Missouri
Department
of Transportation

Pete K. Rahn, Director

105 West Capitol Avenue
P.O. Box 270
Jefferson City, MO 65102
(573) 751-2551
Fax (573) 751-6555
www.modot.org

ADDENDUM 002
REQUEST FOR BID
Dynamic Merge System
RFB NUMBER: 6-060215

Bidders shall acknowledge receipt of Addendum 002 (two) by signing and including it with the original bid. The due date for receipt of bids remains unchanged with this addendum. The original solicitation is hereby changed to the extent stated. All other terms and conditions remain unchanged and in full force.

Name and Title of Signer (Print or type)	Name and Title of Department Authority Brenda Tyree Procurement Agent
Contractor/Bidder Signature (Signature of person authorized to sign)	Department of Transportation Brenda Tyree (Authorizing Signature)
Date Signed:	Date Signed:

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

1.1.1 This document constitutes a request for competitive, sealed bids for the procurement of a Dynamic Merge System as set forth herein.

1.1.2 Organization - This document, referred to as a Request for Bid (RFB), is divided into the following parts:

1) Introduction and General Information

2) Contractual Requirements

3) Appendix A

4) Pricing Page

5) Terms and Conditions

1.1.3 Note to Respondent:

A vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The compliance to conduct business in the state shall include but may not be limited to: Registration of business name, vendors MUST submit a bid that correctly and accurately identifies the company name that is registered to do business in the State of Missouri. All vendors who are required to execute a contractual agreement MUST submit a copy of their certificate with the signed copy of the contract agreement before the purchasing department can proceed with MoDOT legal contract approval.

2. CONTRACTUAL REQUIREMENTS

2.1 General Requirements:

2.1.1 The contractor shall provide a Dynamic Merge System (DMS) on an as needed, if needed basis for the Missouri Department of Transportation (hereinafter referred to as the "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 the MoDOT.

2.1.3 The MoDOT estimates, but does not guarantee, that the services specified herein may be required on multiple projects.

2.1.4 The 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 the MoDOT.

2.1.5 The contractor shall furnish all material, labor, installation, operating, monitoring, maintaining, equipment, and supplies necessary to provide the deliverables/services required herein.

2.2 Specific Requirements:

2.2.1 If requested by the MoDOT, the contractor shall provide the MoDOT with a Dynamic Merge System in accordance with the following.

a. *Project 1*- Located in Crawford County on I-44 from Route F to Route H on the westbound lanes for an approximate length of 12.00 miles. The project may start March 2006, or anytime thereafter, and should be completed by May 25, 2006. The contractor's DMS may be located at Project 1 and operating for approximately 70 calendar days.

DELETED WITH AMENDMENT 001

b.

DELETED WITH AMENDMENT 001

c.

d. *Project 3* - Located in Laclede County on I-44 from Route MM to Route 133 on the westbound lanes for an approximate length of 14.00 miles. The project may start in May 30, 2006, or anytime thereafter, and should be completed by October 1, 2006. The contractor's DMS may be located at Project 3 and operating for approximately 75 calendar days.

e. *Project 3A* - Located in Laclede County on I-44 from Route MM to Route 133 on the eastbound and westbound lanes for an approximate length of 14.00 miles. The project may start in May 30, 2006, or anytime thereafter, and should be completed by October 1, 2006. The contractor's DMS may be located at Project 3A and operating for approximately 75 calendar days.

2.2.2 The MoDOT shall notify the contractor fourteen (14) calendar days prior to the start date of a project. After being notified by the MoDOT, the contractor shall place a DMS, and insure the DMS is in operating condition and fully functioning one (1) calendar day prior to the start date of a project.

2.2.3 The MoDOT shall notify the contractor fourteen (14) calendar days prior to the end date of a project. After being notified by the MoDOT, the contractor shall remove the DMS on the last day of a project.

2.2.4 If requested by the MoDOT, the contractor shall provide the MoDOT with a Dynamic Merge System for additional future projects. Such additional future projects may be located anywhere throughout the State of Missouri.

2.3 Liquidated Damage Requirements:

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

a. In the event the contractor fails to provide the specified services for the DMS in accordance with the contractual requirements specified herein, the contractor shall be assessed liquidated damages in the amount of $1,000.00 per day for each such delinquent day.

b. 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 the MoDOT, at the sole discretion of the MoDOT.

c. The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.

d. The contractor shall agree and understand that all assessments of liquidated damages shall be within the discretion of the State of Missouri and shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies.

2.4 Invoicing and Payment Requirements:

REVISED WITH AMENDMENT 002

2.4.1 The contractor shall submit an itemized monthly invoice to the MoDOT after the completion of deliverables specified herein for each project receiving a contract award.

REVISED WITH AMENDMENT 002

2.4.2 The contractor shall be paid on a monthly basis in accordance with the applicable prices stated on the pricing page of this document after the completion of deliverables specified herein and acceptance by the MoDOT. However, the contractor shall understand and agree that under no circumstance shall the contractor be paid in excess of:

a. the guaranteed-not-to-exceed price(s) stated on the pricing page for any project(s) performed in the original contract period,
b. the maximum price stated on the pricing page for any project(s) performed in the 1st or 2nd renewal period.

2.4.3 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

2.5 Other Contractual Requirements:

2.5.1 Contract Period - The contract shall commence from the date of award through one year with two (2) one-year renewal option periods. If the option for renewal is exercised by the MoDOT, the contractor shall agree to all terms and conditions of the RFB and all subsequent amendments. Renewal options are at the sole discretion of the MoDOT.

2.5.2 Renewal Periods - If the option for renewal is exercised by the MoDOT, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated herein.

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

b. 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.

c. In the event the MoDOT exercises its option(s) to renew the contract, the requirements for future years shall be basically similar.

DYNAMIC MERGE SYSTEM

1.0 General. The Dynamic Merge System (DMS) improves traffic flow and safety in advance of lane closures on 2-lane, high-speed, divided facilities by changing the merge point based on traffic demand. Under free flow, the system reverts to static lane drop signing and provides warning of traffic anomalies. Under congestion, the system advises traffic to use all lanes and merge nearer the taper point.

2.0 Description. This work shall consist of furnishing, installing, operating, maintaining, monitoring, and removing the DMS.

3.0 Materials. The DMS shall consist of three Changeable Message Signs (CMS), four Traffic Detectors (TD), and Automated System Manager (ASM) per direction of traffic flow.

3.1 Changeable Message Signs. The CMS shall conform to Missouri Standard Specification for Highway Construction Section 616. One CMS shall be located approximately 100-feet upstream of the merge point and the remaining CMS will be located in agreement with the engineer and manufacturer. The DMS placement is located in the attached drawing.

3.2 Traffic Detectors. The TD shall be non-intrusive and be capable of capturing traffic speed (mph) and as necessary traffic volume. The TD located at the CMS locations shall collect speed data and the TD located 1200-feet upstream from the merge point shall collect speed and volume data.

REVISED WITH AMENDMENT 002

3.3 Automated System Manager. The ASM shall assess current traffic data captured by the TD's, determine appropriate merging strategy based upon pre-determine criteria, and communicate appropriate messages to the traveling public through the CMS. The contractors' ASM shall provide real-time data to a website. The ASM shall be located within the project limits or housed at a remote facility of the vendor's choosing.

3.4 Data. The speed and volume data shall be available to MoDOT staff at all times for the duration of work zone activity. Historical data should be password protected and stored on the website for each day the system is in use, with date and time stamps included. An electronic copy of all data shall be provided to MoDOT staff after all work zone activity is completed and the DMS has been removed.

4.0 Construction Requirements.
The DMS shall accommodate a minimum of 5 distinct traffic conditions: Free Flow, Congestion, High Speed, Loss of DMS Communication, and Manual Override.

4.1 Free Flow. During Free Flow conditions, the DMS shall display no lane use messages, and therefore allow traffic to resume typical merge operation. Definitions of free-flow may vary by project, but typical traffic condition warrants may include:

(a) A trend of vehicle speeds at two points above an adjustable parameter. This parameter should be set for optimal results based on on-site monitoring and review as directed by the engineer. Typically greater than 50 mph may be utilized as a guideline.

(b) A trend of vehicle volume between two points below an adjustable parameter. This parameter should be set for optimal results based on on-site monitoring and review as directed by the engineer. Typically less than 1000 vehicles/hour may be utilized as a guideline.

(c) A trend including reduced vehicle speeds together with increased volume. These parameters should be set for optimal results based on on-site monitoring and review as directed by the engineer.

4.2 Congestion. When traffic conditions warrant changing from typical merge operation to the dynamic merge strategy, the DMS shall display lane use messages on the CMS. The messages shall consist of two alternating displays as

described below. The CMS shall be located in advance of the lane closure as determined by the engineer based upon estimated queue lengths and project geometry.

(a) CMS located approximately 100-feet upstream of the merge point shall display: **MERGE HERE – TAKE TURNS**

(b) Intermediate CMS located beyond estimated queue length at the time when DMS activation will occur shall display: **MERGE AHEAD – USE BOTH LANES**

(c) CMS located beyond estimated maximum queue length shall display: **STOPPED TRAFFIC AHEAD – USE BOTH LANES**

4.2.1 Definitions of congestion may vary by project, but typical traffic condition warrants may include:

(a) A trend of vehicle speeds at two points below an adjustable parameter. This parameter should be set for optimal results based on on-site monitoring and review as directed by the engineer. Typically less than 45 mph may be utilized as a guideline.

(b) A trend of vehicle volume between two points above an adjustable parameter. This parameter should be set for optimal results based on on-site monitoring and review as directed by the engineer. Typically greater than 1500 to 1700 vehicles/hour may be utilized as a guideline.

(c) A trend including reduced vehicle speeds together with increased volume. These parameters should be set for optimal results based on on-site monitoring and review as directed by the engineer.

4.3 High Speed. When the furthest upstream TD captures an excess speed of 15-mph or the next TD down stream captures an excess speed of 10-mph above the prevailing speed located at the TD 100-feet upstream from the merge point; a message will be provided to the high-speed vehicles. During free flow conditions, the corresponding upstream CMS shall display:
REDUCE SPEED – ROAD WORK AHEAD.
During congestion conditions, the corresponding upstream CMS shall display:
REDUCE SPEED – STOPPED TRAFFIC AHEAD.

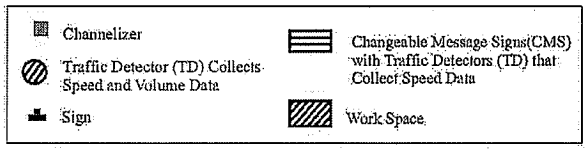
4.4 Loss of Communication. If the DMS has a loss of communication between the TD locations, the CMS shall display the following: **ROAD WORK AHEAD – EXPECT DELAYS.**

4.5 Manual Override. If the DMS is needed to provide additional information due to other traffic concerns the engineer shall have the capability to manually override the CMS display. The engineer shall document all manual override messages.

5.0 Acceptance: The contractor shall provide a website and access to the engineer. The contractor shall supply equipment that is fully functional. In the event of damage or lack of communication, the DMS shall be repaired or replaced within the time period as agreed upon with the engineer. The contractor shall provide technical personnel for all system calibration, operation, maintenance and timely on-call support services. The contractor shall certify that the system will perform to the operational strategy as outlined above. MoDOT will conduct field reviews and require event logs for performance measures and the project's special provisions will prevail for the DMS.

3. APPENDIX A

Dynamic Merge System (DMS) Typical Application

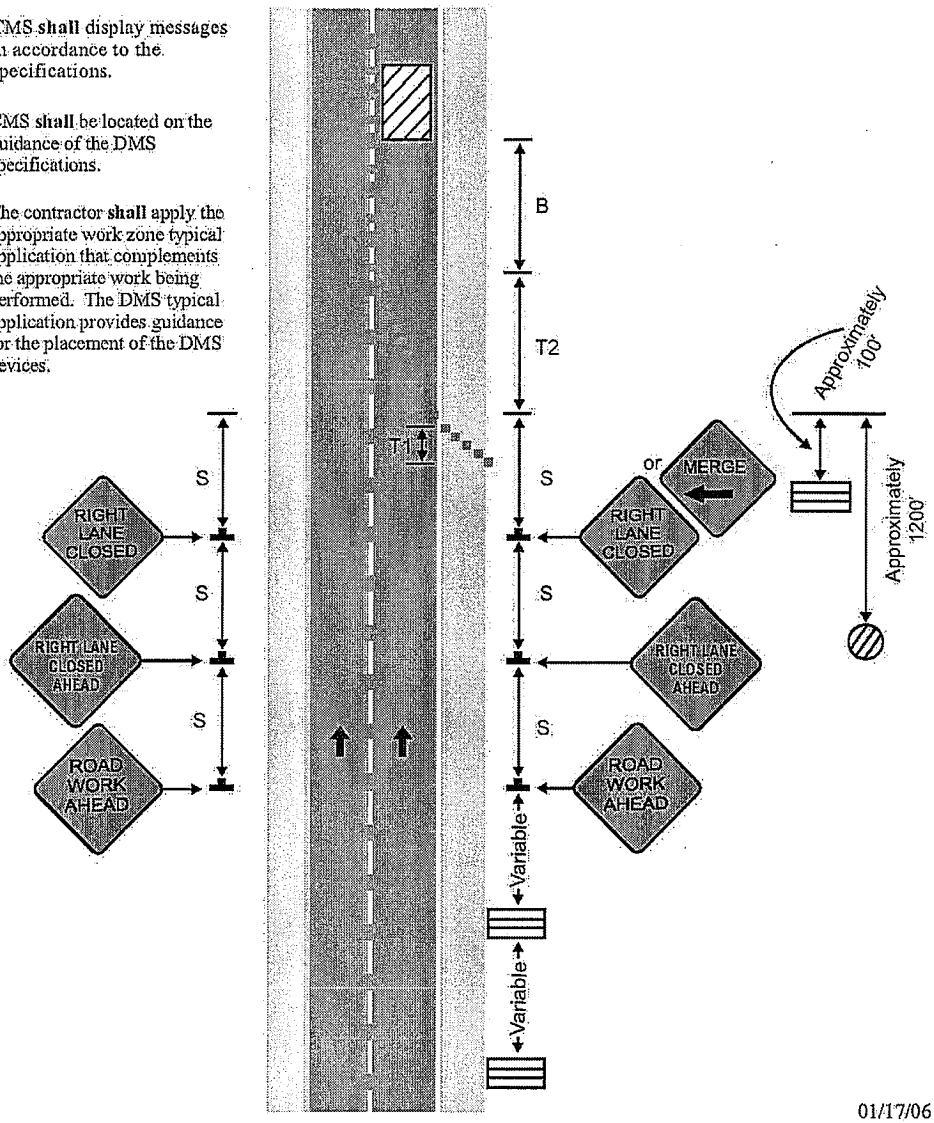


Note:

CMS **shall** display messages in accordance to the specifications.

CMS **shall** be located on the guidance of the DMS specifications.

The contractor **shall** apply the appropriate work zone typical application that complements the appropriate work being performed. The DMS typical application provides guidance for the placement of the DMS devices.



01/17/06

4. REVISED PRICING PAGE

REVISED WITH AMENDMENT 001

4.1 **Dynamic Merge System (DMS)** - The bidder shall provide a guaranteed-not-to-exceed 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.

To submit a responsive bid, the bidder must submit pricing for all line items on the pricing page.

Item #	Description	Original Contract Period *Guaranteed-Not-To-Exceed Price*	1st Renewal Period *Maximum Price*	2nd Renewal Period *Maximum Price*
001	Project 1	$_____ *per project*		
	DELETED	**DELETED**		
	DELETED	**DELETED**		
004	Project 3	$_____ *per project*		
005	Project 3A	$_____ *per project*		
	DELETED	**DELETED**		
007	Project 1 and Project 3	$_____ *per combination of projects*		
	DELETED	**DELETED**		
009	Project 1 and Project 3A	$_____ *per combination of projects*		
	DELETED	**DELETED**		
	DELETED	**DELETED**		
012	Additional Future Project		$_____ *per day*	
013	Additional Future Project			$_____ *per day*

4.2 Evaluation Process:

4.2.1 Bids shall be reviewed to determine if the bid complies with the mandatory requirements and to determine the lowest bidder.

REVISED WITH AMENDMENT 002

4.2.2. The objective evaluation of cost shall be based on an item-by-item basis, which shall be determined by using the prices stated on the pricing page (line items 001 – 013) for the original contract period and each potential renewal period.

4.3 Contract Award:

4.3.1 The MoDOT reserves the right to award a contract for one, some, or all of the projects specified herein.

DELETED WITH AMENDMENT 002

4.3.2

4.3.3. The contract shall be awarded to the lowest responsive bidder determined as specified herein.

STANDARD SOLICITATION PROVISIONS

a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.

b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.

d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.

e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.

f. **For bids/proposals of $25,000** or more, no bids/proposals by telephone, telegram or telefax will be accepted. If provided, these bids/proposals should be returned in the MoDOT solicitation return envelope.

g. If a solicitation return envelope is provided by MoDOT, the bid/quote/proposal should be returned in the envelope provided with the Bid/RFQ/RFP Request Number plainly indicated thereon.

h. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

GENERAL TERMS AND CONDITIONS

General Performance

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

Deliveries

a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.

b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.

c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

Nondiscrimination

a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.

   1) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

      i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,

      ii. cancellation, termination or suspension of the contract, in whole or in part.

Contract/Purchase Order

a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.

b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order.

c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.

d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

Subcontracting

a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.

b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.

c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

Invoicing and Payment

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

b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.

c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.

d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.

e. The MHTC reserves the right to purchase goods and services using the state purchasing card.

Applicable Laws and Regulations

a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.

b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

   1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

Preferences

a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.

b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.

1) If attached, the document entitled **"PREFERENCE IN PURCHASING PRODUCTS"** should be completed and returned with the solicitation documents.
2) If attached, the document entitled "MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT" should be completed and returned with the solicitation documents. Applies if bid is Twenty-Five Thousand Dollars ($25,000.00) or more

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

Remedies and Rights

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

Cancellation of Contract

a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.

b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

Bankruptcy or Insolvency

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

Inventions, Patents, and Copyrights

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

Inspection and Acceptance

a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.

b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.

d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

Warranty

a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.

b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

Status of Independent Contractor

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

Indemnification

a. The Contractor shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement.

b. In addition to the liability imposed upon the Contractor on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Contractor's performance under this Agreement, the Contractor assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees.

c. The Contractor also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Contractor for any purpose under this Agreement, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.

SPECIAL TERMS AND CONDITIONS

Insurance

a. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them.

b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:

1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained **if** required by law.

2) Public Liability (includes property damage and personal injury):

i. Not less than $400,000 for any one person in a single accident or occurrence.

ii. Not less than $2,500,000 for all claims arising out of a single occurrence.

3) Special Hazard Insurance: As required.

4) Builder's Risk: Not less than the full Contract amount.

Permits, Licenses and Safety Issues

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

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

Award

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

Cancellation of Contract

a. If the Contractor/supplier fails to carry out the performance of the work with sufficient workmen and equipment to insure the completion of the delivery within the time specified or becomes insolvent or is adjudicated a bankrupt or commits any act of bankruptcy or insolvency or allows any final judgment to stand against him for a period of ten (10) days, the Missouri Department of Transportation may give notice in writing by registered mail to the Contractor/supplier and the surety of such delay, neglect or default.

b. If, within ten (10) days after such notice the Contractor/supplier does not proceed to remedy to the satisfaction of the Department's representatives the faults specified in said notice, or the surety does not proceed to take over the deliveries, the Department shall have full power and authority, without impairing the obligation of the Contractor/supplier under the contract or the surety under the bond, to take over the completion of the work and arrange for the shipment of any materials necessary to complete the work and the Contractor/supplier and the surety will be responsible for any additional costs incurred by the Department in obtaining the completion of the deliveries.

Liquidated Damages

a. In the event the successful Contractor fails to deliver the material within the time specified, the Department and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain, and in order to liquidate such damage in advance it is agreed that the **sum of one-thousand dollars ($1000.00) per day,** for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages, and it is therefore agreed that said amount will be withheld from payments due the Contractor or otherwise collected from the Contractor as liquidated damages.