

## INVITATION FOR BID



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

## IFB ER234R9039

Ice Cream and Ice Cream Novelties  
For Resale in Offender Canteens

FOR  
Department of Corrections  
Missouri Eastern Correctional Center

Contract Period: Date of Award  
through One Year

Date of Issue: November 6, 2019  
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Buyer of Record:  
Lisa Graham  
Procurement Officer II  
Telephone: (573) 526-6611  
[Lisa.Graham@doc.mo.gov](mailto:Lisa.Graham@doc.mo.gov)

Target Date and Time for Bid Submission:  
Tuesday, November 26, 2019 at 2:00 p.m.

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

The undersigned hereby declares understanding, agreement, and certification of compliance to provide the items and/or services at the prices stated, pursuant to the requirements and specifications contained herein. The undersigned further agrees that when an authorized official of the Missouri Department of Corrections countersigns this document, a binding contract, as defined herein, shall exist between the contractor and the Department of Corrections. The authorized signer of this document certifies the contractor (named below) and each of its principles are not suspended or debarred by the federal government.

Company Name: Performance Food Group Inc. dba Vistar Maxima

Mailing Address: 3909 Holt Rd.

City, State, Zip: Holt, MI 48842

Telephone: 887-662-9462 Fax: 517-268-9571

MissouriBUYS System ID 13117

Email: Sean.Mahoney@pfgc.com

Authorized Signer's Printed Name and Title: Sean C. Mahoney

Authorized Signature: *Sean C. Mahoney* Date: 11/22/19

**NOTICE OF AWARD:** This bid is accepted by the Missouri Department of Corrections as follows:  
Contract No.

*Gil Long*  
Gil Long, Acting Director of Fiscal Management

12-10-19  
Date

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

**EXHIBIT A, Pricing Page**

The vendor must state **only one** firm fixed price for all line items, delivered FOB Destination Prepaid and Allowed to the MECC. If bidding multiple brands for a line item, it is requested vendors make a copy of **EXHIBIT A, Pricing Page** to use for each alternate bid and clearly mark the pages “**alternate bid #1, alternate bid #2**”, etc. Prices quoted shall be considered firm and fixed throughout the contract period.

**LINE ITEMS 1-5 - BID ALL OR NONE**

Line Item #	Description	Estimated Annual Quantity	Firm Fixed Unit Cost
1	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>Chocolate Ice Cream – Pint Size Only</b> Brand: <u>BlueBunn</u> Name of Chocolate Flavor Bidding: <u>Chocolate</u>	140 sleeves  Based on 8 Pints per sleeve	\$ <u>1.88</u> <b>Per Pint</b> (Cost may only go out 2 decimal points) # of Pints per sleeve/case: <u>8/1120</u> Individual Item UPC: <u>070640002948</u>
2	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>Vanilla Ice Cream – Pint Size Only</b> Brand: <u>BlueBunn</u> Name of Vanilla Flavor Bidding: <u>Vanilla TFF FZ</u>	143 sleeves  Based on 8 Pints per sleeve	\$ <u>1.88</u> <b>Per Pint</b> (Cost may only go out 2 decimal points) # of Pints per sleeve/case: <u>8/1144</u> Individual Item UPC: <u>070640002924</u>
3	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>Strawberry Ice Cream – Pint Size Only</b> Brand: <u>BlueBunn</u> Name of Strawberry Flavor Bidding: <u>Double Strawberry</u>	150 sleeves  Based on 8 Pints per sleeve	\$ <u>1.88</u> <b>Per Pint</b> (Cost may only go out 2 decimal points) # of Pints per sleeve/case: <u>8/1200</u> Individual Item UPC: <u>070640004075</u>
4	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>Ice Cream Sandwiches – Vanilla Ice Cream Only with chocolate flavored cookie layers.</b> Brand: <u>BlueBunn</u> Individual Item UPC: <u>070640008599</u>	85 Boxes  Based on 24 bars per box	\$ <u>.61</u> <b>Per Bar</b> (Cost may only go out 2 decimal points) Ounces per bar: <u>4.25</u> # of bars per Box: <u>24</u> # of Boxes per master case: <u>85</u>
5	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>Sundae Cones – Vanilla Ice Cream Only covered in chocolate coating topped with peanuts.</b> Brand: <u>BlueBunn</u> Individual Item UPC: <u>070640630073</u>	98 Boxes  Based on 24 cones per box	\$ <u>.61</u> <b>Per Cone</b> (Cost may only go out 2 decimal points) Ounces per cone: <u>4.3</u> # of cones per Box: <u>24</u> # of Boxes per master case: <u>98</u>

**EXHIBIT A, Pricing Page, continued**

**RENEWAL OPTION:** The vendor must indicate below the maximum allowable percentage of price increase applicable to the renewal option periods. If a percentage is not quoted (i.e. left blank), the Department shall have the right to execute the renewal option at the same price(s) quoted for the original contract period. Statements such as “percentage of the then-current price” or “consumer price index” are NOT ACCEPTABLE.

All increases shall be calculated against the ORIGINAL contract price, NOT against the previous year’s price. A CUMULATIVE CALCULATION SHALL NOT BE UTILIZED.

LINE ITEM #	DESCRIPTION	QUANTITY	UNIT	MAXIMUM PERCENTAGE INCREASE
6	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>1<sup>st</sup> Renewal Period Maximum Percentage Increase</b>	1	Percent	<u>0</u> %
7	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>2<sup>nd</sup> Renewal Period Maximum Percentage Increase</b>	1	Percent	<u>0</u> %
8	UNSPSC Code: 50192303 <i>Ice cream or Ice Cream Desserts</i> <b>3<sup>rd</sup> Renewal Period Maximum Percentage Increase</b>	1	Percent	<u>0</u> %

**Vendor’s Acceptance of the State Purchasing Card (Visa):**

The vendor should indicate agreement/disagreement to allow the Department to make purchases using the state purchasing card (Visa). If the vendor agrees, the vendor shall be responsible for all service fees, merchant fees and /or handling fees. Furthermore, the vendor shall agree to provide the items/services at the prices stated herein:

Agreement \_\_\_\_\_ Disagreement X

**Terms:**

The vendor should state below its discount terms offered for the prompt payment of invoices: 0 % if paid within 30 days of receipt of invoice

**Web Site:**

The vendor should state web site address if online invoicing is available: N/A

**END OF EXHIBIT A**

**EXHIBIT C**  
**MISCELLANEOUS INFORMATION**

**Employee Bidding/Conflict of Interest**

If the vendor and/or any of the owners of the vendor’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 vendor’s organization:		_____ %

**Missouri Secretary of State/Authorization to Transact Business**

<p>In accordance with section 351.572.1, RSMo, the Department is precluded from contracting with a vendor or its affiliate who is not authorized to transact business in the State of Missouri. Vendors must either be registered with the Missouri Secretary of State, or exempt per a specific exemption stated in section 351.572.1, RSMo.</p> <p align="center"><a href="http://www.moga.mo.gov/mostatutes/stathtml/35100005721.html">http://www.moga.mo.gov/mostatutes/stathtml/35100005721.html</a></p>	
<p>If the vendor is registered with the Missouri Secretary of State, the vendor shall state legal name or charter number assigned to business entity</p>	<p>Legal Name: <u>Performance Food Group Inc.</u></p> <p>Missouri State Charter # <u>F00456878</u></p>
<p><b><u>If the vendor is not required</u></b> to be registered with the Missouri Secretary of State, the vendor shall state the specific exemption stated per section 351.572.1, RSMo.</p> <p><a href="http://www.moga.mo.gov/mostatutes/stathtml/35100005721.html">http://www.moga.mo.gov/mostatutes/stathtml/35100005721.html</a></p>	<p><b>State specific exemption</b> _____ (List section and paragraph number)</p> <p>Stated in section 351.572.1 RSMo,</p> <p>_____ (State Legal Business Name)</p>

**END OF EXHIBIT C**

**EXHIBIT D**  
**Kosher and/or Halal Information**

The bidder shall indicate if the item bid qualifies as Kosher or Halal. This is for informational purposes only and will not be a criterion for evaluation and award. **All items bid should be listed if Kosher and/or Halal on this exhibit.** In order to qualify as Kosher, items must be certified by a reliable rabbinical authority. In order to qualify as Halal, items must be certified by the Islamic Food and Nutrition Council of America. Documentation certifying the items as Kosher or Halal must be submitted to the Department upon request.

Line item 001: Kosher   X   Halal        Neither       

Line item 002: Kosher   X   Halal        Neither       

Line item 003: Kosher   X   Halal        Neither       

Line item 004: Kosher   X   Halal        Neither       

Line item 005: Kosher   X   Halal        Neither

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This document, referred to as an Invitation for Bid (IFB), is divided into the following parts:

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EXHIBIT A	Pricing Page
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## 1. INTRODUCTION AND GENERAL INFORMATION

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

### 1.1 Purpose:

1.1.1 This document constitutes a request for competitive bids from prospective vendors to establish a contract for the purchase of ice cream and ice cream novelties for the Missouri Department of Corrections (hereinafter referred to as the "Department") Missouri Eastern Correctional Center (hereinafter referred to as MECC) for resale in the offender canteens in accordance with the requirements and provisions stated herein.

1.1.2 Pursuant to section 610.021, RSMo, the vendor's bid and related documents shall be considered an open record after the bids are opened. Therefore, the vendor is advised not to include any information that the vendor does not want to be viewed by the public, including personal identifying information such as social security numbers.

a. Section 610.011, RSMo, requires that all provisions be "*liberally construed and their exceptions strictly construed*" to promote the public policy that records are open unless otherwise provided by law.

b. Regardless of any claim by a vendor as to material being confidential and not subject to copying or distribution, or how a vendor characterizes any information provided in its bid, all material submitted by the vendor in conjunction with the IFB is subject to release in relation to a request for public records under the Missouri Sunshine Law (see chapter 610, RSMo). Only information expressly permitted to be closed pursuant to the strictly construed provisions of Missouri's Sunshine Law will be treated as a closed record and withheld from any public request submitted to the Department. The vendor should presume information provided to the Department in a bid will be public and made available upon request in accordance with the provisions of state law. The vendor's sole remedy for the state's denial of any confidentiality request shall be limited to withdrawal of their bid in its entirety. It is not the State of Missouri's intention to have requested any confidential material as part of the vendor's bid. Therefore, vendors should NOT include confidential material with their bid.

c. In no event will the following be considered confidential or exempt from the Missouri Sunshine Law:

1) Vendor's entire bid including client lists, references, proposed personnel, and methodology including deliverables;

2) Vendor's pricing; and

3) Vendor's product specifications unless specifications specifically disclose scientific and technological innovations in which the owner has a proprietary interest (see subsection 15 of section 610.021, RSMo).

### 1.2 Questions Regarding the IFB:

1.2.1 IFB Questions - It is the vendor's responsibility to ask questions, request changes or clarifications, or otherwise advise the Department if the vendor believes that any language, specifications, or requirements are: (1) ambiguous, (2) contradictory or arbitrary, or both, (3) violate any state or federal law or regulation, (4) restrict or limit the requirements to a single source, or (5) restrict or limit the vendor's ability to submit a bid.

1.2.2 Except as may be otherwise stated herein, the vendor and the vendor's agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the IFB, the solicitation process, the evaluation, etc., to the Buyer of Record indicated on the first

page of this IFB. Inappropriate contacts to other personnel are grounds for suspension and/or exclusion from specific procurements. Vendors and their agents who have questions regarding this matter should contact the Buyer of Record.

- 1.2.3 All questions and issues should be submitted at least ten (10) working days prior to the due date of the bid. If not received prior to ten (10) working days before the bid due date, the Department may not be able to fully research and consider the respective questions or issues. Questions and issues relating to the IFB, including questions related to the competitive procurement process, must be directed to the Buyer of Record. It is preferred that questions be e-mailed to the Buyer of Record at [Lisa.Graham@doc.mo.gov](mailto:Lisa.Graham@doc.mo.gov).
- 1.2.4 The Department will attempt to ensure that a vendor receives an adequate and prompt response to questions, if applicable. Upon the Department's consideration of questions and issues, if the Department determines that changes are necessary, the resulting changes will be included in a subsequently issued IFB addendum(s); absence of such response indicates that the questions and issues were considered but deemed unnecessary for IFB addendum as the questions and issues did not provide further clarity to the IFB. All vendors will be advised of any change to the IFB's language, specifications, or requirements by a formal addendum to the IFB.

NOTE: The only official position of the Department shall be that which is contained in the IFB and any addendums thereto.

### **1.3 Background Information:**

- 1.3.1 The Department operates offender canteens within the correctional institutions for offenders to purchase approved food, clothing, appliances, and other items. By departmental policy, the selection of items approved and available for purchase in the canteens is decided upon by committee. The committee is tasked with standardizing an approved list in order to provide uniformity in product and pricing in the canteens. Items on the approved list are competitively bid in order to obtain the best possible pricing for the Department. Once contracted, only contracted items are sold in the canteens.
- 1.3.2 The estimated population for MECC is 1,100 male offenders.
- 1.3.3 The estimated population for MECC is 1,100 male offenders.
- 1.3.4 The estimated annual gross sales for all line items at MECC are \$8,848.00.

### **1.4 General Information:**

- 1.4.1 Terms and Conditions - It is recommended that all vendors review the Terms and Conditions governing this solicitation in its entirety, giving particular emphasis to examining those sections related to:
- Open Competition
  - Submission of Bids
  - Preparation of Bids
  - Evaluation and Award
- 1.4.2 Funds – Expenditures from general revenue funds are not included in this contract.

**END OF SECTION 1: INTRODUCTION AND GENERAL INFORMATION**



## 2. PERFORMANCE REQUIREMENTS

*This section of the IFB includes requirements and provisions relating specifically to the performance requirements of the Department. The contents of this section include mandatory requirements that will be required of the successful vendor and subsequent contractor. Response to this section by the vendor is requested in the Exhibit section of this IFB. The vendor's response, whether responding to a mandatory requirement or a desired attribute will be binding upon the vendor in the event the bid is accepted by the Department.*

### 2.1 General Requirements:

- 2.1.1 The contractor shall provide the items for resale on an as needed basis as ordered by the Department. The contractor must comply with all mandatory requirements and specifications presented herein pertaining to the provision of the items and to the sole satisfaction of the Department. Items not conforming to the requirements stated herein, including approved substitutions shall not be accepted.
- 2.1.2 The contractor shall function as the single point of contact for all contract activities regardless of any subcontract arrangement for any product or service. This shall include assuming responsibilities and liabilities for any and all problems relating to all items and services provided.
- 2.1.3 Specifications including flavor, type and size are listed on **EXHIBIT A, Pricing Page**. Each product bid must meet or exceed all of the minimum specifications required.

### 2.2 Required Ice Cream Specifications:

- 2.2.1 All ice cream must contain a minimum of 10% butterfat.
- 2.2.2 Flavors and Varieties – The contractor must be able to provide all of the required flavors of ice cream, and all of the required varieties of novelties at all times.
  - a. The required flavors of ice cream shall be chocolate, vanilla, and strawberry.
    - 1) The required flavors of ice cream shall contain no nuts, marshmallows, toffee, or any other additional ingredients. Strawberry flavor may contain real strawberries.
  - b. The required novelties shall be sundae cones and ice cream sandwiches.
- 2.2.3 Size of Novelties – The Department desires that novelties provided be standard vending sizes in the range of four (4) to six (6) ounces and individually packaged for resale; however, the Department is willing to accept other packaging and sizes with the minimum size being three and one-half (3.5) ounces.
- 2.2.4 All items must be fresh and quality must be equivalent to what is currently delivered to retail outlets. Outdated or short dated products will not be accepted.

### 2.3 Item Labeling, Shelf Life and Packaging Requirements:

- 2.3.1 Labeling – The Department desires individually bar-coded items.
  - a. Line items 1-3 must be commercially packaged for resale and the label or package must bear an identifying barcode.
  - b. The Department recognizes that line items 4 and 5 are typically packaged without an individual label that bears an identifying barcode; however, if available, individually bar-coded items are preferred.
  - c. Each item's label/package must bear the name of the item, nutrition facts, ingredients, net weight, date of expiration/freshness date, and lot number.
    - 1) The Department prefers expiration/freshness dating to be in month and year format; however, Julian date codes will be acceptable. If an item expresses a Julian date code, the

supplier/manufacture must provide the formula to decode the Julian date. In addition, if the Julian date code is not an expiration/freshness date, the supplier/manufacture must provide the manufacturer's recommended shelf life in order to determine the expiration/freshness date from the Julian date code.

- d. Package labeling, including trademarks, logos, graphics, etc., shall not depict violence, weapons, full or partial nudity, or illegal substances.
- e. All line items shall not be pre-priced.
- f. Item labels must bear the Kosher or Halal symbol on all items that are indicated as Kosher and/or Halal certified on **EXHIBIT D, Kosher and Halal Items**.

2.3.2 **Shelf Life** - All items must have a maximum shelf life upon delivery. Freshness dating shall be legible on each individual pint/package. All items shall have a freshness date at least two (2) months beyond the date of delivery to the institution. Any items received with a shelf life of less than two (2) months will be refused or returned at the contractor's expense.

2.3.3 **Packaging** - All pints must be packaged in a round or "scround" paper or plastic container. Novelties must be individually wrapped.

## 2.4 Kosher and Halal Items

2.4.1 The vendor should indicate on **EXHIBIT D, Kosher and Halal Information**, if the item bidding qualifies as Kosher or Halal. This is for informational purposes only and will not be a criterion for evaluation and award.

- a. In order to qualify as Kosher, items must be certified by a reliable rabbinical authority.
- b. In order to qualify as Halal, items must be certified by the Islamic Food and Nutrition Council of America.

2.4.2 Documentation certifying the items as Kosher or Halal must be submitted to the Department upon request.

## 2.5 Substitution of Product or Item Changes:

2.5.1 **Substitution of Product** - Following award of the contract, no substitution of an awarded item will be permitted except in the case of natural disaster, item discontinuation by the manufacturer or supplier, or the inability of a manufacturer or supplier to ship. The contractor must provide documentation from the manufacturer or supplier to substantiate the occurrence of any of these aforementioned situations.

2.5.2 The contractor shall be obligated to obtain a substitution to replace an awarded item that meets or exceeds the specifications of the item that was originally awarded at no additional cost to the Department. Substitutions must be approved in advance by a formal contract amendment.

2.5.3 The Department reserves the right to allow the contractor to substitute any new item offered by the contractor on all unshipped and future orders if quality is equal to or greater than the item under contract and if the price is equal to or less than the contract price. The Department shall be the final authority as to the acceptability of the proposed substitution.

2.5.4 **Item Changes** - The contractor must **immediately notify** the Department prior to the discontinuation of any item, change in packaging, size, ingredients, nutrition facts, or labeling (i.e. **UPC**) of an awarded item. Whenever possible, the contractor must accept orders for items which are to be discontinued for a full thirty (30) days following notice to the Department of such discontinuation.

- a. No changes shall be made on any item awarded to the contractor without written approval by a formal contract amendment. The contractor must submit documentation from the manufacturer or supplier to verify any material change.

**2.6 Replacement of Damaged/Defective Product:**

- 2.6.1 The contractor shall be responsible for replacing any item received that is defective or in damaged condition at no cost to the Department. This includes all shipping costs for returning damaged or defective items to the contractor for replacement.

**2.7 Orders:**

- 2.7.1 MECC will determine which of the offered flavors and novelties will be ordered, and may choose not to order or stock all flavors or all novelties at one time.
- 2.7.2 There shall be no minimum order requirements for all line items except for the smallest unit of order (case/package).

**2.8 Delivery Requirements:**

- 2.8.1 Orders shall be placed by the MECC. Historically, orders are placed bi-weekly. The contractor must begin accepting orders upon notice of award. Initial delivery and all subsequent deliveries must be made within three (3) business days upon receipt of an authorized purchase order or state purchasing card transaction notice. All orders received on the last day of the contract must be shipped at the contract price.

a. Outdated or short dated products will not be accepted.

- 2.8.2 **The contractor must coordinate its delivery schedule with the Business Manager or designee at the institution to which items are to be delivered.** Delivery shall include unloading shipments at the dock or other designated unloading site(s) as requested by the institution. All orders must be shipped **FOB Destination, Freight Prepaid and Allowed.**

a. Delivery Addresses:

Missouri Eastern Correctional Center  
18701 Old Highway 66  
Pacific, MO 63069  
Jessica Poschel, Business Manager, 636-257-3322 x1300  
Kara McKee, Canteen Manager

- 2.8.3 A delivery arriving during a time the institution does not accept deliveries will be delayed or refused. Any additional cost for delay or redelivery shall be the responsibility of the contractor.

a. Delivery must not be made on official state holidays. A list of official state holidays may be found on the State of Missouri website at:

<https://www.oa.mo.gov/personnel/state-employees/hours-work-overtime-and-holidays>

- 2.8.4 All products must be maintained at a temperature not to exceed -18°C or -0.4°F. Full cases of products showing evidence of deterioration from fluctuation in temperature will be returned at the contractor's expense.

- 2.8.5 Delays in Delivery Performance: If at any time the contractor should encounter conditions impeding delivery of an awarded item(s), the contractor shall immediately notify the Department's Purchasing Section in writing of the fact of delay, its likely duration, and its cause(s). As soon as practical after the receipt of the contractor's notice, the Department shall evaluate the situation and may, at its sole discretion, extend the contractor's time for delivery.

a. A delay by the contractor in the performance of its delivery obligations shall render the contractor liable for additional costs incurred by the Department to obtain product from other sources unless an extension of time is agreed upon pursuant to 2.8.5.

**2.9 Item Selection and Sales Performance:**

- 2.9.1 The selection of allowable items to be sold in the offender canteens is decided upon by a committee. If at any time during the contract period the committee decides to remove an awarded item(s) from the allowable list, the Department shall have the right to cancel that item(s) from the contract. All other specifications, terms and conditions of the contract, including the pricing on all non-affected awarded items shall remain the same.
- 2.9.2 Additional item choices shall not be added without the Department's approval.
- 2.9.3 The purpose of items selected for resale is to maximize sales potential for the benefit of the offender Canteen Fund. Therefore, if an item shows an overall trend of a decrease in sales volume, the Department reserves the right to discontinue that item without penalty.

**2.10 Invoicing Requirements:**

- 2.10.1 The contractor shall accurately invoice per the price indicated on **EXHIBIT A, Pricing Page** and shall issue one invoice per order.
- 2.10.2 If the Department issues a purchase order, an itemized invoice shall be emailed to [doc.Payables@doc.mo.gov](mailto:doc.Payables@doc.mo.gov) or mailed to:
- Accounts Payable/MECC  
Missouri Department of Corrections  
Fiscal Management Unit  
PO Box 236  
Jefferson City, MO 65102
- 2.10.3 Each invoice submitted must be specific to one purchase order number, referenced on the invoice, 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. Emailed invoices should contain the purchase order number in the subject line.
- 2.10.4 If the state purchasing card is used for payment, an itemized invoice reflecting the charged amount must be faxed or emailed to the institution within one business day. The state purchasing card shall not be charged until all goods have been received and accepted.
- 2.10.5 The contractor's invoice should include any discount for prompt payment as indicated on **EXHIBIT A, Pricing Page**.
- 2.10.6 If the contractor maintains an e-commerce web application that enables Department staff to view and print invoices and invoice history, the contractor shall indicate on **EXHIBIT A, Pricing Page** the web site address where the Department staff may access those invoices. Upon award of a contract, the contractor shall provide the Department with a customer number in order for Department staff to access invoices and invoice history.
- 2.10.7 Prior to any payments becoming due under the contract, the contractor must update their vendor registration with their ACH-EFT payment information at <https://MissouriBUYS.mo.gov>.
- 2.10.8 The contractor shall understand and agree the Department reserves the right to make contract payments to the contractor through Electronic Funds Transfer (EFT). 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.

- 2.10.9 The Department may choose to use the state purchasing card (Visa) in place of a purchase order to make purchases under this contract. Unless exception to this condition is indicated on **EXHIBIT A, Pricing Page**, the contractor agrees to accept the purchasing card as an acceptable form of payment and may not charge any additional fees related to the use of a purchasing card such as service fees, merchant fees, and/or handling charges. **The state purchasing card shall not be charged until items are delivered, inspected, and accepted.**
- 2.10.10 The Department does not pay state or federal sales tax. The Department shall not make additional payments or pay add-on charges.
- 2.10.11 Other than the payments and reimbursements specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever, including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

## END OF SECTION 2: PERFORMANCE REQUIREMENTS

### 3. GENERAL CONTRACTUAL REQUIREMENTS

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

- 3.1 **Contract** - A binding contract shall consist of: (1) the IFB, addendums thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Department's acceptance of the response (bid) by "Notice of Award". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- a. A Notice of Award issued by the Department does not constitute an authorization for shipment of supplies or a directive to proceed with services. Before providing supplies for the Department, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the Department.
  - b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
  - c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Department prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.
- 3.1.2 **Contract Period** - The original contract period shall be as stated on the Notice of Award. The contract shall not bind, nor purport to bind, the Department for any contractual commitment in excess of the original contract period. The Department shall have the right, at its sole option, to renew the contract for three (3) additional one-year periods, or any portion thereof. In the event the Department 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.
- 3.1.3 **Renewal Period** - If the Department exercises its option for renewal, the contractor shall agree that the price for the renewal period shall not exceed the maximum percentage increase quoted for the applicable renewal period as stated on **EXHIBIT A, Pricing Page**, of the contract.

- a. If a renewal percentage is not provided, then the price during the renewal period shall be the same as during the original contract period. The Department does not automatically exercise its option for renewal based upon the maximum percentage and reserves the right to offer or to request renewal of the contract at a percentage less than the maximum stated.
- b. As stated on **EXHIBIT A, Pricing Page**, any increase shall be calculated against the original contract price. If a price increase was allowed as outlined in section 3.2 of this IFB, the increase will be added after the calculation of the renewal price has been determined.

**EXAMPLE:** Original Contract Price = \$1.00, Maximum Increase = 2%. Economic Adjustment = 5%

Renewal Period Increase -  $\$1.00 \times 2\% = \$1.02$

Economic Adjustment -  $\$1.00 \times 5\% = \$1.05$

Renewal Period Price =  $\$1.07 (\$1.02 + \$0.05)$

- 3.1.4 **Contract Price** – The price(s) shall be as stated on **EXHIBIT A, Pricing Page**. The Department shall not pay, nor be liable, for any other costs including, but not limited to, taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.
  - a. Price(s) shall include all packing, handling, shipping, and freight charges FOB Destination, Freight Prepaid and Allowed. The Department 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.
  - b. Price(s) shall be considered firm for the duration of the contract period unless a price increase/decrease is allowed as outline in section 3.2 of this IFB.
- 3.1.5 **Contract Audits** - The Department reserves the right to investigate and/or audit the prices charged by the contractor to the Department, with or without notice to the contractor, at the expense of the Department. If it is determined that the contractor has charged prices to the Department in excess of those agreed upon in the contract, the Department shall consider this just cause for cancellation of the contract in its entirety, which may result in the contractor's removal from the list of eligible vendors who may do business with the Department.
- 3.1.6 **Termination** - The Department reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty-(30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the Department pursuant to the contract prior to the effective date of termination.
- 3.1.7 **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 Department, including its divisions, employees, and assignees, from every expense, liability, or payment arising out of such negligent act.
  - a. The contractor also agrees to hold the Department, including its divisions, 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 Department, including its divisions, employees, and assignees.
- 3.1.8 **Insurance** - The contractor shall understand and agree that the Department 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.

3.1.9 Contractor's Employees - The contractor and all of the contractor's employees and agents providing services in any Department of Corrections institution must be at least eighteen (18) years of age. A Missouri Uniform Law Enforcement System (MULES) check or other background investigation may be required on the contractor, the contractor's employees and agents before they are allowed entry into the institution. The contractor, its employees and agents understand and agree that the Department may complete criminal background records checks annually for the contractor and the contractor's employees and agents that have the potential to have contact with offenders.

- a. The institution shall have the right to deny access into the institution for the contractor and any of the contractor's employees and agents for any reason, at the discretion of the institution.
- b. The contractor, its employees and agents under active federal or state felony or misdemeanor supervision must receive written division director approval prior to providing services pursuant to a Department contract. Similarly, contractors/employees/agents with prior felony convictions and not under active supervision must receive written division director approval in advance.
- c. The contractor, its employees and agents shall at all times observe and comply with all applicable state statutes, Department rules, regulations, guidelines, internal management policies and procedures, and general orders of the Department that are applicable, regarding operations and activities in and about all Department property. Furthermore, the contractor, its employees and agents, shall not obstruct the Department or any of its designated officials from performing their duties in response to court orders or in the maintenance of a secure and safe correctional environment. The contractor shall comply with the Department's policies and procedures relating to employee conduct.
- d. The Department has a zero tolerance policy for any form of sexual misconduct to include staff/contractor/volunteer on offender, or offender on offender, sexual harassment, sexual assault, sexual abuse and consensual sex.
  - 1) Any contractor or contractor's employee or agent who witnesses any form of sexual misconduct must immediately report it to the warden of the institution. If a contractor or contractor's employee or agent fails to report or knowingly condones sexual harassment or sexual contact with or between offenders, the Department may cancel the contract, or at the Department's sole discretion, require the contractor to remove the employee/agent from providing services under the contract.
  - 2) Any contractor or contractor's employee or agent who engages in sexual abuse shall be prohibited from entering the institution and shall be reported to law enforcement agencies and licensing bodies, as appropriate.
- e. The contractor, its employees and agents shall not interact with the offenders except as is necessary to perform the requirements of the contract. The contractor, its employees and agents shall not give anything to nor accept anything from the offenders except in the normal performance of the contract.
- f. If any contractor or contractor's employee or agent is denied access into the institution for any reason or is denied approval to provide service to the Department for any reason stated herein, it shall not relieve the contractor of any requirements of the contract. If the contractor is unable to perform the requirements of the contract for any reason, the contractor shall be considered in breach.

3.1.10 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 Department and to ensure that the Department 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 Department and the contractor.

- a. The contractor shall expressly understand and agree that it 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.
- 3.1.11 Contractor Status - The contractor is an independent contractor and shall not represent the contractor or the contractor's employees to be employees of the State of Missouri or an agency of the State of Missouri. The contractor shall assume all legal and financial responsibility for salaries, taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the Department, its divisions, 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.
- 3.1.12 Coordination - The contractor shall fully coordinate all contract activities with those activities of the Department. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the Department's Purchasing Section throughout the effective period of the contract.
- 3.1.13 Delivery Performance - The contractor and/or the contractor's subcontractor(s) shall deliver items in accordance with the contracted delivery times stated herein to the Department upon receipt of an authorized purchase order or P-card transaction notice. 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 invoiced at the contract price.
- 3.1.14 Confidentiality - The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the Department.
- 3.1.15 Liability - The contractor shall agree that the Department shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the ownership, selection, possession, leasing, rental, operation, control, use, maintenance, delivery, return, and/or installation of equipment provided by the contractor, except as otherwise provided in the contract.

### 3.2 **Economic Adjustment Clause:**

- 3.2.1 In the event that the contractor's cost for the items covered in this IFB and resulting contract should increase 5% or more during the period of time in which the contract is in effect, the contractor may, upon submission of written proof of such increase and approval by the Department, be entitled to an adjustment in price accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Department. All prices shall remain firm for the first six (6) months of this contract.
- 3.2.2 Whenever possible, the contractor must submit a written request for price increases thirty (30) days prior to the effective date of increase to the Department's Purchasing Section. **Requests and documentation must be submitted via US Mail.** If the manufacturer provides a percentage increase, the claim for such adjustment must include a certification from the manufacturer or supplier verifying the contractor's cost at the time of the bid award, the new cost, and the effective date of the increase. If the manufacturer provides an actual dollar amount of increase, the claim for such adjustment must include a certification from the manufacturer or supplier verifying the increase and the effective date of the increase. Supporting



documentation must clearly establish the increase is to all customers and not to the Department or this contract alone. Supporting documentation will be returned to the contractor once the Department's Purchasing Section has verified its validity and shall not become part of the contract record.

- 3.2.3 The increase will be allowed only on the cost of the item(s) to the contractor. No increase or change in the contractor's overhead, transportation costs, profit or other factors will be approved. The Department reserves the right to ask for invoices, published price lists, or any other evidence establishing the contractor's costs to support the increase. Failure to supply any requested documentation will be grounds to deny adjustment in price.
- 3.2.4 After receipt of the required documentation, and in the event a price change is authorized thereafter, no additional adjustments will be allowed for a term of six (6) months.
- 3.2.5 The Department further reserves the right to reject any proposed price increase, cancel the item(s) from the contract, and re-bid the item(s) if determined to be in the best interest of the Department.
- 3.2.6 The contractor shall neither delay nor stop deliveries pending price changes.
- 3.2.7 If a price increase is allowed through a formal contract amendment, no price increase shall be billed to the Department before the effective date of the increase. Billed price changes will only be accepted for payment on purchase orders dated on or after the effective price change date. Purchase orders dated prior to the effective price change date shall be billed at the contract price in existence before the amended price change regardless of when delivery is accepted.
- 3.2.8 In the event the contractor's costs should decrease by more than 5% during the period of time that the contract is in effect, the contractor shall pass any manufacturer's price decrease to the Department and such decreases shall become effective immediately upon notification by the contractor of the amount of the decrease. The contractor shall notify the Department of any such decrease.

### **END OF SECTION 3: GENERAL CONTRACTUAL REQUIREMENTS**

## **4. BID SUBMISSION, EVALUATION AND AWARD INFORMATION**

### **4.1 Submission of Bids:**

- 4.1.1 Hard Copy Bid – When submitting a hard copy bid via the mail, or a courier service, or is hand delivering the bid, the vendor should include completed exhibits, forms, and other information concerning the bid, including completed Pricing Page(s) with the bid. The vendor is instructed to review the IFB submission provisions carefully to ensure they are providing all required pricing, including applicable renewal pricing.
  - a. The State of Missouri recognizes the limited nature of our resources and the leadership role of government agencies concerning the environment. Accordingly, the vendor is requested to print the bid double-sided using recycled paper, if possible, and minimize or eliminate the use of non-recyclable materials such as plastic report covers, plastic dividers, vinyl sleeves, and binding. Lengthy bids may be submitted in a notebook or binder.
- 4.1.2 Open Records – Pursuant to section 610.021, RSMo, the bid shall be considered an open record after the bid is opened. Therefore, the vendor is advised not to include any information that the vendor does not want viewed by the public, including personal identifying information such as social security numbers.
  - a. In preparing a bid, the vendor should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the bids and should limit bid content to items that provide substance, quality of content, and clarity of information.

- 4.1.3 Compliance with Terms and Conditions – The vendor is cautioned when submitting pre-printed terms and conditions or other type material to make sure such documents do not contain other terms and conditions that conflict with those of the IFB and its contractual requirements. The vendor agrees that in the event of conflict between any of the vendor's terms and conditions and those contained in the IFB that the IFB shall govern. Taking exception to the Department's terms and conditions may render a vendor's bid non-responsive and remove it from consideration for award.
- 4.1.4 Bid Detail Requirements and Deviations – It is the vendor's responsibility to submit a bid that meets all mandatory specifications stated herein. The vendor should clearly identify any and all deviations from both the mandatory and desirable specifications stated in the IFB. Any deviation from a mandatory requirement may render the bid non-responsive. Any deviation from a desirable specification may be reviewed by the Department as to its acceptability and impact on competition.
- 4.2 Missouri Service-Disabled Veteran Business Preference:**
- 4.2.1 Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, a three (3) bonus point preference shall be granted to vendors who qualify as Missouri service-disabled veteran business enterprises and who complete and submit **EXHIBIT B, Missouri Service-Disabled Veteran Business Enterprise Preference** with the bid. If the bid does not include the completed **EXHIBIT B** and the documentation specified on **EXHIBIT B** in accordance with the instructions provided therein, no preference points will be applied.
- 4.3 EXHIBIT A, Pricing Page:**
- 4.3.1 The vendor must submit a **firm fixed price** on **EXHIBIT A, Pricing Page** for **each item**.
- a. The prices quoted shall include all packing, handling, shipping and freight charges FOB destination freight prepaid and allowed. The Department shall not make additional payments or pay add-on charges for freight or shipping.
- b. Pricing shall be considered firm for the duration of the contract period unless a price increase/decrease is allowed as outlined in paragraph 3.2 of this IFB.
- 4.3.2 The quantities listed on **EXHIBIT A, Pricing Page** are an estimated cumulative total based on historical sales data of the same or similar product. The Department makes no guarantees of single order quantities or total aggregate order quantities.
- 4.3.3 Grouped Items - Line items 1 through 5 are grouped and one award will be made for all items within the group.
- a. A bid price must be stated for each item in the group.
- b. If any one item in the group is deemed non-responsive or unacceptable, or if a vendor is not able to supply or bid on one or more items in the group, the entire group will not be considered for award to that vendor.
- 4.3.4 The vendor should complete the "Terms" and the "Vendor's Acceptance of the State Purchasing Card" sections on **EXHIBIT A, Pricing Page**.
- 4.4 Evaluation and Award Process:**
- 4.4.1 After determining that a bid satisfies the mandatory requirements stated in the IFB, the evaluator shall use objective analysis in conducting a comparative assessment of the bid(s). The contract shall be awarded to the lowest and best vendor.

#### 4.5 Evaluation of Cost:

- 4.5.1 Cost Evaluation - The objective evaluation of cost shall be based on the firm fixed pricing stated on **EXHIBIT A, Pricing Page**. The evaluation shall include the original contract period plus the renewal periods. The estimated quantities shall be taken into consideration to compute the total price for the original contract period and renewal period for each line item.
- a. For line items 1 - 3, and for evaluation purposes only, the cost for the original contract period will be calculated by multiplying the firm fixed price per pint for each line item as stated on **EXHIBIT A, Pricing Page**, by eight (8) and then by the estimated annual case quantity. The subsequent renewal period costs for each item will be calculated in the same manner.
  - b. For line items 4 and 5, and for evaluation purposes only, the individual item cost for the line item will be calculated by dividing the firm fixed package price for the item stated on **EXHIBIT A, Pricing Page** by the number of items per package to arrive at the individual cost per item. The cost per ounce for the line item will be calculated by dividing the individual item cost by the total ounces of the item to arrive at the total cost per ounce. The initial contract period cost will be calculated by multiplying the individual item cost per ounce by the multiplier ninety-six (96) (estimated ounces per box) for each line item, and then multiplied by the estimated box quantity for the line item.
  - c. A cost for each renewal period will be calculated in the same manner as indicated in 4.3.1 a. for line items 1-4 and 4.3.1 b. for line items 5 and 6. The total cost of the initial contract period and each renewal period for each line item will be added together to arrive at the total bid price for the group.
  - d. Cost evaluation points shall be determined from the result of the calculations stated above using the following formula:

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

**NOTE:** Any prompt payment discount term indicated on **EXHIBIT A, Pricing Page** will not be used in any cost calculation.

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

$$\text{Assigned Cost Points} + \text{Earned Preference Points} = \text{Total Points}$$

If no preference points are earned, no further calculation is necessary and Assigned Cost Points will serve as Total Points.

#### 4.6 Determination for Award:

- 4.6.1 **The vendor shall understand and agree that in order to be considered for award, the vendor must be registered in MissouriBUYS (<https://missouribuys.mo.gov/vendors>).**
- 4.6.2 The Department reserves the right to award to the vendor whose bid complies with all mandatory specifications and requirements, and is the lowest and best vendor for the items.
- 4.6.3 Only one award shall be made to the vendor whose items meet specifications and who has the highest total cost points for the group. Other factors that affect the determination of the lowest price responsive vendor include consideration of the preference explained in paragraph 4.2.1.

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

- a. If the lowest responsive vendor is determined to not be responsible and reliable, the Department shall conduct a determination of responsibility and reliability for the next lowest responsive vendor.

#### 4.7 **Other Bid Submission Requirements:**

4.7.1 **Business Compliance - The vendor must be in compliance** with the laws regarding conducting business in the State of Missouri. The vendor certifies by signing the signature page of this original document and any addendum signature page(s) or by submitting an on-line bid that the vendor and any proposed subcontractors either are presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. The vendor shall provide documentation of compliance upon request by the Department. The compliance to conduct business in the state shall include, but not necessarily be limited to:

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

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

4.7.2 Vendors 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 vendor or any owner of the vendor's organization is currently an employee of the State of Missouri, a member of the General Assembly, or a statewide official, please complete the first section of **EXHIBIT C, Miscellaneous Information**.

4.7.3 Registration of Business Name – The vendor should complete the second section of **EXHIBIT C, Miscellaneous Information** as it applies to the vendor's business, and submit the exhibit with the bid.

4.7.4 Local or Territorial Distributors - The Department recognizes that all of the items listed on **EXHIBIT A, Pricing Page** may be sold through local or territorial distributorships. The vendor shall submit the distributor name, address and telephone number for the distributor that will be servicing MECC, along with the contact name and contact phone number of the person who will receive orders from the institution. This information should be submitted with the vendor's response, and must be submitted upon award of a contract.

#### **END OF SECTION FOUR: BID SUBMISSION, EVALUATION AND AWARD INFORMATION**

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

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

**STANDARDS:**

The following standards shall be used by the Missouri Department of Corrections in determining whether an individual, business, or organization qualifies as an SDVE:

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

If a vendor meets the standards of a qualified SDVE as stated above, and unless previously submitted within the past three (3) years to the Missouri Department of Corrections or to the Office of Administration, Division of Purchasing (OA/Purchasing), the vendor **must** provide the following SDV documents to receive the Missouri SDVE three (3) bonus point preference.

- a copy of the SDV's Certificate of Release or Discharge from Active Duty [DD Form 214], and a copy of the SDV's disability rating letter issued by the Department of Veterans Affairs establishing a service connected disability rating, or a Department of Defense determination of service connected disability, and
- A completed copy of this exhibit.

(NOTE: The SDV's Certificate of Release or Discharge from Active Duty (DD Form 214), and the SDV's disability rating letter issued by the Department of Veterans Affairs establishing a service connected disability rating, or Department of Defense determination of service connected disability shall be considered confidential pursuant to subsection 14 of section 610.021, RSMo.)

**EXHIBIT B continued on the next page**

**EXHIBIT B (continued)**  
**MISSOURI SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE PREFERENCE**

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

\_\_\_\_\_  
Service-Disabled Veteran's Name  
(Please Print)

\_\_\_\_\_  
Service-Disabled Veteran Business Enterprise Name

\_\_\_\_\_  
Service-Disabled Veteran's Signature

\_\_\_\_\_  
Missouri Address of Service-Disabled Veteran  
Business Enterprise

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Website Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

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

- No, I have not previously submitted the SDV documents specified herein to the state agency or to the Office of Administration, Division of Purchasing and therefore have enclosed the SDV documents.
- Yes, I previously submitted the SDV documents specified herein within the past three (3) years to the state agency.
- Yes, I previously submitted the SDV documents specified above within the past three (3) years to the Office of Administration, Division of Purchasing.

**Date** SDV Documents were submitted: \_\_\_\_\_

Previous **Bid/Contract Number** for Which the SDV Documents were submitted: \_\_\_\_\_  
(If known)

(NOTE: If the SDVE and SDV are listed on the Office of Administration, Division of Purchasing (OA/Purchasing) SDVE database located at <http://oa.mo.gov/sites/default/files/sdvelisting.pdf>, then the SDV documents have been submitted to the OA/Purchasing within the past three [3] years. However, if it has been determined that an SDVE at any time no longer meets the requirements stated above, the OA/Purchasing will remove the SDVE and associated SDV from the database.)

<b>FOR STATE USE ONLY</b>	
SDV's Documents - Verification Completed By:	
_____ Procurement Officer	_____ Date

**END OF EXHIBIT B**

STATE OF MISSOURI  
MISSOURI DEPARTMENT OF CORRECTIONS

**TERMS AND CONDITIONS – INVITATION FOR BID**

**1. TERMINOLOGY/DEFINITIONS**

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

- a. **1 CSR 40-1 (Code of State Regulations)** refers to the rule that provides the public with a description of the Division of Purchasing and Materials Management within the Office of Administration. This rule fulfills the statutory requirement of section 536.023(3), RSMo.
- b. **Agency and/or Department** means the Missouri Department of Corrections.
- c. **Addendum** means a written official modification to an IFB.
- d. **Amendment** means a written, official modification to a contract.
- e. **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.
- f. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- g. **Buyer or Buyer of Record** means the procurement staff member of the Department. The **Contact Person** as referenced herein is usually the Buyer of Record.
- h. **Contract** means a legal and binding agreement between two or more competent parties for consideration for the procurement of equipment, supplies, and/or services.
- i. **Contractor** means a person or organization who is a successful vendor as a result of an IFB and who enters into a contract.
- j. **Exhibit** applies to forms that are included with an IFB for the vendor to complete and submit with the sealed bid prior to the specified opening date and time.
- k. **Invitation for Bid (IFB)** means the solicitation document issued by the Department to potential vendors for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Exhibits, Attachments, and Addendums thereto.
- l. **May** means that a certain feature, component, or action is permissible, but not required.
- m. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- n. **Pricing Page(s)** applies to the Exhibit on which the vendor 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 vendor with the sealed bid prior to the specified bid opening date and time.
- o. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature that govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the procurement operations of the Department.
- p. **Shall** has the same meaning as the word **must**.
- q. **Should** means that a certain feature, component, and/or action is desirable but not mandatory.
- r. **Vendor** 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.

**2. APPLICABLE LAWS AND REGULATIONS**

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the Department.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.

- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

### **3. CONTRACT ADMINISTRATION**

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

### **4. OPEN COMPETITION/INVITATION FOR BID DOCUMENT**

- a. It shall be the vendor's responsibility to ask questions, request changes or clarification, or otherwise advise the Department if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements or evaluation process stated in the IFB to a single source. Any and all communication from vendors regarding specifications, requirements, competitive bid process, etc., must be directed to the Buyer of Record of the Department, unless the IFB specifically refers the vendor to another contact. Such communication should be received at least ten (10) calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the vendor receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all vendors will be advised, via the issuance of an addendum to the IFB, of any relevant or pertinent information related to the procurement. Therefore, vendors are advised that unless specified elsewhere in the IFB, any questions received less than ten (10) calendar days prior to the IFB opening date may not be answered.
- c. Vendors are cautioned that the only official position of the State of Missouri is that which is issued by the Department in the IFB or an addendum thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The Department monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among vendors, price-fixing by vendors, or any other anticompetitive conduct by vendors, which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. Some IFBs may be available for viewing and downloading on the Department's website or on the MissouriBUYS Statewide eProcurement System. For IFB's posted on MissouriBUYS, registered vendors are electronically notified of those bid opportunities that match the commodity codes for which the vendor registered in MissouriBUYS. If a registered vendor's e-mail address is incorrect, the vendor must update the e-mail address himself or herself on the state's MissouriBUYS Statewide eProcurement System at <https://missouribuys.mo.gov/>.
- f. The Department reserves the right to officially amend or cancel an IFB after issuance. It shall be the sole responsibility of the vendor to monitor the Department's website and the MissouriBUYS Statewide eProcurement System to obtain a copy of the addendum(s). Registered vendors who received e-mail notification of the bid opportunity when the IFB was established and registered vendors who have responded to the IFB on-line prior to an addendum being issued should receive e-mail notification of the addendum(s). Registered vendors who received e-mail notification of the bid opportunity when the IFB was established and registered vendors who have responded to the bid on-line prior to a cancellation being issued should receive e-mail notification of a cancellation issued prior to the exact end date and time specified in the IFB.

### **5. PREPARATION OF BIDS**

- a. Vendors **must** examine the entire IFB carefully. Failure to do so shall be at the vendor'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 vendor may offer any brand that 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 vendor shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. 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 vendor is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a vendor may submit a bid that contains a list of statutory limitations and identification of those prohibitive clauses. The vendor should include a complete list of statutory references and citations for each provision of the IFB that is affected by this paragraph. The statutory limitations and prohibitive clauses may be requested to be clarified in writing by the Department or be accepted without further clarification if statutory limitations and prohibitive clauses are deemed acceptable by the Department. If the Department determines clarification of the statutory limitations and prohibitive clauses is necessary, the clarification will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges, and shall be delivered to the Department's designated destination FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Bids, including all pricing therein, shall remain valid for 90 days from the bid opening unless otherwise indicated. If the bid is accepted, the entire bid, including all prices, shall be firm for the specified contract period.
- i. Any foreign vendor not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

## 6. SUBMISSION OF BIDS

- a. Delivered bids must be sealed in an envelope or container, and received in the Department's Purchasing office located at the address indicated on the cover page of the IFB no later than the exact opening time and date specified in the IFB. For bids posted on the MissouriBUYS Statewide eProcurement System, registered vendors may submit bids electronically through the MissouriBUYS Statewide eProcurement System at <https://missouribuys.mo.gov/>. All bids must be submitted by a duly authorized representative of the vendor's organization, contain all information required by the IFB, and be priced as required. Vendors are cautioned that bids submitted via the USPS, including first class mail, certified mail, Priority Mail and Priority Mail Express, are routed through the Office of Administration Central Mail Services and the tracking delivery time and date may not be the time and date received by the Department's Purchasing office. Regardless of delivery method, it shall be the responsibility of the vendor to ensure their bid is in the Department's Purchasing office no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with the official IFB number **and** the official opening date and time. Different bids should not be placed in the same envelope; however, copies of the same bid may be placed in the same envelope.
- c. A bid that has been delivered to the Department may be modified by a signed, written notice that has been received by the Department's Purchasing office prior to the official opening date and time specified. A bid may also be modified in person by the vendor 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 registered vendor may be retracted on-line prior to the official end date and time. A bid that has been delivered to the Department's Purchasing office may only be withdrawn by a signed, written document on company letterhead transmitted via mail, e-mail, or facsimile that has been received by the Department's Purchasing office prior to the official opening date and time specified. A bid may also be withdrawn in person by the vendor or its authorized representative provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. A bid may also be withdrawn after the bid opening through submission of a written request by an authorized representative of the vendor. Justification of a withdrawal decision may include a significant error or exposure of bid information that may cause irreparable harm to the vendor.
- f. When submitting a bid electronically, the registered vendor indicates acceptance of all IFB requirements, terms and conditions by clicking on the "Accept" button on the Overview tab. Vendors submitting a hard copy must sign and return the IFB cover page or, if applicable, the cover page of the last addendum thereto in order to constitute acceptance by the vendor of all the IFB terms and conditions. Failure to do so may result in the rejection of the bid unless the vendor's full compliance with those documents is indicated elsewhere within the vendor's response.
- g. Faxed and e-mailed bids shall not be accepted; however, faxed and e-mail no-bid notifications shall be accepted.

## **7. BID OPENING**

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

## **8. PREFERENCES**

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.

## **9. EVALUATION/AWARD**

- a. Any clerical error, apparent on its face, may be corrected by the Buyer of Record before contract award. Upon discovering an apparent clerical error, the Buyer of Record shall contact the vendor 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 vendor shall be subject to evaluation if deemed by the Department to be in the best interest of the State of Missouri.
- c. The vendor is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the Department. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the Department.
- d. Awards shall be made to the vendor(s) whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the vendor, 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 vendors fail to meet the same mandatory requirement in an IFB, the Department reserves the right, at its sole discretion, to waive that requirement for all vendors and to proceed with the evaluation. In

addition, the Department reserves the right to waive any minor irregularity or technicality found in any individual bid.

- f. The Department reserves the right to reject any and all bids.
- g. When evaluating a bid, the Department reserves the right to consider relevant information and fact, whether gained from a bid, from a vendor, from a vendor's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the Department to the successful vendor. The Department reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by the Department based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation submitted on or before the official opening date and time will be considered open records pursuant to section 610.021 RSMo.
- k. The Department maintains records of all bid file material for review. Vendors who include an e-mail address with their bid will be notified of the award results via e-mail if requested.
- l. The Department reserves the right to request clarification of any portion of the vendor's response in order to verify the intent of the vendor. The vendor is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) business days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (9).
- n. The final determination of contract award(s) shall be made by the Department.

## **10. CONTRACT/PURCHASE ORDER**

- a. By submitting a bid, the vendor 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 addendums thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Department's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- c. A Notice of Award issued by the Department does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the Department, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the Department.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Department prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

## **11. INVOICING AND PAYMENT**

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. For each purchase order received, an invoice must be submitted that references the purchase order number, and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- d. The Department assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the Department's rejection and shall be returned to the contractor at the contractor's expense.
- e. All invoices for equipment, supplies, and/or services purchased by the Department shall be subject to late payment charges as provided in section 34.055 RSMo.

- f. The Department reserves the right to purchase goods and services using the state purchasing card.

## **12. DELIVERY**

- a. Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time if a specific time is not stated.
- b. A Missouri Uniformed Law Enforcement System (MULES) background check may be required on the contractor's delivery driver prior to allowing a delivery vehicle entrance to certain institutions. A valid Missouri driver's license is required from the driver to perform the MULES background check. If the driver does not have a valid Missouri driver's license, their social security number and date of birth are required. If a driver or carrier refuses to provide the appropriate information to conduct a MULES background check, or if information received from the background check prohibits the driver or carrier from entering the institution, the delivery will be refused. Additional delivery costs associated with re-deliveries or contracting with another carrier for delivery shall be the responsibility of the contractor.
- c. Unless a pallet exchange is requested at the time of delivery, all pallets used in the delivery of equipment and supplies shall become property of the Department.

## **13. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by the Department pursuant to a contract shall be deemed accepted until the Department has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements, or which are otherwise unacceptable or defective, may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective, or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection), may be rejected.
- c. The Department reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The Department's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

## **14. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the Department, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the Department's acceptance of or payment for said equipment, supplies, and/or services.

## **15. CONFLICT OF INTEREST**

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

## **16. CONTRACTOR STATUS**

- a. The contractor represents itself to be an independent contractor offering such services to the general public and shall not represent itself to be an employee of the State of Missouri. Therefore, the contractor shall assume all

legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss, costs (including attorney fees), and damage of any kind related to such matters.

#### **17. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the Department of any existing or future right and/or remedy available by law in the event of any claim by the Department of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the Department of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the Department for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the Department.

#### **18. SEVERABILITY**

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

#### **19. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the Department may cancel the contract. At its sole discretion, the Department may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than ten (10) working days from notification, or at a minimum, the contractor must provide the Department within ten (10) working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach, or if circumstances demand immediate action, the Department will issue a notice of cancellation terminating the contract immediately. If it is determined the Department improperly cancelled the contract, such cancellation shall serve as notice of termination for convenience in accordance with the contract.
- c. If the Department cancels the contract for breach, the Department reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the Department deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that if the funds required to fund the contract are appropriated by the General Assembly of the State of Missouri, the contract shall not be binding upon the Department for any contract period in which funds have not been appropriated, and the Department shall not be liable for any costs associated with termination caused by lack of appropriations.
- e. If the Department has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Department shall declare a breach and cancel the contract immediately without incurring any penalty.

#### **20. TERMINATION OF CONTRACT**

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

**21. ASSIGNMENT OF CONTRACT**

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

**22. COMMUNICATIONS AND NOTICES**

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

**23. FORCE MAJEURE**

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

**24. CONTRACT EXTENSION**

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

**25. INSURANCE**

- a. The State of Missouri cannot save and hold harmless and/or indemnify the contractor or its employees against any liability incurred or arising as a result of any activity of the contractor or the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage, and/or expense related to his/her performance under the contract.

**26. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the Department immediately.
- b. Upon learning of any such actions, the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

**27. INVENTIONS, PATENTS, AND COPYRIGHTS**

- a. The contractor shall defend, protect, and hold harmless the Department, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

**28. CONTRACTOR PROPERTY**

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

**29. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

- a. In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program, which shall include:
  1. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
  2. The identification of a person designated to handle affirmative action;
  3. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
  4. The exclusion of discrimination from all collective bargaining agreements; and
  5. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.
- b. If discrimination by a contractor is found to exist, the Department shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the Department until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

**30. AMERICANS WITH DISABILITIES ACT**

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

**31. FILING AND PAYMENT OF TAXES**

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

**32. TITLES**

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

Vistar-Maxima  
3909 Holt Rd  
Holt, MI 48842

RECEIVED  
MO DEPT. OF CORRECTIONS  
PURCHASING SECTION  
TIME: 2:10pm INITIAL: M

Missouri Department of Correction  
Purchasing Section  
2729 Plaza Drive  
Jefferson City, MO  
651

RECEIVED  
NOV 25 2019  
PURCHASING



MI 48842

ED  
CORRECTIONS  
SECTION  
TIAL: M

Missouri Department of Corrections  
Purchasing Section  
2729 Plaza Drive  
Jefferson City, MO  
65109

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