
**Rules of
Department of Highway
and Transportation
Division 10—Missouri Highway and Transportation
Commission
Chapter 11—Procurement**

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**Title 7—DEPARTMENT OF
HIGHWAY AND TRANSPORTATION
Division 10—Missouri Highway and
Transportation Commission
Chapter 11—Procurement**

7 CSR 10-11.010 Definition of Terms

PURPOSE: This rule defines terms used in this chapter.

- (1) Award—An action taken by commission on successful purchasing proposals.
- (2) Bid—An offer to perform a contract for work and labor or to supply materials, goods or services at a specified price; also may include detailed information about services to be furnished.
- (3) Bidder—A person or entity submitting a solicitation document to department.
- (4) Bond—A guaranty agreement that contains the promise of a third party to fulfill the bidder's responsibilities in the event that the bidder is unable or unwilling to fulfill those responsibilities. The department may require the following:
 (A) Bid bond—Protects commission against loss due to bidder's refusal to enter into a contract with commission. May be used as performance security;
 (B) Payment bond—Assures commission that persons supplying labor or material in connection with a project will be paid; and
 (C) Performance bond—Protects commission against loss due to the inability or refusal of a bidder to perform his/her/its contract.
- (5) Buyer—A department employee who buys or contracts to buy supplies for the department.
- (6) Certification—The process in which the bidder swears that the information s/he or it has provided is correct.
- (7) Commission—The Missouri Highway and Transportation Commission. The entity defined in the provisions of 226.010, RSMo, which has the sole authority to sue and be sued on behalf of the Missouri Highway and Transportation Department.
- (8) Default—The omission or failure of a bidder to perform a contractual duty.
- (9) Demurrage—The amount payable or credited to either bidder or department for delivery delays.
- (10) Department—The Missouri Highway and Transportation Department.
- (11) Director—The director of the Division of Equipment and Procurement or a designated representative of the director.
- (12) Division—The Division of Equipment and Procurement within the Missouri Highway and Transportation Department.
- (13) Domicile—The state in which a business is incorporated.
- (14) Emergency—A situation which creates a serious and obvious threat to the public health, welfare or safety, or creates a serious and obvious threat to the operation of state government in executing its legal responsibilities to the public or for the persons or property in its legal care, custody or control, or a combination of these.
- (15) Invitation for bid (IFB)—A formal request for sealed bids which are solicited based upon specifications for which bids must be submitted.
- (16) Missouri firm—A corporation which is incorporated in Missouri, or in the case of a partnership, joint venture or sole proprietorship, a business which has its principal place of business in Missouri.
- (17) Multiple award—A contract awarded to two (2) or more bidders to meet the needs of the department. The term is applicable in the following two (2) situations:
 (A) Volume of business is so large or the geographical distances are so great that more than one (1) bidder is necessary to serve the state's needs; or
 (B) Differences between various bidders' versions of a product are so significant that it is useful to have a contract with a bidder of each product.
- (18) Nonresponsive bid—A bid or proposal which does not fulfill all terms, conditions and specifications outlined in the solicitation document.
- (19) Notice to proceed—A document sent by department that gives notice to bidder to begin performance on its contract.
- (20) Proposal security—A guarantee, in the form of an irrevocable bond or deposit, that the bidder, if selected, will accept the contract as bid.
- (21) Purchase—Includes rental or leasing of any equipment, articles or supplies.
- (22) Purchase order—A document issued by department, authorizing bidder to deliver goods.
- (23) Responsible bid—Bid which complies with all terms, conditions, and specifications outlined in solicitation document.
- (24) Request for proposal (RFP)—A formal request for sealed proposals which is solicited and based on scope of work requirements. Proposals must be submitted by a specific date and time.
- (25) Request for quotation (RFQ)—An informal request for either bids or proposals based upon either a specification or a scope of work requirement. Establishes a target date and time by which quotations must be submitted.
- (26) Solicitation—A process of notifying prospective bidders that the department wishes to receive bids or proposals to provide goods, services or a combination of goods and services. The term includes RFQ, RFP, IFB and any other procurement method which may be used.
- (27) State—The state of Missouri.
- (28) Substitution—A shipment of an item that materially conforms to the specifications but is technically different from the item bid.
- (29) Supplies—Materials, equipment, contractual services and all articles or things.
- (30) Suspension—An exclusion from contracting with the department for a temporary period of time.
- (31) Vendor—Any individual, partnership, company, corporation or joint venturer providing materials, supplies or services to the department.
- (32) Witness—A person who has no interest in the outcome of the drawing of lots.

*Auth: sections 226.020, 226.130 and 227.030, RSMo (1986). * Original rule filed April 5, 1993, effective Oct. 10, 1993.*

**Original authority 1939.*

7 CSR 10-11.020 Procedures for Solicitation, Receipt of Bids and Award of Contract

PURPOSE: This rule describes procedures for soliciting and receiving bids and for awarding contracts for the division.

- (1) Competitive Bids. The department attempts to accomplish its purchasing of supplies and equipment through competitive



bidding. In emergency situations, the department cannot always use competitive bidding.

(2) **Late Bids.** It is the bidder's responsibility to ensure that a bid or proposal is physically deposited in the office of the division or in the appropriate district prior to the exact date and time designated in the bid for opening of these documents. Late bids shall be rejected regardless of the reason, including causes beyond the control of the bidder.

(3) **Sealed Bids.** Bidders must ensure that bids are sealed in a container prior to delivery to the office of the division. Either an envelope or box may be used as a container. The container should bear the official solicitation document number and the official closing date and time. In the event that the division receives a bid which is not identified as a bid, an authorized person within the division may open the container to determine the solicitation document number, closing date, and time and reseal the bid for further consideration at the official time of opening.

(4) **Public Bid Opening.** Bidders and the public may attend the formal opening of bids and proposals. Prices will be read aloud to the public. No decisions related to an award of a contract or purchase order will be made at the opening. The location of the opening of bids and proposals will be indicated in the bid documents.

(5) **Bid Tabulation.** The tabulation sheets, evaluation reports, bids and any other documentation related to the solicitation document and subsequent award shall be maintained in an official solicitation file kept by the division. After an award is made, the solicitation file will be made available to the public for inspection at any time during regular working hours.

(6) **Proposal Security.** If a proposal security is required, the requirement shall be stated in the solicitation document. A proposal security must be submitted with the proposal prior to the official opening date and time. The proposal security must be irrevocable and in the form of a cash bid bond, cashier's check or bank draft. The proposal security must be in the amount required and made payable to the State of Missouri Director of Revenue, Credit State Road Fund. Personal and company checks are not acceptable. The security must irrevocably guarantee that the successful bidder will accept the contract or purchase order if offered. The bidder's failure to accept a contract shall cause the amount of the security to be forfeited to the state. Security deposits of unsuccessful bidders will be returned prior to the award being made, however; the director

may retain the second and third lowest bids until the award is made.

(7) **Performance Security.** If a performance security is required in the solicitation document, the successful bidder's proposal security will be held and remain in full force and effect until a valid performance security in the amount stated in the solicitation document, is received by the division. Security deposits of the lowest, second lowest and third lowest bidder may be retained until the award is made. The performance security must be irrevocable and in the form of a bond, cashier's check or bank draft. The performance security must be in the amount required and made payable to the State of Missouri Director of Revenue, Credit State Road Fund. No personal or company checks shall be accepted. When the department is purchasing automotive equipment, the model year bid and performance bond may be retained by the department unless requested by the bidder.

(8) **Award.** The award of a contract or purchase order shall be based on the terms and conditions set forth in the solicitation document. The director's discretion may be utilized in the evaluation of bids provided that the evaluation categories and the relative percentage of impact are published in the solicitation document.

(A) Any bid failing to agree to, and comply with, all terms, conditions and specifications stated in the solicitation document shall be considered as nonresponsive to the solicitation and shall not be considered for the award of a contract or purchase order.

(B) The commission may reject all bids and may waive any minor informality or irregularity in a bid. The commission also may make multiple awards from a single solicitation document when permitted by the solicitation document.

(9) **Questions Relating to Bid Documents.** Any question concerning the solicitation document must be directed to the buyer in the division whose name is listed in the solicitation document. The person corresponding must specify the solicitation document number and the closing date that appears in the solicitation. The director may issue an amendment to the solicitation document if, in the director's opinion, an amendment is necessary.

(10) **Corrections to Bid Documents.** When preparing a bid, a bidder may correct an error by marking it out or erasing it. The change should be initiated by the person signing the bid. No bid shall be altered or amended after the time and date specified for the opening of bids. In the case of errors in the extension of price, the unit price will govern.

(11) **Withdrawal of Bid.** To withdraw a bid after submittal a bidder must—

(A) Send written notice to the buyer designated in the solicitation document before the time for opening of bids. When this notice is received the bid will not be opened and will be returned to the bidder; or

(B) Appear in person at the office of the division, make proof of his/her identity and sign a receipt for the return of the bid; and

(C) Telephone or facsimile requests to withdraw a bid will not be honored.

(12) **Modification of Bid Before Opening.** To modify a bid after its submittal and before the deadline for bid submission, a bidder must

(A) Submit a substitute bid which clearly indicates that it replaces the first submittal; or

(B) Provide a written modification contained in a sealed envelope which is plainly marked Modification to No. _____ submitted by: _____. Bid modifications may be made by telegraph but modifications submitted by facsimile machine or telephone shall not be accepted.

(13) **Withdrawal of Bid After Opening.** After bid opening, a bidder may be permitted to withdraw a bid prior to award at the discretion of the division if there is an error obvious to the director in the bid which is supported by cost and pricing data, or where enforcement of the bid would impose an unconscionable hardship in the opinion of the director. This withdrawal will be considered only after receipt of a written request and supporting documentation from the bidder. Withdrawal shall be the bidder's sole remedy for an error on the proposal form. No change in prices or other provisions of the bid shall be permitted or considered.

(14) **Tie Bids.** When the bids are equal in all respects and tied in price, the contract shall be awarded to a bidder doing business as a Missouri firm. If both bidders or neither is a Missouri firm, the contract shall be awarded by a formal drawing of lot. Whenever practical, the drawing will be held in the presence of the bidders who are considered equal. If this is not possible, the drawing will be witnessed.

(15) **Cancellation of Solicitation.** The division may cancel a solicitation document at any time.

(16) **Samples.** Any samples or descriptive literature requested in the solicitation document must be provided free of charge. Samples which are not destroyed by testing will be returned at the bidder's expense if return of the samples is stipulated in the bid. Samples submitted by a bidder who receives the award of a contract shall be kept for the duration of

the contract for comparison of shipments received.

(17) Deviations from Specifications. The bid shall specifically identify all deviations from the specifications or the scope of work described in the solicitation document issued by the division. Proposals which do not strictly comply with the terms of the solicitation document are subject to rejection at the division's discretion.

(18) New Supplies. All supplies and equipment offered and furnished must be new and of current production unless the solicitation document specifically permits the offer of used items. Remanufactured or reconstructed items shall not be considered new.

(19) Trade-Ins. The division may request bids for new equipment employing the trade-in of used equipment. A trade-in price quotation may be requested for trade-in purchases and a separate price quotation without trade-in for the equipment.

(20) Demonstrations. Prior to a solicitation, manufacturers and suppliers may demonstrate products to division personnel. To assure equal opportunity for all bidders, proper testing methods and valid evaluations, bidders must obtain prior approval from the division for those demonstrations.

(21) Substitutions. Unless otherwise specified in the contract, substitution of items, personnel or services shall require the approval of the division prior to shipment or performance.

(22) Rejection of Supplies. Products, equipment or items delivered that do not meet the specifications of the contract will be returned to the vendor at vendor's expense. When a shipment or product is returned, the vendor must make immediate replacement in accordance with the specifications of the contract.

(23) Inspection. All materials, equipment and supplies shall be subject to inspection and tests by the department. Items that do not meet the specifications of a contract may be rejected. The failure to reject upon receipt or after part or all of the items have been consumed shall not relieve the vendor of any liability under the contract.

(24) Services. Services which have not been performed in accordance with specifications or the scope of work of a contract may be rejected. The failure to reject upon receipt or after part or all of those services have been performed shall not relieve the vendor of any liability under the contract.

(25) Assignment. Permission to assign a contract or order must be requested in writing. A vendor shall not assign its interest in a contract or order to another party without written permission from the division.

(26) Shipment and Performance. Upon the award of a contract, the vendor shall be mailed a copy of the contract. Receipt of a contract does not authorize shipment or performance by the vendor. Shipment of materials, equipment and items or performance of services, or both, shall only be authorized and made after receipt of a properly executed contract release form, notice to proceed or purchase order from the department.

(27) Gifts. Department employees shall act impartially and neither dispense nor accept special favors or privileges which might be construed to improperly influence the performance of their duties to the public. Employees shall not use their positions in a manner designed to create personal gain.

(28) Arbitration. The commission unless specifically agreed upon by the parties in writing shall not be bound, by a compulsory arbitration or other compulsory dispute resolution provision which is present in any of vendor's forms or boilerplate.

*Auth: sections 226.020, 226.130 and 227.030, RSMo(1986). *Original rule filed April 5, 1993, effective Oct. 10, 1993.*

**Original authority 1939.*

7 CSR 10-11.030 Bidder Registration, Official Mailing Lists, Suspension From List

PURPOSE: This rule describes the procedures for bidder registration and official mailing lists.

(1) Bidder Registration Application. Any individual, business or entity desiring to sell materials, equipment, supplies or services to the department must request, complete and sign a bidder registration application from the division. It is the bidder's responsibility to notify the division in writing of any change of fact set forth in the application. To request a registration application, contact the director of equipment and procurement at (314) 751-3720 or Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102.

(2) Mailing List. Solicitation documents will be sent to those persons appearing on the official mailing list.

(3) Independent Contractor. A person, business, corporation or entity contracting to sell materials, equipment and supplies, or contracting to perform services, shall be considered an independent contractor and shall not represent him/herself as an employee or agency of the state. A corporation must be authorized to do business in Missouri by registering with the Office of the Secretary of State before proceeding with work under a contract.

(4) Suspension Policy. Vendors who are in default or have been declared nonresponsible will be removed from all bid lists and will not be allowed to bid until they have been reinstated. Vendors will be reinstated after three (3) years.

(A) Declaring a Vendor in Default or Nonresponsible. The director of equipment and procurement may remove any vendor from a list of qualified bidders, provided evidence is available for the action. The vendor will be given written notice of the removal. The vendor will be reinstated three (3) years after the date it is given notice that it is in default or nonresponsible.

(B) Disciplinary Grounds for Removal. Any of the following shall be sufficient grounds for removal from the list of qualified vendors. This list is not all inclusive:

1. Delivery of commodities, equipment or services that do not comply with the specifications;

2. Failure to make delivery or complete a project in the time specified on the contract or purchase order;

3. Failure to honor the offer for the length of time specified;

4. Failure to provide performance bond following award of contract or purchase order when the bond is required in the IFB;

5. Collusion with other vendors or prospective vendors to restrain competitive bidding;

6. Failure to accept orders offered based upon firm bids;

7. Failure to make applicable adjustment or replace damaged goods;

8. Failure to honor warranties and guarantees on products delivered;

9. False or misleading information on application for placement on the bidders' list;

10. Any violation of the laws of Missouri or the federal government; and

11. Any other violation of responsible business practices or unsatisfactory performance as determined by the director.

(C) Appeal. At any time after the vendor receives notice of removal, the vendor may submit, in writing or in person, an explanation of the circumstances which were the cause of removal or may show that these circumstances

have been corrected. On the basis of this explanation or showing, the director of equipment and procurement may modify or rescind the removal.

(D) Solicitation After Default. Where supplies are purchased without a bond, the division may solicit bids on the items as soon as the vendor is declared in default by the director of equipment and procurement. A report shall be made to the commission at its next meeting.

(5) Failure to Bid. The director also may suspend any vendor from an official mailing list for the failure to respond to three (3) consecutive solicitation documents for a specific item(s) with either a bid or a failure to submit a written reason for failing to submit a bid. This suspension shall not be applicable to all items for which a vendor is registered, but shall apply only to those items for which the vendor fails to respond. The vendor shall be mailed a formal notice of suspension and the reasons for this action and then shall be removed from the mailing list. The vendor may appeal suspension by contacting the division with reasons why suspension is not necessary. On the basis of this information, the suspension may be rescinded or affirmed.

*Auth: sections 226.020, 226.130 and 227.030, RSMo (1986). *Original rule filed April 5, 1993, effective Oct. 10, 1993.*

**Original authority 1939.*



FORM E-24
REV. 7-93

**Missouri Highway and Transportation Department
Vendor Registration Application**

Vendor Number

To be Assigned by MHTD

Please complete the Vendor Registration Application and return it to the following address:
Missouri Highway and Transportation Department
Equipment and Procurement Division
P.O. Box 270
Jefferson City, Missouri 65102

Upon receipt of your application, the information which you have supplied will be entered into our vendor files. Then the appropriate buyer will sign your application and mail a copy back to you.

General Mailing Address: *Print Name or Type*

Vendor Name _____
Address _____

City _____
State _____
Zip Code _____
Contact Person _____
Phone Number _____

Business type (Please select only one classification). Please classify your business utilizing the definitions listed below and place a check mark (✓) in the appropriate box next to the classification which best represents your business.

Small: An organization with less than 500 employees.

Large: An organization with greater than 500 employees.

Minority: An organization that has been (1) certified socially and economically disadvantaged by the Small Business Administration, (2) certified as a minority business enterprise by a state or federal agency, or (3) is an independent business concern that is 51% owned and controlled by a minority group member including: a. Black American, b. Hispanic American with origins from Puerto Rico, Mexico, Cuba, or South or Central America, c. Native American, American Indian, Eskimo, Aleut, or Native Hawaiian, or d. Asian Pacific American with origins from Japan, China, The Philippines, Viet Nam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian Subcontinent.

Non-Minority: An organization that does not satisfy the criteria listed above for minority.

Missouri: An organization whose state of incorporation is Missouri, or if not incorporated whose principal place of business is in Missouri.

Non-Missouri: An organization whose state of incorporation is not in Missouri, or if not incorporated whose principal place of business is located outside Missouri.

- | | |
|--|--|
| <input type="checkbox"/> Small, Minority, Missouri | <input type="checkbox"/> Large, Minority, Missouri |
| <input type="checkbox"/> Small, Non-Minority, Missouri | <input type="checkbox"/> Large, Non-Minority, Missouri |
| <input type="checkbox"/> Small, Minority, Non-Missouri | <input type="checkbox"/> Large, Minority, Non-Missouri |
| <input type="checkbox"/> Small, Non-Minority, Non-Missouri | <input type="checkbox"/> Large, Non-Minority, Non-Missouri |



Female-Owned Business - Please indicate whether your organization has been certified by a local state or federal government agency as a women's business concern or if yours is an independent business concern which is at least 51% owned by a woman (or women) who controls your operations. Place a check mark (✓) in the box next to the appropriate answer - yes or no.

Yes No

Please list below specific supplies, equipment and/or repair services which you are willing to provide. Brochures, product listing or literature should be enclosed with this application.

Office Use Only/Buyer

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

To the best of my knowledge the above information herein is true and accurate as of this date:

_____ (Type Name)	_____ (Title)
_____ (Signature)	_____ (Date)

* * * * *

FOR MHTD OFFICE USE ONLY

Your application has been reviewed and processed.

_____ (Signature)	_____ (Date)
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Original to File
Copy to Vendor