferson City, Missouri 65102

- Chesterfield, Missouri 63017-5712
- Joplin, Missouri 64802
- Springfield, Missouri 65801
- Willow Springs, Missouri 65793
- Sikeston, Missouri 63801

Liquidated Damage Requirements:

The contractor shall agree and understand that the delivery of the surveyor/supervisor vests in accordance with the requirements stated herein is considered critical to the efficient operations of MoDOT. However, since the amount of actual damages would be difficult to establish in the event the contractor fails to comply with the delivery requirements, the contractor shall agree and understand that the amount identified below as liquidated damages shall be reasonable and fair under the circumstances.

In the event the contractor fails to deliver the surveyor/supervisor vests in accordance with the delivery schedule specified herein, the contractor shall be assessed liquidated damages in the amount of $100.00 per day for each such delinquent day until the delivery of the surveyor/supervisor vests.

In the event the quality of the construction of the surveyor/supervisor vests fails to comply with the requirements specified herein, MoDOT shall have the right to reject the surveyor/supervisor vests. However, if delivery of the surveyor/supervisor vests is critical, as determined by MoDOT, and MoDOT elects to accept the surveyor/supervisor vests, the contractor shall be assessed liquidated damages in an amount not to exceed 10% of the total amount invoiced. MoDOT shall have the final decision concerning (1) the acceptability of the construction, (2) the rejection of the surveyor/supervisor vests versus the assessment of liquidated damages, and (3) the amount of the liquidated damages.

The contractor shall further agree and understand that such liquidated damages shall either be deducted from the total amount due the contractor or paid by the contractor as a direct payment to MoDOT, at the sole discretion of MoDOT. The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.

The contractor shall agree and understand that all assessments of liquidated damages shall be within the discretion of MoDOT and shall be in addition to, not in lieu of, the rights of MoDOT to pursue other appropriate remedies.

Invoicing and Payment Requirements:

The contractor shall submit an itemized invoice to the applicable requesting address for the completion of deliverables, as specified herein.

The contractor shall be paid in accordance with the firm, fixed prices stated on the pricing page of this document after completion of deliverables specified herein and acceptance by MoDOT.

Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

Other Contractual Requirements:

Contract Period - The contract period shall be as noted on the bid signature page with up to two (2) one-year renewal option periods. If the option for renewal is exercised by MoDOT, the contractor shall agree to all terms and conditions of the IFB and all subsequent amendments. Renewal options are at the sole discretion of MoDOT.

Renewal Periods - If the option for renewal is exercised by MoDOT, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated herein.

If renewal prices are not provided, the prices during renewal periods shall be the same as during the original contract period.

MoDOT does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.

In the event MoDOT exercises its option(s) to renew the contract, the requirements for future years shall be basically similar.

BID SUBMISSION INFORMATION

Evaluation Process – Bids will be reviewed to determine if the bid complies with the mandatory requirements and to determine the lowest responsible and reliable bidder.

Low Bid Determination:

Objective Evaluation of Cost – The objective evaluation of cost shall be conducted as follows:

- The cost evaluation shall be based on a total cost determined using the estimated quantities and the firm, fixed prices stated on the pricing page.
- Bidders shall agree and understand that the quantities used in the evaluation of cost are provided solely to document how cost will be evaluated. MoDOT makes no guarantee regarding the accuracy of the quantities stated nor does MoDOT intend to imply that the figures used for the cost evaluation in any way reflects actual nor anticipated usage.
- Samples – ***The bidder must provide two (2) samples of the proposed surveyor/supervisor vests with the bid.*** Such surveyor/supervisor vests must meet all of the requirements specified herein. The bidder's bid may be rejected in the event the bidder fails to provide requested samples of the proposed surveyor/supervisor vests. Such samples shall be provided at no additional cost. Such samples shall not be returned to the bidder.

Responsible and Reliability Determination:

The bidder should submit any of, but not limited to, the information requested herein in order to demonstrate the responsibility and reliability of the bidder. Failure of the bidder to submit sufficient information to document that the bidder is responsive and responsible may cause an adverse impact on the evaluation of the bid.

Responsibility and Reliability in Experiences:

The bidder should provide, on Exhibit A or in another similar format, the information listed below related to previous and current services/contracts performed by the bidder's organization and any proposed subcontractors which are similar to the requirements of this document. If the contact person listed on Exhibit A is not available or is otherwise unable to be reached during the evaluation, the listed experience may not be considered.

- Name, address, and telephone number of client/contracting agency and a representative of that client/agency who may be contacted for verification of all information submitted;
- Dates of the service/contract; and
- A brief, written description of the specific prior services performed and requirements thereof.

If references for current and/or previous contracts are not identified in the bid, MoDOT may request that the bidder identify one or more references. MoDOT receive the reference(s) within twenty-four hours of the request. Failure of the bidder to identify one or more references may result in the bid being rejected.

Final Determination:

Any bid which does not comply with the mandatory requirements of the IFB will not be considered for an award. In addition, MoDOT reserves the right to reject any bid for reasons which may include but not necessarily be limited to: (1) receipt of any information, from any source, regarding unsatisfactory performance of similar services by the bidder within the past three (3) years, and/or (2) inability of the bidder to document responsible and reliable past performances similar to the services required.

Contract Award:

The contract shall be awarded to the lowest responsive and responsible bidder determined as specified herein. The contract shall be awarded on an "all or none" basis.

PRICING PAGE

Surveyor/Supervisor Vests - The bidder shall provide a firm, fixed price in the table below for the original contract period and a maximum price for each potential renewal period for providing the deliverables/services in accordance with the provisions and requirements of this IFB. All costs associated with providing the required deliverables/services shall be included in the stated prices.

Surveyor/Supervisor Vests				
Item #	**Description**	**Original Contract Period** *Firm, Fixed Price*	**1st Renewal Period** *Maximum Price*	**2nd Renewal Period** *Maximum Price*
001	Surveyor/supervisor vests, Small	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
002	Surveyor/supervisor vests, Medium	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
003	Surveyor/supervisor vests, Large	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
004	Surveyor/supervisor vests, X-Large	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
005	Surveyor/supervisor vests, 2X-Large	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
006	Surveyor/supervisor vests, 3X-Large	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
007	Surveyor/supervisor vests, 4X-Large	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*
008	Surveyor/supervisor vests, 5X-Large	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*	$_____ *per surveyor and supervisor vest*

Optional Retro Reflective Panel: The bidder must state the cost to add the optional "MoDOT" logo or "Supervisor" to the panel:

$_____
per surveyor and supervisor vest

Quantity per Case: The bidder should state the quantity per case: _____

EXHIBIT A

PRIOR EXPERIENCE OF BIDDER

The bidder should copy and complete this form for each reference being submitted as demonstration of the bidder and subcontractor's prior experience. In addition, the bidder is advised that if the contact person listed for the reference is unable to be reached during the evaluation, the listed experience may not be considered.

Bidder/Subcontractor Name:	
Reference Information (Prior Services Performed For:)	
Name of Reference Company:	
Address of Reference Company:	
Reference Contact Person Name:	
Contact Person Phone #	
Contact Person e-mail address:	
Dates of Prior Services:	
Dollar Value of Prior Services	
Description of Prior Services Performed	

As the contact person for the reference provided above, my signature below verifies that the information presented on this form is accurate. I am available for contact by the Missouri Department of Transportation for additional discussions regarding my/my company's association with the bidder referenced above:

_____ *Signature of Reference Contact Person*

_____ *Date of Signature*

PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

The bidders attention is directed to Section 34.076 RSMo 2000 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

All vendors submitting a bid/quotation must furnish <u>ALL</u> 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:

_____

_____

_____

_____

_____

<u>THIS SECTION MUST BE COMPLETED AND SIGNED:</u>

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.

r item number)	n 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): _____

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.

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. 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 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 Contractor shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement.

b. In addition to the liability imposed upon the Contractor on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Contractor's performance under this Agreement, the Contractor assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees.

c. The Contractor also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Contractor for any purpose under this Agreement, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.