



STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID (IFB)

IFB NO.: B1E10157
TITLE: Grocery Items: Gelatin and Drink Mix
ISSUE DATE: 12/29/09

REQ NO.: NR 931 YYY10709119
BUYER: Matthew Wiseman
PHONE NO.: (573) 751-4925
E-MAIL: matthew.wiseman@oa.mo.gov

RETURN BID NO LATER THAN: 01/11/10 AT 2:00 PM CENTRAL TIME

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Delivered sealed bids must be in DPMM office (301 W High Street, Room 630) by the return date and time.

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

CONTRACT PERIOD: Date of Award Through June 30, 2010

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

Missouri Department of Corrections
Central Region Commodity Warehouse
8416 No More Victims Road
Jefferson City, MO 65101

Missouri Department of Corrections
Eastern Region Commodity Warehouse
2727 Hwy K
Bonne Terre, MO 63628

The bidder 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 Invitation for Bid (Revised 08/28/08). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management 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 bidder and the State of Missouri.

SIGNATURE REQUIRED

DOING BUSINESS AS (DBA) NAME		LEGAL NAME OF ENTITY/INDIVIDUAL FILED WITH IRS FOR THIS TAX ID NO.	
MAILING ADDRESS		IRS FORM 1099 MAILING ADDRESS	
CITY, STATE, ZIP CODE		CITY, STATE, ZIP CODE	
CONTACT PERSON		EMAIL ADDRESS	
PHONE NUMBER		FAX NUMBER	
TAXPAYER ID NUMBER (TIN)	TAXPAYER ID (TIN) TYPE (CHECK ONE) ___ FEIN ___ SSN	VENDOR NUMBER (IF KNOWN)	
VENDOR TAX FILING TYPE WITH IRS (CHECK ONE) ___ Corporation ___ Individual ___ State/Local Government ___ Partnership ___ Sole Proprietor ___ Other _____		(NOTE: LLC IS NOT A VALID TAX FILING TYPE.)	
AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Purpose:

1.1.1 This document constitutes an invitation for sealed bids from prospective bidders to establish a contract for the purchase of grocery items: gelatin and drink mix for the Missouri Department of Corrections', Central and Eastern Region Commodity Warehouses in Jefferson City and Bonne Terre, Missouri respectively (hereinafter referred to as the state agency) on an as needed, if needed basis, in accordance with the requirements and provisions stated herein.

a. This IFB is the re-bid of line items 005 and 008 of IFB B1E10093.

1.2 Contract Document Search and Retrieval System:

1.2.1 Both the current contract (C109270001 and C109270002) and the previous procurement documentation (B1E09270) may be viewed and printed from the Division of Purchasing & Materials Management's **Contract Document Search and Retrieval System** located on the Internet at <http://www.oa.mo.gov/purch>.

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 Division of Purchasing and Materials Management's acceptance of the response (bid) by "notice of award". All Exhibits and Attachments included in the IFB 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 and Materials Management 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 the date of award through June 30, 2010. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.

2.3 Termination:

2.3.1 The Division of Purchasing and Materials Management 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 just and equitable 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 Price:

- 2.4.1 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.

2.5 Prices Must Be Lowest:

- 2.5.1 The contractor's prices must be the lowest offered to any governmental or commercial consumer, under the same terms and conditions.

2.6 Payment Terms:

- 2.6.1 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 following website: <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>. 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.
- 2.6.2 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 Payment Website at <https://www.vendorpay.oa.mo.gov>.
- 2.6.3 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/STATUTES/STATUTES.HTM>.

2.7 Contractor Liability:

- 2.7.1 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.
- 2.7.2 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.
- 2.7.3 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.

2.8 Contractor Status:

- 2.8.1 The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees 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; cost (including attorney fees); and damage of any kind related to such matters.

2.9 Coordination:

- 2.9.1 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 and Materials Management throughout the effective period of the contract.

2.10 Federal Funds Requirement:

- 2.10.1 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.

2.11 Insurance:

- 2.11.1 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.

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 bid.
- 2.12.2 The contractor shall prepare and submit to the Division of Purchasing and Materials Management 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 and Materials Management.
- 2.12.3 The Division of Purchasing and Materials Management will monitor the contractor's compliance in meeting the participation levels committed to in the contractor's awarded bid. 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 and Materials Management 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 certified organizations for the blind/sheltered workshops to fulfill the participation requirements committed to in the contractor's awarded bid.

- a. The contractor must obtain the written approval of the Division of Purchasing and Materials Management 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 and Materials Management detailing all efforts made to secure a replacement. The Division of Purchasing and Materials Management 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.

2.13 Contractor's Personnel:

2.13.1 The contractor understands and agrees that by signing the IFB, they certify the following:

- a. The contractor shall only utilize 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.
- b. 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.
- c. The contractor agrees to fully cooperate with any audit or investigation from federal, state, or local law enforcement agencies.

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.

2.15 Confidentiality and Security Documents:

2.15.1 If required by the state agency, the contractor and any required contractor personnel must sign specific documents regarding confidentiality, security or other similar documents upon request. Failure of the contractor and any required personnel to sign such documents shall be considered a breach of contract and subject to the cancellation provisions of this document.

3. PERFORMANCE REQUIREMENTS

3.1 The contractor shall comply with the following general requirements:

- 3.1.1 Items packed in glass containers will not be accepted and must be replaced.
- 3.1.2 The contractor shall be required to deliver per the mandatory specifications stated herein.
- 3.1.3 Rules governing grading, packaging, receiving, qualified brands and recall listed in the State Specification Booklet shall apply until it is updated and/or replaced.

3.2 Contractor's Agreement:

- 3.2.1 The contractor shall agree that products provided under the contract shall conform to all mandatory specifications, terms, conditions and requirement stated herein. The contractor shall understand and agree that any sample-tested products that were accepted during testing must be the same product submitted to the state agency for the duration of the contract.

3.3 Substitutions:

- 3.3.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management. Any product substitution must be of equal or better functionality and of equal or lower pricing.
- 3.3.2 The state reserves the right to allow the contractor to substitute any new product/system offered by the contractor on all unshipped and future orders if capabilities and quality are equal to or greater than the product/system under contract and if prices are equal to or less than contract prices. The Division of Purchasing and Materials Management shall be the final authority as to acceptability.

3.4 Replacement of Damaged Product:

- 3.4.1 At the agency request, the contractor shall be responsible for replacing any item received in damaged or unacceptable condition including product received with rim or seam dents, at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

3.5 General Delivery Performance Requirements:

- 3.5.1 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. Delivery shall include unloading shipments at the state agency's dock or other designated unloading site as requested by the state agency. 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.
- 3.5.2 Deliveries shall be made as requested by the ordering agency. The contractor must coordinate his/her delivery schedule with the agency. Any change in the delivery schedule must be approved by the agency and must be preceded with a written request at least two (2) weeks prior to the implementation date of such change.
- 3.5.3 The contractor is advised that delivery must not be made on official state and/or federal holidays. Arrangements shall be made with the state agency for any delivery which falls on state and/or federal holiday.

- 3.5.4 The contractor must contact Dewayne Doerhoff at (573) 526-3080 to make an appointment prior to delivery to the Central Region Commodity Warehouse. The contractor must contact Karen Honerkamp at (573) 358-5516, extension 2615, to make an appointment prior to delivery to the Eastern Region Commodity Warehouse.

3.6 Shrink-Wrapped Pallets Required:

- 3.6.1 The awarded items must be on shrink-wrapped pallets grade 2 or better. Pallets will be exchanged upon delivery.

3.7 Liquidated Damages For Late Deliveries:

- 3.7.1 The contractor shall agree and understand that the provision of awarded grocery items in accordance with the requirements and delivery dates stated herein is considered critical to the efficient operation of the Missouri Department of Corrections. However, since the amount of actual damages would be difficult to establish in the event the contractor fails to comply with the requirements and delivery dates, the contractor shall agree and understand that the amount identified below as liquidated damages shall be reasonable and fair under the circumstances.
- 3.7.2 If for any reason the actual delivery date for the specific order is not met within five (5) work days of the delivery date stated on the Pricing Page of the contract, the Missouri Department of Corrections will assess per day liquidated damages of 1% of the amount that is scheduled and undelivered until the delivery is fulfilled.
- 3.7.3 Liquidated damages shall be assessed starting with the sixth work day up to and including the 15th work day after the stated delivery date. The maximum period for assessment of liquidated damages shall be ten (10) work days.
- 3.7.4 Subsequent to the 15th work day past the scheduled delivery date, the entire purchase order or the shipment quantity may be cancelled as determined by the Department of Corrections to be in its best interests. The Missouri Department of Corrections may purchase the needed item(s) on the open market if deemed in its best interests, and the state reserves the right to charge the contractor with any additional cost for obtaining said item(s) compared to pricing for the product had it been delivered per contract terms in the event liquidated damages are not assessed by the Department of Corrections against the contractor. The amount of difference between the contract price and the open-market price may be applied to future orders and/or to current orders for other products provided by the contractor under the subject contract or other contracts the contractor currently holds for product for the State of Missouri Department of Corrections.

3.8 Guaranteed Quantity:

- 3.8.1 The quantity indicated on the Pricing Page specific to the line item is considered a maximum guaranteed quantity. The contractor shall understand and agree that the contract is for a guaranteed order quantity, rather than an estimate. Failure of the contractor to deliver the number of cases specific to a line item by the delivery date specified on the Purchase Order shall be considered a breach of contract unless an alternate quantity is approved by the Department of Corrections. Upon the mutual consent of the Department of Corrections and the contractor, the case quantities specific to a line item maybe increased or decreased.

3.9 Fill Rate Accuracy:

- 3.9.1 The contractor is advised that a delivery fill rate will be calculated on all deliveries by the state agency. The contractor must maintain a delivery fill rate of a minimum of 98% on each delivery to be judged successful under the contract.
- 3.9.2 If the delivery fill rate falls below 98% on any delivery, the agency has the option to both:
- a) Receive a 2% price reduction on the item not delivered per schedule, to be assessed per delivery; and

- b) Receive the difference in price as required for the agency to procure the item from a different vendor or source.

3.9.3 When the delivery fill rate falls below 98% on any delivery, the agency at its option may cancel the entire purchase order or the shipment quantity.

3.9.4 The contractor's success under the contract shall be measured and assessed in ways other than solely described above.

4. SPECIFICATION

4.1 Quality Assurance Certificate:

4.1.1 Grading of the products specified herein is not required. However, the contractor must provide to the state a certificate of quality assurance, if requested.

4.2 Inspection:

4.2.1 The State of Missouri reserves the right to require an official USDA inspection and/or independent lab analysis should the state question the quality, grade or drained weight of any product provided hereunder. If the product inspection/analysis shows that the product does not comply with the specification, all costs of the inspection/analysis shall be borne by the contractor, and the contractor shall replace the product at no additional cost to the State of Missouri. If the product inspection/analysis shows that the product meets the specification, all costs of the inspection/analysis shall be borne by the requesting agency of the State of Missouri.

4.3 Shelf Life:

4.3.1 The contractor is advised that all products must have a minimum of 6-month shelf life remaining at the time of delivery. Furthermore, the contractor shall replace any item received as unacceptable at no cost to the State of Missouri.

5. BIDDERS' INSTRUCTIONS

5.1 Contact:

5.1.1 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.

5.2 Prices:

5.2.1 The bidder shall state the firm, fixed unit price for one, some, or all of the line items specified on the Pricing Pages. All pricing shall be considered firm for the duration of the contract period.

5.2.2 All prices shall include all packing, handling, shipping, and freight charges **FOB Destination, Freight Prepaid and Allowed**. The State of Missouri shall not make additional payments or pay add-on charges for freight or shipping unless specifically described and priced in the bid, or as otherwise specifically stated and allowed by the IFB.

5.3 Cost Evaluation:

5.3.1 The cost evaluation shall cover the original contract period and shall include all mandatory requirements and specifications. The evaluation shall utilize the unit prices stated for each item multiplied by the applicable

quantities for each to determine the lowest bidder. However, the State of Missouri reserves the right to evaluate optional items, if deemed necessary.

5.4 Unit of Measure:

- 5.4.1 If the unit of measure specified on the attached pricing pages is different than the manner in which the bidder offers that item, then the unit of measure being proposed by the bidder must be clearly identified on the pricing page. All mathematical conversions should be shown by the bidder, and must be provided upon specific request from the Buyer.
- 5.4.2 In the cost evaluation, a unit price conversion will be done to fairly evaluate bid prices. However, for any resulting contract, the unit of measure bid will be the unit of measure awarded. Bidders are encouraged to contact the Buyer **prior to** submission of their bid to discuss anticipated unit modifications. The bidder is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification or to disqualify the bid for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

5.5 Description of Product:

- 5.5.1 The bidder should present a detailed description of all products and services proposed in the response to this Invitation for Bid. It is the bidder's responsibility to make sure all products proposed are adequately described in order to conduct an evaluation of the bid to insure its compliance with mandatory technical specifications. It should not be assumed that the evaluator has specific knowledge of the products proposed; however, the evaluator does have sufficient technical background to conduct an evaluation when presented complete information.

5.6 Preprinted Marketing Materials:

- 5.6.1 The bidder may submit preprinted marketing materials with the bid. However, the bidder is advised that such brochures normally do not address the needs of the evaluators with respect to the technical evaluation process and the specific responses which have been requested of the bidder. The bidder is strongly discouraged from relying on such materials in presenting products and services for consideration by the state.
- 5.6.2 It is the bidder's responsibility to provide detailed information about how the item bid meets the specifications presented herein. If preprinted marketing materials do not specifically address each specification, the bidder should provide detailed information to assure that the product meets the state's mandatory requirements. In the event this information is not submitted with the bid, the buyer may, but is not required to, seek written clarification from the bidder to provide assurance that the product bid meets specifications.

5.7 American Made:

- 5.7.1 In accordance with the Domestic Product Procurement Act (hereinafter referred to as the Buy American Act) RSMo 34.350-34.359, the bidder is advised that any goods purchased or leased by any public agency shall be manufactured or produced in the United States.
- 5.7.2 Bidders 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 bidders whose products do not qualify.
- 5.7.3 The requirements of the Buy American Act shall not apply if other exceptions to the Buy American mandate in RSMo 34.353 are met.

- 5.7.4 If the bidder claims there is only one line of the good manufactured or produced in the United States, RSMo 34.353 (2), or that one of the exceptions of RSMo 34.353 (3) applies, the Executive Head of the Agency bears the burden of certification as required prior to the award of a contract.
- 5.7.5 In accordance with the Buy American Act, the bidder must provide proof of compliance with RSMo 34.353. Therefore the bidder should complete and return **Exhibit A**, certification regarding proof of compliance, with the bid. This document must be satisfactorily completed prior to an award of a contract.
- 5.7.6 If any products and/or services offered under this IFB are being manufactured or performed at sites outside the United States, the bidder **MUST** disclose such fact and provide details with the bid.

5.8 Bid Detail Requirements and Deviations:

- 5.8.1 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.
- 5.8.2 **Bidders should note:** A descriptive brochure of the model bid may not be acceptable as clear identification of deviations from the written specification.

5.9 Open Competition:

- 5.9.1 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.
- 5.9.2 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.

5.10 Labels:

- 5.10.1 The bidder should include a copy of an ingredient and nutritional label along with the bid. If the label is not furnished with the bid then the label must be provided upon request. If requested, the label shall be furnished within five (5) working days after notification from the Division of Purchasing and Materials Management. Failure to provide this information may render the bid incapable of evaluation and non-responsive.

5.11 Samples:

- 5.11.1 The bidder may be required to submit a sample of the product bid. If notified, such samples should be clearly identified with: (1) the bidder's company name, (2) IFB bid number, and (3) item identified. Samples should be sent to the Department of Corrections, Central Region Commodity Warehouse, Cook/Chill, Attn: Robin Norris, 8416 No More Victims Road, Jefferson City, Missouri 65101. Samples shall be submitted at no additional cost to the State of Missouri and will not be returned. A bidder failing to submit samples within five (5) working days after notification from the Division of Purchasing and Materials Management may not be considered for award.
- 5.11.2 At minimum, samples will be evaluated for, consistency, flavor, texture, yield and color. Other considerations may include the condition of the cans or other packaging materials the samples are contained in. If sample testing indicates that the product does not meet mandatory specifications or is found otherwise unacceptable, the award shall not be made to that bidder.

- 5.11.3 The sample submitted must be the exact item bid, and it must conform to the mandatory IFB specifications for the specific line item. If awarded a contract for the line item, the bidder hereby agrees that the product provided under contract shall be the same product submitted for sample testing for the duration of the contract.

5.12 Electronic Bids:

- 5.12.1 If a Premium registered bidder is responding electronically through the On-Line Bidding/Vendor Registration System website, the Premium registered bidder should submit completed exhibits, forms, and other information concerning the bid as an attachment to the electronic bid. Instructions on how to enter a Premium Registration, how to respond to a bid on-line, and how to submit electronic attachments are available on the On-Line Bidding/Vendor Registration System website at <https://www.moolb.mo.gov>. Be sure to include the bid number, company name, and a contact name on any attachments submitted with the electronic bid.
- 5.12.2 Premium registered bidders submitting electronic and hard copy bid responses which are not identical should explain which response(s) is(are) valid for the state's consideration. In the absence of such explanation, the state reserves the right to evaluate the response which serves its best interest.
- 5.12.3 The exhibits and forms provided herein can be saved into a word processing document of the Premium registered bidder's own creation, completed by the bidder, and then attached to the electronic submission. Other requested or required information should be attached to the electronic bid in whatever format the bidder desires.
- 5.12.4 Specifically the Premium registered bidder should submit the following with the electronic bid as an attachment: brand, model, warranty period, renewal pricing, domestic products status, and product information.
- 5.12.5 Exhibits, forms and other information may also be submitted through mail or courier service. However, any such submission should be received prior to the specified closing date and time.

5.13 Determination for Award:

- 5.13.1 The award of contract shall be made to the lowest priced responsive bidder. The State of Missouri 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 State of Missouri reserves the right to clarify any and all portions of any bidder's offer.

5.14 Compliance with Terms and Conditions:

- 5.14.1 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.

5.15 Business Compliance:

- 5.15.1 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 Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:

- Registration of business name (if applicable)
- 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)

5.16 Debarment Certification:

5.16.1 The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that the bidder 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 bidder should complete and return the attached certification regarding debarment, etc., **Exhibit B** with their bid. This document must be satisfactorily completed prior to award of the contract.

5.17 Preference for Organizations for the Blind and Sheltered Workshops:

5.17.1 Pursuant to 34.165 RSMo, a ten (10) bonus point preference shall be granted to bidders 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 bidder must meet following the conditions and provide the following evidence:
 - 1) The bidder 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 bidder must use the organization for the blind or sheltered workshop in a manner that will constitute an added value or provide a service required as part of the performance of the contract.
 - 3) The bidder must provide the following information with the bid:
 - Participation Commitment - The bidder must complete **Exhibit C**, Participation Commitment, by identifying the organization for the blind or sheltered workshop, the amount of participation committed, and the commercially useful products/services to be provided by the listed organization for the blind or sheltered workshop. If the bidder submitting the bid is an organization for the blind or sheltered workshop, the bidder must be listed in the appropriate table on the Participation Commitment Form.
 - Documentation of Intent to Participate – The bidder must either provide a properly completed **Exhibit D**, Documentation of Intent to Participate Form, signed by the organization for the blind or sheltered workshop proposed or must provide a recently dated letter of intent signed 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; (2) must indicate the organization for the blind/sheltered workshop's commitment to aid the bidder in the performance of the required services and/or provision of the required products (identified by the Invitation for Bid (IFB) number or other identifier) in an amount that must equal the amount specified on the bidder's Participation Commitment Form, **Exhibit C**; and (3) should include evidence of the organization for the blind/sheltered workshop qualifications (e.g. copy of certificate or Certificate Number for Missouri Sheltered Workshop).
- b. A list of Missouri sheltered workshops can be found at the following internet address:

<http://www.dese.mo.gov/divspeced/shelteredworkshops/index.html>.

- 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 bidder's bid is awarded, the participation committed to by the bidder on **Exhibit C**, Participation Commitment, as verified by the organization for the blind/sheltered workshop's documentation of intent to participate, shall be interpreted as a contractual requirement.

5.18 Missouri Service-Disabled Veteran Business Preference:

- 5.18.1 Any bidder eligible to receive the Missouri service-disabled veteran business preference pursuant to 34.074 RSMo must review and complete **EXHIBIT E**, MISSOURI SERVICE-DISABLED VETERAN BUSINESS PREFERENCE and provide the specified documentation in accordance with the instructions provided therein.

PRICING PAGE

The products shall conform to the following specifications. The bidder shall state the firm, fixed unit price for one, some or all of the line items specified below.

Bidders shall agree and understand that the quantity shown specific to the line item is the quantity that will be ordered by the state agency during the contract period. The bidder must take into account that partial loads might have to be delivered in order to comply with the state agency's quantity. Therefore, bid pricing must reflect all costs for delivering full and partial pallets and truckloads. A partial pallet will be accepted per truckload.

<u>LINE ITEM</u>	<u>MANDATORY SPECIFICATIONS</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
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001	C/S Code: 39399 <i>Grocery Items, Miscellaneous</i> Fruit Flavored Drink Mix, Vitamin C Fortified and sweetened with NutraSweet/Aspartame blend. Must contain 60 mg of Vitamin C per 8 fluid ounces diluted product. Fortified with calcium to provide 100 mg of calcium per 8 oz. serving. Yield: One (1) packet yields five (5) gallons. One case yields 720 gallons Desired Flavors: orange, grape, lemon and punch Packaging: 144 packs per case	952	CS	\$_____
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Acceptable brands: Tova, Good Source, AC Sales or equal.

State Flavors available: _____

State Package Size: _____

Deliver 952 Cases to:

Central Region Commodity Warehouse
 8416 No More Victims Road
 Jefferson City, MO 65101
 Number of cases per flavor:
 952 cases of assorted fruit flavors

002	C/S Code: 39399 <i>Grocery Items, Miscellaneous</i> Gelatins, Assorted Flavors, Sweetened. Must not contain any pork or pork derivatives. Packaging: 12 bags per case Yield: Each bag to mix with one (1) gallon of water Nutritional and Ingredient statements should be furnished with the bid. Flavors: cherry, orange, strawberry, lime	2,856	CS	\$_____
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Acceptable Brands: MJ Kellner, or Tova.

State Package Size: _____

Deliver 1,904 Mixed Cases to:

Central Region Commodity Warehouse
 8416 No More Victims Road
 Jefferson City, MO 65101
 Number of cases per flavor:

500 cases of cherry
854 cases of orange
550 cases of strawberry

Deliver 952 Mixed Cases to:

Eastern Region Commodity Warehouse
2727 Hwy. K
Bonne Terre, MO 63628
Number of cases per flavor:
420 cases of cherry
250 cases of lime
180 cases of orange
102 cases of strawberry

Delivery:

The delivery shall not exceed thirty (30) calendar days after the receipt of a properly executed order. If bidder's delivery is different, the bidder should state delivery in days after receipt of order (ARO): _____ calendar days ARO.

Employee Bidding/Conflict of Interest:

Bidders who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official 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 employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name and title of state employee, General
Assembly member or statewide elected official: _____

Name of state agency where employed: _____

Percentage of ownership interest in bidder's
organization held by state employee, General
Assembly member or statewide elected official: _____%

**STATE OF MISSOURI -- OFFICE OF ADMINISTRATION
DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN)**

EXHIBIT A

The Missouri Domestic Products Procurement Act (34.350-34.359 RSMo) requires that for all bids with a value of \$25,000 or more, the goods or commodities purchased by any public agency or used or supplied in the construction, alteration, repair, or maintenance of any public works must be **manufactured or produced** in the United States. As defined in 34.350 RSMo, United States means the United States of America, the District of Columbia, and all territories and possessions subject to the jurisdiction of the United States. The law also requires that the bidder must provide proof of compliance. **Note: In general, if an import tariff is applied to an item, it does not qualify for the Buy American preference. In addition, Most Favored Nation status does not allow application of the preference.**

Section A – All Products Are Manufactured or Produced In U.S.

If all products bid qualify as domestic products under Missouri law, complete only Section A.

I hereby certify that all products qualify as domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required).

COMPANY NAME

If Section A is completed, do not complete Section B.

Section B – Only One Product Line or No Products Are Manufactured or Produced In U.S.

If only one product line or no products are manufactured or produced in the U.S. complete only section B.

I hereby certify that there is only one product line or no product manufactured or produced in the U.S., that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required).

COMPANY NAME

Section C – Products May Qualify Because of Qualifying Treaty

If some or all products bid qualify for domestic status because of a trade treaty, etc., then the bidder must identify each product, country and qualifying treaty, etc. below. The bidder must list ALL products which are or may qualify as domestic below. If more space is needed, please copy this form and submit as an attachment.

BID ITEM NUMBER(S)	COUNTRY WHERE MANUFACTURED OR PRODUCED	QUALIFYING TREATY, LAW, AGREEMENT, OR REGULATION

SECTION C

I hereby certify that the specific items listed above are domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required)

COMPANY NAME

NOTE: Any product not listed above in Section C will be considered non-domestic if Section A is not signed. If this form is not completed, signed, and returned, items bid may not receive the domestic preference.

EXHIBIT B

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.

Name and Title of Authorized Representative

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 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.

EXHIBIT C**PARTICIPATION COMMITMENT**

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

Organization for the Blind/Sheltered Workshop Commitment Table		
Name of Organization for the Blind or Sheltered Workshop Proposed	Committed Participation (\$ amount or % of total value of contract)	Description of Products/Services to be Provided by Listed Organization for the Blind/Sheltered Workshop
1.		
2.		
3.		

EXHIBIT D**DOCUMENTATION OF INTENT TO PARTICIPATE**

If the bidder is proposing to include the participation of an Organization for the Blind/Sheltered Workshop in the provision of the products/services required in the IFB, the bidder must either provide a recently dated letter of intent from each organization documenting the following information, or complete and provide this Exhibit with the bidder's bid.

~ Copy This Form For Each Organization Proposed ~

1. Bidder

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 bidder identified above.

Indicate appropriate business classification(s):

_____ Organization _____ Sheltered
_____ for the Blind _____ Workshop

Name of Organization _____

Contact Name: _____

Email: _____

Address: _____

Phone #: _____

City: _____

Fax #: _____

State/Zip: _____

Certification # _____

(or attach copy of certification)

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

Document the amount of participation the bidder has committed to you (*as the participating organization*) for the products/services you are providing:

_____ or _____
_____ % of Total Value of Contract
_____ Total Dollar Amount

Authorized Signature:_____
*Authorized Signature of Participating Organization*_____
Date

EXHIBIT E
MISSOURI SERVICE-DISABLED VETERAN BUSINESS PREFERENCE

Pursuant to 34.074 RSMo, the Division of Purchasing and Materials Management has a goal of awarding three (3) percent of all contracts for the performance of any job or service to service-disabled veteran businesses (see below for definitions included in 34.074 RSMo) either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entity, are comparable.

Definitions:

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

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

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

If a bidder meets the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and is either doing business as a Missouri firm, corporation, or individual; or maintains a Missouri office or place of business, the bidder **must** provide the following with the bid in order to receive the Missouri service-disabled veteran business preference over a non-Missouri service-disabled veteran business when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable:

- a. a copy of a letter from the Department of Veterans Affairs (VA), or a copy of the bidder's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) from the branch of service the bidder was in, stating that the bidder has a service-connected disability rating ranging from 0 to 100% disability; and
- b. a completed copy of this exhibit

(NOTE: For ease of evaluation, please attach copy of the above-referenced letter from the VA or a copy of the bidder's discharge paper to this Exhibit.)

By signing below, I certify that I meet the definitions of a service-disabled veteran and a service-disabled veteran business as defined in 34.074 RSMo and that I am either doing business as a Missouri firm, corporation, or individual; or maintain Missouri offices or places of business at the location(s) listed below.

 Service-Disabled Veteran's Name
 (Please Print)

 Service-Disabled Veteran Business Name

 Service-Disabled Veteran's Signature

 Missouri Address of Service-Disabled Veteran Business

**STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT
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. **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 and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **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.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **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.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **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.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **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.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM 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 Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **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.
- m. **Pricing Page(s)** applies to the form(s) 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.
- n. **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 DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **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 DPMM.
- 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. 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 DPMM 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 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 from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten 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 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 DPMM 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 DPMM 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. The IFB is available for viewing and downloading on the state's On-Line Bidding/Vendor Registration System website. Premium registered bidders are electronically notified of the bid opportunity based on the information maintained in the State of Missouri's vendor database. If a Premium registered bidder's e-mail address is incorrect, the bidder must update the e-mail address themselves on the state's On-Line Bidding/Vendor Registration System website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance. Premium registered bidders who received e-mail notification of the bid opportunity when the IFB was established and Premium registered bidders who have responded to the IFB on-line prior to an amendment being issued will receive e-mail notification of the amendment(s). Premium registered bidders who received e-mail notification of the bid opportunity when the IFB was established and Premium registered bidders who have responded to the bid on-line prior to a cancellation being issued will receive e-mail notification of a cancellation issued prior to the exact closing time and date specified in the IFB.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at 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 which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference 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. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- 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 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 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.

5. SUBMISSION OF BIDS

- a. Premium registered bidders may submit bids electronically as permitted by the IFB through the State of Missouri's On-Line Bidding/Vendor Registration System website or hard copy delivered to the DPMM office. Standard registered bidders or bidders that have not registered on the On-Line Bidding/Vendor Registration System website may submit bids hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) 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 (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically by a Premium registered bidder may be modified on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM 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 submitted electronically by a Premium registered bidder may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM 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, e-mail, or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the Premium registered bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM 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 IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.
- f. Faxed bids shall not be accepted. However, faxed and e-mail no-bid notifications shall be accepted.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Names, locations, and prices of respondents shall be read at the bid opening. Premium registered bidders may view the names and prices of the respondents on the state's On-Line Bidding/Vendor Registration System website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM 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.

7. 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.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.
- d. In the evaluation of bids, a service-disabled veteran business preference shall be applied in accordance with Section 34.074 RSMo.

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 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 DPMM 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 State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder 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, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from 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 DPMM to the successful bidder. The DPMM 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 DPMM 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 which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding/Vendor Registration System website for Premium registered bidders to view for a reasonable period after bid award. The DPMM maintains images 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.
- l. The DPMM 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) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

9. 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) DPMM'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 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 the DPMM 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 the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- 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 the DPMM, (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 state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri 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.

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, the DPMM may cancel the contract. At its sole discretion, the DPMM 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 DPMM 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, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM 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 DPMM 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 bidder/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 bidder/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 the DPMM immediately.
- b. Upon learning of any such actions, the DPMM 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, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM 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 bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid 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.

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END OF DOCUMENT