



Missouri Department of Transportation ~ District #5

Bid Request No. D5-10-41B
Bid Opening Date: November 30, 2009, 10:00 AM CST

REQUEST FOR BID

WINTER ASPHALT PATCHING MATERIAL

November 13, 2009

TO SUPPLIERS:

The Missouri Department of Transportation (MoDOT) desires to establish pricing for **Winter Asphalt for the District Five (5) Maintenance Sheds.**

All bidders must adhere to the specifications listed herein.

The bidder may withdraw, modify or correct their bid after it has been deposited with the department, provided such request is submitted in writing and received before the time specified for opening bids. Such a request received within the time specified will be accepted, attached to the bid, and to have been considered modified accordingly. No bid may be modified, corrected, or withdrawn after the time specified for the opening of bids.

Bids must be typed or written in ink, and must show the bidders complete company name and address, and signature of the authorized representative of the company in the spaces provided on the bid sheet.

The Missouri Highways and Transportation Commission reserves the right to waive technicalities and to reject any or all bids and purchase from the best and most economical source. No bid is final until formally accepted by the Commission.

Please also note these requirements:

The Vendor 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 will be required to submit to MoDOT a copy their current Authority Certificate from the Secretary of State of the State of Missouri. Please submit certificate at the time of bid.

All Vendors must also be in Compliance with House Bill 600, Section 34.060 RSMo, which states MoDOT is precluded from contracting with a vendor or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in RSMo 144.

If you have any questions, please give me a call.

Sincerely yours,

Sheldon Redel
General Services
Missouri Department of Transportation, District 5
(573) 751-7708



BID SHEETS

The intent of this bid is designed to establish price agreements with multiple suppliers where product will be purchased based upon availability, cost and previous material quality.

BID OPENING DATE

MoDOT will host a bid opening on November 30, 2009, at the District Office General Services Division, Jefferson City, Missouri. All sealed bid submittals must be received and in hand no later than 10:00 A.M., Central Standard Time where they will be publicly opened and read. The time will be determined using a MoDOT predetermined clock. Bids will be accepted on time if time stamped using one of the following methods: 1) electronically time stamped, 2) handwritten initials and timestamp of a MoDOT representative, and 3) verification that any Fed-X, UPS or USPS certified mail, time stamped mail that clearly indicates that the sealed bid was received at the listed address prior to the closing bid time. No award will be made at this time until final review of all documents is complete.

Return sealed bids to: **MoDOT D5, C/O G.S. Bid D5-09-041B 1511 Mo. Blvd (P.O. Box 718), Jefferson City, MO 65102.**

BID PERIOD AND CONDITIONS

The contract period will be effective starting December 1, 2009 and ending April 15, 2010. Pricing updates will be received by the Missouri Department of Transportation on the following date and time:

Update Bid Date and Time	Updated Price Effective Date	Updated Price Ending Date
1:00 P.M. CST, January 27, 2010	February 1, 2010	April 15, 2010

***** It will be the suppliers responsibility to provide pricing changes by the designated deadlines. If pricing changes are not submitted, then the last submitted price will be the current price in effect. *****

ORDERING PROCEDURE

MoDOT facilities should give all suppliers 48 hours notice prior to pickup.

SPECIFICATIONS

Bituminous Stockpile Patching Material – Cold Mix, bulk material meeting Specifications MGS-93-07A. Any General Provisions and Supplemental Specifications can be found on The Missouri Department of Transportations website at www.modot.org.

PRICING

See attached 'Pricing Page'



METHOD OF AWARD

Award will be a 'Multiple Award' bid.

This request is not a guarantee of material that will be purchased. This request shall serve as a method to establish price agreements for materials that our maintenance areas may need. Therefore, low price may not be the only factor for establishing which material will be purchased. Material cost, availability, previous material quality, etc., may be used as determining factors for selection of material source

NOTES:

- 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.
- 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.
- All suppliers **must** be in good standing with the Secretary of State's office prior to issuance of 'Notice to Proceed.'
- All suppliers must also be in compliance with House Bill 600, Section 34.040.6 RSMo, which states MoDOT is precluded from contracting with a supplier or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in RSMo 144.



PRICING PAGE

For plant pick up price, please only bid in the county where the plant is located.

	Plant Pick Up	Delivered
	Bituminous Stockpile Patching Material – Cold Mix	Bituminous Stockpile Patching Material – Cold Mix
	Unit Price Per Ton	Unit Price Per Ton (23 Ton Min. Loads)
BENTON		
BOONE		
CAMDEN		
CALLAWAY		
COLE		
COOPER		
CRAWFORD		
FRANKLIN		
GASCONADE		
LACLEDE		
MARIES		
MILLER		
MONITEAU		
MONTGOMERY		
MORGAN		
OSAGE		
PETTIS		
PHELPS		
PULASKI		
SALINE		

NOTES: _____



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ENDORSEMENT PAGE

By signing below, I hereby agree that that the bid prices submitted meet or exceed the listed specifications with all exceptions noted and will deliver the product in the time specified.

Signature/Company _____ Date _____

SEALED BIDS TO BE MAILED TO:
Missouri Department of Transportation
1511 Missouri Blvd.
Jefferson City, Missouri 65102

FIRM _____

STREET _____

STATE _____ ZIP _____

Bid Clearly marked
Request No. D5-10-041B
Bid opening 10:00 AM CST
November 30, 2009

TELEPHONE _____

PRINT NAME _____

SIGNATURE _____

EMAIL _____



SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual Bidder, (2) each partner or joint ventures (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the Bidder or Bidders; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a

- () sole individual () partnership () joint venture
() corporation, incorporated under laws of state of _____

Dated _____, _____.

Name of individual, all partners, or joint ventures:

Address of each:

doing business under the name of:

Address of principal place of business in Missouri

(If using a fictitious name, show this name above in addition to legal names)

(If a corporation, show its name above)

ATTEST: (SEAL)

Secretary

Title

(NOTE: If the Bidder is doing business under a FICTITIOUS NAME, the Proposal shall be executed in the legal name of the individual, partners, joint venturers, or corporation, with the legal address shown, and REGISTRATION OF FICTITIOUS NAME filed with the Secretary of State, as required by Sections 417.200 to 417.230, RS Mo. If the Bidder is a CORPORATION NOT ORGANIZED UNDER THE LAWS OF MISSOURI, it shall procure a CERTIFICATE OF AUTHORITY TO DO BUSINESS IN MISSOURI, as required by Section 351.570 and following, RS Mo. A CERTIFIED COPY of such Registration of Fictitious Name or Certificate of Authority to do Business in Missouri shall be filed with the Missouri Highway and Transportation Commission, as required by the Standard specifications, Sec 102.6.6 and 102.6.7.



MISSOURI SERVICE-DISABLED VETERAN BUSINESS PREFERENCE

By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.

Definitions:

Service-Disabled Veteran is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.

Service-Disabled Veteran Business is defined as a business concern:

- a. Not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and
- b. The management and daily business operations of which are controlled by one or more service-disabled veterans.

If an offeror meets the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and is either doing business as a Missouri firm, corporation, or individual; or maintains a Missouri office or place of business, the offeror **must** provide the following with the proposal in order to receive the Missouri service-disabled veteran business preference over a non-Missouri service-disabled veteran business when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing proposals, in their entirety, are comparable:

- a. A copy of a letter from the Department of Veterans Affairs (VA), or a copy of the offeror's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) from the branch of service the offeror was in, stating that the offeror has a service-connected disability rating ranging from 0 to 100% disability; and
- b. A completed copy of this exhibit

(NOTE: For ease of evaluation, please attach copy of the above-referenced letter from the VA or a copy of the offeror's discharge paper to this Exhibit.)

By signing below, I certify that I meet the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and that I am either doing business as a Missouri firm, corporation, or individual; or maintain Missouri offices or places of business at the location(s) listed below.

Veteran Information

Business Information

Service-Disabled Veteran's Name, (Please Print)

Service-Disabled Veteran Business Name

Service-Disabled Veteran's Signature

Missouri Address of Service-Disabled Veteran Business



Missouri Department of Transportation ~ District #5

PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

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

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

All vendors submitting a bid/quotation must furnish ALL information requested below.

FOR CORPORATIONS:

State in which incorporated: _____

FOR OTHERS:

State of domicile: _____

FOR ALL VENDORS:

List address of Missouri offices or places of business:

THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME: _____

ADDRESS: _____

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

BY (signature required): _____

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

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



MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

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

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

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

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

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

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

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

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

(attach an additional sheet if necessary)

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

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

CERTIFICATION

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

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

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STANDARD SOLICITATION PROVISIONS

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

GENERAL TERMS AND CONDITIONS

General Performance

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

Deliveries

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

Nondiscrimination

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

Contract/Purchase Order

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

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

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equipped for such work.

- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

Invoicing and Payment

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Project Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request if applicable.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

Applicable Laws and Regulations

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
 - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

Executive Order

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

Preferences

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
 - 1) If attached, the document entitled "**PREFERENCE IN PURCHASING PRODUCTS**" should be completed and returned with the solicitation documents.
 - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when

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the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.

1) If attached, the document entitled "MISSOURI SERVICE-DISABLED VETERAN PREFERENCE" should be completed and returned with the solicitation documents.

d. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

Remedies and Rights

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Cancellation of Contract

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

Bankruptcy or Insolvency

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

Inventions, Patents, and Copyrights

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

Inspection and Acceptance

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

Warranty

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

Status of Independent Contractor

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

Indemnification

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



BITUMINOUS STOCKPILE PATCHING MATERIAL MGS-93-07A

1.0 DESCRIPTION. This specification covers furnishing a plant Mixed bituminous mixture for patching asphalt or concrete pavement, suitable for stockpiling and cold-applied use during inclement weather conditions.

1.1 For purposes of this specification, the manufacturer is considered to be the entity overseeing combination of the raw materials and responsible for the quality of the final product. All pre-approvals will be handled through the manufacturer.

1.2 The attention of the bidder is specifically directed to the mixture performance characteristics of this provision. Material not meeting these characteristics and any other material not meeting the specifications and deemed unusable by the engineer shall be removed and disposed of by the bidder immediately upon notification, at no cost to the purchaser. This requirement is to be expressly understood as a part of the bid.

2.0 MATERIALS. All mixtures furnished under this specification shall be pre-approved and shall meet the manufacturer's specifications, as well as any additional requirements listed herein.

2.1 AGGREGATE. The aggregate shall be from sources recommended by the asphalt supplier and shall meet the manufacturer's recommended tolerances for quality and gradation when tested on extracted material prior to use. One hundred percent of the material shall pass a 1/2" sieve.

2.2 ASPHALT. The asphalt portion is considered to include the bituminous material and any additives used in the formation of the mixture, other than aggregates. The percent asphalt shall not vary by more than 0.5% from the manufacturer's recommended asphalt content. Other asphalt properties shall meet the manufacturer's tolerances when tested.

2.3 MIXTURE. Aggregates shall be artificially heated and at least surface dried prior to uniformly mixing with the asphalt.

3.0 MIXTURE PERFORMANCE CHARACTERISTICS.

3.1 The mixture shall remain pliable and workable in the field at a mixture temperature of 20 F or less. It shall pass the workability test in the laboratory.

3.2 No stripping of the asphalt from the aggregate shall occur in the field. It shall pass the water resistance test in the laboratory.

3.3 The material shall be suitable for "pothole" or other small repair type application, however is not required to be suitable for mechanical spreading operations.

3.4 The only requirement for application shall be removal of loose and non-bonded material from the repair area and compaction by truck or other wheel-applied loads.

3.5 The mixture shall maintain adhesive qualities in areas which are wet at the time of application and shall not bleed or flush when overlaid with hot mix. No tack or prime material shall be required to hold the material in any application for repair to asphalt or concrete pavement.

3.6 After delivery, the mixture shall be capable of maintaining all performance characteristics after remaining in a stockpile of 25 tons or more, for a minimum of 6 months. Except for the workability characteristic, the in-place mixtures shall be capable of maintaining all performance characteristics for a period of 3 months under all forms of traffic and weather.

4.0 TEST PROCEDURES.

4.1 WATER RESISTANCE TEST. Fifty grams of the mixture, whether freshly prepared or taken from the stockpile, shall be heated at 250 F in a laboratory oven for one hour, cooled to 200 F at ambient temperature, and then placed in 400 ml of boiling distilled water in a 600 ml glass beaker and stirred with a glass rod at the rate of one revolution per second for 3 minutes. The water shall be decanted and the mix spread on an absorbent paper for visual observation of the coating. The aggregate shall be at least 90 percent coated with a bituminous film.

4.2 WORKABILITY TEST. Approximately five pounds of the mixture shall be cooled to 20 F in the laboratory. After cooling, the mixture shall be capable of being broken up readily with a spatula having a blade length of approximately eight inches.

5.0 APPROVAL AND PREQUALIFICATION. The following information shall be furnished for each aggregate, asphalt, and mixture combination. At the engineer's discretion, part or all of the combinations may be laboratory and/or field evaluated.

5.1 Prior to use or acceptance of any material, the manufacturer shall submit samples for laboratory evaluation to the State Materials Engineer, Jefferson City, MO, along with specific test results for any specified laboratory test and a manufacturer's certification. Following satisfactory evaluation of the submittal and the material, a minimum of one ton of material shall be furnished free of charge to a local maintenance building designated by the State Maintenance Engineer for field evaluation. The field evaluation period will not be less than one winter period. Material submitted for evaluation after October 1 will not be considered for field evaluation for that winter. Mixtures containing the same asphalt and similar aggregates may be considered for approval without field testing, at the engineer's discretion.

5.2 MANUFACTURER'S CERTIFICATION. The manufacturer shall certify to the following information: 1) The brand name or other identification of the material being submitted for approval, 2) The formation and source of the aggregates, 3) The source and supplier of the asphalt. 4) The gradation and asphalt content of the mixture, 5) Allowable ranges for the asphalt content and each designated sieve size, specifically including the # 200 sieve, and 6) A list of any specific limitations as to the use of the material, specifically including maximum/minimum roadway temperatures and maximum storage time, outside in an uncovered condition. Furthermore, the manufacturer shall certify that the material is intended for use as described in this provision and that no changes in composition, materials, or properties will be made without proper notification. In the event that the manufacturer is

not the asphalt supplier, the certification shall include a letter from the asphalt supplier stating that they concur with use of their material for these purposes.

5.3 MIXTURE CHANGES. The manufacturer shall notify the State Materials Engineer of any changes to the mixture. Typically changes in materials (other than some aggregate sources) will require field evaluation. Small changes in additives or the composition for improvements may not, however the engineer will make the final judgement as to whether a new field evaluation is required.

6.0 BASIS OF ACCEPTANCE. Each lot or shipment furnished shall be accompanied by a manufacturer's certification that the material furnished is of the same ingredients and composition as that submitted for evaluation on (date submitted) and that no changes have been made. All material will be accepted on the basis of brand name, required certification, and other such tests as might be performed by the engineer.

7.0 INSPECTION. Inspection will be made at the point of delivery.