



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION
REQUEST FOR QUOTATION (RFQ)**

RFQ NO.: CFLMR0313A
TITLE: Cash Farm Lease – Moberly Correctional Center (Hay)
ISSUE DATE: May 13, 2013

BID CONTACT: Amy Spray
PHONE NO.: (573) 526-5791
E-MAIL: Amy.Spray@oa.mo.gov

RETURN BID NO LATER THAN: May 29, 2013 at 1:30 p.m.

MAILING INSTRUCTIONS: Print or type **RFQ Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Delivered sealed bids must be in DFMDC office (301 W High Street, Room 730) by the return date and time.

<p>(U.S. Mail) RETURN BID TO: OFFICE OF ADMINISTRATION DFMDC PO BOX 809, ROOM 730 JEFFERSON CITY MO 65102-0809</p>	<p>or</p>	<p>(Courier Service) OFFICE OF ADMINISTRATION DFMDC 301 WEST HIGH STREET, ROOM 730 JEFFERSON CITY MO 65101</p>
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CONTRACT PERIOD: June 1, 2013 through May 31, 2014

PROPERTY ADDRESS:

**Moberly Correctional Center
5201 South Morley Street
Moberly, Missouri 65270**

The bidder hereby declares understanding, agreement and certification of compliance with all requirements and specifications contained herein and the Terms and Conditions Request for Quotation (RFQ). The bidder further agrees that the language of this RFQ shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized Notice of Award 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) (NOTE: LLC IS NOT A VALID TAX FILING TYPE.) ___ Corporation ___ Individual ___ State/Local Government ___ Partnership ___ Sole Proprietor ___ Other _____			
AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	

1. INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction:

1.1.1 This document constitutes an invitation for competitive, sealed bids for the provision of cash farm lease services as set forth herein.

1.2 Background Information:

1.2.1 Attachment 1 is a site plan of the property outlined near the Moberly Correctional Center. It contains approximately 40 acres.

1.2.2 Interested bidders are encouraged to visit the farmland prior to submitting a bid. Bidders may contact Greg Brown at (660) 263-3778 ext. 1205 to schedule an appointment to view the area. The Office of Administration, Division of Facilities Management, Design and Construction does not guarantee exact acreage of tracts of land and encourages the bidder to establish knowledge of the acreage to their own satisfaction.

1.2.3 Other than questions regarding the farmland, all questions regarding this RFQ and/or the competitive bid process must be directed to Amy Spray at (660) 526-5791 or Amy.Spray@oa.mo.gov.

1.2.4 Although an attempt has been made to provide accurate and up-to-date information, the State of Missouri does not warrant or represent that the background information provided herein reflects all relationships or existing conditions related to this Request for Quotation.

2. CONTRACTUAL REQUIREMENTS

2.1 General Requirements:

2.1.1 The contractor shall function as a cash lessee for the Office of Administration, Division of Facilities Management, Design and Construction, Real Estate Services (hereinafter referred to as the state agency), at the Moberly Correctional Center located in Moberly, MO, in accordance with the provisions and requirements stated herein.

2.1.2 The contractor shall perform all services to the sole satisfaction of the state agency.

2.1.3 The contractor shall understand and agree that the state agency shall delineate the boundaries of the fields which the contractor may crop.

2.1.4 The state agency estimates that there are approximately 35 acres of farmland at Moberly Correctional Center. However, the State of Missouri does not guarantee exact acreage of tracts of land. Attachment #1 provides an aerial view of the farmland and surrounding area.

2.1.5 If the contractor has indicated agreement on the Pricing Page, the contractor shall function as a cash lessee as described herein pursuant to the provisions and requirements of the contract.

2.2 Performance Requirements:

- 2.2.1 The contractor shall access the leased property only through approved areas designated by the on-site contact, Greg Brown, Department of Corrections.
- 2.2.2 The contractor must submit to the state agency for approval, prior to admittance, a list of personnel to be allowed access to the leased property.
- a. The state agency reserves the right to approve or disapprove any personnel proposed on the list.
 - b. All personnel admitted to the leased property must carry an identification card that contains a photograph while on the leased property.
- 2.2.3 The contractor shall mow and bale areas that are mutually agreed to between the on-site contact, Greg Brown, and the contractor.
- a. In the leased property, the contractor shall understand and agree that only hay crops are allowed. No corn may be grown on the site.
- 2.2.4 The contractor shall utilize both an appropriate fertility program and an appropriate pesticide program. The contractor's fertility program shall maintain the leased land's current level of fertility, applying an amount that the crops will use.
- a. The scope of both the fertility program and the pesticide program shall be mutually agreeable to both the contractor and Greg Brown, Department of Corrections. In the event of disagreement by the contractor and the Agribusiness Manager, the state agency may consult the University of Missouri College of Agriculture for guidance. In the event of a disagreement, the decision of the state agency shall be final and without recourse.
 - b. The contractor shall submit to Greg Brown, Department of Corrections the scale tickets for all crops removed from the area. The contractor shall also submit scale tickets or sales receipts for all fertilizer, lime, and pesticides, indicating the fields where applied and their application rates.
 - c. The contractor shall submit to the Greg Brown, Department of Corrections the soil test results for all fields, indicating the necessary requirements for the elements nitrogen, potassium, and phosphorus, and for the mineral lime. Soil fertility must be maintained equivalent to the fertility at the time of contract award.
- 2.2.5 The contractor may sign up for United States Department of Agriculture (USDA) Programs, if available. The contractor must report USDA crop acres prior to established deadlines.
- a. The contractor shall be responsible for complying with all USDA regulations and will receive all USDA benefits applicable.
- 2.2.6 The contractor must maintain, at the contractor's expense, fences and other improvements on the leased land at a level equal to or better than the condition of such on the effective date of the contract.
- a. In the event fences or other improvements are upgraded, the contractor must maintain the upgraded condition of such improvements for the remainder of the contract period.
 - b. The contractor shall not be responsible for ordinary wear and tear, loss by fire, and/or unavoidable depreciation or destruction.
 - c. The contractor shall maintain all fences in a safe and prudent manner so as to assure that no damage shall be incurred to any land, life, or property.

- d. The contractor shall obtain approval from the state agency prior to erecting additional fences.
 - e. Any additional fences or gates erected shall become the property of the state agency.
 - f. The contractor shall agree that the state agency is not obligated to make alterations, repairs, or additions to the leased property.
- 2.2.7 The contractor shall maintain all fences in good repair and in a safe and prudent manner so as to assure that no damage shall be incurred to any land, life, or property as a result of the contractor's leasing and use of the leased property.
- a. The contractor shall supply all labor and materials required for fence repair.
- 2.2.8 The contractor shall not alter, take down, or make new openings to the perimeter of the area's fencing. However, if the contractor is of the opinion that additional access is needed through the area's perimeter fencing, the contractor shall request the state agency's concurrence. If the state agency determines that access through the area's perimeter fencing is needed, Greg Brown, Department of Corrections shall provide such access.
- 2.2.9 The contractor shall not construct any permanent structure on the leased property.
- a. The contractor shall not construct any temporary structure or advertisement on the leased property without prior written consent of the state agency.
- 2.2.10 The contractor shall adhere to all administrative rules and security regulations as promulgated by the Department of Corrections.
- 2.2.11 The contractor shall not allow trespassing, hunting, or the use of firearms on the leased property.
- 2.2.12 The contractor shall not engage in practices that are detrimental to the leased property including, but not necessarily limited to:
- a. Cutting or allowing any timber to be cut on the leased property;
 - b. Conducting mining operations;
 - c. Removing sand, gravel, or any similar material from the leased property;
 - d. Committing waste of any kind; and
 - e. Substantially changing the contour or condition of the leased property, except for those changes which are required in order to accomplish soil and water conservation measures.
- 2.2.13 The State of Missouri shall not be responsible for any losses, should they occur, due to vandalism, theft, or acts of nature.
- 2.2.14 The contractor shall harvest all crops in a timely manner.
- 2.2.15 The contractor shall control noxious weeds in accordance with applicable sections of the State of Missouri Revised Statutes, specifically Chapter 263.
- 2.2.16 The contractor shall understand and agree that the state agency reserves the right to enter the leased property at any time for the purpose of fulfilling security responsibilities in the operation of penal institutions.
- 2.2.17 The contractor shall understand and agree that state agency personnel shall periodically inspect the leased property to ensure compliance with all provisions and requirements of the contract.

2.2.18 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

2.3 Other Requirements:

2.3.1 Within the last 120 days of the contract, the Division of Facilities Management, Design and Construction may obtain bids for the following year's Cash Farm Lease contract. In the event the current contractor is not the successful contractor for the following year, the current contractor shall agree and understand that the new contractor shall have access to the land for fall tillage and/or seeding of crops immediately after the current contractor completes harvest of the current contractor's crops.

2.3.2 In order to accommodate potential changing needs of the State of Missouri, the state agency reserves the right to add access to or delete acreage from a particular parcel of land up to ten percent (10%) of the parcel's total acreage. The dollar value per acre added to or deleted from the total contract price shall be a proration of the current contract price, as stated on the Pricing Page.

2.4 Payment Requirements:

2.4.1 The contractor shall make payment to the state agency for land leased in accordance with the following payment schedule:

- a. Thirty percent (30%) of the total payment as stated on the Pricing Page shall be due June 15th; and the remaining seventy percent (70%) of the total payment shall be due October 31st of each contract period.

2.4.2 The contractor shall make all payments in the form of a check made payable to Office of Administration, Division of Facilities Management, Design and Construction. However, the state agency reserves the right to require the payment be submitted in the form of certified check, cashier's check, money order, or cash.

2.4.3 The contractor shall submit payments to the following address:

Office of Administration,
Division of Facilities Management, Design and Construction
Attn: Real Estate Services – CFLMR0313A - Moberly Farm Lease (Hay)
301 West High Street, Room 730
PO Box 809
Jefferson City, Missouri 65102

2.4.4 The contractor shall pay the entire annual lease price regardless of the contractor's ability to plant and/or harvest a crop on the premises except on those farmable portions of the premises where the state agency or its employees knowingly and intentionally interfere with crop production.

2.4.5 The contractor shall pay reasonable compensation to the state agency for any damage(s) to the leased property caused by the contractor.

- a. In the event damage occurs to the leased property is caused by the contractor, the contractor shall:
 - 1) Notify Greg Brown, Department of Corrections for an opportunity to perform any of the repair work.
 - 2) Obtain, at a minimum, three (3) cost estimates from qualified entities to return the damaged property to the original condition.

2.5 Other Contractual Requirements:

- 2.5.1 Contract: A binding contract shall consist of: (1) the RFQ and any amendments thereto, (2) the bidder's response (bid) to the RFQ, (3) clarification of the bid, if any, and (4) the Division of Facilities Management, Design and Construction indication of acceptance of the response (bid) by "Notice of Award". All Exhibits and Attachments included in the RFQ shall be incorporated into the contract by reference.
- a. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
 - b. 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 Facilities Management, Design and Construction. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.
- 2.5.2 Contract Period: The original contract period shall be as stated on page 1 of the Request for Quotation (RFQ). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Facilities Management, Design and Construction shall have the right, at its sole option, to renew the contract for four (4) additional one-year periods, or any portion thereof. In the event the Division of Facilities Management, Design and Construction exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.
- 2.5.3 Renewal Periods - If the option for renewal is exercised by the Division of Facilities Management, Design and Construction, the contractor shall agree that the prices for the renewal period shall be as stated on the Pricing Page of the contract.
- a. If renewal prices are not provided, then prices during renewal periods shall be the same as during the original contract period.
- 2.5.4 Termination – Office of Administration, Division of Facilities Management, Design and Construction 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.
- 2.5.5 Contractor Liability - 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.
- a. 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.
 - b. 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.
 - c. 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.

- 2.5.6 Insurance - 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.
- 2.5.7 Subcontractors - 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.
- a. 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.
 - b. 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.
 - c. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.
 - d. The contractor shall only subcontract services such as mowing, fertilizing, etc. The contractor shall not subcontract out the lease of the land.
- 2.5.8 Contractor Status - 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.
- 2.5.9 Coordination - 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 Facilities Management, Design and Construction throughout the effective period of the contract.

3. BID SUBMISSION INFORMATION

3.1 Submission of Bids:

- 3.1.1 Mail Bid - If the bidder is responding through the mail, the bidder should include completed Exhibits, forms, and other information concerning the bid (including completed Pricing Pages) with the mailed response.
- 3.1.2 Open Records - The bid shall be considered an open record after the bids are opened pursuant to Section RSMo 610.021. Therefore, the bidder is advised not to include any information that the bidder does not want to be viewed by the public, including personal identifying information such as social security numbers.

- 3.1.3 The bidder is cautioned that it is the bidder's sole responsibility to submit necessary information. The State of Missouri is under no obligation to solicit information if it is not included with the bid. The bidder's failure to include completed Exhibits, forms, and other requested or required information with the bid, including Pricing and Renewal information, may adversely affect the bid.
- 3.1.4 Questions Regarding the RFQ - The bidder and the bidder's agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFQ, the evaluation, etc., to Amy Spray, Division of Facilities Management, Design and Construction.
- a. Amy Spray may be contacted via e-mail or phone as shown on the first page, or via facsimile to (573) 526-4138.
 - b. Bidders are advised that any questions received less than five calendar days prior to the RFQ opening date may not be answered.
- 3.2 Evaluation Process** – Bids will be reviewed to determine if the bid complies with the mandatory requirements and to determine the highest responsible and reliable bidder.

3.2.1 High Bid Determination:

Objective Evaluation of Cost – The objective evaluation of cost shall be based upon the total of the annual lease prices quoted for the original period and each renewal option period.

- 1) Cost points shall be computed utilizing the total cost determined from above, using a scale of 100 possible points, and the following formula:

$$\frac{\text{Compared Bidder's Price}}{\text{Highest Responsive Bidder's Price}} \times 100 = \text{Cost evaluation points}$$

- 3.2.2 Responsible and Reliability Determination - The bidder should submit any of, but not limited to, the information requested herein in order to demonstrate the responsibility and reliability of the bidder. Failure of the bidder to submit sufficient information to document that the bidder is responsive and responsible may adversely affect the bid.
- a. Responsibility and Reliability in Experiences:
 - 1) The bidder should complete Exhibit A with information related to previous and current services/contracts performed by the bidder's organization and any proposed subcontractors which are similar to the requirements of this RFQ.
 - 2) If references for current and/or previous contracts are not identified in the bid, the Division of Facilities Management, Design and Construction may request that the bidder identify one or more references. The Division of Facilities Management, Design and Construction must receive the reference(s) within twenty-four hours of the request. Failure of the bidder to identify one or more references may result in the bid being rejected.
 - b. Business Compliance - 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) 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 Facilities Management, Design and Construction. The compliance to conduct business in the state shall include but not necessarily be limited to:
 - 1) Registration of business name (if applicable)

- 2) Certificate of authority to transact business/certificate of good standing (if applicable)
- 3) Taxes (e.g., city/county/state/federal)
- 4) State and local certifications (e.g., professions/occupations/activities)
- 5) Licenses and permits (e.g., city/county license, sales permits)
- 6) Insurance (e.g., worker's compensation/unemployment compensation)

3.2.3 Final Determination - Any bid which does not comply with the mandatory requirements of the RFQ will not be considered for an award. In addition, the State of Missouri reserves the right to reject any bid for reasons which may include but not necessarily be limited to: (1) receipt of any information, from any source, regarding unsatisfactory performance of similar services by the bidder within the past three (3) years, and/or (2) inability of the bidder to document responsible and reliable past performances similar to the services required.

3.3 Contract Award: The contract will be awarded to the highest responsive and responsible bidder determined as specified herein.

4. PRICING PAGE

4.1 Moberly Correctional Center Annual Lease Price - The bidder shall provide a firm, fixed price for the following for the original contract period and a minimum price for each potential renewal period for providing the services in accordance with the provisions and requirements of this RFQ. All costs associated with providing the required services shall be included in the stated prices.

MOBERLY CORRECTIONAL CENTER (40 ACRES - Hay)		
Line 001	Original Contract Period	\$_____ Firm, fixed annual lease price
Line 002	First Renewal Period	\$_____ Firm, fixed annual lease price
Line 003	Second Renewal Period	\$_____ Firm, fixed annual lease price
Line 004	Third Renewal Period	\$_____ Firm, fixed annual lease price
Line 005	Fourth Renewal Period	\$_____ Firm, fixed annual lease price

4.2 Outside United States - If any products and/or services offered under this RFQ are being manufactured or performed at sites outside the United States, the bidder **MUST** disclose such fact and provide details in the space below or on an attached page.

Are products and/or services being manufactured or performed at sites outside the United States?	Yes _____	No _____
Describe and provide details:		

4.3 Employee/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 and/or any of the owners of the bidder’s organization are 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 of State Employee, General Assembly Member, or Statewide Elected Official:	
In what office/agency are they employed?	
Employment Title:	
Percentage of ownership interest in bidder’s organization:	_____ %

EXHIBIT A

PRIOR EXPERIENCE

The bidder should copy and complete this form for each reference being submitted as demonstration of the bidder and subcontractor’s prior experience. In addition, the bidder is advised that if the contact person listed for the reference is unable to be reached during the evaluation, the listed experience may not be considered.

Bidder Name or Subcontractor Name: _____	
Reference Information (Prior Services Performed For:)	
Name of Reference Company:	
Address of Reference Company ✓ Street Address ✓ City, State, Zip	
Reference Contact Person Information: ✓ Name ✓ Phone # ✓ E-mail Address	
Dates of Prior Services:	
Dollar Value of Prior Services	
Description of Prior Services Performed	

**STATE OF MISSOURI
DIVISION OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION**

TERMS AND CONDITIONS – REQUEST FOR QUOTATION

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in a Request for Quotation (RFQ) 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 Facilities Management, Design and Construction (DFMDC)**.
- b. **Amendment** means a written, official modification to a RFQ or to a contract.
- c. **Attachment** applies to all forms which are included with a RFQ 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 RFQ for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to a RFQ by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the RFQ document.
- f. **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.
- g. **Contractor** means a person or organization who is a successful bidder as a result of a RFQ and who enters into a contract.
- h. **Exhibit** applies to forms which are included with a RFQ for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- i. **Request for Quotation (RFQ)** means the solicitation document issued by the RFQ to potential bidders for the services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- j. **May** means that a certain feature, component, or action is permissible, but not required.
- k. **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.
- l. **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 RFQ. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- m. **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 DFMDC.
- n. **Shall** have the same meaning as the word **must**.
- o. **Should** mean that a certain feature, component and/or action are 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 DFMDC.
- 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 RFQ 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/REQUEST FOR QUOTATION DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DFMDC if any language, specifications or requirements of a RFQ appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFQ 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 DFMDC, unless the RFQ 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 RFQ, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFQ, any questions received less than ten calendar days prior to the RFQ 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 DFMDC in the RFQ 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 DFMDC 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 DFMDC reserves the right to officially amend or cancel a RFQ after issuance.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire RFQ carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the RFQ, 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 RFQ, 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 RFQ.

- 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 a RFQ, 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 DFMDCC 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 RFQ. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the RFQ which is affected by this paragraph.
- f. 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. Delivered bids must be sealed in an envelope or container, and received in the DFMDCC office located at 301 West High St. Room 730 in Jefferson City, MO no later than the exact opening time and date specified in the RFQ. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the RFQ, and (3) be priced as required. Hard copy bids may be mailed to the DFMDCC post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DFMDCC office (address listed above) no later than the exact opening time and date specified in the RFQ.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official RFQ number and (2) The official opening date and time. Different bids should not be placed in the same envelope.
- c. A bid which has been delivered to the DFMDCC office may be modified or withdrawn by signed, written notice which has been received by the DFMDCC prior to the official opening date and time specified. A bid may also be modified or withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify or withdraw a bid shall not be honored.
- d. Bidders delivering a hard copy bid to DFMDCC must sign and return the RFQ cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all RFQ terms and conditions. Failure to do so may result in rejection of bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.
- e. Faxed bids shall not be accepted.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the RFQ document. Names, locations, and prices of respondents shall be read at the bid opening.
- b. Bids which are not received in the DFMDCC 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.

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.

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 DFMDCC 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 RFQ, 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 RFQ and (2) is the highest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the RFQ.
- e. In the event all bidders fail to meet the same mandatory requirement in a RFQ, DFMDCC reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DFMDCC reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DFMDCC 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, DFMDCC may negotiate for the required provisions.
- 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 DFMDCC to the successful bidder. The DFMDCC reserves the right to make awards 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. Bidders who include an e-mail address with their bid will be notified of the award results via e-mail.
- l. The DFMDCC 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.
- n. The final determination of contract award(s) shall be made by DFMDCC.

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 RFQ, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFQ and any amendments thereto, (2) the contractor's response (bid) to the RFQ, (3) clarification of the bid, if any, and (4) DFMDCC's acceptance of the response (bid) by "Notice of Award". All Exhibits and Attachments included in the RFQ shall be incorporated into the contract by reference.

- c. 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 DFMD C or by a modified documentation 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. 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.

11. 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.

12. COMMUNICATIONS AND NOTICES

Any notice to the 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 contractor.

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

14. 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.

15. 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. 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 DFMD C shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DFMD C 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.

16. 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).

17. 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.

18. 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.

