

Missouri
Department
of Transportation



Roger Schwartz, District Engineer

Central District
1511 Missouri Boulevard
P. O. Box 718
Jefferson City, MO 65102
(573) 751-3322
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Toll free 1-888 ASK MoDOT
www.modot.org

February 29, 2007

GENERAL SERVICES: BID REQUEST D5-08-031B

The Missouri Department of Transportation (MoDOT) is accepting sealed bids for Class 3, Hi-Visibility safety winter coats.

Sealed bids for the purchase of Hi-Visibility coats will be received by the Missouri Department of Transportation, Jefferson City, Missouri, until **1:00 P.M., CST, March 12, 2008**, and at that time will be publicly opened and read in the MoDOT District 5 office, 1511 Missouri Blvd in Jefferson City, Missouri 65102.

Bids are to be returned in a sealed envelope plainly marked **BID # D5-08-031B, Hi-Visibility Coats.**

The date specified for the receiving of bids is a firm deadline and all bids must be received at the designated office by that time. The Department does not recognize the U.S. Mail, United Parcel Service, Air Express, or any other organization, as its agent for purposes of accepting proposals. Any proposal arriving at the designated office after the specified deadline will not be accepted.

The attached form identified as "**PREFERENCE IN PURCHASING PRODUCTS**" must be on file in this office and must be dated in the current calendar year. Bidders must also complete and return with their bid the form identified as "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT.**"

The right is reserved by the Missouri Highways and Transportation Commission to reject any or all bids and no award is final until formally approved by the Commission.

Please also note these requirement before any contract can be issued with vendor.

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. Their number is (573) 751-4936.

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. Their number is (573) 751-9268.

If it cannot be determined that a vendor is compliant with the above, it shall be the vendors responsibility to provide the documentation within a reasonable amount of time in relation to the needs within the bid.

By _____
Corey Duemmel, District 5 MoDOT
Senior General Services Specialist/Buyer
(573) 526-6956



BID PROPOSAL

The Missouri Department of Transportation desires to establish pricing for Hi-Visibility safety winter coats.

Delivery:

Coats shall be delivered FOB Missouri Department of Transportation (reference address/location listing at the end of this document)

All initial orders placed by April 15, 2008 must be delivered by August 1, 2008. All other orders are subject to specified delivery time listed by the bidder.

Scope of Bid

The Missouri Department of Transportation desires to establish pricing for a Hi-Visibility winter, bomber style coat(s) meeting the attached specifications.

The coats that are being bid are part of a new program; therefore, quantities to be purchased are unknown at this time. MoDOT estimates that a possible 75 coats could be ordered per each district over the course of this bid duration, but does not guarantee any ordered quantity. Each of the 10 districts will be responsible for their own ordering.

Award

An award will be made to the lowest responsive and responsible bidder, meeting all specifications and requirements listed herein.

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

Bid Duration

Prices will be good until March 31, 2009, with a possible two (2) one-year renewal option periods. Renewal options are at the sole discretion of MoDOT.

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

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

Inspection

A final inspection of all coats will be conducted to determine the compliance of specifications.

General Requirements

- The contractor shall provide Hi-Visibility coats on an as needed, if needed basis for the Missouri Department of Transportation (hereinafter referred to as MoDOT), in accordance with the provisions and requirements stated herein.
- The contractor shall provide all deliverables/services to the sole satisfaction of MoDOT.



- MoDOT reserves the right to obtain “like or similar” products as specified herein from other manufacturers, exclusive of the contract, when use of such products is deemed in the best interest of MoDOT.
- Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to provide the deliverables/services required herein.
- MoDOT reserves the right to order a single Hi-Visibility coat.

Liquidated Damage Requirements

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

In the event the contractor fails to deliver the surveyor/supervisor vests in accordance with the delivery schedule specified herein, the contractor shall be assessed liquidated damages in the amount of 15% off the bid price.

- In the event the quality of the construction of the Hi Visibility Coat fails to comply with the requirements specified herein, MoDOT shall have the right to reject the Hi Visibility Coat . However, if delivery of the Hi Visibility Coat is critical, as determined by MoDOT, and MoDOT elects to accept the Hi Visibility Coat, the contractor shall be assessed liquidated damages in an amount not to exceed 10% of the total amount invoiced. MoDOT shall have the final decision concerning (1) the acceptability of the construction, (2) the rejection of the Hi Visibility Coat versus the assessment of liquidated damages, and (3) the amount of the liquidated damages.
- The contractor shall further agree and understand that such liquidated damages shall either be deducted from the total amount due the contractor or paid by the contractor as a direct payment to MoDOT, at the sole discretion of MoDOT. The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.
- The contractor shall agree and understand that all assessments of liquidated damages shall be within the discretion of MoDOT and shall be in addition to, not in lieu of, the rights of MoDOT to pursue other appropriate remedies.



**MINIMUM SPECIFICATIONS
MO DOT HI-VISIBILITY
WINTER CLASS 3 BOMBER COAT**

- Outer coat shell shall:
 - Be constructed of 150 Denier 100% Polyester Oxford water repellent, Hi -Visibility Lime material and/or material equal in quality performance that meets ANSI 107-2004.
 - Have 2-inch Lime/Orange or Orange prismatic tape that meets ANSI 107-2004 requirements, Level 2. (See attachment for reflective design requirements)
 - Have both plastic snaps and zipper front (Black in color) with easy 3-n-1 zip out zipper attachment.
 - Have black ribbed hem and sleeves.
 - Have two front slant pockets and snap down collar fasteners. Collar shall have 3 black snaps for hood attachment.

- Hoods shall:
 - Be constructed of 150 Denier 100% Polyester Oxford water repellent Hi -Visibility Lime material and/or material equal in quality performance that meets ANSI 107-2004.
 - Have removable face shield designed to attach with hook material on outside of face shield (1 ½ x1.5) to loop material (2x4) on sides of hood.
 - Have an inner shell constructed of black or navy blue mesh lining with drawstring.

- Inner coat shell shall:
 - Be constructed of black or navy blue mesh lining with color block protection.
 - Include two (2) interior pockets with snap closures, one (1) cell phone pocket and one (1) chest radio pocket.

- Reversible zip out vest shall:
 - Be manufactured from a reversible pattern design.
 - Outside shall be constructed of 150 Denier 100% polyester oxford water repellent Hi-Visibility Lime material and/or material equal in quality performance that meets ANSI 107-2004, with 2-inch Lime/Orange or Orange Prismatic tape meeting ANSI 107-2004 standards, Level 2. (See attachment for reflective design requirements).
 - Reversible inside vest shall be constructed of 100 % Pongee, Navy Blue or Black in color **with no reflective** design.
 - Have a ribbed black collar and zipper front with slash side pockets.
 - Be insulated with 120 GRM/M2 padded lining.

- Lime fleece zip-out from outer shell shall:
 - Be constructed of 100% Polyester Fleece, weight 350 gm/m2 zip.
 - Have 2 inch Lime /Orange or Orange Prismatic Retro-Reflective tape meeting ANSI 107-2004, Level 2. (See attachment for reflective design requirements).

- Coats should be available in the following sizes: Medium, Large, X-Large, 2X-Large, 3X-Large, 4X-Large, 5X-Large, 6X-Large, 7X-Large, 8X-Large, 9X-Large and 10X-Large. (See attached sizing chart)



- Each coat should be provided in a plastic bag with paper insert for shipping and storage; maximum of ten (10) coats per box if multiple orders.

Other Requirements

- One sample of the proposed coat is expected at time of bid for complete inspection by the Missouri Department of Transportation.
- Once the Bid has been awarded the vendor must supply MoDOT two (2) sets of the complete coats, vests and fleece liners, of the following sizes: (L, XL, XXL and XXXL), for proper outfitting of employees. These coats are to be received no later than two (2) weeks after Notice to Proceed. In cooperation with the awarded, coats may be returned at the bidders request, otherwise forfeited and will be not be considered as part of an initial order.
- All vendors must supply to the state, third party test documents for component parts on both background material as well as Prismatic tape, and submit Design Certification from ANSI 107-2004 Standard.

Payment

Payment will be made only after the MoDOT completes and accepts final inspection of every order.

Contacts

If you have any questions regarding this bid, please call Corey Duemmel, (573) 526-6956.



PRICING PAGE

Hi-Visibility Coats - The bidder shall provide a firm, fixed price in the table below for the original contract period and a maximum price for each potential renewal period for providing the deliverables/services in accordance with the provisions and requirements of this RFB. All costs associated with providing the required deliverables/services shall be included in the stated prices (FOB Destination.) **BIDDERS NEED TO SUBMIT ONE (1) SAMPLE OF COAT WITH EACH BID.**

Hi-Visibility Coats				
Item #	Description	Original Contract Period per Coat <i>Firm, Fixed Price</i>	1st Renewal Period <i>Maximum Price</i>	2nd Renewal Period <i>Maximum Price</i>
001	Hi-Visibility coat	\$_____	\$_____	\$_____



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
D5 General Services/Procurement
1511 Missouri Blvd.
Jefferson City, MO 65102

Clearly Marked: Bid Request D5-08-031B

Firm: _____

Street: _____

City: _____

State: _____ Zip: _____

Phone: _____

Fax: _____

Name: _____

Signature: _____

Email: _____



PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

The bidders attention is directed to Section 34.076 RsMO 1986 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

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

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

FOR CORPORATIONS:

State in which incorporated: _____

FOR OTHERS:

State of domicile: _____

FOR ALL VENDORS:

List address of Missouri offices or places of business:

THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME: _____

ADDRESS: _____

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

BY (signature required): _____

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

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



MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

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

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

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

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

- If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the “United States” as defined in Section 34.350, RsMO, check the box at left.
- If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the “United States” as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:

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

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

(attach an additional sheet if necessary)

- The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to 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.



DELIVERY LOCATIONS

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

Missouri Department of Transportation
District 1 Garage
3602 N. Belt Highway
St. Joseph, Missouri 64502
Risk Management Safety Officer

Missouri Department of Transportation
District 6 Garage
2309 Barrett Station Rd.
Ballwin, Missouri 63021
Risk Management Safety Officer

Missouri Department of Transportation
District 2 Garage
902 N. Missouri St.
Macon, Missouri 63552
Risk Management Safety Officer

Missouri Department of Transportation
District 7 Garage
3901 East 32nd Street
Joplin, Missouri 64804
Risk Management Safety Officer

Missouri Department of Transportation
District 3 Garage
Highway 61 South
Hannibal, Missouri 63401
Risk Management Safety Officer

Missouri Department of Transportation
District 8 Garage
3025 E. Kearney
Springfield, Missouri 65804
Risk Management Safety Officer

Missouri Department of Transportation
District 4 Garage
2050 N.E. Independence.
Lee Summit Missouri 64064
Risk Management Safety Officer

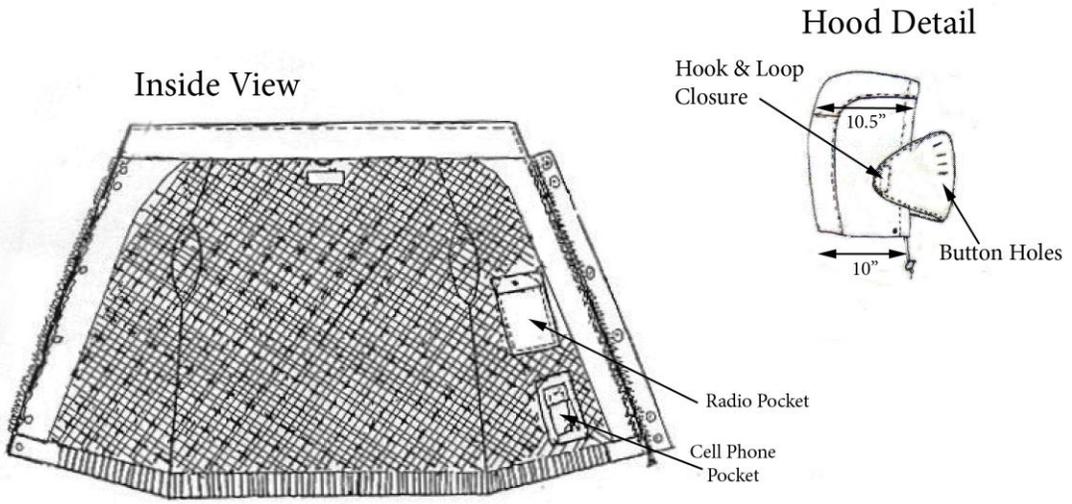
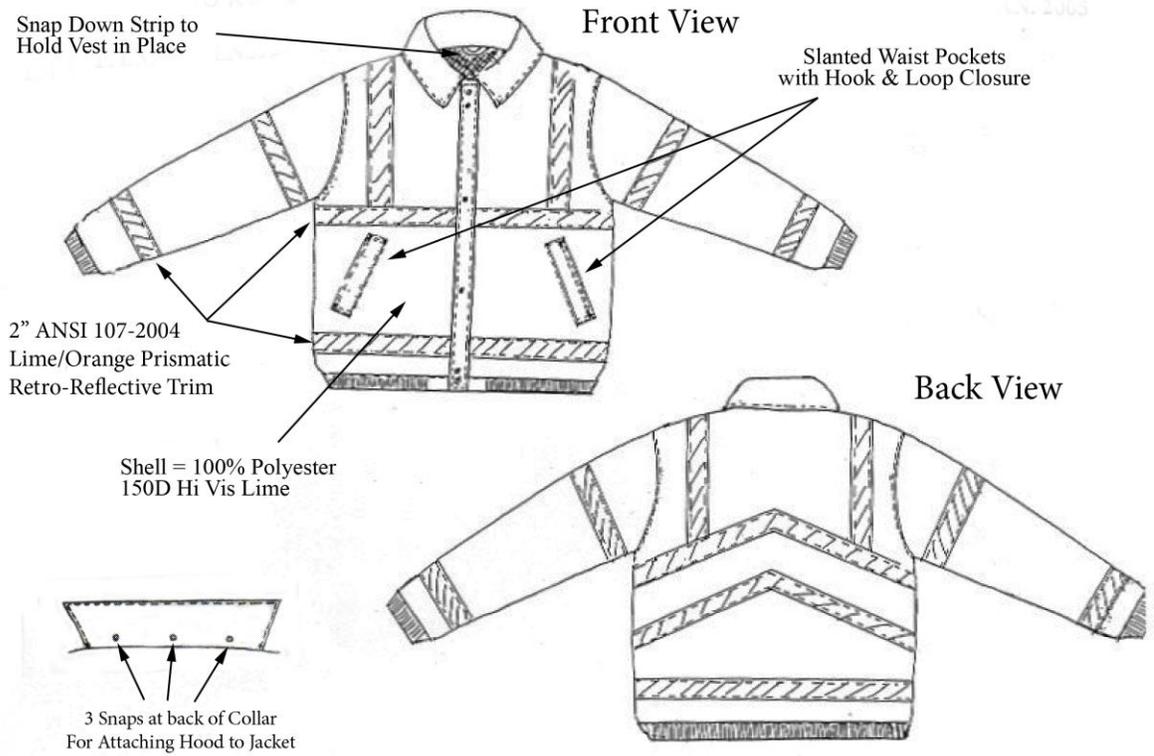
Missouri Department of Transportation
District 9 Garage
3956 East Main
Willow Springs, Missouri 65793
Risk Management Safety Officer

Missouri Department of Transportation
District 5 Garage
1511 Missouri Blvd
Jefferson City, Missouri 65101
Risk Management Safety Officer

Missouri Department of Transportation
District 10 Garage
201 N. Main
Sikeston, Missouri 63801
Risk Management Safety Officer

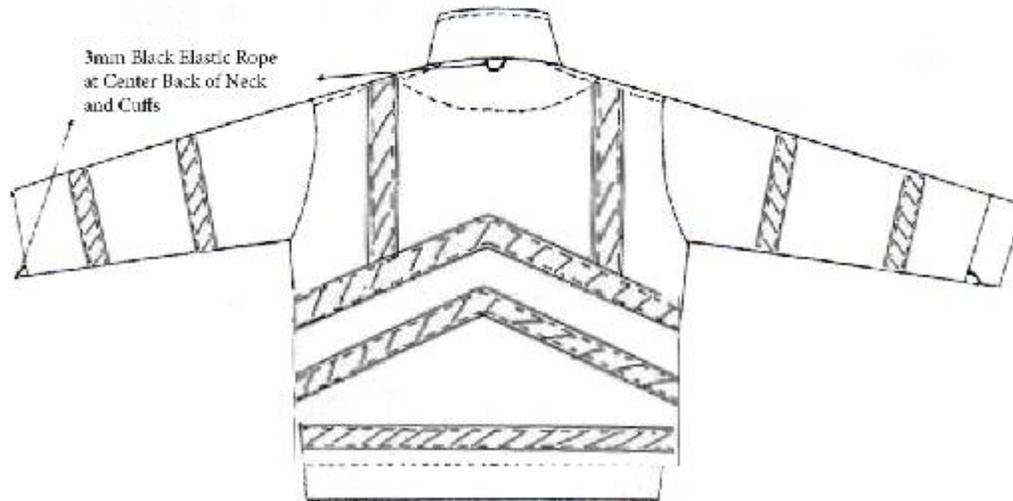
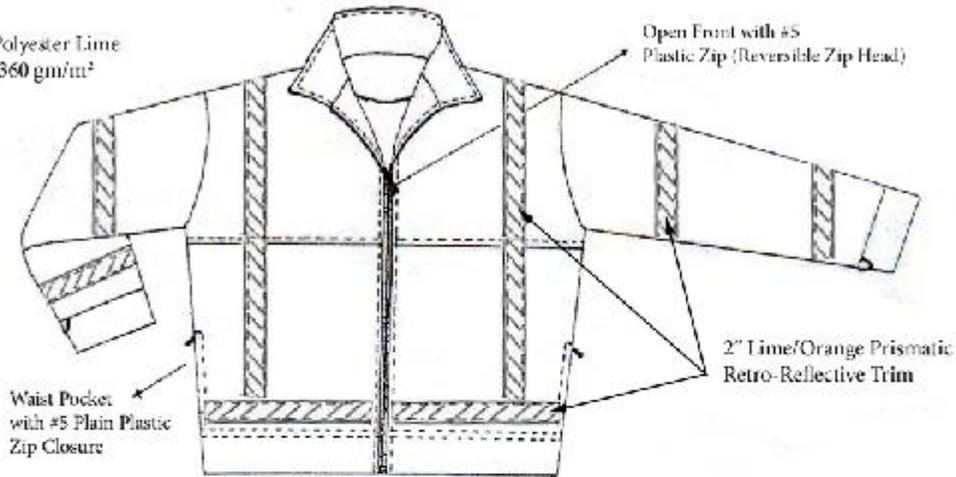
Hi Visibility Lime Bomber Coat

Class 3 ANSI 107-2004



Inner Fleece Lime Jacket Zip Out Class 3 ANSI 107-2004

100% Polyester Lime
Fleece 360 gm/m²

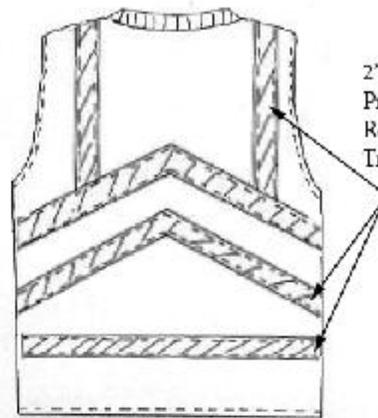
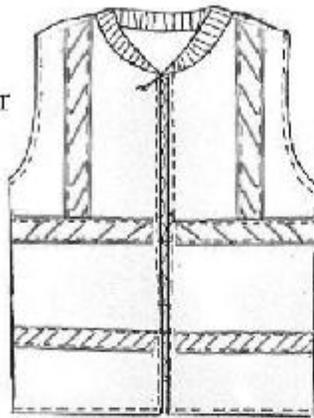


2/15/08

Reversible Zip Out Lime/Navy Reversible Vest
Class 2 ANSI 107-2004

Outside View of Vest

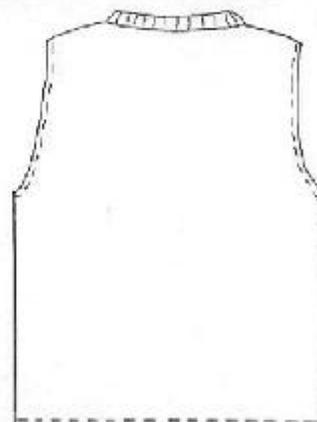
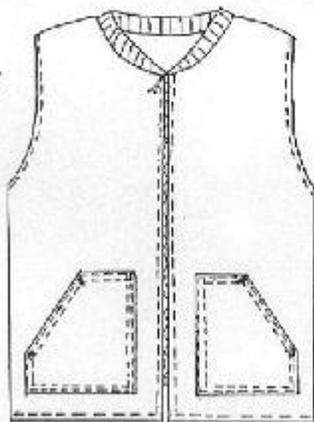
Outside Color
Lime



2" Lime/Orange
Prismatic
Retro-Reflective
Trim

Inside View of Vest

Inside Color
Navy Blue



No Retro
Reflective
Trim Next
To Body

Sizing Charts for Lime Bomber Coat & Component Parts

Size Measurement (CM) Outer Shell

Small	Medium	Large	Xlarge	2XLarge	3X Large	4XLarge	5XLarge	6XLarge	7XLarge	8XLarge	9XLarge	10XLarge	
Chest	67	69	71	73	75	77	79	81	83	85	87	89	91
Center Back Length	71	72	73	74	74	76	76	78	78	80	80	82	82
Sleeve Length	63	64.5	66	67.5	69	70.5	72	73.5	75	76.5	78	79.5	81
Shoulders	60	61.5	63	64.5	66	67.5	69	70.5	72	73.5	75	76.5	78
Bottom	44	46	48	50	52	54	56	58	60	62	64	66	68
Armhole	29.5	30	30.5	30	31.5	32	32.5	33	33.5	34	34.5	35	35.5
Collar Width	54	54	54	56	56	57	57	59	59	61	61	63	63

Size Measurement (CM) Fleece Zip Out Jacket

Small	Medium	Large	Xlarge	2XLarge	3X Large	4XLarge	5XLarge	6XLarge	7XLarge	8XLarge	9XLarge	10XLarge	
Chest	65	67	69	71	73	75	77	79	81	83	85	87	89
Center Back Length	69	70	71	72	72	74	74	76	76	78	78	80	80
Sleeve Length	62	63.5	65	66.5	68	69.5	71	72.5	74	75.5	77	78.5	80
Shoulders	57	58.5	60	61.5	63	64.5	66	67.5	69	70.5	72	73.5	75
Bottom	56	58	60	62	64	66	68	70	72	74	76	78	80
Armhole	27.5	28	28.5	29	29.5	30	30.5	31	31.5	32	32.5	33	33.5

Size Measurement (CM) Reversible Shell

Small	Medium	Large	Xlarge	2XLarge	3X Large	4XLarge	5XLarge	6XLarge	7XLarge	8XLarge	9XLarge	10XLarge	
Chest	63	65	67	69	71	73	75	77	79	81	83	85	87
Center Back Length	69	70	71	72	72	74	74	76	76	78	78	80	80
Shoulders	55.5	57	58.5	60	61.5	63	64.5	66	67.5	69	70.5	72	73.5
Bottom	58	60	62	64	66	68	70	72	74	76	78	80	82
Armhole	27.5	28	28.5	29	29.5	30	30.5	31	31.5	32	32.5	33	33.5
Collar Width	50	50	50	52	52	54	54	56	56	58	58	60	60

Missouri Highways and Transportation Commission
Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions

STANDARD SOLICITATION PROVISIONS

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

Missouri Highways and Transportation Commission
Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions

equipped for such work.

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

Invoicing and Payment

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

Applicable Laws and Regulations

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

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.

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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.

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SPECIAL TERMS AND CONDITIONS

Required Specifications

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

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 15% be deducted from the unit price**, 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.