



## **North Carolina Sheriffs' Association**

### **Tire Procurement and Related Services Program**

# **Solicitation for Bids and** **Contract Terms and Conditions**

**Post Office Box 20049  
Raleigh, North Carolina 27619  
Main Number – 919-743-7433  
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#### **Contact:**

**Jason Bennett  
NCSA Contract Administrator  
919-459-8195  
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# North Carolina Sheriffs' Association Tire Procurement Program – Solicitation for Bids and Contract Terms and Conditions 2018

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## **Section I**

### **Pre-Bid Procedures**

#### 1.0 PURPOSE

The North Carolina Sheriffs' Association (NCSA) invites interested tire manufacturers to submit responses in accordance with these solicitation documents. The NCSA will facilitate the solicitation process and the administration of any resulting contract between the manufacturer and the NCSA. The purpose of this Solicitation for Bids is to establish a contract with tire manufacturers for the purpose of providing tires to North Carolina county and city government agencies.

#### 1.1 DEFINITIONS

The following terms are defined as follows:

- a) Tire Procurement Program (TPP) – A program managed by the NCSA for the purpose of providing public procurement of quality goods (tires) to support the prudent use of public funds by government agencies. The primary goals of the TPP are:
  - Providing efficient delivery of tires;
  - Obtaining best value through competition;
  - Offering fair and equitable contracting opportunities for suppliers; and
  - Maintaining public confidence through ethical and transparent procurement practices.
- b) Contract Administrator – The NCSA employee who is responsible for administering the contract solicitations and administration process for the Tire Procurement Program.
- c) Customer – An eligible Customer as defined in Section 1.4.
- d) Bid – A competitive Bid procedure initiated through the issuance of a Solicitation for Bids. The term “Bid” as used herein, refers to a request for

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- price quotations by the NCSA and the subsequent submission of price quotations from a tire manufacturer.
- e) Bid Title – The Bid title for the TPP is “Tires and Related Services” and includes the Bid number assigned to each contract term by the NCSA.
  - f) Bidder – The manufacturer that submits a Bid and documentation to the NCSA Contract Administrator in accordance with the terms and conditions contained herein.
  - g) Manufacturer – The entity that produces the tire and related components or assembly line for tires.
  - h) MSRP – The manufacturer’s suggested retail price, which represents the manufacturer’s recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser.
  - i) Contractor – A Bidder that agrees to sell tires/ and or related services, which meet the requirements, specifications, terms and conditions of this agreement, to eligible Customers, as defined herein in return for the ability to post their price sheets with the NCSA.
  - j) Dealer – An entity authorized by the manufacturer to market and sell tires and provide related services in accordance with the pricing provided by the manufacturer pursuant to this solicitation for bids. Authorized Dealers may be Contractor owned and/or controlled, in whole, or in part independently owned and controlled. NCSA acknowledges that Contractor does not exercise ownership or control over its non-company independent authorized Dealers and cannot indemnify or otherwise be held responsible for such acts. Accordingly, Contractor’s independent authorized Dealers are deemed to be excluded from any and all references to Bidder, Contractor, its authorized representatives, agents, contractors, subcontractors, dealers, partners or any other words of similar import in these Terms and Conditions and Contractor makes no agreements, representations, warranties or guarantees with respect to such independent authorized Dealers.
  - k) Dealer Option – A product or service provided by the dealer or other third party; not the factory.
  - l) Price Sheets- A comprehensive listing of all tires and their corresponding pricing, fees, and additional service fees, such as tire valves, and tire mounting and balancing. These sheets are provided by each tire manufacturer in their official Bid summary.

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## 1.2 TPP OVERVIEW AND CRITERIA TO PARTICIPATE

The NCSA will solicit tire manufacturers licensed to do business in the State of North Carolina to participate in the TPP. These tire manufacturers will provide NCSA with set pricing for tires and related services in the form of Price Sheets. They will also provide NCSA with a list of approved Dealers authorized by the manufacturer to market and sell tires and provide related services in accordance with the set pricing provided by the manufacturer to NCSA. The Price Sheets and Dealer list will be posted in a central repository on the NCSA website and made available to Customers for the purchase of tires and related services.

In order for a manufacturer to be eligible to participate in the NCSA TPP and have their Price Sheets and Dealer list made available on the NCSA website, a manufacturer has to meet the following criteria:

- Agree to the terms and conditions contained in the Solicitation for Bids and Contract Terms and Conditions document herein;
- Possess the ability, capacity, and skill to perform the Contract;
- Perform the Contract within the time specified, without delay or interference;
- Possess the character, integrity, reputation, judgment, experience and efficiency to perform the Contract in the judgment of the Contract Administrator;
- Demonstrate quality of performance of previous contracts;
- Demonstrate previous and existing compliance with laws and ordinances relating to the Contract

## 1.3 BID CORRESPONDENCE

All correspondence regarding any tire Bid must be directed to the NCSA using the information below. Be sure to reference the appropriate Bid number and include the manufacturer contact information on all correspondence.

The NCSA point of contact for the Tire Procurement Program's Solicitation to Bid is:

Jason Bennett  
Contract Administrator  
North Carolina Sheriffs' Association  
E-Mail – [jbennett@ncsheriffs.net](mailto:jbennett@ncsheriffs.net)  
Phone – (919) 459-8195

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All written (paper copy but not electronic copy) communication or documents related to any Solicitation for Bids must be directed to:

North Carolina Sheriffs' Association  
Attn: Contract Administrator  
Post Office Box 20049  
Raleigh, North Carolina 27619

## 1.4 ELIGIBLE CUSTOMERS OF TPP

The TPP is available to any and all units of local governments (in North Carolina or outside North Carolina) including, but not limited to, counties, sheriffs' offices, local county boards of public instruction, municipalities and/or police agencies, and other local public safety agencies or authorities.

All Customers are subject to their individual governing purchasing ordinances, rules and regulations.

All Contractors and authorized Dealers are governed by the manufacturer's agreement with the NCSA and any agreements between the Dealer and the Customer. All Contractors and authorized Dealers and Customers referencing this contract for the purpose of facilitating sales (purchase authority) outside the State of North Carolina must accept the terms and conditions of this Solicitation for Bids and Contract Terms and Conditions.

## 1.5 TERM OF CONTRACT

A contract between NCSA and each individual Contractor shall remain in effect for 365 days or until the next official NCSA solicitation for Bids is conducted, whichever is earlier. A contract may be renewed by mutual agreement between the NCSA and the Contractor, for up to two one year extensions, independent of the next solicitation for Bids.

Contract extensions will only be executed when conditions indicate it is in the best interest of the NCSA and the Customers.

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## 1.6 SHERIFF AS COUNTY CONSTITUTIONAL OFFICER

The sheriff does not necessarily have independent statutory authority to contract on behalf of or bind the resources of the county unless delegated this authority by the board of commissioners. Therefore, it may be necessary for both the sheriff and an appropriate county official to sign any necessary agreements between the Dealer and Customer.

## 1.7 COMMUNICATIONS

Bidders should not rely on representations, statements, or explanations other than those made in this Solicitation for Bids or in any written addendum to this Solicitation for Bids. Bidders should verify with the Contract Administrator prior to submitting a Bid that all addenda have been received.

Any questions or requests for clarifications concerning this Solicitation for Bids and Contract Terms and Conditions shall be submitted in writing by mail or facsimile to the North Carolina Sheriffs' Association, Contract Administrator, Post Office Box 20049, Raleigh, North Carolina 27619 or by email to [jbennett@ncsheriffs.net](mailto:jbennett@ncsheriffs.net) with the Bid Title referenced on all correspondence.

## 1.8 LATE BIDS

At the time, date, and place indicated in the published Bid calendar, the Bids will be opened. Any Bid(s) received after the time and date specified as the deadline for the submission of Bids will be rejected by the NCSA and all documentation will be returned to the Bidder unopened. A Bid is considered received by the NCSA when the Bid is stamped received by the Contract Administrator.

The responsibility for submitting a Bid before the stated time and date deadline for the submittal of Bid's is solely and strictly the responsibility of the Bidder. The NCSA is not responsible for delays caused by mail, courier service, including US Mail, or any other occurrence.

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## 1.9 EXECUTION OF BID

Bids must contain a manual signature of an authorized representative of a manufacturer in the space provided on the Bid Signature Page. Failure to properly sign a Bid shall invalidate same and it shall NOT be eligible to be posted. All Bids must be completed in pen/ink or typewritten. If a correction is necessary, draw a single line through the entered figure and enter the corrected figure above it. Corrections must be initialed and dated by the person signing the Bid. Any illegible entries or pencil Bids will not be posted. The Bid specifications posted by the NCSA CANNOT be changed or altered in any way by any manufacturer or Dealer. No alterations in the format or content of product specifications can be made.

Any changes in Bid pricing must be made in letter form and in a new Price Sheet, signed by Bidders and attached to the Bid.

A Bidder may submit a modified Bid to replace all or any portion of a previously submitted Bid up until the Bid due date and time. No modified Bid submitted after the Bid due date and time will be considered.

Bids shall be irrevocable unless withdrawn in writing prior to the Bid due date.

Letters of withdrawal received outside of the bid posting date will not be considered.

Circumstances under which withdrawal of a Bid/cancellation of a contract resulting from this solicitation are permissible after the opening of Bids are addressed in Section 3.2.

## 1.10 REQUESTS FOR CLARIFICATION AND ADDENDA TO BID SPECIFICATIONS

The submission of a Bid presumes the Bidder has read and thoroughly understands the terms and the specifications.

If any person contemplating submission of a Bid under this Solicitation for Bids is in doubt as to the meaning of the specifications or other Bid documents or any part thereof, the Bidder must submit to the Contract Administrator at least ten (10) calendar days prior to the scheduled Bid opening, a request for clarification. All such requests for clarification must be made in writing and the person submitting the request will be responsible for its timely delivery.

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Any interpretation of the Solicitation for Bids, if made, will be made only by addendum duly issued by the Contract Administrator. The Contract Administrator shall issue an informal addendum if minor clarification or minimal changes are required. An example of an informal addendum would be a grammatical change. Any informal addenda will be sent via email to all Bid participating tire manufacturers.

The Contract Administrator shall issue a formal addendum if substantial changes which impact the technical submission of Bids are required. An example of a formal addendum would be the deletion or addition of a tire model. In the event of a conflict with the original Contract Documents, the addenda shall govern all other Contract Documents to the extent specified. Subsequent addenda shall govern over prior addenda only to the extent specified. All formal addenda will be sent via E-mail to each Bidder.

The Bidder shall be required to acknowledge receipt of the formal addendum by signing in the space provided on the Bid Form prior to the tire manufacturer's Bid submission. Failure to acknowledge addenda shall deem a Bid non-responsive; provided, however, that the NCSA may waive this requirement in its best interest. The NCSA will not be responsible for any other explanation or interpretation made verbally or in writing by any other NCSA representative.

## 1.11 NO BID

If a manufacturer declines to submit a Bid, the manufacturer should respond by returning the "No Bid" questionnaire (NCSA Form 1), and explain the reason. Repeated failure to Bid without sufficient justification shall be cause for removal of a manufacturer's name from the Bid mailing list.

## 1.12 PRICE QUOTED

Prices quoted in Bid submissions should deduct trade discounts and quote firm net prices. Prices should contain both the unit price and extended total (sum of unit price plus add-ons), when requested. Prices must be stated in units of quantity specified in the Bidding specifications.



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In case of discrepancy in computing the amount of the Bid, the UNIT PRICE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in special conditions).

All pricing submitted must be in accordance with the terms and conditions stated herein. Each item must be Bid separately and no attempt is to be made to tie any item or items in with any other item or items.

## 1.13 PRICES SHALL BE FIXED AND FIRM

Pursuant to this Bid solicitation and the manufacturer's subsequent submission of a Bid, the prices quoted by the Bidder on the Bid Forms shall remain fixed and firm during the entirety of this one-year contract and during any 1-year contract extension unless adjusted pursuant to Section 1.14 OPTION TO RENEW WITH PRICE ADJUSTMENT below.

## 1.14 OPTION TO RENEW WITH PRICE ADJUSTMENT

The contract could be extended for an additional two (2) years, on a year by year basis, if mutually agreed to by both parties. Prior to the completion of each year during this contract, the Contractor shall be entitled to adjust pricing due to increases or decreases in raw materials required for the production of tires. Contractors shall provide evidence of such raw material price increases. In no event shall the contract price increase by a greater percentage than the percent increase in the cost of such raw materials.

It is the Contractor's responsibility to request any pricing adjustment under this provision. For any adjustment to commence on the first day of any renewal option period, the Contractor's request for adjustment must be submitted at least 30 calendar days prior to the commencement of a new option period or they will not be considered.

The Contractor adjustment request must clearly substantiate the requested increase. If no adjustment request is received from the Contractor, the NCSA will assume that the Contractor has agreed that the optional term will be exercised without pricing adjustment.

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The NCSA is not obligated to accept the renewal adjustment. If the NCSA does not accept the requested adjustment, the NCSA will allow the contract to terminate and re-advertise for Bids.

## 1.15 REQUIRED RELATED SERVICES

Prices for the following services shall be supplied on the Price Sheets as separate items from the unit tire price for passenger, pursuit, and light truck tires (Specifications 1, 2, and 3):

- Mounting of the tire
- New valve stem and installation
- Dynamic balancing including weights
- Tire Disposal Fee
- Waste Tire Fee

Customers may purchase tires alone, without related services. If additional services are purchased, each related cost shall be added to the invoice as an additional charge.

Additional required related services are:

- Tire Disposal Fee. On bulk tire deliveries (deliveries with 50 or more tires) to a Customer's facility, the Dealer must pick up and dispose of an equal number of replaced used tires. This pickup of used tires may be required at a later date. All used tires must be disposed of by the dealer in accordance with all Federal, State and local requirements, and a disposal fee may be assessed to the customer by Dealer to recover such costs.
- Waste Tire Fee. All taxes, environmental or other waste cleanup fees imposed by the State, Federal or local governments and in effect at the time of the Bid opening shall be listed separately by the manufacturer on the Price Sheets. Any increase or new fees effective subsequent to the Bid opening date must be approved by the Contract Administrator in order for the increased or new fee to be charged to a customer. The Contract Administrator is not required to approve these increases or new fees. If the Contract Administrator does not approve the new fees, the manufacturer may withdraw their bid.

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## 1.16 NCSA ADMINISTRATIVE FEES FOR ALL SPECIFICATIONS

Tire manufacturers must include a three quarters of one percent (.0075) administrative fee in their Bid prices. The three quarters of one percent fee will be incorporated into, and made a part of, the total invoice amount and shall not be treated or added as a separate line item. Fees are based on the total invoice cost of the new tire. No other administrative fee(s) will be applicable to any transaction relative to the contract.

## 1.17 SUBMITTAL OF BID

Bids may be delivered in person or by mail. Submit the original Bid and one copy in a sealed envelope. The face of the envelope shall indicate the NCSA address, the Bid title, and the date and time of the Bid opening. Bids not submitted on the forms included with these solicitation documents shall be rejected. Each Bidder is responsible for ensuring that their Bid is delivered at the proper time and to the proper place. Late Bids shall not be considered. BIDS MUST BE RECEIVED AT THE NORTH CAROLINA SHERIFFS' ASSOCIATION, POST OFFICE BOX 20049, RALEIGH, NORTH CAROLINA 27619, AT THE TIME DESIGNATED IN THE INVITATION TO BID for the receipt of submission. A Bidder may withdraw his/her proposal at any time prior to the fixed time for opening Bids without prejudice to himself/herself.

All Bid forms must show the manufacturer's name and be manually signed where required (no rubber stamps, facsimile signatures, etc) in ink by a tire manufacturer representative who has the authority for Bid submission. Unsigned Bids will be rejected.

The completed Bid must be submitted in a sealed envelope clearly marked with the Bid Title to the North Carolina Sheriffs' Association (NCSA), Attn: Jason Bennett, Contract Administrator, Post Office Box 20049, Raleigh, North Carolina 27619.

BIDDER shall be required to provide as part of the Bid package, two hard copies – one marked "ORIGINAL" and one marked "COPY." Also BIDDER must furnish Price Sheets in Excel for Windows on a USB drive. The USB must be formatted as follows:

- "Excel for Windows"

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- Font: Arial – 12 point
- Margins: One-half inch (.5) all the way around
- Landscape ONLY
- No Headers or Footers

The following is a list of the headings (all caps) that will be used for formatting with an indication of the size for the column and whether or not the column will be in bold print:

- SIZE – 16
- S/W – 8
- SR/LR – 10
- PRODUCT NUMBER – 10
- NC NET SHERIFF'S PRICE – 11 Bold Print
- WASTE TIRE FEE – 8
- TIRE DISPOSAL FEE – 8
- TOTAL TIRE COST – 11 Bold Print
- TIRE VALVE – 8
- TIRE MOUNT – 8
- TIRE BALANCE – 8
- TOTAL TIRE PRICE WITH OPTIONS –12 Bold Print

An example of the Bid price Excel spreadsheet will be provided and is marked “Example Only” within the Solicitation for Bids package.

Bids received on separate sheets and not attached to the complete specifications will be rejected. All prices must be clearly stated in permanent fashion (no pencil) on lines provided on the “Price Sheets.” Any variations from these specifications must be clearly stated by the Bidder on the proposal blank.

All Bids, notifications, claims, and statements must be signed by an individual authorized to bind the Bidder. The individual must state that he or she has the legal authorization to bind the Bidder.

All Bidders must sign in ink where indicated and print or type name and date on pages designated and return same with all proposals.

Prices shall be firm and are to be F.O.B. Destination, delivered to the customer. In the event of a discrepancy between a unit Bid price and any other price modification, the unit Bid price will govern. Written prices shall govern.

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Bidders are expected to examine the specifications, delivery schedules, Bid prices, and extensions and all instructions pertaining to supplies and services. Failure to do so will be at the Bidder's risk.

## 1.18 AMENDMENTS TO SOLICITATION DOCUMENTS

The Contract Administrator may use discretion in issuing amendments to the solicitation prior to the deadline for Bid submission only. Notice of any amendment will be posted on the NCSA website [http://ncsheriffs.net./](http://ncsheriffs.net/). Such notice will contain the appropriate details for identifying the changes to the solicitation. Each Bidder is responsible for monitoring the NCSA website for new or changing information concerning the solicitation.

## 1.19 BID OPENING AND ELECTRONIC POSTING OF MANUFACTURER PRICING

Bids will be opened at the date, time, and place indicated in the Bid Calendar. Although prices will not be read aloud, Bidders may attend, but it is not a requirement. All Bids received after that date and time shall be returned, unopened.

The Contract Administrator will electronically post the manufacturer's pricing and authorized Dealer information contained in the Bid submission on the NCSA website, specifically on the Tire Procurement webpage, according to the time table outlined in the Bid Calendar.

If the posting of the Bid results is delayed, the Contract Administrator will post a notice of the delay on the NCSA website and will give a revised date for posting of results.

## 1.20 BID EVALUATION CRITERIA

Bid acceptance will be based on the qualifications of a dealer's facilities and financial resources, and demonstrated ability to perform the work in a satisfactory manner. The spirit and the intention of the NCSA Bid(s) are to obtain the lowest cost for the tire or the related service which is representative of the NCSA published specification.

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Bids will be evaluated to determine if all contract Bid requirements are met. Bids that do not meet all contract requirements of this solicitation, or fail to provide all required information, documents, or materials may be rejected as nonresponsive.

Contractors/Dealers must have the necessary facilities, personnel, and expertise to satisfy the published specifications and requirements, and must be prepared, if requested by the Contract Administrator, to present evidence of such capabilities.

The Contract Administrator reserves the right to investigate or inspect at any time during the Bid process, and the contract period, whether the product, qualifications, or facilities offered by the Contractor/Dealer meet the contract requirements.

Contractor/Dealers, whose Bids, past performance, or current status do not, in the judgment of the Contract Administrator, reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of the contract may be rejected as nonresponsive. In determining past performance, the Contract Administrator will give consideration to the nature and number of complaints received from Customers regarding a previously utilized Contractor/Dealer. Bidders who routinely demonstrate deficiencies in providing satisfactory customer service during a contract period prior to the issuance of this Bid, may have their Bid rejected. In cases where the manufacturer is at fault, the dealer must provide evidence of this fact to the complainant and to the NCSA within 7 calendar days of receipt of such evidence.

The Contract Administrator may use discretion in determining which Bids meet the contract requirements of this solicitation, and which respondents are responsive and responsible.

The Contract Administrator may use discretion in accepting or rejecting any and all Bids, or separable portions thereof, in whole or in part; and to waive any minor irregularities, technicalities, or omissions if determined that doing so will serve the best interest of the local government agencies of the State of North Carolina. The Contract Administrator may reject any responses not submitted in the manner specified by solicitation documents.

Bidders are hereby advised that the Contract Administrator may use discretion in rejecting any Bid proposal not considered to be competitive in nature based on the best pricing information available.

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## 1.21 TAX EXEMPTIONS FOR CUSTOMERS

All state and federal tax exemptions applicable to the units of local governments of the State of North Carolina will apply. It is the Customer's responsibility to comply with any federal, State, and local tax requirements.

## 1.22 TAX EXEMPTIONS FOR NCSA

The NCSA is a 501(c)(3) organization and is exempt from all Federal Excise and State Taxes. The NCSA tax id number is 56-1079943.

## 1.23 TIRE MODELS AND RELATED SERVICES

All tires and services listed in the Price Sheets shall be the manufacturer's current basic production model, in accordance with the manufacturer's latest literature. Bidders must supply a unit that either meets or exceeds all the requirements included in the applicable detailed specifications.

All Bidders will bid only on the models listed in each designated specification.

All equipment offered to satisfy a solicitation for Bids must be designed, constructed, and installed to be fully suitable for its intended use and service.

Tires offered under this Bid shall be as listed in the following specification classes:

- |                  |  |
|------------------|--|
| SPECIFICATION 1: | PASSENGER<br>Tire, Automobile, Radial, Standard Passenger  |
| SPECIFICATION 2: | PURSUIT AND EMERGENCY HIGH SPEED<br>Tire, Police Pursuit, Radial   |
| SPECIFICATION 3: | LIGHT TRUCK<br>Tire, Light Truck, Radial; Tire, Light Truck, Steel Casing (Includes Off-Road Applications) |
| SPECIFICATION 4: | MEDIUM TRUCK   |

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SPECIFICATION 5:	Tire, Medium Truck, Radial OFF ROAD TIRES, INTERMITTENT HIGHWAY SERVICE Tire, Off Road, Radial; Tire, Off Road, Bias
SPECIFICATION 6:	IMPLEMENT/FARM Tire, Implement, Farm
SPECIFICATION 7:	SPECIALTY Tire, Specialty

All tires offered under the Contract shall be new and unused and in current production. Retreaded tires shall not be offered. However, the NCSA reserves the right to add a specification for retreaded tires at a later date if it is in the best interest of NCSA and Customers. If a new specification for retreaded tires has been posted, it will follow the Terms and Conditions of any corresponding solicitation for Bids.

Contractors shall offer only those brands of tires (new or retreaded) qualified and listed in the Cooperative Approved Tire List (CATL) (latest edition in effect at the time of the NCSA Bid solicitation), published by the Associated Consultants of Technical Services, Inc., the contract manager for the Federal Government's program for testing new tire performance. In lieu of being listed in the publications, a Contractor may provide a Qualification Certification Form signed by the CATL Program Administrator.

## 1.24 FACTORY ORDERED OPTIONS

All factory ordered options are to be "original equipment manufacturer (OEM) and factory installed" unless otherwise noted by the Contractor/Dealer and acknowledged in writing by both the Contractor/Dealer and the Customer. Verbal agreements will not be recognized.

## 1.25 FEDERAL AND STATE TIRE MANUFACTURING STANDARDS

It is intended that all specifications be in full and complete compliance with all Federal and North Carolina State laws and regulations that apply to tires and other related services. This includes, but is not limited to the, U.S. Department of



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Transportation, NC Department of Transportation, National Highway Traffic Safety, Federal Motor Vehicle Safety Standard, Occupational Safety & Health Administration and Environmental Protection Agency standards and North Carolina requirements for external noise control that apply to the type tire or related service being provided.

If an apparent conflict in laws exists, the Bidder must contact the Contract Administrator immediately. In addition, any Federal or State legislation which should become effective regarding tire safety shall immediately become a part of this contract. Contractor/Dealer shall have the option to meet or exceed any such safety standard or cancel his/her portion of any contract resulting from this Bid solicitation by providing thirty (30) calendar days' written notice to the Contract Administrator/Customer.

## Testing –

Samples of delivered tires may be selected at random and tested by either the Customer, the NCSA, or their agent for compliance with these specifications using the following standards:

- ASTM Standard F1922, Test Method-for Tires, Pneumatic, Vehicular Highway.
- ASTM Standard F1923, Test Method-for Tires, Pneumatic, Vehicular Low Speed, Off Highway.

Delivery of non-conforming product shall be grounds for terminating the contract.

## 1.26 MISTAKES

Bidders are expected to examine the specifications, delivery schedules, Bid prices, extensions and all instructions pertaining to supplies and services. Failure to do so will be at the Bidder's risk. Signatures by the manufacturer on the bid package materials will presume the manufacturer has read, understood, and will comply with all specifications, delivery schedules, bid prices and instructions.

## 1.27 CONDITION AND PACKAGING

Any item offered or shipped as a result of this solicitation for Bids shall be the latest new and current model offered (most current production model at the time of this

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Bid). All shipping containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

## 1.28 UNDERWRITERS' LABORATORIES (UL)

Unless otherwise stipulated in the Bid, all manufactured items and fabricated assemblies shall be U.L. listed or re-examination listed where such has been established by U.L. for the item(s) offered and furnished.

## 1.29 EQUIVALENTS

The term "Approved Equivalent" is used to allow a Bidder to Bid components or equipment that are equal to the components or equipment described in the detailed specifications. The NCSA shall have the sole authority to determine the suitability of approved equivalents.

Catalog numbers, manufacturers' and brand names, when listed, are informational guides as to a standard of acceptable product quality level only and should not be construed as an endorsement or a product limitation of recognized and legitimate manufacturers. Bidders shall formally substantiate and verify that product(s) offered conform with or exceed the quality listed in the specifications.

If the Bidder offers equipment other than that specified in the Bid specifications, the Bidder must so indicate in the Bid submittal.

Bidder shall indicate in the Bid package the manufacturer's name and option code if Bidding other than the specified brands, and shall indicate ANY deviation from the specifications as listed. Items offered that are other than those described in the specifications require complete descriptive technical literature. The literature must be marked to indicate in detail the product's conformance with the specifications. This literature **MUST BE INCLUDED WITH THE BID**. Specific article(s) of equipment/supplies shall conform in quality, design, and construction with all published claims of the manufacturer. **NO BIDS WILL BE CONSIDERED WITHOUT THIS DATA.**

Lacking any written indication of intent to quote an alternate brand or model number, the Bid will be considered as a Bid in complete compliance with the specifications as listed on the attached Bid form.

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Manufacturers offering alternate makes of tires or equipment not specifically identified in the Bid cannot utilize or publish the offering as an “option” within the Bid specification and detail. Offerings of this nature will cause the Bid to be rejected.

Should a proposed Bid not meet one (1) or more of the requirements set forth in this Solicitation for Bids, and the Bidder is proposing alternatives to said requirements, the Bidder must notify the Contract Administrator in writing at least five (5) days prior to the deadline for submission of Bids. The NCSA reserves the right to revise the scope of services via addendum prior to the deadline for receipt of Bids.

## 1.30 INTERPRETATIONS

Unless otherwise stated in the Bid, any questions concerning conditions and specifications should be submitted in writing to Jason Bennett, NCSA Contract Administrator, at Post Office Box 20049, Raleigh, North Carolina 27619 or by email to [jbennett@ncsheriffs.net](mailto:jbennett@ncsheriffs.net).

## 1.31 GOVERNING LAW

All questions with respect to the construction, performance, and enforcement of these terms and conditions, and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of North Carolina. Any legal action taken or to be taken by any party regarding these terms and conditions or the rights and liabilities of the parties hereunder shall be brought only before a court of competent jurisdiction located within the State of North Carolina.

## 1.32 PATENTS AND ROYALTIES

The Bidder, without exception, shall indemnify and hold harmless the NCSA and its employees from liability of any nature or kind, including cost and expenses, for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of any contract extended under these terms and conditions, including its use by the NCSA.

If the Bidder uses any design, device, or materials covered by letters, patents, or copyright, it is mutually understood and agreed, without exception, that the Bid

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prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

## 1.33 ANTI-DISCRIMINATION

The Bidder certifies that he/she is in compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin.

## 1.34 AMERICANS WITH DISABILITY ACT (ADA)

To request ADA material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any NCSA-sponsored proceeding, please contact Jason Bennett, NCSA Contract Administrator, at 919-459-8195 or [jbennett@ncsheriffs.net](mailto:jbennett@ncsheriffs.net).

## 1.35 MINORITY BUSINESS ENTERPRISE (MBE)

The NCSA policy is that MBEs shall have the opportunity to participate in competitive Bids. Such process would be for supplying goods and services to the Customers.

## 1.36 QUALITY

All materials used for the manufacture or construction of any supplies or equipment covered by this Bid shall be new. The items Bid must be new, the latest model, of the best quality, and highest grade of workmanship per NCSA discretion.

## 1.37 FACILITIES

The North Carolina Sheriffs' Association reserves the right to inspect the Bidder's facilities at any time with a two week (calendar days) prior written notice.

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The Contract Administrator reserves the right to periodically request additional or updated information from a Contractor/Dealer regarding the manufacturing, repair or warranty facility during the solicitation and the term of the contract.

## 1.38 COPY OF PRICE SHEETS

Bidders desiring a copy of Price Sheets may request same by enclosing a self-addressed stamped envelope with the Bid along with a written request for the Price Sheets.

## 1.39 DEMONSTRATION OF COMPETENCY

Inspection of the Bidder's facility by NCSA may be made prior to entering into a contract. Bids will only be considered from manufacturers which are regularly engaged in the business of providing the goods and/or services as described in this Bid.

Bidders and Dealers must be able to demonstrate a satisfactory record of performance for a reasonable period of time per NCSA's discretion, and have sufficient financial support, equipment and organization to ensure they can adequately execute the services contemplated under the terms and conditions herein stated.

The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices in the industry and as determined by the NCSA.

The NCSA may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a Bidder or Dealer, including past performance (experience) with the NCSA in determining which manufacturer(s) to contract with, in the best interest of the NCSA and Customers.

If the NCSA determines, at any point in the Bid process, that an authorized Dealer of a Bidder, or a Bidder, no longer possesses the financial support, equipment and organization necessary to comply with the demonstration of competency section, the NCSA may reject that Dealer as eligible to participate in this contract or reject the Bid and cancel any contract resulting from such Bid.

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## 1.40 LAWS, PERMITS AND REGULATIONS

The Bidder shall obtain and pay for all licenses, permits, and inspection fees required for this project; and shall comply with all laws, ordinances, regulations, and requirements applicable to the work contemplated herein.

## 1.41 ELIMINATION FROM CONSIDERATION

A contract shall not be entered into with any manufacturer who is in arrears to the NCSA for any debt, or taxes, or contracts which are defaulted as surety or otherwise upon any obligation to the NCSA.

## 1.42 WAIVER OF INFORMALITIES

The NCSA reserves the right to waive any informalities or irregularities in this Bid solicitation.

## 1.43 COLLUSION

Related parties mean Bidders, or the principals thereof, which have a direct or indirect ownership interest in another Bidder for the same contract, or in which a parent company or the principals thereof of one (1) Bidder has a direct or indirect ownership interest in another Bidder for the same contract.

Where two (2) or more related parties each submit a Bid for any contract, such Bids or Bids shall be presumed to be collusive. Bids found to be collusive shall be rejected.

The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control, and management of such related parties in the preparation and submittal of such Bids.

Bidders who have been found to have engaged in collusion will be suspended from participating in any NCSA solicitations and contracts for a minimum of one year. The Bidder may be permanently barred if collusive bidding occurs more than once in a five-year period. Any contract resulting from collusive bidding will be terminated for default.

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## 1.44 GRATUITIES

Bidders shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the NCSA for the purpose of influencing consideration of this Bid.

## 1.45 SIGNED BID CONSIDERED AN OFFER

The signed Bid shall be considered an offer on the part of the Bidder, which offer shall be deemed accepted upon approval by the NCSA. In case of default on the part of the Contractor after the acceptance of the Bidder's offer, the NCSA may procure the items or services from other sources and hold the Contractor responsible for any excess cost occasioned or incurred thereby.

## 1.46 DELIVERY

Bidders shall specify on the attached Bid Form, the estimated delivery time (in calendar days) for each item. The estimated delivery time must be a firm delivery period; ranges will be accepted, i.e.: within 30 days ARO.

Delivery shall be within the regular business working hours of the Customer, Monday through Friday, excluding holidays.

Most bulk deliveries of tires shall be completed within thirty (30) days. For certain OTR tires and tires of limited supply, delivery times may take in excess of thirty (30) days. In all cases, Contractor and Customer may negotiate a delivery schedule applicable to particular orders.

All delivery expense/fees must be included in the base price and prices shall be firm and are to be F.O.B. Destination, delivered to the individual participating user agency. In the event of a discrepancy between a unit Bid price and an extension, the unit Bid price will govern. All items delivered or installed at any location of the participating agencies must include all manufacturer's standard equipment and warranties. Agencies may waive the prescribed delivery process and choose to facilitate delivery by taking receipt directly from the manufacturer's facility.

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## 1.47 RIGHT TO AUDIT

The Contractor/Dealer must establish and maintain a reasonable accounting system that enables the NCSA to readily identify the Contractor/Dealer's sales.

NCSA, and its authorized representatives, shall have the right to audit and examine financial and related records, policies and procedures, memoranda, and correspondence (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract or agreement or a corresponding agreement between a Customer and a Dealer that may be in the custody or control on the Contractor. Should documents be identified in the course of an audit relevant to the NCSA inquiry, the Contractor will preserve and set these documents aside for use by the NCSA in its audit. The NCSA or its identified representative shall execute a mutually agreeable confidentiality agreement with the Contractor prior to any audit to ensure that the confidentiality of Contractor's records is preserved.

The Contractor/Dealer, shall, at all times during the term of a contract and for a period of three (3) years after payment for the applicable goods and service, maintain the above referenced relevant records. The Contractor/Dealer shall at any time during the three (3) year period, whether during or after payment for the applicable goods and service, and at Contractor/Dealer's own expense make these records available for inspection and audit (including copies and extracts of records as required) by the NCSA when requested. The records shall be made available to the NCSA (subject to a seven calendar-day written notice) during normal business hours.

NCSA may select the Contractor/Dealer's office or place of business for the audit. The NCSA may also allow the Contractor/Dealer to provide financial records, together with the supporting or underlying documents and records, via email or facsimile for audit at a time and location that is mutually agreeable to the parties.

The costs of any audits conducted under the authority of this right to audit, if not addressed elsewhere, will be borne by the NCSA unless certain exemption criteria set forth below are met. If the audit discovers substantive findings related to fraud, misrepresentation, or nonperformance, the NCSA may recoup all of the costs of the audit work from the Contractor/Dealer.

Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor/Dealer's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the NCSA's findings to the Contractor/Dealer.



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Notwithstanding the foregoing, in no event shall the NCSA be entitled to audit bidder more than once in a 12 month period. Additionally, the NCSA and the personnel performing the audit shall enter into a confidentiality agreement in favor of bidder and its affiliates in order to have access to bidders' personnel and documents and prior to undertaking any audit.

## 1.48 AMENDMENTS TO CONTRACTS

Any contract resulting from this solicitation for bids may only be amended in writing signed by Contractor and the NCSA.

## 1.49 SPECIFICATION EXCEPTIONS, OMISSIONS OR ERRORS

Specifications are based on the most current manufacturer literature available. Bidders should immediately notify the Contract Administrator of any defects in the specifications or required submittal documents. All notifications of defect must be in writing and submitted prior to the request for clarification deadline.

Failure of a Bidder to comply with these provisions will result in Bidders being held responsible for all cost required to bring the equipment into compliance with the contract specifications.

## 1.50 FINANCIAL RESPONSIBILITY

The Bidder affirms by his or her signature on the contract signature page that he or she:

- Has fully read and understands the scope, nature, and quality of work to be performed or the services to be rendered under this Bid, and that both the Manufacturer has the adequate facilities and personnel to fulfill such requirements.
- Accepts the financial responsibility associated with this Bid, and declares that both the Manufacturer has the access to capital (in the form of liquidity or credit lines) in order to meet the financial demands of any contract resulting from this solicitation for bids. In assessing financial responsibility,

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the Bidder shall consider items such as the specifications, the quantity of specifications, and the timing of payment from Customers.

- Assumes full responsibility that all tires delivered to the Customer are free and clear of all outside liens, encumbrances, security interests apart from the manufacturer floor plan or other dealer inventory finance security interest.

### 1.51 LICENSING

Bidders are required to possess all applicable license certificates allowing the manufacturer or Dealer to conduct and carry on business as a manufacturer or Dealer of tires in the State of North Carolina as applicable. Bidders may be required to have some additional licenses.

Contractors conducting sales outside the State of North Carolina using the NCSA contract as a purchase authority must be in possession of an equivalent license; issued within the state in which their facility resides and allows for the manufacturing and sale of tires or related service to end users.

## **Section II**

### **Protest Procedures**

#### 2.0 AUTHORITY TO RESOLVE PROTESTED BIDS

(a) Right to Protest – Any Bidder who feels aggrieved in connection with the solicitation for Bids or any resulting contract may protest to the Contract Administrator or his or her designee. Protests will be evaluated and resolved under the process set forth below:

(1) Any protest concerning the tire models, requirements, and/or terms must be made within seven (7) business days (for the purpose of this section “business day” means a day other than Saturday, Sunday, or a national holiday) prior to the due date of all tire Bid sealed responses. Such protest must be made in writing to the Contract Administrator, or his or her designee, via electronic communication (such as facsimile transmission and/or email) and such protest shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No protest shall be accepted unless it complies with the requirements of this section. Failure to timely protest tire models, requirements, and/or terms is a waiver of the ability to protest the models, requirements, and/or terms.

The Contract Administrator will consider and rule on the protest prior to the due date for Tire Bid sealed responses. The decision of the Contract Administrator will be based solely on the written protest and all accompanying documents. The opening of bid solicitations will not be delayed, absent extraordinary circumstances, due to the protest, in the determination of the Contract Administrator.

(2) Protests challenging a contract resulting from the solicitation for bids must be made in writing within two (2) business days following the posting of the Price Sheets. This protest must be submitted to the Contract Administrator or his or her designee. All Bidders will be notified in writing (which will be transmitted by electronic

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communication) of any protests following the release of the Price Sheets.

Protests must state the particular grounds on which it is based and shall include all pertinent documents and evidence. No Bid protest will be accepted unless it complies with the requirements of this section.

The decision of the Contract Administrator will be based solely on the written protest and all accompanying documents.

Failure to timely protest a contract resulting from the solicitation for bids constitutes a waiver of the ability to protest the resulting contract.

- (b) Once the protest has been decided by the Contract Administrator, the Contract Administrator shall promptly issue a decision by electronic communication to the protestor. The decision shall specifically state the reasons for the action taken.
- (c) Additionally, a copy of each decision by the Contract Administrator shall be mailed by certified mail, immediately after a decision is made, to the protestor and all other parties shall receive a copy of each decision by electronic communication.

## **Section III**

### **Post Bid Award Procedures/Performance**

#### 3.0 TERMINATION FOR DEFAULT

If through any cause within the reasonable control of the Contractor/Dealer, it shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, contracts, or stipulations contained in, or contracts resulting from, this solicitation for bids, the NCSA shall thereupon have the right to terminate the services of the Contractor then remaining to be performed by giving written notice to the Contractor.

In that event, the Customer shall compensate the Contractor in accordance with any corresponding agreement for all services performed by the Contractor prior to termination, net of any costs incurred by the Customer as a consequence of the default.

Notwithstanding the above, the Contractor shall not be relieved of liability to the Customer for damages sustained by the Customer by virtue of any breach of the agreement by the Contractor, and the Customer may reasonably withhold payments to the Contractor for the purposes of set off until such time as the exact amount of damages due to the Customer from the Contractor is determined.

All reprourement costs may be charged against the defaulting Contractor. Default by the Contractor may result in immediate removal from the TPP.

#### 3.1 WARRANTY OF AUTHORITY

Each person signing any contract resulting from this solicitation for bids warrants that he or she is duly authorized to do so and to bind the respective party to the contract.

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## 3.2 CANCELLATION

In the event any of the provisions of a contract are violated by the Contractor, the Contract Administrator/customer shall give written notice of the deficiencies to the Contractor giving the Contractor ten (10) business days after receipt of written notice to correct the deficiencies. If the deficiencies are not corrected, the Contract Administrator will immediately cancel the contract.

## 3.3 SEVERABILITY

In the event any provision of a contract resulting from this solicitation for bids is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the contract which shall remain in full force and effect and enforceable in accordance with its terms.

## 3.4 ASSIGNMENT

Neither part shall assign, transfer, convey, sublet, or otherwise dispose of a contract resulting from this solicitation for bids, including any or all of its right, title, or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of the other party hereto.

## 3.5 TERMINATION FOR CONVENIENCE

The NCSA, for its convenience, can terminate a contract between the NCSA and a Contractor, in whole or part, without cause by giving written notice to the Contractor of such termination, which shall become effective 180 days following receipt by the Contractor of such notice.

Contractor, for its convenience, can terminate a contract between the NCSA and Contractor, in whole or in part, without cause by giving written notice to the Contractor of such termination, which shall become effective 180 days following receipt by the NCSA of such notice.

If a contract between a Contractor and the NCSA is cancelled, all documents related in any way to the Bid and any resulting contract must be provided to the NCSA.

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The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of an existing contract, if any. The Contractor shall not be entitled to recover any lost profits that the Contractor expected to earn on the balance of the agreement or cancellation charges.

Any payments to the Contractor shall be only to the total extent of the Customer's liability for goods or services delivered or agreed upon to the effective date of contract termination.

### 3.6 INSURANCE AND INDEMNIFICATION

Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors (in all cases excluding the Contractor's non-owned authorized independent dealers) and shall fully indemnify, defend, and hold harmless the NCSA, the participating agencies, and their officers, agents, and employees from suits, actions, damages, and costs of every name and description, including reasonable legal counsels' fees, to the extent arising from personal injury and damage to real or personal tangible property proximately caused by the negligence or willful misconduct of Contractor, its agents, employees, partners, or subcontractors (in all cases excluding the Contractor's non-owned authorized independent dealers); provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the acts or omissions of the NCSA and participating agencies and their officers, agents, and employees.

The NCSA and any participating agencies will give the Contractor written notice of any legal action or threatened legal action and the opportunity to take over and settle or defend any such action at the Contractor sole expense. Contractor shall not be liable for any cost, expense or compromise incurred by the NCSA, or participating agencies in any legal action without Contractor prior written consent, which shall not be unreasonably withheld. No legal action defended by the Contractor will be settled without the concurrence of the NCSA, which shall not be unreasonably withheld.

The Contractor shall be responsible for his or her work and every part thereof, and for all materials, tools, appliances and property of every description, used in connection with this particular project. He or she shall specifically and distinctly assume, and does so assume, all risks of damage or injury to property or persons used or employed on or in connection with the work and of all damage or injury to

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any person or property wherever located, resulting from any action or operation under the contract or in connection with the work.

The Contractor, at all times during the full duration of work under a contract resulting from this solicitation for bids, including extra work in connection with this project, shall meet the following requirements:

- No material change or cancellation in insurance shall be made without thirty (30) days advance written notice to the Contract Administrator.
- All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina and these companies must have a rating of at least a B+: VI or better per Best's Key Rating Guide, latest edition.
- Certificates of insurance, evidencing such coverages and endorsements as required herein shall be filed with and approved by the Contract Administrator before work is started.
- The certificate must state the Bid number and title. Upon expiration of the required insurance, the Contractor must submit updated certificates of insurance for as long a period as any work is still in progress.
- It is understood and agreed that Contractor may self-insure all insurance obligations contained in Section 3.6.

It is understood and agreed that all policies of insurance provided by the Contractor are considered the primary coverage to any insurance or self-insurance the NCSA possesses that may apply to a loss resulting from the work performed in a contract resulting from this solicitation for bids.

“The Contractor hereby agrees to indemnify and hold harmless the NCSA, a 501(c)(3) corporation, its officers, agents, and employees from all claims for bodily injuries to the public in and up to the amount of \$1,000,000 for each occurrence and for all damages to the property of others in and up to the amount of \$1,000,000 for each occurrence in accordance with the insurance requirement set out on the specifications of solicitations for Bids, to the extent proximately caused by the negligence or willful misconduct of



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Contractor, its agents, employees, partners or subcontractor (in all cases excluding the Contractor's non-owned authorized independent dealers).

The Contractor will obtain and maintain contractual liability insurance in adequate limits (as referred to in NCSA Form 3) for the purpose of protecting the NCSA under the Hold Harmless Agreement from claims arising out of this contractual operation.

Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying of insurance shall not relieve the Contractor and all subcontractors of their liabilities and obligations under any section or provisions of this contract. Contractor shall be as fully responsible to the NCSA and the Customer for the acts and omissions of the subcontractor and of persons employed by them as he/she is for acts and omissions of persons directly employed by him/her.

Insurance coverage required in the specifications shall be in force throughout the contract term. Should any Contractor fail to provide acceptable evidence of current insurance within seven days of receipt of written request at any time during the contract term, the NCSA shall have the right to consider the contract breached and terminate the contract.

It is understood and agreed that the inclusion of more than one insured under these policies shall not restrict the coverage provided by these policies for an additional insured hereunder with respect to a liability claim or suit by another insured hereunder or an employee of such other insured.

### 3.7 WARRANTY OF ABILITY TO PERFORM

The Contractor warrants that, to the best of his or her knowledge, at the time a contract resulting from this solicitation for bids is entered into, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor ability to satisfy its contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the State Debarred Vendors list maintained by the North Carolina Department of Administration Division of Purchase and Contract, or on any similar list maintained by any other state or the federal government. The Contractor/Dealer shall immediately notify the NCSA and the Customer in writing if its ability to perform is compromised in any manner during the term of the contract.

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## 3.8 NON-PERFORMANCE

Contractor shall at all times during the contract term remain responsive and responsible to the Customer and the NCSA. In determining Contractor responsibility as a vendor, the Contract Administrator shall consider all information or evidence which is gathered or comes to the attention of the agency or NCSA which demonstrates the Contractor capability to fully satisfy the requirements of the solicitation and the contract.

In some instances, Contractors may be required to develop corrective action plans to address contract deficiencies.

Failure to abide by corrective action plans will result in the contract being terminated and the Contractor, and Contractor representative being barred from future competitive Bid solicitations.

Examples of conditions that would justify termination include, but are not limited to:

- Egregious breach of contract or trust to either the NCSA or Customer
- failure to perform the responsibilities of the contract
- refusal to accept orders during the contract period while manufacturer orders are still being accepted for current model year and/or the new year if the tire(s) or related service is price protected by the factory
- charging amounts exceeding MSRP
- requiring the purchase of additional options over and above the base tire as a condition of acceptance of order
- providing aftermarket options where factory options are available without the consent of the Customer
- any misrepresentation of optional equipment or service as being “factory” that fails to meet the definition as described in this document
- any other practice deemed to be outside of the intent of the contract

Any Contractor, who is presented with a valid purchase order as a result of a contract resulting from this solicitation for bids, is required and bound to accept such purchase order and deliver the product; regardless of whether the tires or service is at a higher cost than that bid. The Contractor must deliver the tires or service regardless of profit or loss based on their respective Bid. Failure to deliver said tires or service could result in the Customer and the NCSA seeking damages

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for the difference in cost by ordering the product from another Contractor, plus any legal fees and damages that may be incurred in the process to facilitate a completed order.

All terms and conditions are applicable throughout the term of the contract and not any given “year, make or model” period.

*Each report of a lost purchase order will be handled on a case by case basis.*

## 3.9 NON-CONFORMING TIRES

Contractor shall only install tires on the contract that are of an appropriate fitment and for use on that vehicle. Contractor shall only install tires included in this specification and, in the event a purchaser orders a tire which is not in stock at the time a vehicle is present for service, Contractor shall only install a substitute good if such substitute is of a similar quality, size and rating.

## 3.10 EQUITABLE ADJUSTMENT

The Contract Administrator may make an equitable adjustment in the contract terms or pricing at their discretion. Adjustments to pricing may occur for various reasons, such as availability of supply (i.e. material surcharge) and extreme and unforeseen volatility in the marketplace. Adjustments may be considered if all the following criteria exist:

1. The volatility is due to causes wholly beyond the Contractor's control;
2. The volatility affects the marketplace or industry, not just the particular contract source of supply;
3. The effect on pricing or availability of supply is substantial per NCSA's discretion; and
4. The volatility so affects the Contractor that continued performance of the contract would result in a substantial loss for the Contractor

When a Contractor requests an adjustment, including but not limited to price increases, all of the following items must be submitted to the Contract Administrator:

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1. A letter of request for an adjustment from the Contractor, including the specification number and model listed in the contract, along with the requested changes;
2. When requested adjustment is based on production cutoff of a currently listed model, a letter of affirmation from the Contractor;
3. When a requested adjustment includes model changes, Contractor's documentation of items included in the proposed model must be submitted in order to evaluate if the proposed model meets the base specification; and
4. Currently published MSRP listing.

The Customer will be notified by the Contract Administrator of any price adjustment through electronic communication within one (1) business day of receiving this notice from the Contractor. The Customer will have the option to continue with or cancel the purchase order based on the price adjustments.

### 3.11 ORDER, DELIVERY, AND LIQUIDATED DAMAGES

#### A. Order

- 1) Eligible Customers shall issue a purchase order to the Contractor and/or Dealer and such purchase order shall bear the contract or Bid number, the NCSA Customer Code as provided by the Contractor, the specification number, and the Customer's federal identification number and contact information (phone number and email address). The purchase order shall be placed by the Customer directly with the Contractor and/or Dealer, and shall be deemed to incorporate the contract solicitation terms and conditions contained herein. Required delivery or due dates should be discussed between the Customer and the Contractor and/or Dealer at the time the purchase order is made.
- 2) The Customer is required to forward an executed copy of the purchase order to the Contract Administrator (by email, fax or hard copy) at the same time the purchase order is released to the Contractor.
- 3) If a Contractor and/or Dealer receives a purchase order for a specification for which they did not submit a bid, the Contractor must notify the Customer and the Contract Administrator and return the purchase order to the Customer within three (3) business days.

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- 4) The Contractor shall state in the space provided on each Price Sheet, the approximate time required for delivery after receipt of purchase order.

### B. Delivery

- 1) The Warranty Start Date will begin at the time of delivery of the products and acceptance by the Customer.
- 2) All Bids are F.O.B. Destination to the Customer purchasing the tires or related service.
- 3) The Contractor shall notify, through the most efficient means available a Customer's designated representative, as listed on the purchase order, no less than 72 hours prior to delivery of the products. The Contractor is responsible for contacting the Customer to establish all delivery requirements including but not limited to date and time. Deliveries not complying with these requirements may be rejected and will have to be redelivered at Contractor expense. The Customer may choose to pick up the tires at the Contractor's facility or other location previously agreed upon by both Customer and Contractor.

### C. Force Majeure

Liquidated damages shall not be assessed for and it shall not be a breach of the contract for a delay resulting from the Contractor failure to comply with delivery requirements if neither the fault nor the negligence of the Contractor or its employees contributed to the delay and the delay is due directly to acts of God, war, public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor control, or for any of the foregoing that affects subcontractor or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, they shall notify both the Customer and the Contract Administrator in writing of the delay or potential delay and describe the cause of the delay within ten (10) calendar days after the cause that creates or will create the delay first arose. The foregoing shall constitute the Contractor sole remedy or excuse with respect to delay.

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## 3.12 ACCEPTANCE

It is the Customer's responsibility to thoroughly inspect each tire or service prior to acceptance. Customers are to inspect the tires and or related service and compare Bid specifications, purchase order and manufacturer's invoice to ensure tire(s) and or related service meets or exceeds the requirements of the technical Bid specifications and purchase order or work order. Customers are to inspect the tire(s) for physical damage.

Delivery of a tire and/or related equipment to a Customer does not constitute acceptance for the purpose of payment. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the tire(s) and or service meets contract specifications.

## 3.13 INVOICING AND PAYMENTS

Invoicing and payments shall be the responsibility of the Contractor and the Customer placing orders under this TPP. Contractors must invoice each Customer independently from the North Carolina Sheriffs' Association for tire(s) purchased from this TPP.

The Contractor shall be paid upon submission of properly certified invoices to the Customer at the prices stipulated in the TPP at the time of the acceptance of the goods by the Customer. Upon receipt of the goods, a Customer has three (3) working days to inspect and approve the goods and services.

The invoice(s) shall, at a minimum, indicate the following:

Shipping location, purchase order number, contract number, quantity shipped, price, date, make, and model of the tire(s)

Copies of invoices shall be submitted by the Contractor to the North Carolina Sheriffs' Association (NCSA), Attn: Jason Bennett, Contract Administrator, Post Office Box 20049, Raleigh, North Carolina 27619.

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## 3.14 INADEQUATE SERVICE

When equipment requires service or adjustments upon delivery, the Contractor shall either remedy the defect or be responsible for reimbursing others to remedy the defect. Such service or adjustments shall be initiated by the Contractor within forty-eight (48) hours (not including weekends and holidays) after notification by a Customer. Delivery will not be considered complete until all service and/or adjustments are satisfactory and the equipment is redelivered and accepted by the Customer.

The provisions contained herein regarding delivery shall remain in effect until the redelivery is accomplished and the equipment is accepted by the Customer. The cost of any transportation required for redelivery shall be the responsibility of the Contractor.

## 3.15 WARRANTY, REPAIRS AND SERVICE

Failure by any Contractor's authorized representative to render proper warranty service/adjustments, including providing a copy of the warranty work order to the Customer, shall subject that representative and the Contractor to suspension from the approved vendor listing until satisfactory evidence of correction is presented to the Contract Administrator.

## 3.16 MANUFACTURER'S CUSTOMER CODE(S) ASSIGNED TO NCSA

Dealers representing tire manufacturer(s) are required to report sales to the appropriate Contractor's representative based on the "NCSA Customer Code" as provided by the Contractor. Please refer to Section 1.48 - Right to Audit.

ALL agencies purchasing products or services in accordance with the pricing, terms and conditions of this contract are required to reference the Contractor "Customer Code" assigned to the NCSA on documents in order to receive pricing contained in the Price Sheets.

## 3.17 POSTING AND REVISION OF AUTHORIZED PRODUCT AND PRICE LIST

Every Contractor shall maintain a list of the products it is authorized to sell under the contract and provide this list exclusively to the NCSA. The list shall clearly

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indicate the discounted price for each product and the appropriate NCSA Customer Code as provided by the manufacturer and assigned to the NCSA' Bid Award/Contract. On the Ordering Instructions form submitted with the Bid, Bidders shall note the proposed Universal Resource Locator (URL) for this list. Posting of the list in a form easily accessible to the Contract Administrator and Customers shall be a condition precedent to Contractor's right to payment under the Contract. The Contract Administrator, will maintain Contractor's authorized list or provide electronic links to it. Regardless of the number of links to the list, Contractor shall ensure that Customers are able to access one, and only one, version of the authorized list located on the NCSA website. The authorized list shall include, either directly or via electronic link, the following:

Contract number; contact person; part or product numbers and descriptions; ordering information; pricing information, and service/distribution points organized geographically by city. When the Contractor submits information for "Authorized Service Centers/Distributors", he/she must provide the following headings:

Dealer/Distributor Name

Address

City

State

Zip

Phone Number

PS (Place an X in the all columns that the distributor provides)

LT (Place an X in the all columns that the distributor provides)

TB (Place an X in the all columns that the distributor provides)

OR (Place an X in the all columns that the distributor provides)

AG (Place an X in the all columns that the distributor provides)

Contact Name

This spreadsheet will also be provided in an Excel spreadsheet with the Invitation to Bid (ITB). Contractor's initial authorized list shall be identical to the discounted list submitted with the Bid. Contractor shall not accept any orders off it until the Contract Administrator approves the list. Contractor may thereafter amend the list to reflect product line and price changes, subject to the following restrictions:

- For product line changes, a Contractor may amend its list to reflect product developments. Any added product shall be offered at the then-current authorized percentage discount, which shall always be at least as great as the discount offered initially.



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- For price changes, a Contractor shall only decrease, and shall never increase, the prices offered initially. Posted price reductions shall take effect immediately and be applied to unshipped and subsequent orders. CONTRACTORS ARE FREE TO OFFER GREATER DISCOUNTS UNDER THESE TERMS AND CONDITIONS FOR INDIVIDUAL TRANSACTIONS, AND CUSTOMERS ARE ENCOURAGED TO SEEK THEM AND TO EXPLORE WHETHER OTHER CONTRACTORS AUTHORIZED FOR THE PRODUCT GROUP MIGHT OFFER BETTER DISCOUNTS.
- At least five (5) business days before making any changes to the posted authorized list – whether to products, to prices, or otherwise – a Contractor shall notify the Contract Administrator by mail of its intent to make a change and describe the proposed change. The Contract Administrator may, in its sole discretion, prohibit any requested change or direct a Contractor to undo any change already made.
- Changes to the authorized list or to related information (i.e.: ordering information) shall not be deemed Contract amendments.

### 3.18 CONTRACTORS' ACTIVITY REPORTS AND SCHEDULE AND FEE DEPOSIT REQUIREMENTS

Contractor shall furnish the Contract Administrator a detailed “Summary of Total Sales” at the end of each quarterly contract period. The Sales Summary shall include the total dollar amount of purchases and the total number of tires sold by tire category.

Categories for the “Summary of Total Sales” will include the following, if applicable:

Customer Making Purchase

Customer Purchase Order Number, if applicable

Tire Dealer Name

Tire Brand

Type Product (i.e. – Light Truck or Passenger)

Tire Description

Units Sold

Total Dollars

The “Contractor or Vendor User Fee Reports” must be submitted **promptly** at the end of each of the following quarterly contract periods:

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March 1 – May 31

June 1 – August 31

September 1 – November 30

December 1 – February 28

PLEASE SUBMIT YOUR SUMMARY OF TOTAL SALES BY USING THE “CONTRACTOR OR VENDOR USER FEE REPORT” FORM which will be provided to you in ITB packet and is also available on the NCSA website. You will need to maintain an original in order to make the necessary copies needed. All administrative fees shall be payable by the Contractor to the North Carolina Sheriffs' Association no later than 15 business days after the end of each quarter.

**Note:** Should there be no activity during a given quarter, then submit your “VENDOR USER FEE REPORT” form indicating “NO SALES FOR THIS PERIOD”.