SECTION 102

BIDDING REQUIREMENTS AND CONDITIONS

102.1 Notice of Bid Opening. After the date is fixed for the receipt of bids, the notice of bid opening will be posted on MoDOT's website and published as required by law. The notice of bid opening will contain a description of the proposed work, instructions and information to the potential bidder regarding bid forms, plans, specifications, combination bids and the reservation of the right of the Commission to reject any and all bids.

102.2 Contractor Questionnaire. Each prospective bidder, including a joint venture, shall file a contractor questionnaire on the form furnished by the Commission, which is available on MoDOT's website. The contractor questionnaire shall be furnished to the Commission as a separate document apart from any other document submitted. A bid will not be opened and read unless a fully responsive contractor questionnaire is on file with the Commission at least seven days prior to the time set for the opening of the bids. A new contractor questionnaire shall be filed annually, except the Commission reserves the right to request a contractor questionnaire from any contractor as of any date if the Commission has shown reason to believe that the contractor's experience data may have changed from that shown on the questionnaire on file. This document shall include a record of the bidder's experience data. The Commission will use this information as an aid to determine in each instance the lowest responsible bidder and nothing contained herein shall be construed as depriving the Commission of the Commission's discretion in the matter of determining the lowest responsible bidder.

102.2.1 At any time prior to award, as a condition of award and for a period of three years after the date of final acceptance, the Commission may request true copies of the bidder's financial data, including the bidder's balance sheet, profit and loss statement and similar financial data, as of the close of the bidder's most recent fiscal year prior to submission of the bid, and for each fiscal year between the contract award and final acceptance of the contract work. Unless specified otherwise by the Commission, financial data shall be prepared by an accountant and audited financial data shall be provided if it is available to the bidder for the fiscal period requested. A bidder who has not closed the first fiscal year prior to the date of the request shall supply the last periodic balance sheet, profit and loss statement and similar data.

102.2.2 The contractor questionnaire contains an affidavit of labor standards compliance. Each prospective bidder shall execute the affidavit, stating that such bidder will fully comply with all written requests by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, to provide information for the purpose of establishing a prevailing wage.

102.2.3 The prospective bidder, if a corporation, shall submit with the contractor questionnaire, a copy of the bidder's current annual registration report or initial registration report if a new corporation, on file with the Corporation Division of the Missouri Secretary of State's Office. Each corporation that is a party to a joint venture shall submit the same required report with the corporation's joint venture contractor questionnaire.

102.2.4 A prospective bidder doing business in the State of Missouri under a fictitious name shall furnish to or have on file with the Commission a certified copy of the prospective

bidder's registration of the fictitious name issued by the Missouri Secretary of State, as an enclosure with the contractor questionnaire. No contract will be executed by the Commission until such a certificate is furnished by the bidder.

102.2.5 All prospective bidders who are corporations organized in states other than Missouri or countries other than the USA shall furnish, at the prospective bidder's cost, a certified copy of a current certificate of authority to do business in Missouri, with said certificate to remain on file with the Commission. Such a certified copy may be secured from the corporation supervisor in the Office of the Secretary of State, Jefferson City, Missouri. The prospective bidder agrees to cause the prospective bidder's authority to do business as a foreign corporation to be continued and extended throughout the life of any contract awarded and until all claims thereon and thereunder shall have been finally settled. All prospective bidders shall have a valid certificate of authority to transact business in Missouri at the time of bid opening as a condition of responsiveness.

102.3 Bidding . Any bid exceeding a monetary value of $250,000 shall be submitted electronically using the BidExpress® website. For any bid less than $250,000, bidders will be allowed to submit paper bids or submit bids electronically using the BidExpress® website. Any paper bids submitted with a bid exceeding $250,000 will be considered irregular in accordance with Sec 102.8

102.3.1 MoDOT uses the BidExpress® website (www.bidx.com) as the official depository for electronic bid submittals. MoDOT will ensure that this electronic bid depository is available for a two-hour period prior to the deadline for submission of bids. In the event of disruption of national communications or loss of services by www.bidx.com during this two-hour period, MoDOT will delay the deadline for bid submissions to ensure the ability of potential bidders to submit bids. Notifications and instructions of delay will be communicated to potential bidders.

102.3.2 The Commission will make the bidding documents available to the prospective bidder. The documents will state the location, description and requirements of the contemplated construction and will show the estimate of the various quantities and types of work to be performed or material to be furnished, and will have a schedule of items for which unit bid prices are invited. The bidding documents will state the time in which the work shall be completed, the amount of the bid guaranty and the date, time and place of the opening of bids.

102.3.3 Bidders that submit bids via the internet shall have on file with the Commission an "Internet Bidding Agreement", a copy of which can be found on MoDOT's website. This agreement shall be initiated by the prospective bidder and submitted to the Commission. A bid will not be opened and read unless a fully executed agreement is on file with the Commission at least seven days prior to the time set for the opening of the bids.

102.3.4 The prospective bidder will be required to pay the Commission the sum stated in the notice of bid opening for each copy of a project's bidding documents. The *Missouri Standard Specifications for Highway Construction*, *Missouri Standard Plans for Highway Construction*, including all revisions of these documents, and other items referenced in the bidding documents, whether attached or not, will be considered a part of the bid. A prospective bidder will be expected to separately purchase the current edition of the *Missouri Standard Specifications for Highway Construction* and the *Missouri Standard Plans for Highway Construction*, including all revisions of these documents.

102.3.5 Bidders that submit bids via the internet will be responsible for any additional fees associated with submitting bids using Trns•port Expedite® Electronic Bidding System software and the BidExpress® website.

102.3.6 It will be conclusively presumed that all of the bidding documents are in the bidder's possession and that these documents have been reviewed and used by the bidder in the preparation of any bid submitted. The effective dates of the *General Provisions & Supplemental Specifications* and the *Supplemental Plans for Highway Construction* will be specified in the contract documents. A copy of the latest version of these documents is available on MoDOT's web site.

102.4 Interpretation of Quantities in Bid Schedule. The quantities appearing in the bid schedule are estimated only and are prepared for the comparison of bids. Payment to the contractor will be made only for the actual quantities of work performed and accepted in accordance with the contract, except where final measurements are not made, as hereinafter provided. The quantities of work to be done and material to be furnished may each be increased, decreased or omitted as hereinafter provided.

102.5 Examination of Plans, Specifications, Special Provisions and Site of Work. The engineer will provide plans and specifications to the contractor providing direction on the work required. Conditions indicated on the plans and in the bidding documents represent information available from surveys and studies. The bidder is expected to carefully examine the proposed work site and bidding documents before submitting a bid. Submission of a bid will be considered proof that the bidder has made an examination and is satisfied with the conditions to be encountered in performing the work.

102.5.1 Other documentary information, consisting of boring logs and other factual subsurface information that does not constitute part of the contract or contract documents, will be provided with project plans that contain cross sections, or they will be available from the engineer upon the bidder's written request. This information, used for project design and quantity estimation purposes, was not obtained to determine actual subsurface conditions, actual quantities of subsurface material or appropriate construction methods, nor shall this information be considered a representation of actual conditions to be encountered during construction. Furnishing this information does not relieve a bidder from the responsibility of making an investigation of conditions to be encountered, including but not limited to site visits, and basing the bid on information obtained from these investigations and the professional interpretation and judgment of the bidder. The bidder shall assume the risk of error if the information is used for any purposes for which the information was not intended. The Commission makes no representation as to the accuracy of the logs or other subsurface information, since the accuracy of this information is limited by the equipment used, the personal judgment of the persons making the investigation, and by the limited number of samples taken. Records indicate conditions encountered only at the times and the specific locations shown. Ground water observations are not routinely recorded in all boring logs. The absence of such data does not mean ground water will not be encountered. An indication of ground water constitutes no representation or warranty as to where ground water will be found, nor its volume or artesian character, during the project work. Any assumptions a bidder may make from this data is at the bidder's risk; none are intended by the Commission.

102.5.2 Certain other documents in the Commission's possession relating to subsurface investigations are not included in the records made available to bidders under Sec 102.5.1. These documents include correspondence and reports containing interpretations, opinions and recommendations that may or may not be factual, accurate or consistent with design decisions. Any such information that does not constitute part of the contract or contract documents is available, at a nominal cost, from the engineer upon specific, written request by the prospective bidder. The bidder is cautioned that any and all such interpretations, conclusions

and recommendations are not represented or warranted to be accurate or reliable and the Commission cannot be bound by them, whether or not the Commission may appear to have "relied" on them. These subjective findings, opinions or assumptions have not been confirmed or shown to be reliable and the bidder assumes the sole risk of liability or loss if the bidder does rely on these documentary interpretations and conclusions to its detriment, delay or loss.

102.5.3 The bidder assumes all risks that may be encountered in basing the order of work, equipment or personnel determinations, time of performance, cost of performance, working days needed, item bid prices or any other element of the work, on documents that the bidder obtains from the Commission, which are not expressly warranted.

102.5.4 Unless stated specifically and expressly in the bidding documents, no project involving excavation, which may include either borrow or the disposal of excess material, is represented or warranted to be a "balanced" job or project, regardless of whether the bidding documents use terms such as "balance points" or other terms that could be interpreted to suggest balance. Whether or not such projects involving excavation contain bid items for borrow or disposal of excess material, the bidder should assume that either is possible and investigate those possibilities accordingly in determining a bid.

102.5.5 Utilities are often in the process of relocation at the time a project is bid. Regardless of what utilities are shown in the bidding documents and utility locations listed, the bidder shall contact each area utility to determine the presence and location of utility lines. The bidder shall determine and shall assume the risk as to whether utilities that are to be relocated by the utility companies have in fact been relocated and if not, when the utility company anticipates the relocation shall be completed. The bidder shall independently determine the reliability of the information received from the utility companies and shall make the determination as to the sequence and timing of utility relocations in determining a bid.

102.5.6 The bidder and contractor has an affirmative duty to inquire and obtain from the National Oceanic and Atmospheric Administration (NOAA), National Climatic Data Center (NCDC), from the USACE and any other cognizant government agency, historic weather and water stage information which the bidder may consider important as guides for bidding and scheduling the work. Some of that information may be contained among the bidding documents solely as a convenience and is not warranted nor represented to any degree to be complete and accurate historic data. No warranty or representation whatsoever is made or intended by the Commission of future weather conditions during the project. Water stages and depths of water at any place or at any time within the area of the project are acknowledged to be beyond control of the Commission and dependent upon future weather conditions and actions by other governmental bodies, such as the government of the USA or third parties. The Commission makes no representation that other governmental bodies or third parties will not take action during the period of the contract or any extended time of contract performance, which will affect water stages or depths. Bidders are put on notice that the bidder's operations may be affected by water flows, siltation and other causes over which it is acknowledged the Commission has no control

102.6 Sales and Use Taxes. The Commission will issue a sales tax exemption certificate as described in Section 144.062 RSMo to contractors for the Commission. The tax exemption will apply to the prime contractor, any subcontractors, or suppliers for materials and supplies incorporated or consumed during the construction of the Commission project.

102.7 Preparation of Bidding Documents. Bids may be prepared on paper or electronically.

102.7.1 Bids submitted on paper shall be properly signed, sealed and submitted in accordance with Sec 102.10. Each bidder shall specify in the bid, in figures, a unit price for each of the separate items listed in the bidding documents, except a unit price entry will not be necessary

for those items having a quantity of one and only the amount for that item need be entered. Zero will be considered a valid bid. The bidder shall not enter zero in any "Unit Price" field unless zero is the intended bid for that item. A unit price left blank, with or without an extension, other than items having a quantity of one, will be considered as zero by the Commission. In case of alternate items, unit prices shall be entered for only one alternate, unless otherwise specified in the bidding documents. A unit price may be carried out to the third decimal. Unit prices carried out further than the third decimal will be rounded to the nearest third decimal by the commission. Bids shall not contain interlineations, alterations or erasures except as noted in Sec 102.7.1. The bidder shall show the products of the respective unit prices and quantities in the amount column provided for that purpose. These extensions shall be totaled and in case of errors or discrepancies in extensions, the unit prices shall govern. All entries in the bid shall be in ink. If, in the sole discretion of the engineer, an obvious and apparent clerical error exists in the unit price listed for an item due to a misplaced decimal, but the extension appears to be correct and as intended in all respects, the engineer may correct the unit price bid in accordance with the extension listed. All errors in extensions or totals will be corrected by the engineer and such corrected extensions and totals will be used in comparing bids.

102.7.2 Bids submitted electronically shall be prepared using the latest version of Trns Port Expedite® Bid and be submitted using the BidExpress® website. Each bidder shall specify in the bid, in figures, a unit price for each of the separate items listed. The bidder shall not enter zero in any "Unit Price" field unless zero is the intended bid for that item. A unit price left blank will be considered a zero by the Commission. In case of alternate items, unit prices shall be entered for only one alternate, unless otherwise specified in the bidding documents.

102.7.3 A bidder may alter or correct a unit price, lump sum bid or extension entered on the paper bid form or the computer-generated itemized paper bid form by crossing out the figure with ink and entering a new unit price, lump sum bid or extension above or below in ink, with the bidder's initials.

102.7.4 A bidder may submit a separate bid on any or all projects, except that bids shall be submitted for all projects in a required combination. Bidders not having the ability to simultaneously execute all contracts for bids submitted during a bid opening may state, in one of the bids, the maximum total value of contract awards the bidder is willing to accept for that bid opening. Only one statement of "Maximum Monetary Value of Awards Accepted this Bid Opening" shall be completed per bid opening. In the event a bidder submits multiple statements of maximum award, the lowest value stated will be used. The Commission reserves the right to select and award the combination of bids, not exceeding this maximum, that will be to the best interest of the State, provided these bids are in conformance with the requests for bids. Any corrected bid that exceeds the lowest specified maximum award may be declared non-responsive.

102.7.5 The bid of an individual, including those doing business under a fictitious name, shall include the signature and address of the individual. The signature shall be exactly the same as that appearing on the contractor questionnaire.

102.7.6 Bids submitted electronically shall have the digital ID of an individual authorized to sign bids for their respective company. The individual must be identified as an officer for the company on the contractor questionnaire.

102.7.7 The bid by a partnership or joint venture, including individuals doing business under fictitious names or corporations, shall be executed by at least one of the partners followed by the title "Partner" or one of the joint venturers followed by the title "Joint Venturer" and the business address of the partnership or joint venturer shown. The true legal name and address

of each partner and joint venturer shall also be shown and shall appear exactly the same as that shown on the contractor questionnaire.

102.7.8 The bid by a corporation, whether acting alone or as a joint venturer, shall show the address and name of the corporation exactly as shown on the contractor questionnaire, and shall include the signature or digital ID and title of a person authorized by its board of directors to bind the corporation.

102.7.9 Each bidder shall submit with each bid a sworn statement, executed by or on behalf of the bidder to whom a contract may be awarded, certifying that the bidder 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 the bid or any contract that may result from its acceptance.

102.7.10 A bid will not be accepted or considered if the bid is the product of collusion among bidders, if the bidder is disqualified or determined not responsible or if the bid is irregular in accordance with Sec 102.8.

102.7.11 For bids submitted on paper, the bidder may use the Trns•port Expedite® Electronic Bidding System software to generate the itemized bid sheets. Changes in accordance with Sec 102.7.1 will be permitted. When the bidder submits computer-generated itemized bid sheets, the itemized bid sheets included in the bidding documents shall not be completed and may be removed. If both are completed and submitted, only the computer-generated itemized bid sheets will be recognized and used as the official bid. The product of the bidder's unit price and the Commission's quantity for that same line number will be used in comparing bids and in the successful bidder's contract. Computer-generated itemized bid sheets not meeting the above requirements may cause the bid to be considered irregular and subject to rejection.

102.7.12 Subcontractor disclosure. For contracts of more than $2,000,000 each bidder shall submit with each bid a disclosure of the subcontracts that have a subcontract value that is equal to or greater than twenty percent of the total project bid or subcontracts that are greater than or equal to $2,000,000. The disclosure of subcontracts must include the name of each subcontractor, the category of work that each subcontractor will perform (e.g. asphalt, concrete, earthwork, bridges…) and the dollar value of each subcontract. The information shall be disclosed on the form provided in the bidding documents. If that information is not available at the time of bid the bidder shall submit the "Subcontractor Disclosure Form" pages with MoDOT on or before 4:00 p.m. of the third business day after the bid opening date, directly to the Design Division, Missouri Department of Transportation, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Telefax transmittal to MoDOT will be permitted at fax no. 573-522-2281. Failure to disclose this information may result in a bid being declared non-responsive. The complete signed original documents do not need to be mailed to MoDOT, but the bidder shall have it available if requested by the Design Division or the engineer.

102.8 Irregular Bids. Bids that are not completed in accordance with the bidding documents, that show any omissions, false statements or certifications, alterations of form, additions not called for, conditional or alternate bids unless called for, irregularities of any kind, or that are not responsive to the request for bids may be rejected. Bids combining or otherwise tying sections or projects not listed in the bidding documents, as being in combination will be rejected. Any comment in the bid limiting or qualifying the reserved right of the Commission to make awards that will be to the best interest of the State will constitute an irregular bid.

102.8.1 A bid will be considered irregular and may be rejected as non-responsive if any of the unit bid prices are mathematically or materially unbalanced to the detriment of the Commission.

102.8.2 A bid submitted on the "Request For Bid" document and that is otherwise complete and fully executed, will not be deemed an irregular bid and will not be subject to rejection by the Commission.

102.9 Bid Guaranty. No bid will be considered unless accompanied by a certified check or cashier's check on any bank or trust company insured by the Federal Deposit Insurance Corporation, payable to the Director of Revenue, Credit State Road Fund, for no less than five percent of the amount of the bid, or by a bid bond secured by an approved surety or sureties in accordance with Secs 103.4.2 and 103.4.3, for no less than five percent of the amount of the bid. Bidders may submit a bid bond for each project bid or an annual bid bond that would cover all projects bid for a twelve-month period beginning July 1 and ending June 30 of each state fiscal year. Annual bid bond forms shall be submitted by June 15 of each year. Forms delivered by US Mail should be mailed to: Missouri Highways and Transportation Commission, Attention: Annual Bid Bond, PO Box 270, Jefferson City, MO 65102. Forms delivered by parcel delivery services, (such as UPS, Fed Ex, DHL etc) should be shipped to Missouri Highways and Transportation Commission, Attention: Annual Bid Bond, 105 West Capitol Avenue, Jefferson City, MO 65102. The Commission will notify the bidder by letter that the annual bid bond form is approved.. Bid bonds shall be submitted on forms furnished by the Commission, which are available on MoDOT's website. Bid bond forms will be furnished to the prospective bidder upon request. Electronically produced copies of the bid bond form may be utilized, however, the exact wording used on the Commission furnished form shall be included in full and without deviation. Bid bond forms shall be complete and correct at the time of submittal or the bid may be considered non-responsive. Only the version of the bid bond form provided with the request for bid shall be submitted, unless the Request for Bid or Notice of Bid Opening authorizes the use of alternate bid bond forms. The bid bond power of attorney shall be an original document, not a facsimile. Bids accompanied by bid guaranties that are not in accordance with this section or accompanied by bid bonds that are not issued by an approved surety will be rejected.

102.9.1 Bidders submitting the bid electronically, may choose to submit a paper bid guaranty in accordance with 102.9, or an electronic bid bond/annual bid bond with the bid prior to the time designated for receiving bids.

102.9.1.2 The electronic bid bond/annual bid bond shall be part of the digitally signed bid and be verified via digital encryption by the bonding agent.

102.9.1.3 If utilizing an annual bid bond as a bid guaranty, it is the responsibility of the bidder to verify that each bid submittal does not exceed the annual bid bond limit. If a bid security maximum amount is specified for the annual bid bond and the bidder chooses to submit bids exceeding the maximum, it is the responsibility of the bidder to contact the surety for an increased annual bid bond or separate bid bond. The Bidder may choose to submit a project-specific bid bond in addition to an existing annual bid bond already on file with MoDOT.

102.10 Delivery of Bids. Paper bids shall be submitted in a sealed envelope that clearly indicate the vendor name, vendor address, vendor number , county , route, call number, and job number on the outside of the envelope. If sent by mail, the sealed bid shall be addressed to the Commission, Attention Bid/Bid Bond at the address specified in the bidding documents. All bids shall be filed prior to the time and at the place specified in the notice to contractors. Bids received after the time for opening of bids will be returned to the bidder unopened.

102.10.1 Bids submitted via the internet shall use the latest version of Trns Port Expedite Bid, and be submitted using the BidExpress website. All bids shall be filed prior to the time specified in the notice to contractors. BidExpress will not accept any bids submitted after that time.

102.10.2 If a bidder submits a bid via the Internet and also submits a paper bid the paper bid will be considered the official bid from the bidder.

102.11 Withdrawal or Revision of Bids. A bidder may withdraw or revise a paper bid after the bid has been deposited with the Commission provided the revision or the request for such withdrawal is received in writing by the Commission, at the address specified in the bidding documents, before the time set for opening bids.

102.11.1 Any request for withdrawal of a bid submitted electronically shall be completed through Bid Express® prior to the time set for opening bids. The bidder may submit multiple electronic bids on the same project, however, the last bid received supersedes all previous submittals.

102.12 Combination Bids. Combination bids for two or more projects may be required or permitted and will be designated as such in the bidding documents.

102.12.1 On required combinations, the bidder shall complete the bid for each project included in the combination.

102.12.2 On permitted combinations, the bidder will be allowed to combine all projects in the combination or bid each project separately. The Commission reserves the right to determine the combination and make awards of the bids, that will be to the best interest of the State, provided they are in conformance with the request for bids and the bids submitted.

102.12.2.1 When the bidder submits computer-generated itemized bid sheets for projects listed in permitted combination, the bidder shall include all itemized bid sheets for all projects. For conventional paper bids, the bidder shall indicate "No Bid" for all projects not bid. For electronic bids, the bidder shall leave the project's bid items blank for all projects not bid.

102.12.2.2 To combine all projects in a permitted combination, the bidder shall enter a complete bid for each project and mark the "All or None" box in the Bid. By marking "All or None" and combining all the projects, the bidder will be awarded all the projects in the combination or none of the projects.

102.12.2.3 If the bidder does not combine all of the projects, bids for the individual projects will be considered separately. The bidder shall complete the bid for each project the bidder desires to bid.

102.12.3 Two or more projects awarded in combination will be considered to be covered by a single contract. If during construction an item for which a unit price has not been bid is encountered in one project of a combination, the unit price bid for the same item in another project of the combination will apply, unless there is conclusive proof that conditions are changed significantly to effect a definite increase or decrease in the cost of the operation.

102.13 Public Opening of Bids. Bids will be opened and the bid totals made public.

102.14 Disqualification of Bidders. Any one or more of the following reasons may be considered as being sufficient for the disqualification of a bidder and the rejection of the bid or bids:

(a) More than one bid is received for the same work from an individual, firm or corporation under the same or different name, or from different firms or corporations having common ownership, control or "Principals" that are affiliated, as described in Sec 108.13. However, a bidder may submit a bid as principal and as a subcontractor to some other principal or may submit a bid as a subcontractor to as many other principals as the bidder desires and by so doing will not be liable to disqualification in the intent of this specification.

(b) There is reason for believing that collusion exists among the bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Commission until any such participant has been reinstated.

(c) The bidder or any officer, shareholder, owner or director of the bidder, has been terminated, debarred or suspended as an eligible contractor or bidder by any agency of the USA, the State of Missouri or any other state or any city, county, municipal corporation or other political subdivision.

(d) The Commission has determined or finds that the bidder is not responsible.

(e) The bidder is a person or firm not a resident of Missouri and has failed or refused to comply with the Missouri laws relating to nonresident or transient employers or is prohibited by Section 285.230 RSMo from contracting for or performing labor on a Missouri public works project.

102.15 Right to Reject Bids. The Commission reserves the right to reject any bid and also the right to reject all bids. All bids may be rejected for, without limitation, the following reasons:

(a) If in the opinion of the majority of the members of the Commission, the lowest bid or bids are excessive.

(b) The advertised bidding or contract documents are inadequate, ambiguous or otherwise deficient in any respect.

(c) The construction of all or any part of the project is no longer required.

(d) The bids received indicate that the quality requirements in the bidding or contract documents were overstated.

(e) The bidding and contract documents did not include all of the intended evaluation factors.

(f) The bids were not independently arrived at in open competition.

(g) There are indications that any of the bids were collusive or were submitted in bad faith.

(h) The bids received did not provide sufficient competition to ensure adequate price.

102.16 Opportunity to Partner. The successful bidder may enter into a cooperative partnership agreement with the Commission for the contract. The objective of this agreement will be the effective completion of the work, on time and to the standard of quality that will be a source of pride to both the Commission and the contractor. The "Partnering" agreement will not affect the terms of the contract. The agreement will only establish an environment of cooperation between the parties.

102.16.1 Partnering objectives can be achieved on an informal basis, the preferred method, or if a formal partnering agreement is desired, a initial training session is recommended to initiate the formal partnership agreement. The cost of this training will be borne equally between the Commission and the contractor.

102.16.2 Participation in "Partnering" will be voluntary and will not be required of the contract. The costs associated with "Partnering" shall not be included in the bid.

102.17 Disadvantaged Business Enterprise Program Bidding Requirements. Refer to the General Provisions for DBE Program Requirements.

102.18 Certifications. The bidder makes the following certifications by signing and submitting the bid.

102.18.1 Certification Regarding Affirmative Action and Equal Opportunity. If the bidder does not meet all requirements set forth in sub-paragraphs (a), (b) and (c) of this section, then the bidder shall submit a statement indicating which elements the bidder has complied with and those elements that are not in fact true and correct. The statement shall be on company letterhead, signed by the bidder and inserted inside the submitted bid. The bidder shall provide the following elements:

(a) The bidder has developed and has on file at each of the bidder's establishments affirmative action programs pursuant to 41 CFR Part 60-2.

(b) The bidder has participated in a previous contract or subcontract subject to the equal opportunity clause set forth in 41 CFR 60-1.4 and Executive Order No. 11246.

(c) The bidder has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs or the Director's designate or the EEO Commission, all reports due under the applicable filing requirements contained in 41 CFR, Part 60-1.

This certification applies to and shall be executed by each bidder or proposed subcontractor if the proposed contract or subcontract on this project will equal or exceed $10,000.00. This certification will also apply to any contractor or subcontractor that has contracts or subcontracts on federally assisted projects in any 12-month period that have or can reasonably be expected to have an aggregate total value exceeding $10,000.00, 41 CFR 60-1.5(a)(1). The prime contractor shall assure that each of the subcontractors that meet the criteria will also execute and submit this certification to the Commission.

102.18.2 Certification Regarding Disbarment, Eligibility, Indictments, Convictions or Civil Judgments. The president or authorized official of the bidder, under penalty of perjury under the laws of the USA, shall certify that, except as noted in the exceptions, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor or any position involving the administration of federal funds:

(a) Is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

(b) Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

(c) Does not have a proposed debarment or suspension pending.

(d) Has not been indicted, convicted or had a civil judgment rendered against any of the listed parties by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

102.18.2.1 If there are any exceptions, the bidder shall submit the exceptions on company letterhead, signed by the bidder and inserted inside the bid submitted.

102.18.2.2 Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility.

102.18.2.3 For any exception noted, the bidder shall indicate to whom it applies, the initiating agency, and dates of action.

102.18.2.4 Providing false information may result in criminal prosecution or administrative sanctions.

102.18.3 Certification Regarding Anti-Collusion. In accordance with 23 USC 112, the bidder shall certify, under penalty of perjury, that the bidder 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 this contract.

102.18.4 Certification Regarding Lobbying Activities. In accordance with 31 USC 1352, the bidder shall certify that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the bidder shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the instructions.

102.18.4.1 This certification shall be a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification shall be a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification will be subject to a civil penalty of no less than $10,000 and no more than $100,000 for each such failure.

102.18.4.2 The bidder also agrees by submitting a bid that the bidder shall require that the language of this certification be included in all subcontracts that exceed $100,000, and that all such subrecipients shall certify and disclose any lobbying activities accordingly.

102.18.5 Certification Regarding Missouri Domestic Products Procurement Act. This certification will only apply to state-funded projects as noted on the cover of the Request for Bid. The bidder's attention is directed to Sections 34.350 through 34.359 RSMo 2000, which requires all manufactured goods or commodities used or supplied in the performance of the

contract or any subcontract to be manufactured, assembled or produced in the USA. Sections 34.350 through 34.359 RSMo will not apply if the total bid is less than $1000.00.

102.18.5.1 Section 34.355 RSMo requires the vendor or bidder to certify compliance with Section 34.353 RSMo 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 performance of the contract and to provide certification of compliance prior to payment will result in nonpayment for those goods or commodities.

102.18.5.2 The bidder shall certify that all the specified goods or products for which this bid was solicited are manufactured, assembled or produced in the USA. If there are any exceptions, the bidder shall submit a list of the exceptions on company letterhead, signed by the bidder and attached to the inside of the bid submitted. The list shall include the pay item number and the location where the item is manufactured. The bidder shall identify any of the exceptions in the list that are specified goods or products that are treated as manufactured, assembled or produced in the USA under an existing treaty, law, agreement or regulation of the USA regarding export/import restrictions and international trade.

102.18.5.3 The bidder shall notify the contact listed in the Request for Bid of any specified goods or products that cannot be manufactured, assembled or produced in the USA in sufficient quantities or in time to meet the contract specifications.

102.18.5.4 The bidder shall certify that the bid complies with all provisions of Section 34.350 *et seq* RSMo.

102.19 Preference for Missouri Products. By virtue of statutory authority, a preference will be given, on projects other than federal aid projects, to material, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri, where same are of a suitable character and can be obtained at reasonable market prices in the state and are of a quality suited to the purpose intended and can be secured without additional cost over foreign products or products of other states.