

INVITATION FOR BID



Missouri Department of Corrections
Fiscal Management Unit
Purchasing Section
2729 Plaza Drive, P.O. Box 236
Jefferson City, MO 65102

Buyer of Record:
Sam Hammond
Procurement Officer II
Telephone: (573) 526-6590
Samuel.Hammond@doc.mo.gov

IFB 16709037 AMENDMENT 001

Boiler Repair
FOR

Department of Corrections
Women's Eastern Reception, Diagnostic and Correctional
Center

Contract Period: Date of Award through One year

Date of Issue: October 9, 2015
Page 1 of 26

Bids Must Be Received No Later Than:

REVISED BY AMENDMENT 001

2:00 p.m., Thursday, October 29, 2015

Sealed bids must be delivered to the Missouri Department of Corrections, Purchasing Section, 2729 Plaza Drive, Jefferson City, MO 65109, or P.O. Box 236, Jefferson City, Missouri 65102. The bidder should clearly identify the IFB number on the lower right or left-handed corner of the container in which the bid is submitted to the Department. This number is essential for identification purposes.

We hereby agree to provide the services and/or items, at the price quoted, pursuant to the requirements of this document and further agree that when this document is countersigned by an authorized official of the Missouri Department of Corrections, a binding contract, as defined herein, shall exist. The authorized signer of this document certifies that the contractor (named below) and each of its principals are not suspended or debarred by the federal government.

Company Name: Solomon Boiler Works
Mailing Address: 6601 Stephens Station Rd, Ste 105
City, State, Zip: Columbia, MO 65202
Telephone: 573-442-7390 Fax: 573-442-6279
Federal EIN #: 20-4949270 State Vendor #: 19521162
Email: greg@solomonboilerworks.com
Authorized Signer's Printed Name and Title: Greg Mackey, President

Authorized Signature: *Greg Mackey* Bid Date: October 29, 2015

NOTICE OF AWARD:

This bid is accepted by the Missouri Department of Corrections as follows:

Dave Dormire, Division Director, Division of Adult Institutions

ACCEPTED IN ITS ENTIRETY
Y16709037

Contract No.

11/4/15

Date

The original cover page, including amendments, should be signed and returned with the bid.

IFB 16709037 AMENDMENT 001

Amendment 001 makes the following changes to IFB 16709037. All other requirements, specifications, terms and conditions for IFB 16709037 remain the same.

REVISED BY AMENDMENT 001

Bid closing date has been revised

Paragraph 1.2.1 has been revised

**EXHIBIT A,
PRICING PAGE**

The product shall conform to the specifications below. The bidder shall submit a firm, fixed unit price for the product bid. The price shall be quoted F.O.B Destination, Freight Prepaid and Allowed.

<u>LINE ITEM</u>	<u>MANDATORY SPECIFICATIONS</u>	<u>QTY</u>	<u>UNIT</u>	<u>PRICE</u>
001	Boiler Repair	1	EA	\$ 3420. ⁰⁰ / ₁₀₀

- Light roll hot pass rear tubes on two (2) Burnham hot water boilers
- Model 3W-200-50-GO-IF
- Hydro-check tubes for leaks upon completion
- Repair any tube still leaking
- All parts for repair to be provided by contractor
- Boilers must be in working condition with no leaks upon completion
- All clean-up provided by contractor

DELIVERY

Delivery shall not exceed thirty (30) calendar days after the receipt of a properly executed order. The bidder should state delivery in days after receipt of order: 7 calendar days ARO.

EMPLOYEE BIDDING/CONFLICT OF INTEREST

Bidders 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 bidder or any owner of the bidder'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 bidder's organization held by elected or appointed official or employee of the State of Missouri or political subdivision thereof:

_____ %

By signing, the bidder hereby declares understanding, agreement and certification of compliance to provide the items at the prices quoted, in accordance with all requirements and specification contained herein and the Terms and Conditions. The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid.

Company Name: Solomon Boiler Works

Authorized Signature: Greg Mackey Printed Name: Greg Mackey

Date: 10-28-15 Email: greg@solomonboilerworks.com

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Purpose:

- 1.1.1 This document constitutes an invitation for sealed bids from prospective bidders for the purchase of boiler repair for Women's Eastern Reception, Diagnostic and Correctional Center institution hereinafter referred to as "Department", in accordance with the requirements and provisions stated herein.
- 1.1.2 The Department will be transitioning to the MissouriBUYS eProcurement system and recommends all potential vendors to visit <https://MissouriBUYS.mo.gov> to register as a vendor for future bidding opportunities.

1.2 Mandatory Site Inspection:

REVISED BY AMENDMENT 001

- 1.2.1 A mandatory site inspection must be scheduled. Please contact Mike Redington at 573-594-6686, Monday through Friday, 8:00 a.m. to 4:00 p.m., or email Michael.Redington@doc.mo.gov at least two (2) days prior to the site inspection to register.
- a. Any potential bidder interested in participating in a site inspection must provide the full name and valid Missouri driver's license number of each individual planning to attend a site inspection. If the bidder does not have a valid Missouri driver's license, their social security number and date of birth are required.
 - b. Each potential bidder is limited to two (2) individuals at the site inspection.
 - c. Each person attending the site inspection will be required to have a valid government issued ID. Cell phones, cameras, tape recorders and purses will not be permitted inside the facility unless prior approval is made by the Department.
 - d. The Department reserves the right to accept or reject any person requesting a site inspection.
 - e. Other than the questions related to the tour, all questions regarding the Invitation for Bid and/or the competitive procurement process must be directed to Sam Hammond at (573) 526-6590 or Samuel.Hammond@doc.mo.gov
- 1.2.2 Each bidder is solely responsible for a prudent and complete personal inspection, examination, and assessment of the building and any other existing condition, factor, or item that may affect or impact the performance of service described and required in the Contractual Requirements. The bidder shall not be relieved of responsibility for performance under the contract for any reason whatsoever, including, but not limited to, the bidder's failure to observe existing conditions, etc.
- 1.2.3 Bidders are strongly encouraged to advise the Department at the time of making the appointment of any special accommodations needed for disabled personnel who will be attending the tour so that these accommodations can be made.

2. CONTRACTUAL REQUIREMENTS

2.1 Contract:

- 2.1.1 A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Missouri Department of Corrections acceptance of the response (bid) by "purchase order". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.

- 2.1.2 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 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.
- 2.1.5 The original contract period shall be as stated in the Invitation for Bid (IFB). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Missouri Department of Corrections, pursuant to the Special Delegation of Authority issued by the Office of Administration, Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract, or any portion thereof for four (4) additional one-year periods through amendment. In the event such a right is exercised, all terms and conditions, requirements, and specifications of the contract shall remain the same and apply during the renewal period stipulated in any amendment.
- 2.2 Termination:**
- 2.2.1 The Department 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 Department pursuant to the contract prior to the effective date of termination.
- 2.3 Price:**
- 2.3.1 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, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.
- 2.4 Prices Must Be Lowest:**
- 2.4.1 The contractor's prices must be the lowest offered to any governmental or commercial consumer, under the same terms and conditions.
- 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 return a completed state Vendor ACH/EFT Application, which is downloadable from the Vendor Services Portal at: <https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>. Each contractor invoice must be on the contractor's original descriptive business invoice form and must contain a unique invoice number. The invoice number will be listed on the state's 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 IFB.

- 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 IFB, or mutually agreed to by the state and the contractor. Payment terms should be net 30 days unless otherwise stated in the IFB. 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>.
- 2.5.4 The Department may choose to use the state purchasing card (Visa) in place of a purchase order to make purchases under this contract. Unless exception to this condition is indicated on **EXHIBIT A, Pricing Page**, the contractor agrees to accept the state purchasing card as an acceptable form of payment and may not charge any additional fees related to the use of a purchasing card such as service fees, merchant fees, and/or handling charges.
- a. If the Department issues a purchase order, an itemized invoice shall be emailed to Samuel.Hammond@doc.mo.gov or mailed to:
- Missouri Department of Corrections
Attn: Sam Hammond
Fiscal Management Unit
PO Box 236
Jefferson City, MO 65102
- 2.5.5 Each invoice submitted must be specific to one purchase order number. The purchase order number must be referenced on the invoice and the invoice must be itemized in accordance with the item listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment. Emailed invoices should contain the purchase order number in the subject line.
- a. If the state purchasing card (Visa) is used for payment, an itemized invoice reflecting the charged amount must be faxed or emailed to the institution within one business day. **The state purchasing card shall not be charged until all goods/services have been received and accepted.**
- 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.
- 2.7 Independent Contractor:**
- 2.7.1 The contractor is an independent contractor and shall not represent the contractor or the contractor's employees to be employees of the Department 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.

2.8 Coordination:

2.8.1 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 Department throughout the effective period of the contract.

2.9 Federal Funds Requirement:

2.9.1 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.

2.10 Insurance:

2.10.1 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 Department, 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 Department 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 Department 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.

2.11 Subcontractors:

2.11.1 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.

2.12 Contractor's Employees:

- 2.12.1 The contractor and all of the contractor's employees and agents providing services in any Department of Corrections institution must be at least 18 years of age. A Missouri Uniform Law Enforcement System (MULES) check or other background investigation shall be required on the contractor, the contractor's employees and agents before they are allowed entry into the institution. The contractor, its employees and agents understand and agree that the Department shall complete criminal background records checks at least every five (5) years for the contractor and the contractor's employees and agents that have the potential to have contact with inmates.
- 2.12.2 The institution shall have the right to deny access into the institution for the contractor and any of the contractor's employees and agents for any reason, at the discretion of the institution.
- 2.12.3 The contractor, its employees and agents under active federal or state felony or misdemeanor supervision must receive written division director approval prior to providing services pursuant to a Department contract. Similarly, contractors/employees/agents with prior felony convictions and not under active supervision must receive written division director approval in advance.
- 2.12.4 The contractor, its employees and agents shall at all times observe and comply with all applicable state statutes, Department rules, regulations, guidelines, internal management policies and procedures, and general orders of the Department that are applicable, regarding operations and activities in and about all Department property. Furthermore, the contractor, its employees and agents, shall not obstruct the Department or 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 Department's policies and procedures relating to employee conduct.
- a. The Department 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 abuse and consensual sex.
- 1) Any contractor or contractor's employee or agent who witnesses any form of sexual misconduct must immediately report it to the warden of the institution. If a contractor or contractor's employee or agent fails to report or knowingly condones sexual harassment or sexual contact with or between offenders, the Department may cancel the contract, or at the Department's sole discretion, require the contractor to remove the employee/agent from providing services under the contract.
 - 2) Any contractor or contractor's employee or agent who engages in sexual abuse shall be prohibited from entering the institution and shall be reported to law enforcement agencies and licensing bodies, as appropriate.
- 2.12.5 The contractor, its employees and agents shall not interact with the offenders except as is necessary to perform the requirements of the contract. The contractor, its employees and agents shall not give anything to nor accept anything from the offenders except in the normal performance of the contract.
- 2.12.6 If any contractor or contractor's employee or agent is denied access into the institution for any reason or is denied approval to provide service to the Department for any reason stated herein, it shall not relieve the contractor of any requirements of the contract. If the contractor is unable to perform the requirements of the contract for any reason, the contractor shall be considered in breach.

3. SPECIFIC CONTRACTUAL AND PERFORMANCE REQUIREMENTS

3.1 General:

- 3.1.1 The contractor shall provide boiler repair that will comply with all mandatory requirements and specifications presented herein.
- 3.1.2 At no time shall the contractor leave any tools or supplies unattended. Missing tools or supplies must be immediately reported to WERDCC staff.
- 3.1.3 The contractor must dispose off-site of all excess material. Disposal must be in accordance with all applicable laws.
- 3.1.4 Upon completion the contractor must leave the area in a broom-swept condition.
- 3.1.5 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

3.2 Prevailing Wage Requirements:

- 3.2.1 The contractor shall comply with section 290.250 RSMo by paying to all personnel employed for applicable services actually provided under the contract not less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations, Division of Labor Standards, specified in Annual Wage Order No. 20 dated March 10, 2015 for Audrain County. The prevailing wage rates incorporated as a part of this document by the referenced annual wage order shall remain in effect for the duration of the contract period.
 - a. The contractor shall forfeit to the state agency ten dollars (\$10.00) for each person employed, for each calendar day, or portion thereof, when such person is paid less than the prevailing hourly rate of wages for any applicable work done under the contract by the contractor or by any subcontractor under them (section 290.250 RSMo).
 - b. In addition to the above, the contractor must comply with all other requirements pertaining to the payment of prevailing wages contained in section 290.210 through 290.340 RSMo and is advised to review the requirements carefully prior to beginning work. In addition, in the event a period of "excessive unemployment" is identified and announced by the Missouri Department of Labor and Industrial Relations, the contractor must assign personnel to provide services who meet the definition of "Missouri laborers" as defined in section 290.550 RSMo.
 - c. The above-stated prevailing wage requirements shall also apply to all subcontractors employed by the contractor to perform services under the contract.

3.3 OSHA Safety Training:

- 3.3.1 Pursuant to section 292.675 RSMo, the contractor and any subcontractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees, which includes a course in construction safety and health approved by OSHA.
 - a. All employees who have not previously completed the required program are required to complete the program within sixty days of beginning work on-site.
 - b. Any employee found on the work site without the successful completion of the required course shall be afforded twenty days to produce such documentation before being subject to the removal from the project.

3.3.2 The contractor shall forfeit two thousand five hundred dollars plus one hundred dollars for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. (section 292.675 RSMo)

- a. The penalty shall not begin to accrue until the time periods stated above have elapsed.
- b. The Department shall withhold and retain there from all amounts owing as a result of any violation when making payments to the contractor under the contract.
- c. The contractor may withhold from any subcontractor sufficient sums to cover any penalties withheld from the contractor resulting from the subcontractor's failure to comply.

3.4 Delivery Performance:

3.4.1 Completion of services shall not exceed thirty (30) calendar days after receipt of award.

3.4.2 The contractor and/or the contractor's subcontractor(s) shall perform services in accordance with the contracted delivery times stated herein to the Department upon receipt of an authorized purchase order or P-card transaction notice. Delivery shall include unloading shipments at the Departments dock or other designated unloading site as requested by the Department. All orders must be shipped F.O.B. Destination, Freight Prepaid and Allowed. Delivery must be coordinated with the state agency.

3.4.3 **The contractor must coordinate its delivery schedule with the ordering institution.** Institutions may have specific times that deliveries can be accepted based on security procedures. A delivery arriving during a time the institution does not accept deliveries will be delayed or refused. Any additional cost for delay or redelivery shall be the responsibility of the contractor.

3.5 Replacement of Damaged Product:

3.5.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the Department. This includes all shipping costs for returning non-functional items to the contractor for replacement.

4. BIDDERS' INSTRUCTIONS

4.1 Contact:

4.1.1 Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc. related to the bid document must be referred to the Buyer of Record identified on the first page of this document. Such communication should be received at least ten calendar days prior to the official bid opening date.

4.2 Business Compliance:

4.2.1 The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) or by submitting an on-line bid that the bidder 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 bidder shall provide documentation of compliance upon request by the Department. 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)

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

4.3 Submission of Bids:

4.3.1 The bidder is cautioned that it is the bidder's sole responsibility to submit information related to the evaluation categories and that the Department is under no obligation to solicit such information if it is not included with the bid. The bidder's failure to submit such information may cause an adverse impact on the evaluation of the bid.

4.3.2 Bids are due no later than the bid date and time as stated on the first page of this IFB.

4.3.3 **Vendor Information Data Form** - The Department maintains a current vendor database. If the bidder has not submitted a Vendor Information Data form with a revision date of 04-09, this form can be downloaded at <http://doc.mo.gov/DHS/Contracts.php> and submitted with the bid response, mailed, or faxed to the number indicated on the form, or emailed directly to DOC.VendorInfo@doc.mo.gov.

4.4 Open Competition:

4.4.1 Any manufacturer's name, 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.

4.4.2 The bidder may offer any brand of product that meets or exceeds the specifications. In addition to identifying the manufacturer's name and model number, the bidder must explain in detail how their product meets or exceed the specifications. Bids, which do not comply with the requirement and the specifications are subject to rejection without clarification.

4.5 Bid Detail Requirements and Deviations:

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

4.5.2 **Bidders should note:** A descriptive brochure of the model bid may not be acceptable as clear identification of deviations from the written specification.

4.6 Compliance with Terms and Conditions:

4.6.1 The bidder 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 IFB and its contractual requirements. The bidder agrees that in the event of conflict between any of the bidder's terms and conditions and those contained in the IFB, that the IFB shall govern. Taking exception to the State's terms and conditions may render a bidder's bid non-responsive and remove it from consideration for award.

4.7 Price:

4.7.1 The bidder shall submit a firm, fixed price for line item 001 on the Pricing Page of the IFB. The price shall be considered firm.

4.8 Evaluation of Cost:

4.8.1 Price shall be considered firm for the duration of the contract period indicated on the Notice of Award of a contract.

4.8.2 The bidder shall submit a **firm fixed price** on **EXHIBIT A, Pricing Page** for the line item. All pricing shall be quoted FOB Destination, Prepaid and Allowed.

4.8.3 Quantity – Upon award, the quantity ordered shall be as stated on **EXHIBIT A, Pricing Page**.

4.8.4 The bidder should complete the “Terms” and the “Bidder’s Acceptance of the State Purchasing Card” sections on **EXHIBIT A, Pricing Page**.

4.8.5 The cost evaluation shall be based on the total cost determined using the firm fixed price and the quantity indicated on **EXHIBIT A, Pricing Page**. The total cost shall be calculated by multiplying the quoted price by the quantity indicated for the line item.

a. Cost evaluation points shall be determined from the result of the calculation stated above using the following formula:

$$\frac{\text{Lowest Responsive Bidder's Price}}{\text{Compared Bidder's Price}} \times \frac{\text{Maximum Cost}}{\text{Evaluation Points (100)}} = \text{Assigned Cost Points}$$

b. NOTE: The prompt payment discount terms on contracts will not be used in any cost calculation.

4.9 Determination for Award:

4.9.1 Award shall be made to the lowest priced responsive bidder. Another factor that affects the determination of the lowest priced responsive bidder includes consideration of the Missouri Service-Disabled Veteran Business Preference explained in the paragraph that follows.

4.9.2 Determination of Lowest Priced Bidder including Consideration of Preferences - After completing the cost evaluation and determining preference bonus points, the bidder with the most points is considered the lowest bidder. Total points shall be computed for the total evaluated bid price as follows:

$$\text{Total Assigned Cost Points} + \text{earned preference points} = \text{Total Points}$$

4.9.3 The Department reserves the right to reject any bid which is determined unacceptable for reasons which may include but are not necessarily limited to: 1) failure of the bidder to meet mandatory general performance specifications; and/or 2) failure of the bidder to meet mandatory technical specifications; and/or; 3) receipt of any information, from any source, regarding delivery of unsatisfactory product or service by the bidder within the past three years. As deemed in its best interests, the Department reserves the right to clarify any and all portions of any bidder’s offer.

4.10 Missouri Service-Disabled Veteran Business Preference:

4.10.1 Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, a three (3) bonus point preference shall be granted to bidders who qualify as Missouri service-disabled veteran business enterprises and who complete and submit **Exhibit C, Missouri Service-Disabled Veteran Business Enterprise Preference**

with the bid. If the bid does not include the completed **Exhibit C** and the documentation specified on **Exhibit C** in accordance with the instructions provided therein, no preference points will be applied.

4.10.2 If the lowest priced bidder qualifies for the preference, or in the event none of the bidders qualify for the preference, no further calculation is necessary.

EXHIBIT B

Missouri Secretary of State

Missouri Secretary of State/Authorization to Transact Business

<p>In accordance with section 351.572.1, RSMo, the Department is precluded from contracting with a vendor or its affiliate who is not authorized to transact business in the State of Missouri. Bidders must either be registered with the Missouri Secretary of State, or exempt per a specific exemption stated in section 351.572.1, RSMo. (http://www.moga.mo.gov/mostatutes/stathtml/35100005721.html)</p>	
<p>If the bidder is registered with the Missouri Secretary of State, the bidder shall state legal name or charter number assigned to business entity</p>	<p>Legal Name: <u>Greg Mackey, Inc.</u> Missouri State Charter # <u>00741838</u></p>
<p>If the bidder is not required to be registered with the Missouri Secretary of State, the bidder shall state the specific exemption stated per section 351.572.1, RSMo.</p>	<p>State specific exemption _____ (List section and paragraph number) Stated in section 351.572.1 RSMo, _____ (State Legal Business Name)</p>

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

Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, the Division of Purchasing and Materials Management (DPMM) 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 the DPMM 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 bidder meets the standards of a qualified SDVE as stated above and unless previously submitted within the past five (5) years to the DPMM, the bidder **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 C (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 bidder 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 the DPMM and therefore have enclosed the SDV documents.
- Yes, I previously submitted the SDV documents specified herein within the past five (5) years to the DPMM.

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 DPMM SDVE database located at <http://content.oa.mo.gov/sites/default/files/sdvelisting.pdf>, then the SDV documents have been submitted to the DPMM 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, the DPMM will remove the SDVE and associated SDV from the database.)

FOR STATE USE ONLY

SDV's Documents - Verification Completed By:

Buyer	Date
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EXHIBIT D
CURRENT/PRIOR EXPERIENCE

Current/Prior Contracts: The bidder should provide a list of contracts which the bidder has provided similar services for within the past five (5) years and the contact name, phone number and email address of where the service is/was provided.

Company/Institution Contact Name, Phone Number, and Email	Date of Services Provided
Vandalia Correctional - Joe Cobbelt 573-522-4678 / Joe.Cobbelt@DOC.mo.gov	Oct. 2015
Moberly Corrections - Danny Ben 660-263-3778 x 5440 Danny.Benn@DOC.MO.gov	Oct. 2015
Columbia Tribune - Kenny Woods 573-289-2675 / Kwoods@Co.Tribune.com	NOV. 2014
Honeywell International / Michael Shiverdecker - 573-886-3184 Michael.Shiverdecker@Honeywell.com	Aug. 2015

STATE OF MISSOURI
MISSOURI DEPARTMENT OF CORRECTIONS

TERMS AND CONDITIONS -- INVITATION FOR BID

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **1 CSR 40-1 (Code of State Regulations)** refers to the rule that provides the public with a description of the Division of Purchasing and Materials Management within the Office of Administration. This rule fulfills the statutory requirement of section 536.023(3), RSMo.
- b. **Agency and/or Department** means the Missouri Department of Corrections.
- c. **Amendment** means a written, official modification to an IFB or to a contract.
- d. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- e. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- f. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- g. **Buyer or Buyer of Record** means the procurement staff member of the Department. The **Contact Person** as referenced herein is usually the Buyer of Record.
- h. **Contract** means a legal and binding agreement between two or more competent parties for consideration for the procurement of equipment, supplies, and/or services.
- i. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- j. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- k. **Invitation for Bid (IFB)** means the solicitation document issued by the Department to potential bidders 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 Exhibits, Attachments, and Amendments.
- 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. Failure to provide or comply will result in a bid being considered non-responsive.
- n. **Pricing Page(s)** applies to the Exhibit on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening 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 procurement operations of the Department.
- 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 the Department.
- 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 IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

- f. The contractor shall only utilize 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. CONTRACT ADMINISTRATION

- a. All contractual administration will be carried out by the Buyer of Record or authorized Department Purchasing Section designee. Communications pertaining to contract administration matters will be addressed to: Department of Corrections, Purchasing Section, PO Box 236, Jefferson City, MO 65102.
- b. The Buyer of Record/authorized designee is the only person authorized to approve changes to any of the requirements of the contract.

4. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the Department if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements or evaluation process stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the Buyer of Record of the Department, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten (10) calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten (10) calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the Department in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The Department monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. Some IFBs are available for viewing and downloading on the Department's website.
- f. The Department reserves the right to officially amend or cancel an IFB after issuance.

5. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at the bidder's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, 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 bidder 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 bid. In addition, the bidder 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. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid 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 IFB.
- e. In the event that the bidder 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 IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses. The bidder should include a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph. The statutory limitations and prohibitive clauses may be requested to be clarified in writing by the Department or be accepted without further clarification if statutory limitations and prohibitive clauses are deemed acceptable by the Department. If the Department 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 IFB.

- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges, and shall be delivered to the Department's designated destination FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Bids, including all pricing therein, shall remain valid for 90 days from the bid opening unless otherwise indicated. If the bid is accepted, the entire bid, including all prices, shall be firm for the specified contract period.
- i. Any foreign bidder 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 bid in order to be considered for award.

6. SUBMISSION OF BIDS

- a. Delivered bids must be sealed in an envelope or container, and received in the Department's Purchasing office located at the address indicated on the cover page of the IFB no later than the exact opening time and date specified in the IFB. All bids must be submitted by a duly authorized representative of the bidder's organization, contain all information required by the IFB, and be priced as required. Bidders are cautioned that bids submitted via the USPS, including first class mail, certified mail, Priority Mail and Priority Mail Express, are routed through the Office of Administration Central Mail Services and the tracking delivery time and date may not be the time and date received by the Department's Purchasing office. Regardless of delivery method, it shall be the responsibility of the bidder to ensure their bid is in the Department's Purchasing office no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with the official IFB number *and* the official opening date and time. Different bids should not be placed in the same envelope; however, copies of the same bid may be placed in the same envelope.
- c. A bid which has been delivered to the Department may be modified by a signed, written notice which has been received by the Department's Purchasing office prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid which has been delivered to the Department's 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 the Department's Purchasing office prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. A bid may also be withdrawn after the bid opening through submission of a written request by an authorized representative of the bidder. Justification of a withdrawal decision may include a significant error or exposure of bid information that may cause irreparable harm to the bidder.
- f. Bidders must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all the IFB terms and conditions. Failure to do so may result in the rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.
- g. Faxed and e-mailed bids shall not be accepted; however, faxed and e-mail no-bid notifications shall be accepted.

7. BID OPENING

- a. Bid openings are public on the opening date and time specified in the IFB document. Names, locations, and prices of respondents shall be read at the bid opening. The Department will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the Department's Purchasing office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

8. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made 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.

9. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the Buyer of Record before contract award. Upon discovering an apparent clerical error, the Buyer of Record shall contact the bidder and request clarification of the intended bid. 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 bidder shall be subject to evaluation if deemed by the Department to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the Department. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the Department.
- d. Awards shall be made to the bidder(s) whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, the Department reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the Department reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The Department reserves the right to reject any and all bids.
- g. When evaluating a bid, the Department reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from a bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the Department to the successful bidder. The Department 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 the Department based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation submitted on or before the official opening date and time will be considered open records pursuant to section 610.021 RSMo.
- k. The Department maintains records of all bid file material for review. Bidders who include an e-mail address with their bid will be notified of the award results via e-mail if requested.
- l. The Department reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid 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).
- n. The final determination of contract award(s) shall be made by the Department.

10. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Department's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- c. A notice of award issued by the Department 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 Department, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the Department.

- 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 the Department 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.

11. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. 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. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- d. The Department 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 Department's rejection and shall be returned to the contractor at the contractor's expense.
- e. All invoices for equipment, supplies, and/or services purchased by the Department shall be subject to late payment charges as provided in section 34.055 RSMo.
- f. The Department reserves the right to purchase goods and services using the state purchasing card.

12. DELIVERY

- a. 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.
- b. A Missouri Uniformed Law Enforcement System (MULES) background check may be required on the contractor's delivery driver prior to allowing a delivery vehicle entrance to certain institutions. A valid Missouri driver's license is required from the driver to perform the MULES background check. If the driver does not have a valid Missouri driver's license, their social security number and date of birth are required. If a driver or carrier refuses to provide the appropriate information to conduct a MULES background check, or if information received from the background check prohibits the driver or carrier from entering the institution, the delivery will be refused. Additional delivery costs associated with re-deliveries or contracting with another carrier for delivery shall be the responsibility of the contractor.
- c. Unless a pallet exchange is requested at the time of delivery, all pallets used in the delivery of equipment and supplies shall become property of the Department.

13. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by the Department pursuant to a contract shall be deemed accepted until the Department 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 Department 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 Department'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.

14. 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 the Department, (2) be fit and sufficient for the purpose expressed in the IFB, (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 Department's acceptance of or payment for said equipment, supplies, and/or services.

15. 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 bid 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.

16. CONTRACTOR STATUS

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

17. REMEDIES AND RIGHTS

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

18. SEVERABILITY

- a. If any provision of this contract or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this contract which can be given effect without the invalid provisions or application, and to this end the provisions of this contract are declared to be severable.

19. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the Department may cancel the contract. At its sole discretion, the Department 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 ten (10) working days from notification, or at a minimum, the contractor must provide the Department within ten (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, the Department will issue a notice of cancellation terminating the contract immediately. If it is determined the Department improperly cancelled the contract, such cancellation shall serve as notice of termination for convenience in accordance with the contract.
- c. If the Department cancels the contract for breach, the Department reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the Department deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that if the funds required to fund the contract are appropriated by the General Assembly of the State of Missouri, the contract shall not be binding upon the Department for any contract period in

which funds have not been appropriated, and the Department shall not be liable for any costs associated with termination caused by lack of appropriations.

- e. If the Department has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Department shall declare a breach and cancel the contract immediately without incurring any penalty.

20. TERMINATION OF CONTRACT

- a. The Department reserves the right to terminate the contract at any time for the convenience of the Department, without penalty or recourse, by giving 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 just and equitable compensation for services and/or supplies or equipment delivered to and accepted by the Department pursuant to the contract prior to the effective date of termination.

21. ASSIGNMENT OF CONTRACT

- a. The contractor shall neither assign nor transfer any of the rights, interests, or obligations of the contract without the prior written consent of the Department.

22. COMMUNICATIONS AND NOTICES

- a. Any notice to the contractor shall be deemed sufficient when e-mailed to the contractor at the e-mail address indicated in the contract, or transmitted by facsimile to the facsimile number indicated in the contract, or deposited in the United States mail, postage prepaid, and addressed to the contractor at the address indicated in the contract, or hand-carried and presented to an authorized employee of the contractor.
- b. If the contractor desires to receive written notices at a different e-mail address, facsimile number, or USPS address than what is indicated in the contract, the contractor must submit this request in writing upon notice of award.

23. FORCE MAJEURE

- a. The contractor shall not be liable for any excess costs for delayed delivery of goods or services to the Department if the failure to perform the contract arises out of causes beyond the control of, and without the fault or negligence of, the contractor. Such causes may include, however are not restricted to: acts of God, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes. In all cases, the failure to perform must be beyond the control of, and without the fault or negligence of, either the contractor or any subcontractor(s). The contractor shall take all possible steps to recover from any such occurrences.

24. CONTRACT EXTENSION

- a. In the event of an extended re-procurement effort and the contract's available renewal options have been exhausted, the Department reserves the right to extend the contract. If exercised, the extension shall be for a period of time as mutually agreed to by the Department and the contractor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and transition to a new contract.

25. INSURANCE

- a. The State of Missouri cannot save and hold harmless and/or indemnify the contractor or its employees against any liability incurred or arising as a result of any activity of the contractor or 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.

26. 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 the Department immediately.
- b. Upon learning of any such actions, the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

27. INVENTIONS, PATENTS AND COPYRIGHTS

- a. The contractor shall defend, protect, and hold harmless the Department, 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.

28. CONTRACTOR PROPERTY

- a. Upon expiration, termination or cancellation of a contract, any contractor property left in the possession of the Department after forty-five (45) calendar days shall become property of the Department.

29. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

- a. 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:
 1. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
 2. The identification of a person designated to handle affirmative action;
 3. 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;
 4. The exclusion of discrimination from all collective bargaining agreements; and
 5. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.
- b. If discrimination by a contractor is found to exist, the Department shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the Department 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.

30. AMERICANS WITH DISABILITIES ACT

- a. 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).

31. FILING AND PAYMENT OF TAXES

- a. 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 a bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

32. TITLES

- a. 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 08/07/2014

Solomon Boiler Works



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