

MAILING ADDRESS:
MISSOURI DEPARTMENT OF TRANSPORTATION
GENERAL SERVICES, P.O. BOX 270
JEFFERSON CITY, MO 65102

REQUEST NO.	3-130215TV
DATE	January 24, 2013
NO. OF PAGES	13

SEALED BIDS, SUBJECT TO THE CONDITIONS ON ALL PAGES OF THIS RFB WILL BE RECEIVED AT THIS OFFICE UNTIL

2:00 PM LOCAL TIME; February 15, 2013

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

MISSOURI DEPARTMENT OF TRANSPORTATION
Submit net bid as cash discount stipulations will not be considered

Kansas City District
600 NE Colbern Road, Lee's Summit, MO

THE BIDDER MUST SIGN AND RETURN BEFORE DATE AND TIME SET FOR OPENING.

BUYER: Tom Veasman

BUYER TELEPHONE: 573-522-4404

BUYER EMAIL:

Tom.Veasman@modot.mo.gov

Wheel Loader Boom Flail Mowers

To establish an agreement to furnish "Wheel loader boom flail mowers".

Components of Agreement: The Agreement between MHTC and the successful Bidder shall consist of: the RFB and any written amendments thereto, the "Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions" that are attached to this RFB and the bid submitted by the Bidder in response to the RFB. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFB or the Bidder's bid. The Bidder is cautioned that its bid shall be subject to acceptance by MHTC without further clarification.

Return sealed bid to the address shown at the top of this page.

(SEE ATTACHED FOR TERMS, CONDITIONS, AND INSTRUCTIONS)

In compliance with the above Request For Bid, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were bid within the timeframe specified herein, after receipt of formal purchase order.

Date: _____
Telephone No.: _____
Fax No.: _____
Federal I.D. No. _____
Email Address: _____

Firm Name: _____
Address: _____
By (Signature): _____
Type/Print Name _____

Is your firm MBE certified? Yes No

Title: _____
Is your firm WBE certified? Yes No

1.1 Introduction:

- 1.1.1 This Request for Bid (RFB) seeks bids from qualified organizations to provide **wheel loader boom flail mower(s)** for the MoDOT Kansas City District located in the State of Missouri, to the Missouri Highways and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT). Each bid must be in a sealed envelope, be mailed or delivered by courier to the RFB Coordinator at the below listed address, on or before the date and time listed herein for receipt of bids. All questions regarding the RFB shall be submitted to the RFB Coordinator. **Bids must be returned to the office of the RFB Coordinator no later than 2:00 p.m., CDT, February 15, 2013.**

RFB COORDINATOR:

Tom Veasman, Senior General Services Specialist

MAILING ADDRESS:

**Missouri Department of Transportation
General Services, P. O. Box 270
Jefferson City, MO 65102
Attn: Tom Veasman**

PHYSICAL ADDRESS:

**Missouri Department of Transportation
General Services Division
830 MoDOT Drive
Jefferson City, MO 65109**

PHONE: 573-522-4404

FAX: 573-526-1218

1.2 General Information:

- 1.2.1 The purpose of this document is to solicit competitive sealed bids from bidders for the purchase of wheel loader boom flail mowers in accordance with the requirements stated herein.
- 1.2.2 Organization: This RFB is divided into the following parts:
- 1) Introduction and General Information
 - 2) Scope of Work
 - 3) Bid Submission
 - 4) Pricing Pages / Specifications / Warranty Information
 - 5) Vendor Information and Preference Certification Form
 - 6) Cooperative Purchasing Form
 - 7) Anti-Collusion Statement
 - 8) Terms and Conditions

1. SCOPE OF WORK

2.1 General Requirements:

- 2.1.1 The contractor shall provide wheel loader boom flail mowers on an as needed, if needed basis for the MHTC and MoDOT, in accordance with the provisions and requirements stated herein.
- 2.1.2 The contractor shall provide all deliverables/services to the sole satisfaction of MoDOT.
- 2.1.3 MoDOT does not guarantee how many units will be ordered.
- 2.1.4 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to provide the deliverables/services required herein.
- 2.1.5 MoDOT reserves the right to reject any or all bids, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid, unit prices will govern.
- 2.1.6 Regardless of which persons or firms, if any, that the Offeror may use as subcontractors, subofferors, or suppliers of goods or services, the Offeror ultimately remains responsible and liable to MHTC for the complete, accurate and professional quality/performance of these goods/services.

2.2 Specific Requirements:

- 2.2.1 The contractor shall provide MoDOT with wheel loader boom flail mowers, in accordance with the attached specifications.

2.3 Required Specifications:

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

2.4 Delivery Requirements:

- 2.4.1 The following delivery requirements shall apply:
 - a. MoDOT will deliver our wheel loader to the dealer's business location within 150 miles of the Kansas City District Office located at 600 NE Colbern Road, Lee's Summit, MO and pick the wheel loader up when the installation is complete.
 - b. **NET FIRM PRICE** - The unit(s) shall be complete and ready for use at the time MoDOT picks up the wheel loader at the dealer's business location. All prices quoted by the bidder must include handling, surcharges, and other charges included in the bid price. Failure to do so may cause rejection of bid. MoDOT will not pay additional surcharges.
 - c. The vendor shall demonstrate to the District prior to acceptance by the District that the equipment complies fully with the enclosed specifications.

2.5 Contract/Purchase Order:

- 2.5.1 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.

2.6 Invoicing and Payment Requirements:

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

Missouri Department of Transportation
P.O. Box 270
Jefferson City, MO 65102
Attn: Kim Minnick

- 2.6.2 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.
- 2.6.3 The contractor shall understand and agree MoDOT reserves the right to make contract payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor must return a completed state Vendor Input ACH/EFT Application, which is downloadable from the Vendor Services Portal at: <https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>. Each contractor invoice must be on the contractor's original descriptive business invoice form and must contain a unique invoice number. The invoice number will be listed on the state's [Vendor Payment Website](#) to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the RFB.
- 2.6.4 The contractor shall be paid in accordance with the firm, fixed prices stated on the pricing page of this document after completion of deliverables specified herein and acceptance by MoDOT.
- 2.6.5 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.
- 2.6.6 Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The MHTC shall not make any advance deposits.
- 2.6.7 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.

2.7 Other Contractual Requirements:

- 2.7.1 Contract Period - Bid prices shall be firm for purchase until July 31, 2013 with up to three (3) one-year renewal option periods, or any portion therein. The option for renewal is at the sole discretion of MoDOT.
- 2.7.2 Renewal Periods - If the option for renewal is exercised by MoDOT, the contractor shall agree to all terms and conditions of the RFB and all subsequent amendments.

- 2.7.3 Escalation Clause - In the event the contractor requests a price increase during a contract renewal period, the contractor must provide a written request and documentation justifying the need for a price increase, and the amount of such price increase. MoDOT will review the contractor's written request and documentation, and decide if a price increase is to be granted at that particular time. The contractor shall understand and agree that MoDOT's decision shall be final and without recourse.
- a. No price increase shall be granted during the original contract period, or if applicable, first 3 months of a contract renewal period.
 - b. In the event a price increase is granted due to an approved escalation, the renewal percentage shall be based upon the current contract value.
- 2.7.4 Inspection and Acceptance: MoDOT reserves the right to inspect the equipment at the point of manufacture, intermediate storage point, or at a destination which shall be at the discretion of MoDOT.
- 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.
- 2.8.1 **Equipment Trade-In Allowance:**
- a. If equipment trade-ins are offered as an option, the trade-in(s) must be negotiated between the District, Division and vendor.
 - b. The vendor must be currently under contract with MoDOT.
 - c. It will be the responsibility of the vendor to examine the condition of the equipment offered for trade. The vendor must not impose any mandatory requirements or restrictions on equipment disposal.
 - d. If the value offered is less than the Division's pre-established minimum price, the Division and District must both approve the trade in value.
 - e. Allowance for trade-in(s) will be deducted from the full purchase price in computing the net purchase price. Trade-in(s) will not be available until the receipt and acceptance of the new equipment unless agreed upon by the District.

Trade-In Worksheet Example:

Make/Model of New Equipment:
Full Purchase Price: \$
Make/Model of Trade-In:
Less Trade-In (Deduct): \$
Net Purchase Price: \$

2.8.2 Equipment Refurbishments:

If equipment refurbishments are available, the refurbishment(s) must be negotiated between the district and vendor. The vendor must be currently under contract with MoDOT. It will be the responsibility of the vendor to examine the condition of the equipment offered for refurbishment. The districts must keep accurate records verifying the process.

2. BID SUBMISSION

3.1 Bid Submission Information:

- 3.1.1 All bids must be received in a sealed envelope/packaging clearly marked “Wheel Loader Boom Flail Mowers”.
- 3.1.2 All bids must be received at the office of the RFB Coordinator as outlined in Section 1. “INTRODUCTION AND GENERAL INFORMATION”.
- 3.1.3 The bidder may withdraw, modify or correct his/her bid after it has been deposited with MoDOT provided such request is submitted in writing and received at the location designated for the bid opening prior to the date and time specified for opening bids. Such a request received as specified will be attached to the bid and the bid will be considered to have been modified accordingly. No bid may be modified after the date and time specified for the opening of bids.
- 3.1.4 Open Competition / Request For Bid Document:
 - a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise MoDOT if any language, specifications or requirements of an RFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from MoDOT, unless the RFB specifically refers the bidder to another contact. Such communication should be received at least three (3) working days prior to the official bid opening date.
 - b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFB (on our website), of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFB, any questions received less than three (3) working days prior to the RFB opening date may not be answered.
 - c. Bidders are cautioned that the only official position of the MoDOT is that which is issued by MoDOT in the RFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

- d. MoDOT monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

3.1.5 Contract Award:

This is a Multiple Award bid and there will be no 'one' bidder awarded the item within this bid. The MoDOT Kansas City District will have sole responsibility for the discretion of all purchasing decisions. Criteria used to determine the "lowest and best" bid are based on price, location of servicing dealers, past performance of servicing dealers, and past performance of different makes and models of wheel loader boom flail mowers. This bid will not be awarded solely based on low price.

Item # 1 22' 6" wheel loader boom with 50" flail mower cutter head with joystick controls and JRB quick coupler attachment hooks, meeting the attached MoDOT specification for a Diamond Model LBF050-C-A or equivalent. To be installed by the dealer on a John Deere Model 444 or 544J wheel loader.

NET PRICE.

MAKE/MODEL _____ EACH \$ _____

Bid price should include the cost of two (2) Operator's Manuals, two (2) Parts Books, and two (2) Technical Service Manuals (if available).

OPTIONS

OPTION	DESCRIPTION	Price
	<i>Please list any vendor-recommended options relevant to this operation. Use additional sheets if necessary.</i>	
Option 1	24' 6" boom	
Option 2		
Option 3		
Option 4		

If other options or parts (in addition to those provided above) are available, submit a complete parts and options list with detailed pricing information for each (make/model) your company would be willing to provide. This information will be posted with the bid tabulation for purchasers to access.

Please indicate below the percent (%) of discount off Manufacturers Suggested Retail Prices (MSRP) for all litter picker options available in your data book or pricing guides that were not priced in your bid.

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

Delivery will be made _____ days after receipt of order.

Warranty Information

Standard Warranty: _____

Begin Date: _____

Warranty coverage is as follows:

Extended Warranty: _____

Begin Date: _____

Warranty coverage is as follows:

Training – A complete list or catalog describing all available training materials related to the items you are bidding should be included in your bid.

All specialty equipment and equipment purchased by MoDOT shall have the minimum vendor training supplied as outlined below:

- a. Training shall take place at each district where equipment is delivered or at an off-site location at the vendor's expense. A qualified service technician or mechanic shall conduct the training. Training will be supplied to operators and mechanics of equipment and will cover safe operation and routine/preventative maintenance. The vendor shall supply training within one month of delivery and acceptance. The vendor shall supply all training materials.
- b. Training shall be supplied to MoDOT mechanics by the vendor. Modules to be covered are electrical, chassis and power train. (also hydraulics if applicable) Warranty coverage(s) will be explained during each of these modules.

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

All vendors shall provide a telephone number for technical assistance, manned during normal working hours.

VENDOR INFORMATION & PREFERENCE CERTIFICATION FORM

Vendor Information

All bidders must furnish ALL applicable information requested below

Vendor Name/Mailing Address: Email Address:	Vendor Contact Information (including area codes): Phone #: Cellular #: Fax #:
Printed Name of Responsible Officer or Employee:	Signature:
For Corporations - State in which incorporated:	For Others - State of domicile:

If the address listed in the Vendor Name/Mailing Address block above is not located in the State of Missouri, list the address of Missouri offices or places of business:

*If additional space is required, please attach an additional sheet and identify it as **Addresses of Missouri Offices or Places of Business.***

M/WBE INFORMATION: List all certified Minority or Women Business Enterprises (**M/WBE**) utilized in the fulfillment of this bid. Include percentages for subcontractors and identify the M/WBE certifying agency:

<u>M/WBE Name</u>	<u>Percentage of Contract</u>	<u>M/WBE Certifying Agency</u>

*If additional space is required, please attach an additional sheet and identify it as **M/WBE Information***

Preference Certification

All bidders must furnish ALL applicable information requested below

GOODS/PRODUCTS MANUFACTURED OR PRODUCED IN USA: If any or all of the goods or products offered in the attached bid which the bidder proposes to supply to the MHTC are **not** manufactured or produced in the "United States", or imported in accordance with a qualifying treaty, law, agreement, or regulation, list below, by item or item number, the country other than the United States where each good or product is manufactured or produced.

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

*If additional space is required, please attach an additional sheet and identify it as **Location Products are Manufactured or Produced.***

MISSOURI SERVICE-DISABLED VETERAN BUSINESS: Please complete the following if applicable. Additional information may be requested if preference is applicable. See below definitions for qualification criteria:

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

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

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

Veteran Information

Business Information

Service-Disabled Veteran's Name (Please Print)	Service-Disabled Veteran Business Name
Service-Disabled Veteran's Signature	Missouri Address of Service Disabled Veteran Business

ANTI-COLLUSION STATEMENT

STATE OF _____)

COUNTY OF _____)

SS.

_____ 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 _____

STANDARD SOLICITATION PROVISIONS

- a. The solicitation for the procurement of the supplies referenced therein, to which these "Standard Bid Provisions, General Terms and Conditions and Special Terms and Conditions" are attached, is being issued under, and governed by, the provisions of Title 7 – Missouri Department of Transportation, Division 10 – Missouri Highways and Transportation Commission, Chapter 11 – Procurement of Supplies, of the Code of State Regulations. The Missouri Highways and Transportation Commission (**MHTC**), acting by and through its operating arm, the Missouri Department of Transportation (**MoDOT**), draws the Bidder's attention to said 7 CSR 10-11 for all the provisions governing solicitation and receipt of bids/quotes and the award of the contract pursuant to this solicitation.
- b. All bids/quotes must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

GENERAL TERMS AND CONDITIONS

Definitions

Capitalized terms as well as other terms used but not defined herein shall have the meaning assigned to them in section 7 CSR 10-11.010 Definition of Terms.

Nondiscrimination

- a. The Contractor shall comply with all state and federal statutes applicable to the Contractor relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*)
- b. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MHTC 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, the Bidder 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 bid response, and (3) the MHTC's acceptance of the bid by post-award contract or purchase order.
- 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 notice to proceed and/or purchase order.

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. 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.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri, Missouri Department of Revenue, 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 MHTC a copy of their current Authority Certificate from the Secretary of State of the State of Missouri and/or a copy of their Certificate of No Tax Due from the Missouri Department of Revenue.
- c. 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 MHTC a copy of their current Transient Employer Certificate from the Missouri Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

Executive Order:

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, preferences shall be applied in accordance with 7 CSR 10-11.020(7). Contractors should apply the same preferences in selecting subcontractors. The attached document entitled "**VENDOR INFORMATION AND PREFERENCE CERTIFICATION FORM**" must be completed and returned with the solicitation documents.
- b. Bidders are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBEs. Bidders are encouraged to obtain 10% MBE and 5% WBE participation.

Cancellation of Contract

The MHTC may cancel the Contract at any time for a material breach of contractual obligations or for convenience by providing 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.

Bankruptcy or Insolvency

Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Contractor responsible for damages.

Warranty

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 the MHTC, (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.

Status of Independent Contractor

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.

Non-Waiver

If one of the parties agrees to waive its right to enforce any term of this Contract, that party does not waive its right to enforce such term at any other time or to enforce any or all other terms of this Contract.

Indemnification

The Contractor shall defend, indemnify and hold harmless MHTC, 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 Contractor's performance of its obligations under the contract awarded pursuant to this solicitation.

SPECIAL TERMS AND CONDITIONS

Tax Exempt Status:

MHTC is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Project Tax Exemption Certificate will be furnished to the successful Bidder upon request if applicable.