BID FORM	MISSOURI DEPARTMENT OF TRANSPORTATION GENERAL SERVICES P.O. BOX 490 SIKESTON, MO 63801	REQUEST NO.	B10-08156-RG
		DATE	May 20, 2008
		PAGE NO.	NO. OF PAGES 17

SEALED BIDS, SUBJECT TO THE CONDITIONS ON THE REVERSE SIDE HEREOF WILL BE RECEIVED AT THIS OFFICE UNTIL	**QUOTATIONS TO BE BASED ON "PLANT PICK UP" BY MISSOURI DEPARTMENT OF TRANSPORTATION**
1:00 P.M. Local Time, Thursday, June 12, 2008	**Pricing Shall include All Materials, Personnel, Equipment, and Traffic Control Signing.**
AND THEN PUBLICLY OPENED AND READ FOR FURNISHING THE FOLLOWING SUPPLIES OR SERVICES.	

DEFINITE DELIVERY DATE MUST BE SHOWN. SIGN AND RETURN BEFORE TIME SET FOR OPENING. **ALL BIDS MUST BE EXTENDED AND TOTALED.**

BUYER:	Ronnie Cluck	**BUYER TELEPHONE:**	573-472-5318

ITEM NO.	SUPPLIES OR SERVICES	MFG. NO. OR BRAND	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	**To provide Mowing Service for MoDOT in Pemiscot County at the location explained in the attached spec. sheet.**					

Submit net bid as cash discount stipulations will not be considered.

NOTE: For bid to be considered, the attachment entitled **"PREFERENCE IN PURCHASING PRODUCTS"** must be on file in this office and must be in the current calendar year.

NOTE: The attachment entitled **"MISSOURI DOMESTIC PRODUCT PROCUREMENT ACT"** certifications of compliance must be completed and submitted with your bid.

(SEE REVERSE SIDE FOR CONDITIONS AND INSTRUCTIONS)

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

Date:		**Firm Name:**	
Telephone No.:		**Address:**	
Fax No.:			
Form E-103 (Rev. 2-96)		**By (Signature):**	
		Type/Print Name	
		Title:	

CCO Form:
Approved: 04/07 (BDG)
Revised:
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MOWING SERVICES AGREEMENT

THIS AGREEMENT is entered into by _____ (hereinafter, "Company") and the Missouri Highways and Transportation Commission (hereinafter, "the Commission").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations contained herein, the parties agree as follows:

(1) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the personnel, equipment, materials, all signing and traffic control, and all other things necessary for mowing the Route I-155 right-of-way in Pemiscot County from I-155 Mile Marker 0.6 to the Mississippi River Bridge near Mile Marker 10.0; a distance of approximately 9.4 miles. (See Exhibit 1)

(B) The Company shall mow the described right-of-way twice. One mowing cycle shall be accomplished in the month of June and the other in the month of August. For each mowing cycle, the Commission's representative will issue a notice to proceed, which will stipulate the date the Company is expected to begin work. The notice to proceed will be issued at least seven (7) calendar days before the stipulated date to start work for each mowing cycle. The Company shall complete all work required for each mowing cycle through the entire contract limits within two weeks of the date the Company is expected to begin work. This Agreement consists of mowing approximately 86 acres per cycle. Thus the total quantity to be mowed is 172 acres, if all areas are mowed and all mowing cycles are authorized.

(C) No direct payment will be made for mobilization. All costs for mobilization shall be considered included in the cost of the pay item in this Agreement.

(D) Mowing of the Right-of-way shall consist of mowing grassed or vegetated roadside areas as follows: A width fifteen (15) feet from the outside edge of the paved surface. Additionally, medians with less than sixty (60) feet between the paved surfaces shall be mowed in their entirety. Medians greater than sixty (60) feet between the paved surfaces shall be mowed for a distance of fifteen (15) feet from the paved surface. Additionally, sight distance triangles shall be mowed at median crossovers and at state and county road intersections. Vegetation to be mowed shall consist of planted or naturally occurring grasses, weeds, and other vegetation, both herbaceous and woody, excluding landscaped ornamental plantings.

(E) All equipment used in the execution of the contract, including but not limited to riding mowers, trucks, tractors, and supply vehicles, shall be equipped with either a white strobe light or an amber flashing light. The light shall be used when operating along or adjacent to the roadway. All mowing equipment shall have a slow-moving vehicle sign properly located on the rear of the equipment. All manufacturer recommended safety devices shall be properly installed and maintained at all times that the equipment is in use. All mowing equipment shall have protective devices on the

mower to prevent objects from being thrown into traffic. If the Commission's representative determines that any equipment is deficient in safety devices, the Company shall immediately remove the equipment from service until the deficiency is corrected.

(F) Mowing equipment used by the Company shall be maintained so as to produce a clean, sharp cut and uniform distribution of cuttings. All grass and vegetation shall be cut to a height of six (6) inches unless otherwise directed by the Commission's representative. Equipment used for mowing shall not be used on slopes steeper than 3 to 1 unless the equipment is designed for that purpose. Mowing shall include the vegetation around all Commission sign posts within the defined fifteen foot (15') mowing width.

(G) Where the limits of mowing have been previously established, or natural landscaping has been preserved, mowing shall conform to the established mowing contours unless otherwise excluded by the Commission's representative. Mowed areas shall be uniform in appearance with no streaking or scalping. Mowed areas of different widths shall be connected to produce smooth flowing transitions. Clippings shall be evenly distributed over the mowed area. No large clumps of clippings shall remain after mowing.

(H) One side of the roadway shall not be mowed to a length for which the adjacent roadside cannot be mowed the succeeding workday. At the conclusion of each working day, no more than a one (1) mile section shall be left partially mowed. All work shall be performed during daylight hours.

(I) Except during working hours, the Company shall not park vehicles or store equipment or materials closer than 30 feet from the edge of pavement carrying traffic, unless the equipment, vehicles, or materials are located in a properly protected area. The Company shall notify the Commission's representative of all temporary parking or storage locations located on the right of way.

(J) All service and supply operations shall be conducted at least 30 feet from the edge of pavement. No supply vehicle shall enter the median for any purpose except as necessary to repair or remove inoperable equipment.

(K) All personnel involved in mowing operations or service and supply operations shall wear high visibility safety vests or other high visibility clothing.

(L) Actions by the Company that result in damage to turf, trees, curbs, sidewalks, pavement, signs, structures, mail boxes, delineators, landscaping, or other appurtenances shall be repaired or replaced to the satisfaction of the Commission's representative at the Company's expense. Ruts, tire tracks, and other disturbed areas caused by the Company shall be filled with approved topsoil and re-seeded as directed by the Commission's representative at the Company's expense.

(M) Measurement of mowed and trimmed areas will be made to the nearest acre. Final measurement will not be made except for authorized changes, or where appreciable errors are found in the contract quantity. The revision or correction will be computed and added to or deducted from the contract quantity. An appreciable error is defined as an increase in excess of 125% or decrease below 75% of the original contract quantity. Payment will be made for contract quantities except for authorized changes or if appreciable errors are found in contract quantities. Payment will be considered full compensation for all labor, equipment, and material necessary to perform the described work.

(N) When operating mowing equipment within 30 feet of the edge of pavement, 48-inch warning signs with the legend "MOWERS AHEAD" shall be placed a maximum of one mile in advance of the operation, and at intervals not to exceed one mile within the operation. Signs shall be erected for both directions of traffic when working in the median. Signs shall be erected on approaching ramps and major side roads as necessary or as directed by the Commission's representative. The Company shall place all signs prior to beginning work and shall relocate the signs as work progresses. These signs shall be supplied by the Commission's representative. No direct payment will be made for installing, relocating or removing work zone signs. Signs remain property of the Commission and will be returned upon completion of each mowing cycle.

(O) Upon presumptive completion of the required work for each mowing cycle, the Company shall notify the Commission's representative and an inspection will be performed by the Commission's representative. If the Commission's representative determines all work required by the contract has been satisfactorily completed, the Commission's representative will make the acceptance for maintenance and notify the Company in writing of the date of acceptance for maintenance.

(P) Work determined to be unsatisfactory by the Commission's representative and not accepted shall be corrected to acceptable standards at the Company's sole cost. Upon completion of the corrections, the Company shall notify the Commission's representative for a re-inspection. All items that are unsatisfactory shall be corrected before payment is made to the Company for all work.

(Q) Nothing in this Agreement shall be deemed to excuse the Company of liability or responsibility for any personal injury, death, or property damages which may arise from acts or the failure to act prior to the final inspection of the work required during the mowing cycle.

(R) Upon final inspection and acceptance for maintenance of the work performed during a mowing cycle, the Company shall request payment by submitting an invoice to the Commission's representative. Invoices shall be submitted in triplicate. The Commission's representative will make an estimate in writing of the work completed and final inspected during the mowing cycle and the value thereof at the contract unit prices. Payment will be made based upon the Commission's representative's estimate.

(2) COMPENSATION: The Company will mow the selected areas of the Commission Right-of-way at the rate of $_____ per acre. The amount to be paid to the Company by the Commission will be made through purchase orders (E-66) and State Treasurer's draft upon receipt of statement from the Commission Representative indicating payment was due for the services provided.

(3) NONDISCRIMINATION: The Company shall comply with all state and federal statutes applicable to the Company relating to nondiscrimination.

(4) DECISIONS UNDER THE AGREEMENT: The Commission's representative will decide all questions concerning the quality, quantity, and acceptability of services performed by the Company, the rate of progress of the services; any questions which may arise as to the intent of the scope of services; all questions as to the acceptable fulfillment of the Agreement on the part of the Company; the proper compensation for a breach of the Agreement; and all other claims in connection with this Agreement. The Commission representative's decisions shall be conclusive, binding and incontestable.

(5) INDEMNIFICATION: The Company 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 Company's performance of its obligations under this Agreement

(6) VENUE: It is agreed by the Company that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(7) INSURANCE: The Company shall provide general liability insurance covering all work to be performed by the Company. The specific amounts of insurance coverage shall be, Public Liability (including property damage and personal injury) : Not less than $400,000 for any one person in a single accident or occurrence, Not less than $1,000,000 for all claims arising out of a single occurrence.

(8) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the Company and the Commission, and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Company.

(9) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Company and the Commission.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the Company with written notice of cancellation. Should the Commission 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 Company.

(11) COMMISSION REPRESENTATIVE: The Commission's District Maintenance Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

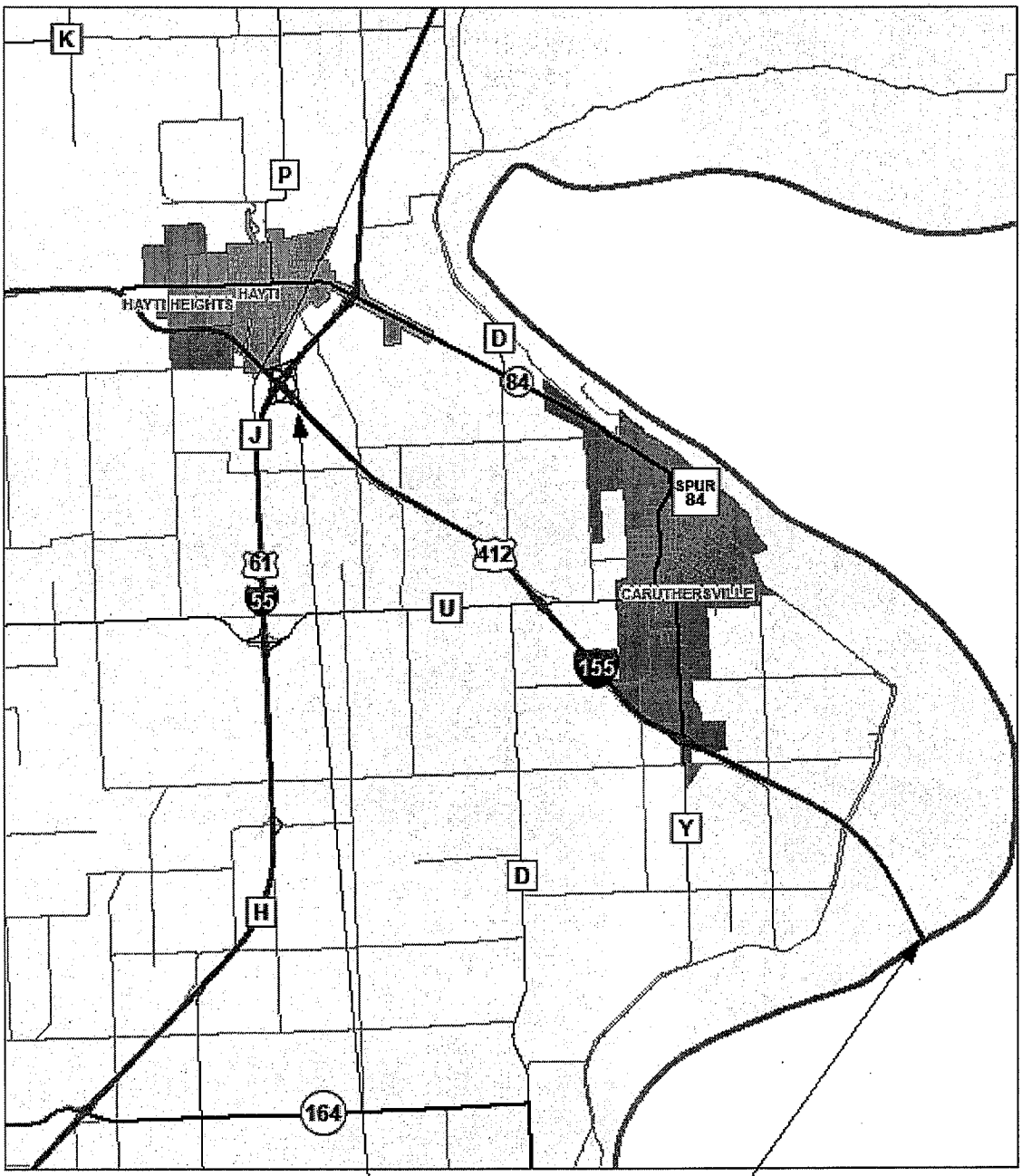
(12) GOVERNING LAW: This Agreement shall be construed according to the laws of the state of Missouri. The Company shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(13) DURATION: Unless otherwise terminated, this Agreement shall be in effect for three (3) months from the execution of this Agreement.

Special Sign Detail

W021-3-48 48"x48"
Orange Reflective Background
Black Legend 8"D Series

Exhibit 1



MoDOT

Project Location

9.4 miles from I-155 MM 0.6 to the Mississippi River bridge

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 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.

ANTI-COLLUSION STATEMENT

STATE OF _____)
) **SS.**
COUNTY OF _____)

_____

_____being first

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

of _____

_____
Name of Bidder

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

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

By _____

By _____

By _____

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

_____
Notary Public

My Commission Expires _____

Mowing Service

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we_____
_____,
as Principal and_____, as Surety are held and firmly bound
unto the **STATE OF MISSOURI** (acting by and through the **Missouri Highways and Transportation Commission)** in the penal sum of:
_____ **Dollars**
($_____) to be paid to the **State of Missouri or to the Missouri Highways and Transportation Commission,** to be credited to the State Road Fund, the Principal and Surety binding themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this _____

THE CONDITION OF THIS OBLIGATION is such that:

WHEREAS, the Principal is submitting herewith a bid to the Missouri Highways and Transportation Commission for furnishing **(Mowing Service)** as set out in the bid to which this bond is attached.

NOW THEREFORE, if the Missouri Highways and Transportation Commission shall accept the bid of the Principal and if said Principal shall properly execute and deliver to the Missouri Highways and Transportation Commission the contract and contract bond in compliance with the requirements of the proposal, the specifications and the provisions of law, to the satisfaction of the Highways and Transportation Commission, then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

In the event the said Principal shall, in the judgment of the Missouri Highways and Transportation Commission, fail to comply with any requirement as set forth in the preceding paragraph, then the State of Missouri acting through the Missouri Highways and Transportation Commission shall immediately and forthwith be entitled to recover the full penal sum above set out, together with court costs, attorney's fees and any other expense of recovery.

(SEAL) _____ Principal

By_____
Signature

(SEAL) _____
Surety

By_____
Attorney-in-Fact

NOTE: This bond must be executed by the PRINCIPAL and by a CORPORATE SURETY authorized to conduct surety business in the State of Missouri.

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.

HB600 Compliance

The bidder must be in compliance with the laws regarding conducting business with the State of Missouri. The bidder should ensure they are in good standing with the Missouri Department of Revenue. Prior to award MoDot staff will check with the Missouri Department of Revenue to ensure compliance with the provisions of RsMO 34.040.6 If Necessary a " Certificate of No Tax Due" may be requested of the successful Bidder. If such a certificate is requested, the Bidder's inability to provide this document will result in his/her bid being rejected.

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.

Proposal/Bid Guaranty/Contract Bond

a. Each proposal shall be accompanied by a Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue – Credit State Road Fund for an amount equal to Five Percent (5%) of the amount of the BID submitted. This is to act as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment bond (Contract Bond) or a cashier's check, a bank money order or a certified check made payable to "Director of Revenue--Credit State Road Fund" in an amount equal to One Hundred (100%) of the contract price.

b. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the State of Missouri as surety. The agent executing the same on behalf of the surety company must attach a current Power of Attorney setting forth his authority to execute the bond involved.

c. Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder(s) will be retained until the contract is executed and a satisfactory Performance and Payment (Contract Bond) is furnished. Bid Bonds will not be returned except on specific request of the bidder.

Information and Reports

a. The Contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

Permits, Licenses and Safety Issues

a. The contract price shall include any necessary permits and licenses required by law incidental to the work. Local ordinances requiring building permits are not applicable to state agencies.

b. The Contractor will comply with local laws involving safety in the prosecution of the work.

Award

a. Award of this bid/quote/proposal will be made on an "All Or Nothing" basis using the "lowest and best" principle of award.

Failure to Execute Contract

a. Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check, bank money order or certified check within **15 days** after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been executed by all parties thereto.

Notice to Proceed

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

Delivery – Additional Requirements

a. The Contractor shall furnish the Missouri Department of Transportation with a planned delivery schedule at least 16 hours before starting delivery.

1) Notification should be during the normal workday preceding the day on which the Contractor desires to initiate delivery.

2) It will be necessary for a representative of the Missouri Department of Transportation to be present when the material is delivered.

3) No material will be accepted that has been dumped in the absence of the department's aggregate materials checker.

b. Unless otherwise specified in the proposal, deliveries will be a minimum of **500 Tons Per Day.** No deliveries will be made during the period from **30 minutes before sundown to sunrise.** No deliveries will be made on **Saturdays, Sundays and holidays** unless specifically authorized by the engineer.

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

January I	New Year's Day
Third Monday in January	Martin Luther King, Jr.'s Birthday

February 12	Lincoln's Birthday
Third Monday in February	Washington's Birthday
May 8	Truman's Birthday
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veteran's Day
Fourth Thursday in November	Thanksgiving Day
December 25	Christmas Day

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

e. Contractor will not be required to provide dozers, loaders, motor graders, or other equipment for shaping of stockpiles, constructing ramps or runways, or leveling of the top of a completed lift, unless otherwise noted herein.

Incentive for Accelerated Delivery

a. If, prior to the delivery deadline, the Contractor's average daily delivery rate **exceed 1,250 tons** for the total award, the Contractor will be paid an incentive for accelerated delivery in the amount of **2%** of the weighted average bid price per ton for the total tons delivered exceeding **1,250 tons per day.**

EXAMPLE:

Total Tons of Award	20,000 tons
Total Value of Award	$107,200
Number of Days for Delivery from 2 sources at same time	5 days
Total number of delivery days	2 x 5 = 10 days
Average bid price per ton = $107,200	20,000 tons = $5.36 per ton
Average daily delivery rate = 20,000 tons	10 days = 2,000 tons per day

Daily tonnage Supplier due Incentive Pay = 2,000 tons - 1,250 tons = 750 tons per day

Total tons delivered exceeding daily min. rate = 750 tons x 10 = 7,500 tons

INCENTIVE PAY = 0.02 x $5.36/Ton x 7,500 Tons = $ 804.00

b. Delivery from two sources on the same day to one or more maintenance sites will be counted as two days of delivery. Delivery from three sources on the same day to one or more maintenance sites will be counted as three days of delivery, etc.

c. The average daily delivery rate is the total tons per award to a supplier divided by the number of days used to deliver the material. The weighted average bid price per ton is the total value of the award divided by the total tons per award.

d. No incentive for accelerated delivery will be paid to a Contractor who is being charged liquidated damages on any item in the same award.

Legal Weights

a. Provisions of the Missouri Statues relative to legal weights in regard to axle and gross weights, gross weights in relation to axle spacing and Supplementary Bridge limits all contained in **Sections 304.180** and **304.190 RSMo** are understood and will be abided by. The Department will not accept loads, which exceed legal weights.

b. It is understood and agreed that the Missouri Department of Transportation may prohibit the use of large trucks hauling heavy loads of material over low type bituminous roads and during adverse weather conditions.

Increase or Decrease Quantities

a. The Highways and Transportation Commission reserves the right to increase or decrease the quantity of material twenty-five percent (25%), subject to the maximum quantity specified by the bidder in his proposal.

b. The quantity finally ordered by the Commission will be furnished by the bidder at the same unit price per ton.

Basis of Measurement for Payment

a. For truck delivery, the quantities for basis of payment are to be determined as provided in **Section 310.4** of the **Missouri Standard Specifications for Highway Construction, Edition of 2004,** and any revisions thereto.

1) Measurement will be to the nearest **100 lbs.** for each load when the measurement is by weight.

2) Moisture tests will be rounded off to the nearest **0.5 percent** for purposes of computing the deduction for excess moisture.

Temporary Suspension of Work

a. The **District Engineer** shall have authority to suspend work wholly or in part for such period or periods as may be deemed necessary when weather or other conditions are such that in the opinion of the engineer, the work may be done at a later time with advantage to the Department or for failure on the part of the Contractor to comply with any of the provisions of the Contract.

b. If the Department suspends the work for its own advantages and not because of the Contractor's failure to comply with the Contract, the Contractor will be allowed an equal number of calendar days after the completion date for the completion of the work. The Department may at its discretion give the Contractor an extension of time for completing the work where the Contractor incurs delays for causes beyond his control.

c. Normal rainfall is not considered a cause qualifying for an extension of time. Claim for extension of time for all causes must be submitted by the Contractor in writing within **30 Days** after the claimed cause for the delay has ceased to exist.

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.

Environmental Issues

a. Attention of the bidder is invited to the **Land Reclamation Act, Chapter 444, Laws of 1971, (House Bill 519)** and the necessity for compliance if applicable.

b. The Contractor shall take necessary precautions and shall schedule and conduct his operations so as to avoid or minimize siltation of streams while removing gravel there from.

c. The material to be supplied under the contract will comply with the quality and gradation requirements of the **Missouri Standard Specifications for Highway Construction, Edition of 2004,** and any revisions thereto, unless modified by these specifications.