



NOTICE OF AWARD

State of Missouri
Office of Administration
Division of Purchasing
P.O. Box 809
Jefferson City, MO 65102-0809
<http://www.oa.mo.gov/purch>

SOLICITATION NUMBER RFPC30034901700212	CONTRACT TITLE Heating Fuel: #2 Low Sulfur Diesel
CONTRACT NUMBER CC170212001	CONTRACT PERIOD November 1, 2016 through October 31, 2017
REQUISITION NUMBER NR 300 22006000099	SAM II VENDOR NUMBER/MissouriBUYS SYSTEM ID 4304151150 B / MB00092847
CONTRACTOR NAME AND ADDRESS MFA Oil Company One Ray Young Dr. Columbia, MO 65205	STATE AGENCY'S NAME AND ADDRESS Office of Administration Division of Facilities Management, Design and Construction Various OA/FMDC Managed Facilities located throughout the State of Missouri
ACCEPTED BY THE STATE OF MISSOURI AS FOLLOWS: The proposal submitted by MFA Oil Company in response to Solicitation/Opportunity (Opp) No.: RFPC30034901700212, including the attached email from Cole Burton of MFA Oil dated October 3, 2016, is accepted as to the following regions: Northwest Region Northeast Region Greater Kansas City Region Central Region Southwest Region Southeast Region	
BUYER Laurie Borchelt	BUYER CONTACT INFORMATION Email: laurie.borchelt@oa.mo.gov Phone: (573) 751-1702 Fax: (573) 526-9816
SIGNATURE OF BUYER 	DATE 10/3/16
DIRECTOR OF PURCHASING AND MATERIALS MANAGEMENT 	



STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING (PURCHASING)
REQUEST FOR PROPOSAL (RFP)

SOLICITATION/OPPORTUNITY (OPP) NO.: RFPC30034901700212
TITLE: HEATING FUEL - #2 LOW SULFUR DIESEL
ISSUE DATE: 09/07/16

REQ NO.: NR 300 22006000099
BUYER: LAURIE BORCHELT
PHONE NO.: (573) 751-1702
E-MAIL: laurie.borchelt@oa.mo.gov

RETURN PROPOSAL NO LATER THAN: 09/20/16 AT 2:00 PM CENTRAL TIME (END DATE)

VENDORS ARE ENCOURAGED TO RESPOND ELECTRONICALLY THROUGH <https://missouribuys.mo.gov>
BUT MAY RESPOND BY HARD COPY (See Mailing Instructions Below)

MAILING INSTRUCTIONS: Print or type Solicitation/OPP Number and End Date on the lower left hand corner of the envelope or package. Delivered sealed proposals must be in the Purchasing office (301 W High Street, Room 630) by the return date and time.

	(U.S. Mail)		(Courier Service)
RETURN PROPOSAL TO:	PURCHASING	or	PURCHASING
	PO BOX 809		301 WEST HIGH STREET, RM 630
	JEFFERSON CITY MO 65102-0809		JEFFERSON CITY MO 65101-1517

CONTRACT PERIOD: NOVEMBER 1, 2016 THROUGH OCTOBER 31, 2017

DELIVER SUPPLIES/SERVICES FOB (Free On Board) DESTINATION TO THE FOLLOWING ADDRESS:

OFFICE OF ADMINISTRATION
DIVISION OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION (OA-FMDC)
VARIOUS OA-FMDC MANAGED FACILITIES LOCATED THROUGHOUT THE STATE OF MISSOURI

The vendor hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Proposal (Revised 10/19/15). The vendor further agrees that the language of this RFP shall govern in the event of a conflict with his/her proposal. The vendor further agrees that upon receipt of an authorized purchase order from the Division of Purchasing or when a Notice of Award is signed and issued by an authorized official of the State of Missouri, a binding contract shall exist between the vendor and the State of Missouri. The vendor shall understand and agree that in order for their proposal to be considered for evaluation, they must be registered in MissouriBUYS. If not registered at time of proposal opening, the vendor must register in MissouriBUYS upon request by the state immediately after proposal opening.

SIGNATURE REQUIRED

VENDOR NAME MFA Oil Company		MissouriBUYS SYSTEM ID (SEE VENDOR PROFILE - MAIN INFORMATION SCREEN) MFA OIL	
MAILING ADDRESS One Ray Young Dr.			
CITY, STATE, ZIP CODE Columbia, Mo. 65205			
CONTACT PERSON Cole Burton		EMAIL ADDRESS cburton@mfaoil.com	
PHONE NUMBER 573-499-9140		FAX NUMBER	
VENDOR TAX FILING TYPE WITH IRS (CHECK ONE) <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> State/Local Government <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> IRS Tax-Exempt			
AUTHORIZED SIGNATURE 		DATE 9/8/16	
PRINTED NAME Cole Burton		TITLE Sr. Manager, Business Development	

Borchelt, Laurie

From: Cole Burton <cburton@mfaoil.com>
Sent: Monday, October 03, 2016 10:35 AM
To: Borchelt, Laurie
Subject: FW: Message from "lanier4ULE"
Attachments: 20161003101932797.pdf

Here you go, let me know if I missed anything else!

Cole Burton
Sr. Manager, Business Development
MFA Oil
Cel:(573)489-9140
Email: cburton@mfaoil.com

-----Original Message-----

From: scan@mfaoil.com [<mailto:scan@mfaoil.com>]
Sent: Monday, October 3, 2016 10:20 AM
To: Cole Burton <cburton@mfaoil.com>
Subject: Message from "lanier4ULE"

This E-mail was sent from "lanier4ULE" (MP C7501/LD375C).

Scan Date: 10.03.2016 10:19:32 (-0500)
Queries to: scan@mfaoil.com

EXHIBIT A

DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN) PREFERENCE

In accordance with sections 34.350-34.359 RSMo, the vendor is instructed to provide information regarding the point of manufacture for each of the products being proposed so that the product's eligibility for the Domestic Products Procurement Act (Buy American) Preference can be determined. This information is requested for the finished product only, not for components of the finished product. The vendor may be required to provide supporting documentation indicating proof of compliance.

Qualifying for the Domestic Products Preference:

A product qualifies for the preference if one of the following circumstances exist:

- if manufactured or produced in the U.S.; or
- if the product is imported into the U.S. but is covered by an existing international trade treaty, law, agreement, or regulation that affords the specific product the same status as a product manufactured or produced in the U.S.; or
- if only one line of products is manufactured or produced in the U.S.

Non-Domestic Product:

If a product is not manufactured or produced in the U.S. and does not otherwise qualify as domestic, then it will be considered non-domestic and not eligible for the preference.

THE VENDOR MUST COMPLETE THE FOLLOWING APPLICABLE TABLES TO CERTIFY WHETHER:

- (Table 1) ALL products proposed are manufactured or produced in the U.S. and qualify for the Domestic Products Procurement Act Preference; OR
- (Table 2) ALL products proposed are manufactured or produced outside the U.S. and do not otherwise qualify for the Domestic Products Procurement Act Preference; OR
- (Tables 3-6) Not all products proposed fall into the prior two categories so an item-by-item certification is necessary.

The vendor is responsible for certifying the information provided on the exhibit is accurate by signing where indicated at the end of the exhibit.

TABLE 1 - ALL PRODUCTS MANUFACTURED OR PRODUCED IN U.S. (eligible for preference)

Check the box to the right if ALL products proposed are MANUFACTURED OR PRODUCED IN THE U.S.:

TABLE 2 - ALL PRODUCTS MANUFACTURED OR PRODUCED OUTSIDE U.S. AND DON'T QUALIFY FOR PREFERENCE (ineligible for preference)

Check the box to the right if ALL products proposed are MANUFACTURED OR PRODUCED OUTSIDE THE U.S. and DO NOT OTHERWISE QUALIFY for the Domestic Products Procurement Act Preference:

TABLES 3 THROUGH 6 - ITEM BY ITEM CERTIFICATION (NOT ALL PRODUCTS PROPOSED FALL INTO PRIOR TWO TABLES)

- For those line items for which a U.S.-manufactured or produced product is proposed, complete Table 3.
- For those line items which are manufactured or produced outside the U.S. that do not qualify for the Domestic Products Procurement Act Preference, complete Table 4.
- For those line items which are not manufactured or produced in the U.S., but for which there is a U.S. trade treaty, law, agreement, or regulation in compliance with section 34.359 RSMo, complete Table 5.
- For those line items which are not manufactured or produced in the U.S., but for which there is only one U.S. Manufacturer of that product or line of products, complete Table 6.

TABLE 3 - U.S.-MANUFACTURED OR PRODUCED PRODUCTS (Eligible for Preference)

- List item numbers of products proposed that are U.S.-manufactured or produced and therefore qualify for the Domestic Products Procurement Act Preference.
- List U.S. city and state where products proposed are manufactured or produced.

Item #	U.S. City/State Where Manufactured/Produced	Item #	U.S. City/State Where Manufactured/Produced

TABLE 4 - FOREIGN-MANUFACTURED OR PRODUCED PRODUCTS (Not Eligible for Preference)

- List item numbers of products proposed that are foreign manufactured or produced and do not otherwise qualify for the Domestic Products Procurement Act Preference.
- List country where product proposed is manufactured or produced.

Item #	Country Where Manufactured/Produced	Item #	Country Where Manufactured/Produced

EXHIBIT A, continued: DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN) PREFERENCE

TABLE 5 - FOREIGN-MANUFACTURED OR PRODUCED PRODUCTS BUT U.S. TRADE TREATY, LAW, AGREEMENT, OR REGULATION APPLIES (Eligible for Preference)

- List item numbers of products proposed that are foreign manufactured or produced but qualify for the Domestic Products Procurement Act Preference because a U.S. Trade Treaty, Law, Agreement, or Regulation applies.
- Identify country where proposed foreign-made product is manufactured or produced.
- Identify name of applicable U.S. Trade Treaty, Law, Agreement, or Regulation that allows product to be brought into the U.S. duty/tariff-free.
- Identify website URL for the U.S. Trade Treaty, Law, Agreement, or Regulation.
- NOTE: As an imported product, if an import tariff is applied to the item, it does not qualify for the preference. In addition, "Most Favored Nation" status does not allow application of the preference unless the product enters the U.S. duty/tariff-free.

Item #	Country Where Proposed Foreign-Made Product is Manufactured/Produced	Name of Applicable U.S. Trade Treaty, Law, Agreement, or Regulation	Official Website URL for the U.S. Treaty, Law, Agreement, or Regulation

TABLE 6 - FOREIGN-MANUFACTURED OR PRODUCED PRODUCTS BUT ONLY ONE US MANUFACTURER PRODUCES PRODUCT OR LINE OF PARTICULAR GOOD (Eligible for Preference)

- List item numbers of products proposed that are foreign manufactured or produced but qualify for the Domestic Products Procurement Act Preference because only one US Manufacturer produces the product or line of a particular good.
- Identify country where proposed foreign-made product is manufactured or produced.
- Identify sole US manufacturer name.
- Identify name of sole US manufactured product/line of particular good.

Item #	Country Where Proposed Foreign-Made Product is Manufactured/Produced	Sole US Manufacturer Name	Name of Sole US Manufactured Product or Line of Particular Good

The vendor is responsible for certifying the information provided on this exhibit is accurate by signing below:

I hereby certify that the information provided herein is true and correct, and complies with all provisions of sections 34.350 to 34.359, RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting proposal electronically, scanned or typed signature is acceptable)

COMPANY NAME

MFA Oil Company

EXHIBIT E**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98 Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988, Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

<u>MFA Oil Company</u> Company Name	<u>00696 5123</u> DUNS #
<u>Cole Burton</u> Authorized Representative's Printed Name	<u>SR. Manager, Business Dev.</u> Authorized Representative's Title
<u>[Signature]</u> Authorized Representative's Signature	<u>10/3/16</u> Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

Instructions for Submitting a Solicitation Response

The Division of Purchasing is now posting all of its bid solicitation documents on the new MissouriBUYS Bid Board (<https://www.missouribuys.mo.gov>). MissouriBUYS is the State of Missouri's web-based statewide eProcurement system which is powered by WebProcure, through our partner, Perfect Commerce.

For all bid solicitations, vendors now have the option of submitting their solicitation response either as an electronic response or as a hard copy response. As a means to save vendors the expense of submitting a hard copy response and to provide vendors both the ease and the timeliness of responding from a computer, vendors are encouraged to submit an electronic response. Both methods of submission are explained briefly below and in more detail in the step-by-step instructions provided at https://missouribuys.mo.gov/pdfs/how_to_respond_to_a_solicitation.pdf. (This document is also on the Bid Board referenced above.)

Notice: The vendor is solely responsible for ensuring timely submission of their solicitation response, whether submitting an online response or a hard copy response. Failure to allow adequate time prior to the solicitation end date to complete and submit a response to a solicitation, particularly in the event technical support assistance is required, places the vendor and their response at risk of not being accepted on time.

- **ELECTRONIC RESPONSES:** To respond electronically to a solicitation, the vendor must first register with MissouriBUYS by going to the MissouriBUYS Home Page (<https://missouribuys.mo.gov>), clicking the "Register" button at the top of the page, and completing the Vendor Registration. Once registered the vendor should log back into MissouriBUYS and edit their profile by selecting the organizational contact(s) that should receive an automated confirmation of the vendor's electronic bid responses successfully submitted to the state.

To respond electronically to a solicitation, the vendor must login to MissouriBUYS, locate the desired solicitation on the Bid Board, and, at a minimum, the vendor must read and accept the Original Solicitation Documents and complete pricing and any other identified requirements. In addition, the vendor should download and save all of the Original Solicitation Documents on their computer so that they can prepare their response to these documents. Vendors should upload their completed response to these downloaded documents (including exhibits, forms, and other information concerning the solicitation) as an attachment to the electronic solicitation response. Step-by-step instructions for how a registered vendor responds to a solicitation electronically are available on the MissouriBUYS system at: https://missouribuys.mo.gov/pdfs/how_to_respond_to_a_solicitation.pdf.

- Vendors are encouraged to submit their entire proposal electronically; however in lieu of attaching exhibits, forms, pricing, etc. to the electronic solicitation response, a vendor may submit the exhibits, forms, pricing, etc. through mail or courier service. However, any such submission must be received prior to the solicitation's specified end date and time. Be sure to include the solicitation/opportunity (OPP) number, company name, and a contact name on any hard copy solicitation response documents submitted through mail or courier service.
- In the event a registered vendor electronically submits a solicitation response and also mails hard copy documents that are not identical, the vendor should explain which response is valid for the state's consideration. In the absence of such explanation, the state reserves the right to evaluate and award the response which serves its best interest.

Addendum Document: If an addendum document is subsequently issued, please follow these steps to accept the addendum document(s).

1. If you have not accepted the original solicitation document go to the **Overview** page, find the section titled, **Original Solicitation Documents**, review the solicitation document(s) then click on the box under **Select**, and then click on the **Accept** button.

2. To accept the addendum document, on the **Overview** page find the section titled **Addendum Document**, review the addendum document(s) then click on the box under **Select**, and then click on the **Accept** button.

Note: If you submitted an electronic response prior to the addendum date and time, you should review your solicitation response to ensure that it is still valid by taking into consideration the revisions addressed in the addendum document. If a revision is needed to your solicitation response and/or to indicate your acceptance of the addendum document, you will need to retract your response and re-submit your response by following these steps:

1. Log into **MissouriBUYS**.
 2. Select the **Solicitations** tab.
 3. Select **View Current Solicitations**.
 4. Select **My List**.
 5. Select the correct **Opportunity Number (Opportunity No)**; the **Overview** page will display.
 6. Click on **Review Response** from the navigation bar.
 7. Click on **Retract** if your response needs to be revised.
 8. A message will come up asking, "Are you sure you want to retract the Bid". Click on **Continue** to confirm.
 9. Click on **Respond** and revise as applicable.
 10. Click on **Review Response** from the navigation bar and then click on **Submit** to submit your response.
- **HARD COPY RESPONSES:** Be sure to include the solicitation/opportunity (OPP) number, company name, and a contact name on any hard copy solicitation response documents.

*******END OF INSTRUCTIONS FOR SUBMITTING A SOLICITATION RESPONSE*******

1. INTRODUCTION AND GENERAL INFORMATION

This section of the RFP includes a brief introduction and background information about the intended acquisition for which the requirements herein are written. The contents of this section are intended for informational purposes and do not require a response.

1.1 Purpose:

- 1.1.1 This document constitutes a request for sealed proposals from prospective vendors to establish a contract for the purchase of heating fuel - #2 low sulfur diesel for various Missouri state agency facilities located throughout the State of Missouri that are maintained by the Office of Administration, Division of Facilities Management, Design and Construction (OA-FMDC) and the Missouri Department of Corrections (hereinafter referred to as "state agency") in accordance with the requirements and provisions stated herein.
- 1.1.2 The Office of Administration, Division of Facilities Management, Design and Construction or the Department of Corrections will serve as a centralized administrative agency that will be coordinating purchases for the various state agency facilities (hereinafter referred to as "facility" or "facilities") actually purchasing diesel under a contract(s) which results from this procurement process.
- 1.1.3 The vendor may choose to service one, some or all regions of Missouri which are identified in **Attachment 1** of this RFP. The vendor shall understand that the prospective contractor must service the entire identified region chosen.

1.2 Attachments:

- 1.2.1 The attachments are not able to be incorporated into this document and, instead, must be downloaded from the MissouriBUYS Statewide eProcurement System. Please refer to <https://missouribuy.com/bidboard.html>. It shall be the sole responsibility of the vendor to obtain the attachments. The vendor shall not be relieved of any responsibility for performance under the contract due to the failure of the vendor to obtain copies of the attachments.

1.3 Awarded Bid and Contract Document Search:

- 1.3.1 Both the current contract (C113245001) and the previous procurement documentation (B1E13245) may be viewed and printed from the Division of Purchasing's **Awarded Bid & Contract Document Search** located on the Internet at <http://www.oa.mo.gov/purch>.

***** END OF INTRODUCTION AND GENERAL INFORMATION *****

2. CONTRACTUAL REQUIREMENTS

This section of the RFP includes the general contract requirements and provisions that shall govern the contract after RFP award. The contents of this section include mandatory provisions that must be adhered to by the state and the contractor unless changed by a contract amendment. Response to this section by the vendor is not necessary as all provisions are mandatory.

2.1 Contract:

- 2.1.1 A binding contract shall consist of: (1) the RFP, amendments thereto, and any Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including any contractor BAFO response(s), (3) clarification of the proposal, if any, and (4) the Division of Purchasing's acceptance of the proposal by "notice of award". All Exhibits and Attachments included in the RFP shall be incorporated into the contract by reference.
- 2.1.2 A notice of award issued by the State of Missouri 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 for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- 2.1.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- 2.1.4 Any change to the contract, 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 Division of Purchasing 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 to the contract.

2.2 Contract Period:

- 2.2.1 The original contract period shall be as stated on page 1 of the Request for Proposal (RFP). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Purchasing shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Division of Purchasing exercises such right, all terms and conditions, requirements and specifications of the contract, including the quoted mark-up prices, shall remain the same and apply during renewal periods.

2.3 Termination:

- 2.3.1 The Division of Purchasing reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

2.4 Contract Prices and Invoices:

- 2.4.1 The contractor shall be paid the price for the #2 low sulfur diesel fuel determined by the applicable Oil Price Information Service (OPIS) report as described further herein. The average price for #2 low sulfur diesel fuel published by OPIS will be added to the quoted mark-up price per gallon as shown on the contract Pricing Page.

- 2.4.2 All prices shall be as indicated on the Pricing Page. The state shall not pay nor be liable for any other additional costs including but not limited to taxes (except as noted in paragraph 2.4.7 below), shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.
- 2.4.3 The contractor shall furnish a current copy of the OPIS Posting used to determine pricing to the state agency with the invoice, and otherwise upon specific request of the state agency and the Division of Purchasing. Invoices shall be submitted to the following address:
- Office of Administration, Facilities Management Design and Construction
Attn: Accounts Payable
301 West High Street, Room 780
P.O. Box 809
Jefferson City, MO 65102
Reference: P.O. #
- or
- Department of Corrections
Fiscal Management Unit
P.O. Box 236
Jefferson City, MO 65102
- 2.4.4 Invoiced pricing shall be the OPIS price effective on the day of delivery of the fuel oil to the state agency site.
- 2.4.5 The base price shall be the OPIS PADD 2 report average price per gallon for No. 2 low sulfur diesel fuel for the OPIS rack closest to the state agency delivery location.
- 2.4.6 The state agency will pay for oil delivered. The amount shall be determined as metered from tank/truck fuel oil delivery point:
- a. It is acceptable to provide a meter ticket; oil may be loaded and metered onto a tanker truck, secured/sealed, delivered to the state agency site, unsealed, and put into storage or as otherwise directed by the state agency.
- 2.4.7 All taxes for which the State of Missouri is not exempt such as the Underground Storage Tank Tax (LUST), the Agricultural Diesel Tax, and the Oil Spill Tax must be built into the contractor's quoted mark-up prices. Any new taxes that may be levied during the course of the contract for which the state is not exempt may be itemized separately by the contractor on the state's invoice. Upon the occasion of adding new non-exempt taxes, the contractor must promptly notify the Division of Purchasing; any new non-exempt taxes must be listed in the contract by way of a contract amendment prepared and authorized by the Division of Purchasing.
- 2.4.8 No other add-on charges shall be paid besides the quoted mark-up price as referenced herein.
- 2.5 Payment Terms:**
- 2.5.1 The contractor shall understand and agree the state 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 update their vendor registration with their ACH-EFT payment information at <https://MissouriBUYs.mo.gov>. 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 EFT addendum record to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the RFP.
- 2.5.2 The contractor may obtain detailed information for payments issued for the past 24 months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at <https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>.

2.5.3 All payment terms shall be as stated in the Terms and Conditions of the contract (see paragraph 10, "Invoicing and Payment") unless otherwise addressed in the RFP, or mutually agreed to by the state and the contractor. Payment terms should be net 30 days unless otherwise stated in the RFP. No late charges shall be applied which are not in compliance with Chapter 34.055 RSMo. This statute may be found at <http://www.moga.mo.gov/mostatutes/ChaptersIndex/chaptIndex034.html>.

2.6 Contractor Liability:

2.6.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

2.6.2 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.

2.6.3 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

2.7 Federal Funds Requirement:

2.7.1 The contractor shall understand and agree that this procurement may involve the expenditure of federal funds. Therefore, in accordance with the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law 101-166, Section 511, "Steven's Amendment", the contractor shall not issue any statements, press releases, and other documents describing projects or programs funded in whole or in part with Federal money unless the prior approval of the state agency is obtained and unless they clearly state the following as provided by the state agency:

- a. the percentage of the total costs of the program or project which will be financed with Federal money;
- b. the dollar amount of Federal funds for the project or program; and
- c. percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

2.8 Insurance:

2.8.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract. General and other non-professional liability insurance shall include an endorsement that adds the State of Missouri as an additional insured. Self-insurance coverage or another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable and the State of Missouri is protected as an additional insured.

- a. In the event any insurance coverage is canceled, the state agency must be notified within thirty (30) calendar days.

2.9 Independent Contractor:

2.9.1 The contractor is an independent contractor and shall not represent the contractor or the contractor's employees to be employees of the State of Missouri or an agency of the State of Missouri. The contractor shall assume all legal and financial responsibility for salaries, taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2.10 Estimated Quantities:

2.10.1 The quantities indicated in Attachment #2 of this RFP are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period. The estimates do not indicate single order amounts unless otherwise stated. The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities.

2.11 Hazard Communication Safety Data Sheets and Labeling Requirements:

2.11.1 The State of Missouri, Division of Purchasing, in accordance with the revised rules and regulations of the Occupational Safety and Health Administration (OSHA) requires that all hazardous chemicals and commodities purchased by the State of Missouri be labeled with warning labels, and either contain a safety data sheet with each shipment, or the contractor otherwise shall make available a safety data sheet specific to the product available for downloading from the Internet. The contractor shall ensure that the state agency is informed about where to find safety data sheets for products under contract. Safety data sheet information must be compliant with OSHA's Hazard Communication Standard. The contractor must comply with this mandatory requirement for all commodities provided under contract that contain hazardous material. The contractor's Safety Data Sheets shall comply with the OSHA uniform formatting requirements that became effective June 1, 2015, and the contractor's Safety Data Sheets shall always comply with any changes to those OSHA requirements. Failure to comply with this requirement may cause cancellation of the contract with goods returned at the contractor's expense as well as suspension from the solicitation list for future requirements.

2.12 Participation by Other Organizations:

2.12.1 The contractor must comply with any Organization for the Blind/Sheltered Workshop participation levels committed to in the contractor's awarded proposal.

2.12.2 The contractor shall prepare and submit to the Division of Purchasing a report detailing all payments made by the contractor to Organizations for the Blind/Sheltered Workshops participating in the contract for the reporting period. The contractor must submit the report on a monthly basis, unless otherwise determined by the Division of Purchasing.

2.12.3 The Division of Purchasing will monitor the contractor's compliance in meeting the Organizations for the Blind/Sheltered Workshop participation levels committed to in the contractor's awarded proposal. If the contractor's payments to the participating entities are less than the amount committed, the state may cancel the contract and/or suspend or debar the contractor from participating in future state procurements, or retain payments to the contractor in an amount equal to the value of the participation commitment less actual payments made by the contractor to the participating entity. If the Division of Purchasing determines that the contractor becomes compliant with the commitment, any funds retained as stated above, will be released.

2.12.4 If a participating entity fails to retain the required certification or is unable to satisfactorily perform, the contractor must obtain other organizations for the blind/sheltered workshops to fulfill the participation requirements committed to in the contractor's awarded proposal.

- a. The contractor must obtain the written approval of the Division of Purchasing for any new entities. This approval shall not be arbitrarily withheld.

- b. If the contractor cannot obtain a replacement entity, the contractor must submit documentation to the Division of Purchasing detailing all efforts made to secure a replacement. The Division of Purchasing shall have sole discretion in determining if the actions taken by the contractor constitute a good faith effort to secure the required participation and whether the contract will be amended to change the contractor's participation commitment.

2.12.5 No later than 30 days after the effective date of the first renewal period, the contractor must submit an affidavit to the Division of Purchasing. The affidavit must be signed by the director or manager of the participating Organizations for the Blind/Sheltered Workshop verifying provision of products and/or services and compliance of all contractor payments made to the Organizations for the Blind/Sheltered Workshops. The contractor may use the affidavit available on the Division of Purchasing's website at <http://oa.mo.gov/sites/default/files/bswaffidavit.doc> or another affidavit providing the same information.

2.13 Coordination:

2.13.1 The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing throughout the effective period of the contract.

2.14 Subcontractors:

2.14.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

2.15 Contractor's Personnel:

2.15.1 The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

2.15.2 If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state.

2.15.3 The contractor shall agree to fully cooperate with any audit or investigation from federal, state, or local law enforcement agencies.

2.16 Prison Rape Elimination Act (PREA) Requirements (Applicable to Department of Corrections only):

2.16.1 The contractor's personnel and agents providing service under the contract and within the security perimeter of the state agency's institution must be at least 18 years of age.

- 2.16.2 Prior to the provision of service, the state agency may conduct a Missouri Uniform Law Enforcement System (MULES) or other background investigation on the contractor's personnel and agents. Such investigation shall be equivalent to investigations required of all personnel employed by the state agency.
- a. The state agency shall have the right to deny access into the institution for any of the contractor's personnel and agents, for any reason. Such denial shall not relieve the contractor of any requirements of the contract.
- 2.16.3 The contractor must obtain written approval from the state agency's Director of the Division of Adult Institutions for any contractor personnel and agents under active federal or state felony or misdemeanor supervision, and contractor personnel and agents with prior felony convictions but not under active supervision, prior to such personnel and agents performing contractual services.
- 2.16.4 The contractor and the contractor's personnel and agents shall at all times observe and comply with all applicable state statutes, state agency rules, regulations, guidelines, internal management policy and procedures, and general orders of the state agency that are applicable, regarding operations and activities in and about all state agency property. Furthermore, the contractor and the contractor's personnel and agents shall not obstruct the state agency nor any of its designated officials from performing their duties in response to court orders or in the maintenance of a secure and safe correctional environment. The contractor shall comply with the state agency's policy and procedures relating to personnel conduct.
- a. The state agency has a zero tolerance policy for any form of sexual misconduct to include staff/contractor/volunteer-on-offender or offender-on-offender sexual harassment, sexual assault, sexual abusive contact, and consensual sex. The contractor and the contractor's personnel and agents who witness sexual misconduct must immediately report such to the institution's warden. If the contractor, or the contractor's personnel and agents, engage in, fail to report, or knowingly condone sexual misconduct with or between offenders, the contract shall be subject to cancelation and the contractor or the contractor's personnel and agents may be subject to criminal prosecution.
 - b. If the contractor, or the contractor's personnel and agents, engage in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution, the contractor or the contractor's personnel and agents shall be denied access into the institution.
- 2.16.5 The contractor and the contractor's personnel and agents shall not interact with the offenders except as is necessary to perform the requirements of the contract. The contractor and the contractor's personnel and agents shall not give anything to nor accept anything from the offenders except in the normal performance of the contract.

***** END OF CONTRACTUAL REQUIREMENTS *****

3. TECHNICAL SPECIFICATIONS:

This section of the RFP includes requirements and provisions relating specifically to the technical specifications of the state agency. The contents of this section include mandatory requirements that will be required of the successful vendor and subsequent contractor. The contents of this section are for informational purposes and do not require a response.

3.1 Fuel Oil Requirements:

- 3.1.1 Fuel oil shall be dyed #2 Low Sulfur (500 ppm) grade and include a winter blend or additive for the period of November 1st through April 1st of each year. The winter blend shall be 75% #2 and 25% #1 low sulfur fuel oil or include an additive to meet cold weather specifications.
- 3.1.2 The grades of fuel oil specified herein shall be homogeneous hydrocarbon oils, free from inorganic acid, and free from excessive amounts of solid or fibrous foreign matter likely to make cleaning of suitable strainers necessary. In addition all fuel oil must meet ASTM specifications D-396.

Gravity API "F":	30 minimum	
Cloud Point:	3/1 - 9/30 10°F	
	10/1 - 3/1 0°F	
Cetane Number:	Minimum 40	
Ash:	0.01% Maximum	
Flash Point:	100°F	
Distillation:	10% Recovered	Max. 470°F
	90% Recovered	540 to 640
	End point	Max. 675°F
Viscosity SSU@100°F:	33-38	
Four Point:	3/1 - 9/30 0°F	
	10/1 - 3/1 -15°F	
Carbon Residue:	Maximum 0.25	
Sulfur:	Maximum 0.05% (Weight Percent)	
BTU/Gallon:	Minimum 138,000	

3.2 Testing Requirements and Conditions:

- 3.2.1 Upon the request of the state agency, the contractor shall submit an analysis of the #2 fuel oil including the sulfur content which is to be delivered to the state agency facility.
- 3.2.2 All fuel oil provided by the contractor must conform to and pass the following tests which must be performed in accordance with the following applicable current ASTM (D-396) test methods.

Flash Point:	Method D93
Pour Point:	Method D97
Carbon Residue:	Method D524
Ash:	Method D482
Distillation:	Method D86
Viscosity:	Method D287 or D445
Gravity:	Method D287
Corrosion:	Method D130
Sulfur:	Method D2622

- 3.2.3 Each tanker truck shall be subject to destination inspection, sampling and testing by the state agency at the state agency's discretion.

- a. If the #2 fuel oil is tested, the State of Missouri shall have the option to have an analysis conducted by an independent industrial laboratory in accordance with standard sampling and testing procedures. The cost of such tests shall be paid by the State of Missouri if the sample complies with the specifications. Should the sample not comply, all costs shall be borne by the contractor.
- b. The State of Missouri reserves the right to reject any #2 fuel oil not in compliance with the specification.
- c. Permitting delivery in the storage tank of the state facility does not constitute an agreement by the state that the delivery meets the requirements of the specification.
- d. Samples collected by the state will be a direct method, pull one (1) gallon sample from suction line of oil storage tank or by taking a direct sample from oil delivery tanker truck.
- e. Should the contractor place #2 fuel oil that does not meet the specification into a State of Missouri storage tank, the contractor shall remove all contents and clean out the tank at the contractor's expense and to the State of Missouri's satisfaction. The contractor shall fill the tank to its previous level without any additional reimbursement.

******* END OF TECHNICAL SPECIFICATIONS *******

4. PERFORMANCE REQUIREMENTS:

This section of the RFP includes requirements and provisions relating specifically to the performance requirements of the state agency. The contents of this section include mandatory requirements that will be required of the successful vendor and subsequent contractor. The contents of this section are for informational purposes and do not require a response.

4.1 General:

- 4.1.1 The contractor shall provide #2 low sulfur diesel fuel to any state facility ordering said fuel located within the identified region that the contractor has agreed to serve in the region's entirety (i.e., includes all counties in the designated region) and as identified in **Attachment 1**.
- 4.1.2 All provisions of fuel shall be as ordered by the state agency facility, on an as needed if needed basis.

4.2 Substitutions:

- 4.2.1 The contractor shall not substitute any fuel products that have been awarded to the contractor without the prior written approval of the Division of Purchasing.
- 4.2.2 In the event the product becomes unavailable, the contractor shall be responsible for providing a suitable substitute product. The contractor's failure to provide an acceptable substitute may result in cancellation or termination of the contract.
- 4.2.3 Any product substitution must be a replacement of the contracted product with a fuel product of equal or better capabilities and quality, and with equal or lower pricing. The contractor shall understand that the state reserves the right to allow the substitution of any new or different fuel product offered by the contractor. The Division of Purchasing shall be the final authority as to acceptability of any proposed substitution.
- 4.2.4 Any product substitution shall require a formal contract amendment authorized by the Division of Purchasing prior to the state acquiring the substitute product under the contract.
- 4.2.5 The state may choose not to compel a product substitution in the event requiring a substitution would be deemed unreasonable in the sole opinion of the State of Missouri. The contractor shall not be relieved of substituting a product in the event of manufacturer discontinuation or other reason simply for reasons of unprofitability to the contractor.

4.3 Replacement of Adulterated Product:

- 4.3.1 The contractor shall be responsible for replacing any adulterated fuel product at no cost to the State of Missouri. This includes all shipping costs for returning fuel product to the contractor for replacement.

4.4 Delivery Requirements:

- 4.4.1 The contractor and/or the contractor's subcontractor(s) shall deliver products in accordance with the contracted delivery times stated herein to the state agency upon receipt of an authorized purchase order or P-card transaction notice.
- 4.4.2 All deliveries must be made by the contractor within twenty-four (24) to forty-eight (48) hours after being notified by state personnel. All deliveries shall be coordinated with the specific state agency facility and with authorized representatives for the specific state agency. See **Attachment 2** for specific delivery days/times available for specific state facilities.

- 4.4.3 Delivery shall include the safe transmission of the #2 low sulfur diesel into the state agency's owned fuel tank, following all industry, federal, state and local laws, rules and regulations regarding the safe transport, handling and storage of fuel. All orders must be shipped F.O.B. Destination, Freight Prepaid and Allowed. All orders received on the last day of the contract, must be shipped at the contract price. All deliveries must be coordinated with the state agency.
- 4.4.4 The contractor shall deliver #2 low sulfur diesel via tank-load or transport as applicable to the specific site. For purposes of the contract, "transport" delivery shall mean delivery of an amount of 7,000 gallons or more at one time.
- 4.5 Reporting Requirements:**
- 4.5.1 Upon request, the contractor shall submit usage report(s) to the Division of Purchasing of the fuel oil delivered. The contractor shall have the capability to report annual purchases by fuel type by state facility. The contractor must submit the report in hard-copy format as well as in electronic format, i.e., in an analysis-ready format.
- 4.5.2 At a minimum, the report should contain the following information:
- a. Order Date(s)/Period
 - b. State Agency Facility Name and Account Name/Number
 - c. State Agency Facility Location
 - d. Item Number
 - e. Item Description
 - f. Quantity Ordered, i.e., net gallons
 - g. Quantity Delivered
 - h. OPIS Price
 - i. Unit Price Charged (with contract mark-up)
 - j. Extended Price (unit price charged x quantity delivered)
 - k. Purchase Order (P.O.) number
 - l. Applicable taxes charged (itemized)
- 4.5.3 The contractor shall develop and provide ad hoc reports as required and requested by the Division of Purchasing or the state agency at no additional cost. The contractor must submit ad hoc reports electronically in an analysis-ready format specified and approved by the Division of Purchasing or the state agency.

***** END OF PERFORMANCE REQUIREMENTS *****

5. PROPOSAL SUBMISSION INFORMATION AND REQUIREMENTS

This section of the RFP includes information and instructions to the vendor that is integral to their proposal submittal. The contents of this section are informational and instructional. Many of the instructional provisions require certain actions by the vendor submitting a proposal.

5.1 Contact:

5.1.1 Any and all communication from vendors regarding specifications, requirements, competitive bid process, etc. related to the RFP document must be referred to the buyer identified on the first page of this document. Such communication should be received at least ten (10) calendar days prior to the official proposal opening date.

5.2 Business Compliance:

5.2.1 The vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The vendor certifies by signing the signature page of this original document and any addendum signature page(s) that the vendor and any proposed subcontractors either are presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. The vendor shall provide documentation of compliance upon request by the Division of Purchasing. The compliance to conduct business in the state shall include but may not be limited to:

- Registration of business name (if applicable) with the Secretary of State at <http://sos.mo.gov/business/startBusiness.asp>
- Certificate of authority to transact business/certificate of good standing (if applicable)
- Taxes (e.g., city/county/state/federal)
- State and local certifications (e.g., professions/occupations/activities)
- Licenses and permits (e.g., city/county license, sales permits)
- Insurance (e.g., worker's compensation/unemployment compensation)

5.2.2 The vendor should refer to the Missouri Business Portal at <http://business.mo.gov> for additional information.

5.3 Submission of Offers:

5.3.1 On-line Proposal - If a registered vendor is responding electronically through the MissouriBUYS System website, in addition to completing the on-line pricing, the registered vendor should submit completed exhibits, forms, and other information concerning the proposal as an attachment to the electronic proposal. The registered vendor is instructed to review the RFP submission provisions carefully to ensure they are providing all required pricing, including applicable renewal pricing. Instructions on how a registered vendor responds to a proposal on-line are available on the MissouriBUYS System website at: <https://missouribuys.mo.gov/bidboard.html>.

- a. The exhibits, forms, and Pricing Page(s) provided herein can be saved into a word processing document, completed by a registered vendor, and then sent as an attachment to the electronic submission. Other information requested or required may be sent as an attachment. Additional instructions for submitting electronic attachments are on the MissouriBUYS System website. Be sure to include the solicitation/opportunity (OPP) number, company name, and a contact name on any electronic attachments.
- b. In addition, a registered vendor may submit the exhibits, forms, Pricing Page(s), etc., through mail or courier service. However, any such submission must be received prior to the specified end date and time.
- c. If a registered vendor submits an electronic and hard copy proposal response and if such responses are not identical, the vendor should explain which response is valid. In the absence of an explanation, the State of Missouri shall consider the response which serves its best interest.

5.3.2 **Hard Copy Proposal** - If the vendor is submitting a proposal via the mail or a courier service or is hand delivering the proposal, the vendor should include completed exhibits, forms, and other information concerning the proposal (including completed Pricing Page(s) with the proposal. The vendor is instructed to review the RFP submission provisions carefully to ensure they are providing all required pricing, including applicable renewal pricing.

- a. The vendor's hard copy proposal should include an original document, plus two (2) copies.

5.4 **Open Records:**

5.4.1 Pursuant to section 610.021, RSMo, the vendor's proposal shall be considered an open record after a contract is executed or all proposals are rejected. The vendor shall not submit the entire proposal as proprietary or confidential. The vendor may submit a part of the proposal as confidential, but only if the proprietary or confidential nature of the material is provided for in section 610.021, RSMo. Proprietary or confidential portions of the vendor's proposal allowed by the statute need to be separated, sealed, and clearly marked as confidential within the vendor's proposal. Also, the vendor should provide adequate explanation of what qualifies the material to be held as confidential pursuant to the provisions of section 610.021, RSMo.

5.5 **Compliance with Terms and Conditions:**

5.5.1 The vendor is cautioned when submitting pre-printed terms and conditions or other type material to make sure such documents do not contain other terms and conditions which conflict with those of the RFP and its contractual requirements. The vendor agrees that in the event of conflict between any of the vendor's terms and conditions and those contained in the RFP that the RFP shall govern. Taking exception to the State's terms and conditions may render a vendor's proposal non-responsive and remove it from consideration for award.

5.6 **Open Competition:**

5.6.1 The vendor may offer any brand of fuel product that meets or exceeds the specifications. The vendor should explain in detail how their product meets or exceeds the specifications. Proposals which do not comply with the requirements and the specifications are subject to rejection without clarification.

5.7 **Proposal Detail Requirements and Deviations:**

5.7.1 It is the vendor's responsibility to submit a proposal that meets all mandatory specifications stated herein. The vendor should clearly identify any and all deviations from both the mandatory and desirable specifications stated in the RFP. Any deviation from a mandatory requirement may render the proposal non-responsive. Any deviation from a desirable specification may be reviewed by the state as to its acceptability and impact on competition.

5.8 **Unit of Measure:**

5.8.1 If the unit of measure specified on the attached pricing pages is different than the manner in which the vendor offers that item, then the unit of measure being proposed by the vendor must be clearly identified on the pricing page. All mathematical conversions should be shown by the vendor, and must be provided upon specific request from the buyer.

- a. In the cost evaluation, a unit price conversion will be done to fairly evaluate proposal prices. However, for any resulting contract, the unit of measure offered will be the unit of measure awarded. Vendors are encouraged to contact the buyer **prior** to submission of their proposal to discuss anticipated unit modifications. The vendor is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification or to disqualify the proposal for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

5.9 Competitive Negotiation of Proposals:

- 5.9.1 The vendor is advised that under the provisions of this Request for Proposal, the Division of Purchasing reserves the right to conduct negotiations of the proposals received or to award a contract without negotiations. If such negotiations are conducted, the following conditions shall apply:
- a. Negotiations may be conducted in person, in writing, or by telephone.
 - b. Negotiations will only be conducted with potentially acceptable proposals. The Division of Purchasing reserves the right to limit negotiations to those proposals which received the highest rankings during the initial evaluation phase. All vendors involved in the negotiation process will be invited to submit a best and final offer.
 - c. Terms, conditions, prices, methodology, or other features of the vendor's proposal may be subject to negotiation and subsequent revision. As part of the negotiations, the vendor may be required to submit supporting financial, pricing and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.
 - d. The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the Division of Purchasing determines that a change in such requirements is in the best interest of the State of Missouri.

5.10 Pricing:

- 5.10.1 The vendor must submit pricing information on the Pricing Page provided herein. The mark-up pricing quoted shall apply to all region(s) the vendor chooses to bid. (Reference **Attachment 1**). The vendor must quote a firm, fixed mark-up price to be charged above the OPIS PADD 2 report average price per gallon for #2 low sulfur diesel. The mark-up price shall include any profit desired, freight, handling, and non-exempt taxes (see paragraph 2.4.7 herein) and all delivery charges. The vendor must price both tank-load and transport deliveries applicable to weekday and weekend/holiday deliveries. The quoted firm, fixed mark-up pricing shall remain the same throughout the duration of the contract.

5.11 Cost Evaluation:

- 5.11.1 Separate cost evaluations will be conducted by region. The cost evaluation will be based on the quoted per gallon mark-up price, which will be added to the price per gallon of diesel fuel reported in the most recent-to-bid-opening-date published Missouri Energy Bulletin as published by the Missouri Department of Economic Development, statewide average retail price for diesel. The quoted mark-up prices will be added together to create an arithmetic average mark-up price. This average mark-up price will be added to the average monthly price per gallon for diesel reported in the Missouri Energy Bulletin. The price resulting from this operation will then be multiplied by the estimated annual volumes stated for each state agency facility listed on **Attachment 2**. Resulting sub-totals will be added together to form a grand total for all state agency facilities listed in **Attachment 2**. Cost will be evaluated for the original contract period; renewal option periods will also be considered but they will be considered at the same pricing as the original contract period.

5.12 Determination for Award:

- 5.12.1 The award shall be made to the lowest priced responsive vendor by region. The award shall be made to the lowest priced responsive vendor. Other factors that affect the determination of the lowest price responsive vendor include consideration of the Domestic Product Procurement Act, the Blind/Sheltered Workshop Preference, and the Missouri Service Disabled Veterans Preference explained in the paragraphs that follow.
- 5.12.2 The State of Missouri reserves the right to reject any proposal which is determined unacceptable for reasons which may include but are not necessarily limited to: 1) failure of the vendor to meet mandatory general performance specifications; and/or 2) failure of the vendor to meet mandatory technical specifications; and/or,

3) receipt of any information, from any source, regarding delivery of unsatisfactory product or service by the vendor within the past three years. As deemed in its best interests, the State of Missouri reserves the right to clarify any and all portions of any vendor's offer.

5.13 Domestic Product Procurement Act:

- 5.13.1 In accordance with the Domestic Product Procurement Act (hereinafter referred to as the Buy American Act) sections 34.350 to 34.359, RSMo, the vendor is advised that any goods purchased or leased by any public agency shall be manufactured or produced in the United States.
- 5.13.2 Vendors who can certify that goods or commodities to be provided in accordance with the contract are manufactured or produced in the United States or imported in accordance with a qualifying treaty, law, agreement, or regulation shall be entitled to a ten percent (10%) preference over vendors whose products do not qualify.
- 5.13.3 The requirements of the Buy American Act shall not apply if other exceptions to the Buy American mandate in section 34.353, RSMo, are met.
- 5.13.4 If the vendor claims there is only one line of the good manufactured or produced in the United States, subsection 2 of section 34.353, RSMo, or that one of the exceptions of subsection 3 of 34.353, RSMo, applies, the Executive Head of the Agency bears the burden of certification as required prior to the award of a contract.
- 5.13.5 In accordance with the Buy American Act, the vendor must provide proof of compliance with section 34.353, RSMo. Therefore the vendor should complete and return **Exhibit A**, certification regarding proof of compliance, with the proposal. This document must be satisfactorily completed prior to an award of a contract.
- 5.12.6 If the lowest priced vendor qualifies as American-made or in the event all of the vendors or none of the vendors qualify for the Buy American preference, no further calculation is necessary. In the event the lowest priced vendor does not qualify for the Buy American Preference but other vendors do qualify, then the low vendor's price(s) is increased by 10% for those items not eligible for the Buy American Preference.

5.14 Preference for Organizations for the Blind and Sheltered Workshops:

- 5.14.1 Pursuant to section 34.165, RSMo, and 1 CSR 40-1.050, a ten (10) bonus point preference shall be granted to vendors including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920, RSMo.
- a. In order to qualify for the ten bonus points, the following conditions must be met and the following evidence must be provided:
- 1) The vendor must either be an organization for the blind or sheltered workshop or must be proposing to utilize an organization for the blind/sheltered workshop as a subcontractor and/or supplier in an amount that must equal the greater of \$5,000 or 2% of the total dollar value of the contract for purchases not exceeding \$10 million.
 - 2) The services performed or the products provided by the organization for the blind or sheltered workshop must provide a commercially useful function related to the delivery of the contractually-required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract. Therefore, if the services performed or the products provided by the organization for the blind or sheltered workshop is utilized, to any extent, in the vendor's obligations outside of the contract, it shall not be considered a valid added value to the contract and shall not qualify as participation in accordance with this clause.

3) If the vendor is proposing participation by an organization for the blind or sheltered workshop, in order to receive evaluation consideration for participation by the organization for the blind or sheltered workshop, the vendor must provide the following information with the proposal:

- Participation Commitment - The vendor must complete **Exhibit B, Participation Commitment**, by identifying the organization for the blind or sheltered workshop and the commercially useful products/services to be provided by the listed organization for the blind or sheltered workshop. If the vendor submitting the proposal is an organization for the blind or sheltered workshop, the vendor must be listed in the appropriate table on the Participation Commitment Form.
- Documentation of Intent to Participate – The vendor must either provide a properly completed **Exhibit C, Documentation of Intent to Participate Form**, signed and dated no earlier than the RFP issuance date by the organization for the blind or sheltered workshop proposed or must provide a recently dated letter of intent signed and dated no earlier than the RFP issuance date by the organization for the blind or sheltered workshop which: (1) must describe the products/services the organization for the blind/sheltered workshop will provide and (2) should include evidence of the organization for the blind/sheltered workshop qualifications (e.g. copy of certificate or Certificate Number for Missouri Sheltered Workshop).

NOTE: If the vendor submitting the proposal is an organization for the blind or sheltered workshop, the vendor is not required to complete **Exhibit C, Documentation of Intent to Participate Form** or provide a recently dated letter of intent.

- b. A list of Missouri sheltered workshops can be found at the following Internet address:
<http://dese.mo.gov/special-education/sheltered-workshops/directories>
- c. The websites for the Missouri Lighthouse for the Blind and the Alphapointe Association for the Blind can be found at the following Internet addresses:
<http://www.lhbindustries.com>
<http://www.alphapointe.org>
- d. Commitment – If the vendor’s proposal is awarded, the organization for the blind or sheltered workshop participation committed to by the vendor on **Exhibit B, Participation Commitment**, shall be interpreted as a contractual requirement.

5.14.2 The Blind/Sheltered Workshop Preference required under section 34.165, RSMo, allows for ten (10) bonus points to a qualifying vendor. If the lowest priced vendor qualifies for the preference, or in the event none of the vendors qualify for the preference, no further calculation is necessary.

5.14.3 In the event the lowest priced vendor does not qualify for the preference but other vendors do, then the following evaluation point formula shall apply to determine cost evaluation points:

<u>Lowest Responsive Vendor’s Price</u> Compared Vendor’s Price	x	200 Maximum Cost Evaluation Points	=	Awarded Cost Evaluation Points
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5.15 Missouri Service-Disabled Veteran Business Preference:

5.15.1 Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, a three (3) bonus point preference shall be granted to vendors who qualify as Missouri service-disabled veteran business enterprises and who complete and submit **Exhibit D, Missouri Service-Disabled Veteran Business Enterprise Preference** with the proposal. If the proposal does not include the completed Exhibit D and the documentation specified on Exhibit D in accordance with the instructions provided therein, no preference points will be applied.

- 5.15.2 If the lowest priced vendor qualifies for the preference, or in the event none of the vendors qualify for the preference, no further calculation is necessary.
- 5.15.3 In the event the lowest priced vendor does not qualify for the preference but other vendors do, then the following evaluation point formula shall apply to determine cost evaluation points:

<u>Lowest Responsive Vendor's Price</u> Compared Vendor's Price	x	200 Maximum Cost Evaluation Points	=	Awarded Cost Evaluation Points
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5.16 Debarment Certification:

- 5.16.1 The vendor certifies by signing the signature page of this original document and any addendum signature page(s) that the vendor is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs. The vendor should complete and return the attached certification regarding debarment, etc., **Exhibit E**, with their proposal. This document must be satisfactorily completed prior to award of the contract.

******* END OF PROPOSAL SUBMISSION INFORMATION AND REQUIREMENTS *******

PRICING PAGE

The products shall conform to the specifications as indicated herein. The vendor shall state the firm, fixed mark-up price to be added to the OPIS PADD 2 report average price per gallon for #2 low sulfur diesel fuel. The mark-up pricing quoted shall apply to all region(s) the vendor chooses to bid. (*See Attachment 1 for historical purchase volumes for the state agencies intended for coverage under this contract). The mark-up price shall include any profit desired, freight, handling, any non-exempt taxes (see paragraph 2.4.7), and all delivery charges. The vendor must price both tank-load and transport deliveries applicable to weekday and weekend/holiday deliveries. The quoted firm, fixed mark-up pricing shall remain the same throughout the duration of the contract.

TANK LOAD DELIVERIES

<u>ITEM</u>	<u>MANDATORY SPECIFICATIONS</u>	<u>QTY</u>	<u>UNIT</u>	<u>FIRM, FIXED MARK-UP PRICE</u>
1	C/S Code: 15101701 #2 Heating Fuel Oil #2 Low Sulfur Diesel Fuel Per Gallon Mark-Up – Weekday Delivery (To be added to the OPIS PADD 2 report average price per gallon for diesel fuel)	1*	GAL	\$ <u>.4559</u>
2	C/S Code: 15101701 #2 Heating Fuel Oil #2 Low Sulfur Diesel Fuel Per Gallon Mark-Up – Weekend or Holiday Delivery (To be added to the OPIS PADD 2 report average price per gallon for diesel fuel)	1*	GAL	\$ <u>.5059</u>

TRANSPORT DELIVERIES

<u>ITEM</u>	<u>MANDATORY SPECIFICATIONS</u>	<u>QTY</u>	<u>UNIT</u>	<u>FIRM, FIXED MARK-UP PRICE</u>
3	C/S Code: 15101701 #2 Heating Fuel Oil #2 Low Sulfur Diesel Fuel Per Gallon Mark-Up – Weekday Delivery (To be added to the OPIS PADD 2 report average price per gallon for diesel fuel)	1*	GAL	\$ <u>.2744</u>
4	C/S Code: 15101701 #2 Heating Fuel Oil #2 Low Sulfur Diesel Fuel Per Gallon Mark-Up – Weekend or Holiday Delivery (To be added to the OPIS PADD 2 report average price per gallon for diesel fuel)	1*	GAL	\$ <u>.30</u>

SERVICING REGIONS:

The vendor must identify below the region and specific OPIS rack(s) for the region(s) that the vendor is proposing to serve. Note: The vendor must service the entire region chosen.

Check below the region(s) the vendor will serve. (See Attachment 1 for the counties to be served within each region).

- Northwest Region _____
- Northeast Region _____
- Greater Kansas City Region _____
- Central Region _____
- Greater St. Louis Region _____
- Southwest Region _____
- Southeast Region _____

SERVICING OPIS RACKS/CITIES:

Identify the specific OPIS rack(s) and associated cities within the region(s) the vendor will serve. The identified OPIS rack and associated city(ies) shall be used to determine contract fuel pricing for delivery locations within the cited region(s):

	Rack(s)/City(ies)
Northwest Region	<u>Kansas City</u>

Northeast Region	<u>Columbia</u>

Greater Kansas City Region	<u>KC.</u>

Central Region	<u>Columbia</u>

Greater St. Louis Region	<u>St. Louis</u>

Southwest Region Springfield

Southeast Region St. Louis

DELIVERY:

Delivery shall not exceed 48-hours after the receipt of a properly executed order. If the vendor's delivery is better, the vendor should state the delivery time-frame in hours after receipt of order: _____ hours ARO.

Is fuel transport provided by the vendor? Yes: X No: _____

If the vendor's transport is subcontracted or arranged through agreement with another vendor, name the vendor(s) providing fuel transport:

EMPLOYEE BIDDING/CONFLICT OF INTEREST:

Vendors who are elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.450 to 105.458, RSMo, regarding conflict of interest. If the vendor or any owner of the vendor's organization is currently an elected or appointed official or an employee of the State of Missouri or any political subdivision thereof, please provide the following information:

Name and title of elected or appointed official or employee of the State of Missouri or any political subdivision thereof: _____

If employee of the State of Missouri or political subdivision thereof, provide name of state agency or political subdivision where employed: _____

Percentage of ownership interest in vendor's organization held by elected or appointed official or employee of the State of Missouri or political subdivision thereof: _____ %

EXECUTIVE ORDER 04-09:

If any products and/or services offered under this RFP are being manufactured or performed at sites outside the United States, the vendor MUST disclose such fact and provide details with the bid.

EXHIBIT A

DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN) PREFERENCE

In accordance with sections 34.350-34.359 RSMo, the vendor is instructed to provide information regarding the point of manufacture for each of the products being proposed so that the product's eligibility for the Domestic Products Procurement Act (Buy American) Preference can be determined. This information is requested for the finished product only, not for components of the finished product. The vendor may be required to provide supporting documentation indicating proof of compliance.

Qualifying for the Domestic Products Preference:

A product qualifies for the preference if one of the following circumstances exist:

- if manufactured or produced in the U.S.; or
- if the product is imported into the U.S. but is covered by an existing international trade treaty, law, agreement, or regulation that affords the specific product the same status as a product manufactured or produced in the U.S.; or
- if only one line of products is manufactured or produced in the U.S.

Non-Domestic Product:

If the product is not manufactured or produced in the U.S. and does not otherwise qualify as domestic, then it will be considered non-domestic and not eligible for the preference.

THE VENDOR MUST COMPLETE THE FOLLOWING APPLICABLE TABLES TO CERTIFY WHETHER:

- (Table 1) ALL products proposed are manufactured or produced in the U.S. and qualify for the Domestic Products Procurement Act Preference; OR
- (Table 2) ALL products proposed are manufactured or produced outside the U.S. and do not otherwise qualify for the Domestic Products Procurement Act Preference; OR
- (Tables 3-6) Not all products proposed fall into the prior two categories so an item-by-item certification is necessary.

The vendor is responsible for certifying the information provided on the exhibit is accurate by signing where indicated at the end of the exhibit.

TABLE 1 – ALL PRODUCTS MANUFACTURED OR PRODUCED IN U.S. (eligible for preference)

Check the box to the right if ALL products proposed are MANUFACTURED OR PRODUCED IN THE U.S.:

TABLE 2 – ALL PRODUCTS MANUFACTURED OR PRODUCED OUTSIDE U.S. AND DON'T QUALIFY FOR PREFERENCE (ineligible for preference)

Check the box to the right if ALL products proposed are MANUFACTURED OR PRODUCED OUTSIDE THE U.S. and DO NOT OTHERWISE QUALIFY for the Domestic Products Procurement Act Preference:

TABLES 3 THROUGH 6 – ITEM BY ITEM CERTIFICATION (NOT ALL PRODUCTS PROPOSED FALL INTO PRIOR TWO TABLES)

- For those line items for which a U.S.-manufactured or produced product is proposed, complete Table 3.
- For those line items which are manufactured or produced outside the U.S. that do not qualify for the Domestic Products Procurement Act Preference, complete Table 4.
- For those line items which are not manufactured or produced in the U.S., but for which there is a U.S. trade treaty, law, agreement, or regulation in compliance with section 34.359 RSMo, complete Table 5.
- For those line items which are not manufactured or produced in the U.S., but for which there is only one U.S. Manufacturer of that product or line of products, complete Table 6.

TABLE 3 – U.S.-MANUFACTURED OR PRODUCED PRODUCTS (Eligible for Preference)

- List item numbers of products proposed that are U.S.-manufactured or produced and therefore qualify for the Domestic Products Procurement Act Preference.
- List U.S. city and state where products proposed are manufactured or produced.

Item #	U.S. City/State Where Manufactured/Produced	Item #	U.S. City/State Where Manufactured/Produced

TABLE 4 – FOREIGN-MANUFACTURED OR PRODUCED PRODUCTS (Not Eligible for Preference)

- List item numbers of products proposed that are foreign manufactured or produced and do not otherwise qualify for the Domestic Products Procurement Act Preference.
- List country where product proposed is manufactured or produced.

Item #	Country Where Manufactured/Produced	Item #	Country Where Manufactured/Produced

EXHIBIT A, continued: DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN) PREFERENCE

TABLE 5 – FOREIGN-MANUFACTURED OR PRODUCED PRODUCTS BUT U.S. TRADE TREATY, LAW, AGREEMENT, OR REGULATION APPLIES (Eligible for Preference)

- List item numbers of products proposed that are foreign manufactured or produced but qualify for the Domestic Products Procurement Act Preference because a U.S. Trade Treaty, Law, Agreement, or Regulation applies.
- Identify country where proposed foreign-made product is manufactured or produced.
- Identify name of applicable U.S. Trade Treaty, Law, Agreement, or Regulation that allows product to be brought into the U.S. duty/tariff-free.
- Identify website URL for the U.S. Trade Treaty, Law, Agreement, or Regulation.
- NOTE: As an imported product, if an import tariff is applied to the item, it does not qualify for the preference. In addition, "Most Favored Nation" status does not allow application of the preference unless the product enters the U.S. duty/tariff-free.

Item #	Country Where Proposed Foreign-Made Product is Manufactured/Produced	Name of Applicable U.S. Trade Treaty, Law, Agreement, or Regulation	Official Website URL for the U.S. Treaty, Law, Agreement, or Regulation

TABLE 6 – FOREIGN-MANUFACTURED OR PRODUCED PRODUCTS BUT ONLY ONE US MANUFACTURER PRODUCES PRODUCT OR LINE OF PARTICULAR GOOD (Eligible for Preference)

- List item numbers of products proposed that are foreign manufactured or produced but qualify for the Domestic Products Procurement Act Preference because only one US Manufacturer produces the product or line of a particular good.
- Identify country where proposed foreign-made product is manufactured or produced.
- Identify sole US manufacturer name.
- Identify name of sole US manufactured product/line of particular good.

Item #	Country Where Proposed Foreign-Made Product is Manufactured/Produced	Sole US Manufacturer Name	Name of Sole US Manufactured Product or Line of Particular Good

The vendor is responsible for certifying the information provided on this exhibit is accurate by signing below:

I hereby certify that the information provided herein is true and correct, and complies with all provisions of sections 34.350 to 34.359, RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting proposal electronically, scanned or typed signature is acceptable)

COMPANY NAME

EXHIBIT B

PARTICIPATION COMMITMENT

Organization for the Blind/Sheltered Workshop Participation Commitment – If the vendor is committing to participation by or if the vendor is a qualified organization for the blind/sheltered workshop, the vendor must provide the required information in the table below for the organization proposed and must submit the completed exhibit with the vendor's proposal.

Organization for the Blind/Sheltered Workshop Commitment Table By completing this table, the vendor commits to the use of the organization at the greater of \$5,000 or 2% of the actual total dollar value of contract.	
(The services performed or the products provided by the listed Organization for the Blind/Sheltered Workshop must provide a commercially useful function related to the delivery of the contractually-required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract.)	
Name of Organization for the Blind or Sheltered Workshop Proposed	Description of Products/Services to be Provided by Listed Organization for the Blind/Sheltered Workshop <i>The vendor should also include the paragraph number(s) from the RFP which requires the service the organization for the blind/sheltered workshop is proposed to perform.</i>
1.	Product/Service(s) proposed: RFP Paragraph References:
2.	Product/Service(s) proposed: RFP Paragraph References:

EXHIBIT C

DOCUMENTATION OF INTENT TO PARTICIPATE

If the vendor is proposing to include the participation of an Organization for the Blind/Sheltered Workshop in the provision of the products/services required in the RFP, the vendor must either provide a recently dated letter of intent, signed and dated no earlier than the RFP issuance date, from each organization documenting the following information, or complete and provide this Exhibit with the vendor's proposal.

~ Copy This Form For Each Organization Proposed ~

Vendor Name: _____

This Section To Be Completed by Participating Organization:

By completing and signing this form, the undersigned hereby confirms the intent of the named participating organization to provide the products/services identified herein for the vendor identified above.

Indicate appropriate business classification(s):

_____ Organization for the Blind _____ Sheltered Workshop

Name of Organization: _____

(Name of Organization for the Blind or Sheltered Workshop)

Contact Name: _____ Email: _____

Address: _____ Phone #: _____

City: _____ Fax #: _____

State/Zip: _____ Certification # _____

(or attach copy of certification)

Certification Expiration Date: _____

Describe the products/services you (as the participating organization) have agreed to provide:

Authorized Signature:

*Authorized Signature of Participating Organization
(Organization for the Blind or Sheltered Workshop)*

Date (Dated no earlier than the RFP issuance date)

EXHIBIT D**MISSOURI SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE PREFERENCE**

Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, the Division of Purchasing (Purchasing) has a goal of awarding three (3) percent of all contracts for the performance of any job or service to qualified service-disabled veteran business enterprises (SDVEs).

STANDARDS:

The following standards shall be used by Purchasing in determining whether an individual, business, or organization qualifies as an SDVE:

- Doing business as a Missouri firm, corporation, or individual or maintaining a Missouri office or place of business, not including an office of a registered agent;
- Having not less than fifty-one percent (51%) of the business owned by one (1) or more service-disabled veterans (SDVs) or, in the case of any publicly-owned business, not less than fifty-one percent (51%) of the stock of which is owned by one (1) or more SDVs. (An SDV is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.);
- Having the management and daily business operations controlled by one (1) or more SDVs;
- Having a copy of the SDV's award letter from the Department of Veterans Affairs or a copy of the SDV's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) and a copy of the SDV's documentation certifying disability by the appropriate federal agency responsible for the administration of veterans' affairs; and
- Possessing the power to make day-to-day as well as major decisions on matters of management, policy, and operation.

If a vendor meets the standards of a qualified SDVE as stated above and unless previously submitted within the past five (5) years to Purchasing, the vendor **must** provide the following SDV documents to receive the Missouri SDVE three (3) bonus point preference:

- A copy of the SDV's award letter from the Department of Veterans Affairs or a copy of the SDV's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty),
- A copy of the SDV's documentation certifying disability by the appropriate federal agency responsible for the administration of veterans' affairs, and
- A completed copy of this exhibit.

(NOTE: The SDV's award letter, the SDV's discharge paper, and the SDV's documentation certifying disability shall be considered confidential pursuant to subsection 14 of section 610.021, RSMo.)

EXHIBIT D (continued)

MISSOURI SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE PREFERENCE

By signing below, I certify that I meet the definitions of a service-disabled veteran and a service-disabled veteran business enterprise as defined in section 34.074, RSMo. I further certify that I meet the standards of a qualifying SDVE as listed herein pursuant to 1 CSR 40-1.050.

Service-Disabled Veteran's Name
(Please Print)

Service-Disabled Veteran Business Enterprise Name

Service-Disabled Veteran's Signature

Missouri Address of Service-Disabled Veteran
Business Enterprise

Phone Number

Website Address

Date

E-Mail Address

The SDVE vendor should check the appropriate statement below and, if applicable, provide the requested information.

- No, I have not previously submitted the SDV documents specified herein to Purchasing and therefore have enclosed the SDV documents.
- Yes, I previously submitted the SDV documents specified herein within the past five (5) years to Purchasing.

Date SDV Documents were Submitted: _____

Previous Bid/Contract Number for Which the SDV Documents were Submitted: _____
(if applicable and known)

(NOTE: If the SDVE and SDV are listed on the Purchasing SDVE database located at <http://content.oe.mo.gov/sites/default/files/sdvelisting.pdf>, then the SDV documents have been submitted to Purchasing within the past five [5] years. However, if it has been determined that an SDVE at any time no longer meets the requirements stated above, Purchasing will remove the SDVE and associated SDV from the database.)

FOR STATE USE ONLY	
SDV's Documents - Verification Completed By:	
_____ Buyer	_____ Date

EXHIBIT E

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98 Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988, Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name

DUNS #

Authorized Representative's Printed Name

Authorized Representative's Title

Authorized Representative's Signature

Date

Instructions for Certification

- 1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
- 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
- 3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- 5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
- 6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
- 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

**STATE OF MISSOURI
DIVISION OF PURCHASING**

TERMS AND CONDITIONS – REQUEST FOR PROPOSAL

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in a Request for Proposal (RFP) document or any addendum thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing (Purchasing)**. The agency is also responsible for payment.
- b. **Addendum** means a written, official modification to an RFP.
- c. **Amendment** means a written, official modification to a contract.
- d. **Attachment** applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- e. **Proposal End Date and Time** and similar expressions mean the exact deadline required by the RFP for the receipt of sealed proposals.
- f. **Vendor** means the supplier, vendor, person, or organization that responds to an RFP by submitting a proposal with prices to provide the equipment, supplies, and/or services as required in the RFP document.
- g. **Buyer** means the procurement staff member of Purchasing. The **Contact Person** as referenced herein is usually the Buyer.
- h. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- i. **Contractor** means a supplier, vendor, person, or organization who is a successful vendor as a result of an RFP and who enters into a contract.
- j. **Exhibit** applies to forms which are included with an RFP for the vendor to complete and submit with the sealed proposal prior to the specified end date and time.
- k. **Request for Proposal (RFP)** means the solicitation document issued by Purchasing to potential vendors for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Addendums thereto.
- l. **May** means that a certain feature, component, or action is permissible, but not required.
- m. **Must** means that a certain feature, component, or action is a mandatory condition.
- n. **Pricing Page(s)** applies to the form(s) on which the vendor must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and submitted by the vendor with the sealed proposal prior to the specified proposal end date and time.
- o. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of Purchasing.
- p. **Shall** has the same meaning as the word **must**.
- q. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. 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 to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and Purchasing.
- c. 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.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the RFP or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

3. OPEN COMPETITION/REQUEST FOR PROPOSAL DOCUMENT

- a. It shall be the vendor's responsibility to ask questions, request changes or clarification, or otherwise advise Purchasing if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Any and all communication from vendors regarding specifications, requirements, competitive proposal process, etc., must be directed to the buyer from Purchasing, unless the RFP specifically refers the vendor to another contact. Such e-mail, fax, or phone communication should be received at least ten calendar days prior to the official proposal end date.
- b. Every attempt shall be made to ensure that the vendor receives an adequate and prompt response. However, in order to maintain a fair and equitable procurement process, all vendors will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement. Therefore, vendors are advised that unless specified elsewhere in the RFP, any questions received less than ten calendar days prior to the RFP end date may not be answered.
- c. Vendors are cautioned that the only official position of the State of Missouri is that which is issued by Purchasing in the RFP or an addendum thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. Purchasing monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among vendors, price-fixing by vendors, or any other anticompetitive conduct by vendors 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.
- e. The RFP is available for viewing and downloading on the MissouriBUYS Statewide eProcurement System. Registered vendors are electronically notified of those proposal opportunities that match the commodity codes for which the vendor registered in MissouriBUYS. If a registered vendor's e-mail address is incorrect, the vendor must update the e-mail address themselves on the state's MissouriBUYS Statewide eProcurement System at <https://missouribuy.mo.gov/>
- f. Purchasing reserves the right to officially amend or cancel an RFP after issuance. It shall be the sole responsibility of the vendor to monitor the MissouriBUYS Statewide eProcurement System to obtain a copy of the addendum(s). Registered vendors who received e-mail notification of the proposal opportunity when the RFP was established and registered vendors who have responded to the RFP on-line prior to an addendum being issued should receive e-mail notification of the addendum(s). Registered vendors who received e-mail notification of the proposal opportunity when the RFP was established and registered vendors who

have responded to the proposal on-line prior to a cancellation being issued should receive e-mail notification of a cancellation issued prior to the exact end date and time specified in the RFP.

4. PREPARATION OF PROPOSALS

- a. Vendors must examine the entire RFP carefully. Failure to do so shall be at the vendor's risk.
- b. Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFP, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The vendor may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the proposal. In addition, the vendor shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Proposals which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Proposals lacking any indication of intent to offer an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFP.
- e. In the event that the vendor is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFP, such a vendor may submit a proposal which contains a list of statutory limitations and identification of those prohibitive clauses. The vendor should include a complete list of statutory references and citations for each provision of the RFP, which is affected by this paragraph. The statutory limitations and prohibitive clauses may (1) be requested to be clarified in writing by Purchasing or (2) be accepted without further clarification if the statutory limitations and prohibitive clauses are deemed acceptable by Purchasing. If Purchasing determines clarification of the statutory limitations and prohibitive clauses is necessary, the clarification will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFP.
- f. All equipment and supplies offered in a proposal must be new, of current production, and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFP.
- h. Proposals, including all prices therein, shall remain valid for 90 days from proposal opening or Best and Final Offer (BAFO) submission unless otherwise indicated. If the proposal is accepted, the entire proposal, including all prices, shall be firm for the specified contract period.
- i. Any foreign vendor not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their proposal in order to be considered for award.

5. SUBMISSION OF PROPOSALS

- a. Registered vendors may submit proposals electronically through the MissouriBUYS Statewide eProcurement System at <https://missouribuy.mo.gov/> or by delivery of a hard copy to the Purchasing office. Vendors that have not registered on the MissouriBUYS Statewide eProcurement System may submit proposals hard copy delivered to the Purchasing office. Delivered proposals must be sealed in an envelope or container, and received in the Purchasing office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact end date and time specified in the RFP. All proposals must (1) be submitted by a duly authorized representative of the vendor's organization, (2) contain all information required by the RFP, and (3) be priced as required. Hard copy proposals may be mailed to the Purchasing post office box address. However, it shall be the responsibility of the vendor to ensure their proposal is in the Purchasing office (address listed above) no later than the exact end date and time specified in the RFP.
- b. The sealed envelope or container containing a proposal should be clearly marked on the outside with (1) the official RFP number and (2) the official end date and time. Different proposals should not be placed in the same envelope, although copies of the same proposal may be placed in the same envelope.
- c. A proposal submitted electronically by a registered vendor may be modified on-line prior to the official end date and time. A proposal which has been delivered to the Purchasing office may be modified by signed, written notice which has been received by Purchasing prior to the official end date and time specified. A proposal may also be modified in person by the vendor or its authorized representative, provided proper identification is presented before the official end date and time. Telephone or telegraphic requests to modify a proposal shall not be honored.
- d. A proposal submitted electronically by a registered vendor may be retracted on-line prior to the official end date and time. A proposal which has been delivered to the Purchasing office may only be withdrawn by a signed, written document on company letterhead transmitted via mail, e-mail, or facsimile which has been received by Purchasing prior to the official end date and time specified. A proposal may also be withdrawn in person by the vendor or its authorized representative, provided proper identification is presented before the official end date and time. Telephone or telegraphic requests to withdraw a proposal shall not be honored.
- e. A proposal may also be withdrawn after the proposal opening through submission of a written request by an authorized representative of the vendor. Justification of withdrawal decision may include a significant error or exposure of proposal information that may cause irreparable harm to the vendor.
- f. When submitting a proposal electronically, the registered vendor indicates acceptance of all RFP requirements, terms and conditions by clicking on the "Accept" button on the Overview tab. Vendors delivering a hard copy proposal to Purchasing must sign and return the RFP cover page or, if applicable, the cover page of the last addendum thereto in order to constitute acceptance by the vendor of all RFP requirements, terms and conditions. Failure to do so may result in rejection of the proposal unless the vendor's full compliance with those documents is indicated elsewhere within the vendor's response.
- g. Faxed proposals shall not be accepted. However, faxed and e-mail no-bid notifications shall be accepted.

6. PROPOSAL OPENING

- a. Proposal openings are public on the end date and at the opening time specified on the RFP document. Only the names of the respondents shall be read at the proposal opening. All vendors may view the same proposal response information on the MissouriBUYS Statewide eProcurement System. The contents of the responses shall not be disclosed at this time.
- b. Proposals which are not received in the Purchasing office prior to the official end date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late proposals may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of proposals, preferences shall be applied in accordance with chapter 34, RSMo, other applicable Missouri statutes, and applicable Executive Orders. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, mined, processed or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the vendor and request clarification of the intended proposal. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a vendor shall be subject to evaluation if deemed by Purchasing to be in the best interest of the State of Missouri.
- c. The vendor is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the RFP, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the vendor whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best proposal, considering price, responsibility of the vendor, and all other evaluation criteria specified in the RFP and any subsequent negotiations and (3) complies with chapter 34, RSMo, other applicable Missouri statutes, and all applicable Executive Orders.
- e. In the event all vendors fail to meet the same mandatory requirement in an RFP, Purchasing reserves the right, at its sole discretion, to waive that requirement for all vendors and to proceed with the evaluation. In addition, Purchasing reserves the right to waive any minor irregularity or technicality found in any individual proposal.
- f. Purchasing reserves the right to reject any and all proposals.
- g. When evaluating a proposal, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a proposal, from a vendor, from vendor's references, or from any other source.
- h. Any information submitted with the proposal, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a proposal and the award of a contract.
- i. Negotiations may be conducted with those vendors who submit potentially acceptable proposals. Proposal revisions may be permitted for the purpose of obtaining best and final offers. In conducting negotiations, there shall be no disclosure of any information submitted by competing vendors.
- j. Any award of a contract shall be made by notification from Purchasing to the successful vendor. Purchasing reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by Purchasing based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- k. Pursuant to section 610.021, RSMo, proposals and related documents shall not be available for public review until after a contract is executed or all proposals are rejected.
- l. Purchasing posts all proposal results on the MissouriBUYS Statewide eProcurement System for all vendors to view for a reasonable period after proposal award and maintains images of all proposal file material for review. Vendors who include an e-mail address with their proposal will be notified of the award results via e-mail.
- m. Purchasing reserves the right to request clarification of any portion of the vendor's response in order to verify the intent of the vendor. The vendor is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- n. Any proposal award protest must be received within ten (10) business days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (9).
- o. The final determination of contract(s) award shall be made by Purchasing.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a proposal, the vendor agrees to furnish any and all equipment, supplies and/or services specified in the RFP, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFP, addendums thereto, and any Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including any contractor BAFO response(s), (3) clarification of the proposal, if any, and (4) Purchasing's acceptance of the proposal by "notice of award" or by "purchase order." All Exhibits and Attachments included in the RFP shall be incorporated into the contract by reference.
- c. A notice of award issued by the State of Missouri 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 for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- 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 to the contract, 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 Purchasing or 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 to the contract.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references 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. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of Purchasing.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in section 34.055, RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency 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 State of Missouri 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 State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. 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 Purchasing, (2) be fit and sufficient for the purpose expressed in the RFP, (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 state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the proposal the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri 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 State of Missouri 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 the 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 procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, Purchasing may cancel the contract. At its sole discretion, Purchasing may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide Purchasing within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, Purchasing will issue a notice of cancellation terminating the contract immediately. If it is determined Purchasing improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.
- c. If Purchasing cancels the contract for breach, Purchasing 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 Purchasing deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the vendor/contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the vendor/contractor.

18. 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 assignee for the benefit of creditors, the contractor must notify Purchasing immediately.
- b. Upon learning of any such actions, Purchasing reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, 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.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, Purchasing shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by Purchasing until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore the vendor's failure to maintain compliance with chapter 144, RSMo, may eliminate their proposal from consideration for award.

23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 10-19-15

