



# **North Carolina Sheriffs' Association Heavy Equipment Procurement Program**

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

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## Section I

### Pre-Bid Procedures

#### 1.0 PURPOSE

The North Carolina Sheriffs' Association (NCSA) invites interested vendors, including Dealers/Certified Representatives to submit responses in accordance with these solicitation documents. The NCSA will serve as the "Contract Administrator" in the solicitation process and the administration of the resulting contract. The purpose of this solicitation for Bids is to establish a contract with manufacturer's authorized dealers for the purpose of providing current model year Heavy Equipment on a "no trade-in basis."

**Trade-ins are not addressed in this contract. If a Customer has a desire to offer Heavy Equipment for trade to the dealer, the Customer and dealer or Contractor may do so at their sole discretion, separate and apart from this contract.**

#### 1.1 DEFINITIONS

The following terms are defined as the follows:

- a) Heavy Equipment Procurement Program (HEPP) – A program managed by the NCSA for the purpose of providing public procurement of quality goods to support effective and efficient government ensuring the prudent use of public funds. The primary goals of the HEPP are:
  - Providing efficient delivery of products and services;
  - Obtaining best value through competition;
  - Offering fair and equitable competitive 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 Heavy Equipment Procurement Program.

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- c) Cooperative Bid Coordinator – The NCSA employee who is responsible for the day to day operations of the Heavy Equipment Procurement Program.
- d) Contractor – The Bidder that has been awarded a contract and agrees to sell Heavy Equipment under the requirements, specifications and terms and conditions of this agreement, to eligible Customers, as defined herein.
- e) Customer – An eligible Customer as defined in Section 1.2.
- f) Bid – A competitive Bid procedure initiated through the issuance of a solicitation for Bids. The term “Bid” as used herein, shall not include request for proposals, request for qualifications, request for letters of interest, or the solicitation of purchase orders based on oral or written quotations.
- g) Bid Title – The Bid title consists of the Bid number assigned to each contract term by the NCSA.
- h) Bidder – The entity that submits a Bid and documentation to the NCSA Contract Administrator in accordance with the terms and conditions contained herein.
- i) Draft Bid Package – A list of equipment provided to dealers that contains all Bid-eligible Heavy Equipment makes and models during the existing contract term.
- j) Factory – The manufacturer or assembly line for Heavy Equipment.
- k) Dealer Option – A product or service provided by the dealer or third party but not the factory.
- l) Add Option – A product or service provided by the Heavy Equipment manufacturer.
- m) Fleet Final Order Date – The model year cutoff date by which Heavy Equipment must be ordered as set forth by the manufacturer.
- n) SubContractor or 3<sup>rd</sup> Party – An individual or business that contracts to perform part or the entirety of another individual or business’s contract.
- o) 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 pricer.

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- p) Total Recognized MSRP – Occurs when an NCSA requested option does not exist on the base model of the piece of Heavy Equipment as a free flow option contained in the manufacturer's order guide. This MSRP is generated by the creation of a new model that includes the requested NCSA option content. The Total Recognized MSRP is calculated as the differential between the dealer costs on the representative base piece of equipment versus total MSRP of the requested NCSA option modifying the piece of heavy equipment.
- q) VendorLink – Online bid system the NCSA uses for bid submissions. All bid submissions are required to include a build sheet and option sheet per piece of equipment submitted for bid. Every bidder is also required to submit their procurement documents to the VendorLink system.

## 1.2 ELIGIBLE CUSTOMERS OF HEPP

The HEPP is available to any and all units of local governments/political subdivisions including, but not limited to, county, local county board of public instruction, municipalities, other local public or public safety agencies or authorities, and any private university and college.

The HEPP is available to any and all units of local government/political subdivisions inside and outside the state of North Carolina.

All Customers are bound by their individual governing purchasing ordinances, rules and regulations. All Contractor's and Bidders are governed by their manufacturer's agreement. See also Section 1.4 FUNDING.

## 1.3 TERM OF CONTRACT

If awarded, a contract shall remain in effect until the next official NCSA contract is awarded. A contract may be renewed by mutual agreement between the NCSA and the Contractor, at the sole option and discretion of the NCSA, for up to two additional consecutive years, on a year to year basis.

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

In the event that the NCSA submits a request for a bid submission from interested dealerships the term of each qualified, submitted submission shall remain in effect until the next official contract award has been released by the NCSA.

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In the event that a contract is continued beyond the term provided by mutual consent the contract shall be carried out on a month-to-month basis only and shall not constitute an implied renewal of the contract. Said month to month extension shall be upon the same terms of the contract and at the compensation and payment provided herein.

## 1.4 FUNDING

Funds expended to a Contractor by a Customer pursuant to this contract must be allocated by the individual Customer for each fiscal year included within the contract period. Therefore, the contract shall automatically terminate without penalty if such funds are not allocated.

## 1.5 COMMUNICATIONS

Communications between a Bidder, it's representative(s) and NCSA are limited to matters of process or procedure. Requests for additional information or clarifications must be made in writing to the NCSA Contract Administrator no later than five (5) calendar days prior to the scheduled Bid opening date.

During this solicitation for Bids period, all questions/communication will only be accepted in writing made directly to the NCSA Contract Administrator. All questions and communications, and their associated responses will be posted to the NCSA Procurement website.

The NCSA will issue replies to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the deadline for submitting a Bid.

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 Bid. Bidders should verify with the NCSA Contract Administrator prior to submitting a Bid that all addenda have been received.

## 1.6 REFERENCES

If requested by the NCSA, Bidders shall furnish the names, addresses, and telephone numbers on company letterhead of a minimum of five (5) firms or government organizations for which the Bidder is currently providing or has provided similar services. Two (2) of the references must be government related.

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A Bidder participating for the first time in government fleet sales/Bidding may be considered exempt from this requirement if they can demonstrate to the satisfaction of the NCSA Contract Administrator that they have the appropriate facility, staffing, and financial resources to support the contract should they receive an award. See Section 1.7 Bidder Qualifications.

All references must be received by the NCSA no later than five (5) business days from the deadline to submit electronic Bids.

## 1.7 BIDDER QUALIFICATIONS

In order for VendorLink submissions to be considered, new Bidders to the NCSA's Heavy Equipment Procurement Program must submit with their bid submissions, evidence that they are qualified to satisfactorily perform the specified service. Evidence shall include all information necessary to certify that the Bidder maintains a permanent place of business; is an authorized distributor of the items specified in their proposal; has not had sustained claims filed against the Bidder or the Bidder's firm; and has provided similar type products or services previously. The evidence also will consist of listings of contracts for similar products or services that have been provided to public and private sector clients within the last three (3) years, and letter(s) from the manufacturer that the Bidder is an authorized distributor for the proposed manufacturer. See Section 1.11 Submittal of Bid.

## 1.8 LATE BIDS

At the time, date, and place indicated in the published Bid Calendar, all submitted entries to VendorLink will be reviewed. Any entries received after the time and date specified will be rejected by the NCSA. An electronic Bid is considered received by the NCSA when a Bidder submits their entries within VendorLink. All electronic Bids are final at the date and time specified on the Bid Calendar.

The responsibility for submitting entries before the stated time and date deadline is solely and strictly the responsibility of the Bidder. The NCSA is not responsible for delays caused by any occurrence.

## 1.9 COMPETITIVE FIXED PRICE BIDDING

This competitive process provides multiple sources of supply based on a pre-set maximum price which the Customer will pay. Contracts will be awarded to

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responsive and responsible bidders. Any VendorLink entries received that do not meet solicitation requirements will be considered non-responsive.

All VendorLink submissions will utilize this method of bidding.

## 1.10 NCSA COMMISSION FEES FOR ALL SPECIFICATIONS

Dealers must include a three quarters of one percent (.0075) commission fee in their base Bid prices, and their quotes and pricing for all additional equipment items (options), excluding any state regulated fees including tags. 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 Heavy Equipment or equipment, excluding trade-ins. Trade-ins and other exchanges will not reduce or impact the NCSA Commission fee calculation. No other commission fee(s) will be applicable to any transaction relative to the contract.

## 1.11 SUBMITTAL OF BID

Each Bidder is responsible for ensuring that his or her VendorLink entry(s) and all required bid documents is submitted before the deadline outlined in the Bid Calendar. Late Bids will not be considered. If an electronic Bid is not submitted by the date and time specified on the Bid Calendar, the Bid is rejected. See Section 1.8 Late Bids.

## 1.12 BID OPENING AND ELECTRONIC POSTING OF NOTICE OF INTENDED AWARD

All VendorLink entries will be opened at the date, time, and place indicated in the Bid Calendar and will be evaluated thereafter. Although entries and corresponding prices will not be read aloud, Bidders may attend, but it is not a requirement.

The NCSA Cooperative Bid Coordinator will electronically post the initial Bid tabulation results.

If the posting of the initial NCSA Heavy Equipment Lot Sheet is delayed, the NCSA Cooperative Bid Coordinator will post a notice of the delay through VendorLink and will give a revised date for posting.

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## 1.13 BID EVALUATION CRITERIA

Eligible responsive entries will be evaluated to determine if all contract Bid requirements are met. VendorLink entries 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.

A Bidder must have the necessary facilities, personnel, and expertise, and must be prepared, if requested by the NCSA Contract Administrator, to present evidence of such experience.

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

Bidders, whose Bids, past performance, or current status do not 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 NCSA Contract Administrator will give consideration to the nature and number of complaints received from Customers regarding a previously awarded dealer. The NCSA Contract Administrator may use discretion in determining which entries meet the contract requirements of this solicitation, and which respondents are responsive and responsible.

**The NCSA Contract Administrator may use discretion in accepting or rejecting any and all entries, or separable portions thereof, in whole or in part; and/or make or limit awards either as individual items or as a total combined Bid; and to waive any minor irregularities, technicalities, or omissions if determined that doing so will serve the best interest of the Customer irrespective of the lowest Bid. The NCSA Contract Administrator may reject any responses not submitted in the manner specified by solicitation documents.**

## 1.14 BASIS FOR AWARD

Bidders who routinely demonstrate deficiencies in providing satisfactory customer service per the NCSA's discretion during a contract period prior to the issuance of this Bid, may have their Bid rejected in this Bid cycle. In cases where



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the manufacturer is at fault, the dealer must provide evidence of timely communication to the complainant and to the NCSA.

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

Bidders must offer percentage discounts for equipment and options. The percentage discount amount on options may be different from the percentage discount on equipment in the same group, but must meet the required minimum discount described herein.

All bids submitted via Fixed Price Bidding will be made to all responsive and responsible bidders. Awards may be made to more than one bidder. When only one response is received, the notice of Intent to Award and the delay of award may be waived.

## 1.15 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.

## 1.16 TAX EXEMPTIONS FOR NCSA

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

## 1.17 FACILITIES

The NCSA Contract Administrator reserves the right to periodically request additional or updated information from a dealer regarding the repair/warranty facility during the solicitation for Bids period and the term of any awarded contract.

## 1.18 SPECIFICATIONS (BUILD SHEETS)

All Heavy Equipment listed in the NCSA Heavy Equipment Specifications list shall be the manufacturer's current basic production model, and shall, as a minimum, be equipped with ALL standard factory equipment in accordance with

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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 be required to submit a specification, option sheet, and pricing on the models listed in each designated specification or designated group. A minimum 6% discount off the base price and options is also required.

Model upgrades and/or downgrades are eligible for purchasing off of the NCSA Heavy Equipment Procurement Program. These model upgrades and/or downgrades must be listed in the option sheet uploaded by the Bidder during the bid period. The percent discount offered off the list price of the base unit will be the same discount offered off the base price of the model upgrade and/or downgrade.

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

All current contract year heavy equipment specifications can be found on the NCSA Heavy Equipment Bid Award Announcement.

## 1.19 FACTORY ORDERED OPTIONS

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

## 1.20 FEDERAL AND STATE HEAVY EQUIPMENT MANUFACTURING STANDARDS

In addition to the equipment set out by the specifications listed in the NCSA Price Sheet, Heavy Equipment shall be equipped with all standard equipment as specified by the manufacturer for this model. All Heavy Equipment offered to satisfy this solicitation for Bids must comply with all Environmental Protection Agency emission standards, federal safety standards as established by the US Department of Transportation, National Highway Transportation Safety Administration.

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## 1.21 EXECUTION OF BID

Required bid documents must contain a manual signature of the dealer principal and an authorized representative when applicable in the space provided on the Solicitation for Bids and Contract Terms and Conditions Signature Page. Failure to properly sign and submit the Solicitation for Bids and Contract Terms and Conditions Signature Page will invalidate the Bidder's submission and it shall NOT be considered for award. All Bid forms must be completed in pen and ink or typewritten.

Heavy Equipment specifications CANNOT be changed or altered in any way. Altered Bids will not be considered after the allowed time period closes for VendorLink entries. If a clarification of the submitted Bid is required, the request for clarification shall be in letter form, signed by the Bidder(s) and attached to the Bid.

## 1.22 MISTAKES

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

## 1.23 CONDITION AND PACKAGING

Any item offered or shipped as a result of a Bid award shall be the latest, new, and current model offered (most current production model at the time of this Bid). All shipping containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

## 1.24 INTERPRETATIONS

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

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## 1.25 BID OPENING

All VendorLink entries shall be opened and read on the date, time and place specified on the Bid Calendar, although prices will not be read aloud. No entries will be accepted after that date and time.

## 1.26 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.

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

## 1.28 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.

## 1.29 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

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review any document or participate in any NCSA-sponsored proceeding, please contact Jason Bennett, NCSA Director of Business Development, at 919-459-8195 or [jbennett@ncsheriffs.net](mailto:jbennett@ncsheriffs.net).

## 1.30 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.

## 1.31 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.

## 1.32 FACILITIES

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

## 1.33 REQUESTS FOR CLARIFICATION AND ADDENDA TO BID SPECIFICATIONS

In case of doubt as to the meaning or intent of any items contained in the specifications, inquiry should be made to the NCSA Contract Administrator five (5) calendar days via e-mail. Telephone clarifications will not be accepted, and no clarifications will be accepted after the date listed in the Bid Calendar. ALL requests for clarification from Bidders and NCSA responses will be posted on VendorLink by the date listed on the Bid Calendar.

The submission of a VendorLink entry presumes the Bidder thoroughly understands the terms and the specifications.

If any person contemplating submission of a VendorLink entry 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 NCSA at least five (5) 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 questions or clarifications concerning this Solicitation for Bids and Contract Terms and Conditions shall be submitted in writing by mail or facsimile to the NCSA, Business Development, 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.

Any interpretations will be made only by Addendum issued by the NCSA Contract Administrator. All addendums will be posted on the NCSA website.

There are two types of addendums, informal addendums and formal addendums. Informal addendums are issued to provide minor clarification or minimal changes to the Bid. An example of an informal addendum would be making a grammatical change to the Solicitation for Bids and Terms and Conditions. A formal addendum will be issued when substantive changes are made to the specifications or Bid process that will impact the technical submission of the Bids. An example of a formal addendum would be when a model is deleted from the specifications. In the event of conflict with the original contract documents, the addendum shall govern all other contract documents that relate to that issue. Subsequent addendums shall govern prior addendums on the same issue.

All Bidders will be required to acknowledge any formal addendums by signing in the space provided on the formal addendum and including the signed acknowledgement along with the Bidder's Bid package. Failure to acknowledge receipt of addendum by a Bidder will deem its 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.

## 1.34 DEMONSTRATION OF COMPETENCY

Pre-award inspection of the Bidder's facility may be made prior to the award of contract. Bids will only be considered from firms which are regularly engaged in the business of providing the goods and/ or services as described in this Bid.

Bidders 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 if awarded a contract 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.

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The NCSA may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a Bidder, including past performance (experience) with the NCSA in making the award in the best interest of the NCSA.

The NCSA may require Bidders to show proof that they have been designated as authorized representatives of a manufacturer or supplier which is the actual source of supply. In these instances, the NCSA may also require information from the source of supply regarding the quality, packaging, and characteristics of the products to be supplied to the NCSA through the designated representative. Any conflicts between this information provided by the source of supply and the information obtained in the Bidder's Bid which is contrary to or would alter a specification may render the Bid non-responsive.

## 1.35 DETERMINATION OF AWARD

VendorLink- Multiple awards will be made however awards will only be made to the most responsible and responsive bidder(s) for each manufacturer's product line offered.

In determining the best Bidder, in addition to price, the following criteria will also be considered:

- The ability, capacity, and skill of the Bidder to perform the Contract
- Whether the Bidder can perform the Contract within the time specified, without delay or interference
- The character, integrity, reputation, judgment, experience and efficiency of the Bidder
- The quality of performance of previous contracts
- The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract

## 1.36 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.

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## 1.37 ELIMINATION FROM CONSIDERATION

A contract shall not be awarded or disclosed to any person or bidder 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.

## 1.38 WAIVER OF INFORMALITIES

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

## 1.39 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.

Bids from Related Parties – Where two (2) or more related parties each submit a Bid for any contract, such Bid 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 for a minimum of one contract 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 may be terminated for default.

Dealerships and their representatives may submit multiple Bids without conflict of collusion as long as the Bid submitted is not from the same manufacturer and product line.

## 1.40 GRATUITIES

Bidders shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the NCSA.



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## 1.41 SIGNED BID CONSIDERED AN OFFER

The signed contract between the NCSA and the Contractor shall be considered an offer on the part of the Bidder, which offer shall be deemed accepted upon approval and award 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 Bidder or Contractor responsible for any excess cost occasioned or incurred thereby.

## 1.42 DELIVERY TIME

Each contractor will provide the customer with the most accurate timeline for delivery. It is incumbent on the contractor to provide the customer the estimated date for delivery at the issuance of the initial purchase order.

## 1.43 RIGHT TO AUDIT

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

The NCSA, and its authorized representatives, shall have the right to audit, examine, and make copies of, or extracts from, all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract or agreement. Similarly, all government sales and potential eligible Customers' information will be available for review and kept by or under the control of the Bidder and Contractor, including, but not limited to, records kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. The records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.); all paid vouchers including those for out of pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; memoranda; and correspondence.

The Contractor, shall, at all times during the term of a contract and for a period of three (3) years after the completion of a contract, maintain the above referenced records, together with supporting or underlying documents and materials. The

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Contractor shall at any time during the three (3) year period, whether during or after completion of this contract, and at Contractor'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 three day written notice) during normal business hours.

NCSA, at its option, may select the Bidder's and Contractor's office or place of business or an offsite location for the audit. The NCSA may also allow the Bidder and Contractor to provide financial records, together with the supporting or underlying documents and records, via email or telephone for audit at a time and location that is convenient for the NCSA.

The Bidder and Contractor shall ensure the NCSA has this same right of access to information with Bidder's and Contractor's employees, agents, assigns, successors, and subcontractors. The obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Bidder and Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Bidder's and Contractor's obligation to the NCSA.

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 identifies underreporting, overpricing, or overcharging (of any nature) by the Bidder and Contractor to the Customer in excess of three (3%) of the total contract billings, the Bidder and Contractor shall reimburse the NCSA for the total costs of the audit not to exceed \$5,000. 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 Bidder and Contractor.

Any adjustments and /or payments that must be made as a result of any such audit or inspection of the Bidder's and Contractor'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 Bidder and Contractor.

## 1.44 MODIFICATION/WITHDRAWALS OF BIDS

A Bidder may submit a modified VendorLink entry to replace all or any portion of a previously submitted Price Sheet up until the due date and time when the Bid period closes for Bids. No modifications will be accepted after the Bid due date

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and time. No modified entry submitted after the Bid due date and time of the paper Bid will be considered.

Bids shall be irrevocable after three (3) business days from the date and time of the Bid due date when the Bid period closes. Bids cannot be modified after the Bid period closes, but can be withdrawn in writing within three (3) business days after the Bid period closes. After the expiration of the three (3) day period, all entries are final. If a contract is not awarded within 120 days from the opening of the VendorLink entry, any Bidder may withdraw their entry.

Letters of withdrawal received outside of the timeframe listed above will not be considered.

The Bidder warrants by virtue of Bidding the quoted prices in their entry response, that the prices will be good throughout the Bidding and contract award period.

## 1.45 EXCEPTIONS TO BID

Should a proposed VendorLink entry not be able to 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 NCSA Cooperative Bid Coordinator's Office 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 and/or Price Sheets.

## 1.46 METHOD OF AWARD

The NCSA reserves the right to make multiple awards if deemed in the best interest of the NCSA. See Section 1.14 Basis for Award (specific to Heavy Equipment).

## 1.47 AMENDMENTS TO SOLICITATION DOCUMENTS

The Contract Administrator retains the right to issue amendments to the Solicitation for Bids as appropriate and necessary. Notice of any amendment will be posted on the NCSA website. Bidders are responsible for monitoring the NCSA website for new or updated information concerning the Bid.

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## 1.48 AMENDMENTS TO CONTRACTS

The Contract Administrator retains the right to add or delete any items from a VendorLink entry or resulting contract(s) when deemed to be in the best interest of the NCSA and the participating eligible Customers.

## 1.49 SPECIFICATION (BUILD SHEETS) AND GROUPS EXCEPTIONS, OMISSIONS OR ERRORS

Specifications and groups 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.

Bidders are required to indicate in their VendorLink entries those options which require additional equipment or model upgrade to obtain the original option. Bidder must also identify those options that are available as a part of a package or group. The factory codes listed in the "Prices" section of the Special Conditions must be used.

Failure of a Bidder to comply with these provisions will result in Bidders being held responsible for all cost required to bring the Heavy 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 has the adequate facilities and personnel to fulfill such requirements.
- Accepts the financial responsibility associated with this Bid, and declares that he or she has the access to capital (in the form of liquidity or credit lines) in order to meet the financial demands of such award. In assessing financial responsibility, Contractor shall consider items such as the specifications Bid, and the quantity of specifications Bid, as well as timing of payment from Customers, which can be 45 days from receipt of invoice.

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

## **Section II**

### **Post Bid Award Procedures**

#### 2.0 AUTHORITY TO RESOLVE PROTESTED BIDS AND PROPOSED AWARDS

(a) Right to Protest – Any Bidder who is aggrieved in connection with the solicitation for Bids or contract award 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 Bid specifications, requirements, and/or terms must be made within five (5) business days (for the purpose of this section “business day” means a day other than Saturday, Sunday, or a national holiday) prior to the Bid period opening for Bids. 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 Bid specifications, requirements, and/or terms is a waiver of the ability to protest the specifications, requirements, and/or terms.

The protest will be submitted to the Contract Administrator for consideration. The Contract Administrator will consider and rule on the protest. The opening of the Bid period for Bids will not be delayed, absent extraordinary circumstances, due to the protest. The determination of the Contract Administrator is final and binding.

- (2) Protests challenging the award of the contract must be made in writing within two (2) business days following the release of the Bid Award Announcement. This award protest will be submitted to the Contract Administrator or his or her designee. All Bidders will be notified in writing (which will be transmitted by electronic communication and through VendorLink) of any protests following the release of the Bid Award Announcement.

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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 Bid Award protest will be immediately forwarded, with all supporting documentation, to the Contract Administrator. The decision of the Contract Administrator will be based solely on the written protest and all accompanying documents. The Bid Award execution of the contract will not be delayed by the consideration of the Contract Administrator.

- (b) Decision and Appeal Procedures – The decision shall specifically state the reasons for the action taken and inform the protestor of his or her right to challenge the decision by electronic communication promptly after the decision is made.
- (c) Distribution – A copy of each decision by the Contract Administrator shall be mailed by certified mail, immediately after a decision is made, to the protestor.
- (d) Stay of Procurements During Protest – In the event of a timely protest under this section, the Contract Administrator shall not proceed further with the award pursuant to such Bid unless a written determination is made by the Contract Administrator that the award must be made without delay in order to protect the HEPP.
- (e) Once the bid award protest has been resolved by the Contract Administrator, the Cooperative Bid Coordinator shall promptly issue a decision by electronic communication. The decision shall specifically state the reasons for the action taken.

## 2.1 TERMINATION FOR DEFAULT

If through any cause within the reasonable control of the Contractor, it shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, contracts, or stipulations material to the agreement, the NCSA shall thereupon have the right to terminate the services then remaining to be performed by giving written notice as to the successful Bidder of the written termination notice.

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In that event, the Customer shall compensate the Contractor in accordance with the agreement for all services performed by the Bidder 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 successful Bidder is determined.

All reprocurement cost may be charged against the defaulting Contractor and may result in immediate removal from the HEPP.

## 2.2 WARRANTY OF AUTHORITY

Each person signing the contract warrants that he or she is duly authorized to do so and to bind the respective party to the contract.

## 2.3 PRICES SHALL BE FIXED AND FIRM FOR TERM OF CONTRACT

If the successful Bidder is awarded a contract under this Bid Solicitation, the prices quoted by the successful Bidder on the Bid forms shall remain fixed and firm during the term of the contract unless determined by the Contract Administrator that a change in the price is in the best interest of the HEPP. If the contracted price is increased during a contract year, the price cannot be changed again during the same contract year unless otherwise approved by the Contract Administrator.

For a price increase request, the contractor must provide reasonable documentation for the price increase request. The contractor must also submit a listing of the current price of the equipment and the proposed increased price, as a percentage, of the same piece of equipment. The price increase request template provided by the NCSA must be completed and submitted by all contractors requesting a price increase. Additionally, the contractor must also provide letter(s) from suppliers announcing the price increase. Only after these documents have been sufficiently received by the Contract Administrator will the request for a price increase be considered. All price increase requests will be handled on a per request basis and any approved price increases will be made known to the requesting contractor by electronic mail.



## **Section III**

### **Post Award Performance**

#### 3.0 DISPUTES

In case of any doubt or difference of opinion as to the items to be furnished hereunder, the matter will be referred to the Contract Administrator and his/her decision shall be final and binding on both parties.

In the event of a conflict between the Bid documents, the order of priority of the Bid documents shall be as follows: Any agreement resulting from the award of this Bid (if applicable); then Addenda released for this Bid with the latest Addendum taking precedence; then the Bid; then the Awardee's Bid.

#### 3.1 CANCELLATION

In the event any of the provisions of a contract are violated by the Contractor, the Contract Administrator 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.

#### 3.2 SEVERABILITY

In the event any provision of this contract 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.

#### 3.3 ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract, including any or all of its right, title, or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the NCSA.

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## 3.4 TERMINATION FOR CONVENIENCE OF THE NCSA

The NCSA, for its convenience, can terminate a contract, 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.

If a contract is cancelled, all documents related in any way to the Bid and/or any Price Sheet entry will be provided to the NCSA. All Heavy Equipment and materials shall be disposed of by agreement between Contractor and Customer.

The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the 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 prior to the date of notice to terminate the contract.

## 3.5 INSURANCE AND INDEMNIFICATION

Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors 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 legal counsels' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Bidder, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the NCSA, and participating agencies.

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's 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's prior written consent, which shall not be unreasonably withheld.

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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 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 this contract, including extra work in connection with this project, shall meet the following requirements:

- Maintain automobile liability insurance including property damage covering all owned, non-owned, or hired automobiles and equipment used in connection with the work.
- No 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.
- Original signed 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 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 this contract.

All policies issued to cover the insurance requirements herein shall provide full coverage from the first dollar of exposure. No deductibles will be allowed in any policies issued on this contract unless specific

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safeguards have been established to assure an adequate fund for payment of deductibles by the insured. The adequacy of the fund must be approved by the NCSA's Contract Administrator.

The liability insurance coverage shall extend to and include the following contractual indemnity and hold harmless agreement:

“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 per occurrence and for all damages to the property of others in and up to the amount of \$1,000,000 per occurrence in accordance with the insurance requirement set out in the specifications of solicitations for Bids. This agreement includes costs of investigation, all expenses of litigation, including reasonable legal counsel fees and the cost of appeals arising out of any such claims or suits because of any and all acts of omission or commission of any by the Contractor, his agents, servants, or employees, or through the mere existence of the project under contract.”

The foregoing indemnity agreement shall apply to any and all claims and suits other than claims and suits arising out of the sole and exclusive negligence of the NCSA, its officers, agents, and employees, as determined by a court of competent jurisdiction.

The Contractor will notify his or her insurance agent without delay of the existence of the Hold Harmless Agreement contained within, and furnish a copy of the Hold Harmless Agreement to the insurance agent or carrier.

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

The Contractor will secure and maintain garage, commercial general liability and automobile liability policies of subcontractors. All policies shall be made available to the NCSA upon demand. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying of insurance and furnishing copies of the insurance policies 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

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and omissions of the subcontractor and of persons employed by them as he is for acts and omissions of persons directly employed by him.

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 and that with respect to claims against any insured hereunder, additional insured's hereunder shall be considered members of the public.

## 3.6 WARRANTY OF ABILITY TO PERFORM

The Contractor warrants that, to the best of his or her knowledge, at the time the contract is awarded 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's 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 Division of Price and Contract, or on any similar list maintained by any other state or the federal government. The Contractor 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.

## 3.7 NON-CONFORMANCE TO CONTRACT CONDITIONS

Items may be tested for compliance with the specifications. Item(s) delivered that do not conform to the specifications may be rejected and returned at Contractor's expense. Any items not delivered as per the delivery date in the Bid and/or purchase order may be priced on the open market by the Customer. Any increase in cost may be charged against the Contractor.

Any violation of these provisions may also result in the Contractor's name being removed from the NCSA list of vendors who are allowed to Bid on upcoming contracts.

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## 3.8 OPTION TO RENEW WITH PRICE ADJUSTMENT

Any contract may be extended for an additional two (2) years, on a year to year basis, if mutually agreed by both parties. NCSA is not required to accept a price adjustment for the upcoming year. Any allowable adjustment in price would be effective for the next contractual period not for the current period.

Prior to completion of each contract term, the NCSA may consider an adjustment to price.

It is the Contractor's responsibility to request any pricing adjustment. For any adjustment to commence on the first day of any option period, the Contractor's request for adjustment should be submitted 60 days prior to expiration of the then current contract term.

The Contractor adjustment request must clearly substantiate the requested increase. If no adjustment request is received from the Contractor within the 60 day period, the NCSA will assume that the vendor has agreed that the optional term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new option period will not be considered.

The NCSA reserves the right to accept the renewal adjustment or to allow the contract to terminate and readvertise for new Lot Sheet entries, whichever is in the best interest of the NCSA.

## 3.9 NON-PERFORMANCE

Contractor shall at all times during the contract term remain responsive and responsible to the Customer and the NCSA. In determining Contractor's responsibility as a vendor, the Contract Administrator shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Contractor's 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. In situations where there is evidence the Contractor, fleet sales manager or other representative has demonstrated egregious breaches of the contract or trust to either the NCSA or the Customer, the contract will be terminated, and the dealer and their representative will be removed from future solicitations for a period up to three (3) years. An egregious

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breach of contract would be defined as one that would materially change the specifications of the contract or prevent the contracted Heavy Equipments/equipment from being delivered to the Customer in a timely manner.

Failure to abide by corrective action plans will result in the contract being terminated and the Contractor, and Contractor's representative being barred from future competitive Bid solicitations at the discretion of the Contract Administrator.

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

- 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 Heavy Equipment is price protected by the factory
- charging amounts exceeding MSRP on factory installed items and packages
- requiring the price of additional options over and above the base Heavy Equipment 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 Bid award for a contract, is required and bound to accept such purchase order and deliver the product; regardless of whether the Heavy Equipment is a base model or includes options at a higher cost. The Contractor must deliver this Heavy Equipment regardless of profit or loss based on their respective entry. Failure to deliver said Heavy Equipments or equipment could result in the Customer and the NCSA seeking damages 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.*



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## 3.10 FACTORY INSTALLED

In the event a component(s) that does not meet the specifications is found to be installed on a Heavy Equipment before or after the Heavy Equipment has been accepted by the Customer, the Contractor shall be required to replace the Heavy Equipment with a Heavy Equipment that meets the required specifications, including all factory installed components. In the alternative, the Customer shall decide whether they will accept dealer installed components at the time of issuing the purchase order.

## 3.11 EQUITABLE ADJUSTMENT

The Contract Administrator may make an equitable adjustment in the contract terms or pricing at his/her 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.
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, the following items must be submitted to the Contract Administrator:

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 manufacturer
3. When a requested adjustment includes model changes, manufacturer's documentation of items included in the proposed model must be submitted in order to evaluate if the proposed model meets the base specification
4. Currently published MSRP listing



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

## 3.12 PRE-DELIVERY SERVICES

To assure proper pre-delivery service, the Contractor shall provide, at time of delivery, a completed copy of the manufacturer's standard retail sale pre-delivery inspection form.

## 3.13 ORDER, DELIVERY, AND LIQUIDATED DAMAGES

### A) Order

- 1) Eligible Customers shall issue a purchase order (PO) to the Contractor, and such purchase order shall bear the contract or Bid number, specification number, Customer's federal identification number and contact information (phone number and email address). The PO shall be placed by the Customer directly with the Contractor, and shall incorporate by reference the contract solicitation terms and conditions. Required delivery or due dates should be discussed between the Customer and the Contractor at the time of the PO. It is important to note that Contractors do not have ANY control over production delays in schedules from the manufacturer.
- 2) The Customer is required to forward an executed copy of the purchase order to the Cooperative Bid Coordinator (by email, fax, or hard copy) at the time the purchase order is released to the Contractor.
- 3) If a Contractor receives a PO for a specification for which they were not awarded, the Contractor must notify the Customer and the Contract Administrator and return the purchase order to the Customer within three (3) business days.
- 4) All Heavy Equipment ordered prior to the manufacturer's close of production shall be supplied in the manufacturer's next model run

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of that class piece of heavy equipment even it is requires supplying a later model at the original Bid price.

- 5) The Contractor shall place a PO with their manufacturer within ten (10) business days after receipt of PO from the Customer. The Contractor shall assure that all orders are placed in full compliance with the specifications and purchase order.
- 6) It is the Contractor's responsibility to ensure that the Heavy Equipment ordered by the Customer is fully compatible with all ordered options and that the Heavy Equipment complies with all applicable manufacturer and industry standards. The Contractor's acceptance of a Customer's purchase order will indicate that the Contractor agrees to deliver a piece of heavy equipment that will be fully compatible with all of its options.
- 7) Any changes that are required to bring a piece of Heavy Equipment into compliance with its various options due to an incorrect order placed by the Contractor will be accomplished at the Contractor's expense.

### B. Delivery

- 1) Receipt of a piece of Heavy Equipment by the Contractor is defined as acceptance of the Heavy Equipment(s) from a common carrier at the Contractor's place of business or any third party's place of business agreed upon by the Contractor and the manufacturer.
- 2) The Contractor shall complete delivery of the Heavy Equipment to the Customer as soon as practical after receipt of the Heavy Equipment from the manufacturer. Heavy Equipment originating as incomplete Heavy Equipment would be exempt.
- 3) All fees must be included in the base price and prices shall be firm. Delivery is F.O.B. Destination, delivered to the Customer. 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.

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- 4) Warranty Start Date – All warranties shall begin at the time of delivery and final acceptance by the Customer. If the Customer needs to reset the warranty start date because of an extended delivery date, the request to reset the warranty must be made in writing to the Contractor. Incomplete Heavy Equipment delivered to an upfitter would not qualify for a revised start date unless the Heavy Equipment is in the control of the dealer during the upfit.
- 5) The Contractor shall notify a Customer's designated representative, as listed on the PO, no less than 24 hours prior to delivery. Deliveries will be accepted only between 8:00am – 3:30pm on Customer's normal work days. Transport deliveries must be unloaded and ready for inspection prior to 3:00pm. Deliveries not complying with these requirements may be rejected and will have to be redelivered at Contractor's expense.
- 6) All Heavy Equipment must contain no less than  $\frac{1}{4}$  tank of fuel (if applicable) as indicated by the fuel gauge at time of delivery, except for Heavy Equipments and equipment with tanks over thirty five (35) gallons in capacity, in which case the Heavy Equipment must contain a minimum of ten (10) gallons of fuel.
- 7) The Contractor shall be responsible for delivering Heavy Equipment that are properly serviced, clean, and in perfect operating condition. Pre-delivery service, at a minimum, shall include the following:
  - Standard dealer and manufacturer protocol for new Heavy Equipment delivery;
  - Cleaning of Heavy Equipment, if necessary, and removal of all unnecessary tags, stickers, papers, etc. Do not remove window price sticker or supplied line sheet;
  - Speedometer must be correct regardless of the tires provided by the Heavy Equipment manufacturer or axle ratio furnished;
  - Owner's manual and warranty manual must accompany each piece of Heavy Equipment;
  - All specified options that are "factory installed" are to be installed on the Heavy Equipment at the primary site of assembly and are to be the manufacturer's standard assembly-line product. No aftermarket and no dealer

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installed equipment will be accepted as “factory installed.” Vendors found supplying aftermarket or dealer installed equipment where “factory installed” are specified may be required to retrieve all Heavy Equipment delivered and reorder new Heavy Equipment meeting the specifications.

- Manufacturer’s suggested retail price list sheet (window sticker) form MUST be in the Heavy Equipment when it is delivered to the purchasing agency. Heavy Equipment that are missing this form, or have forms that have been altered, will not be accepted.

### C. Liquidated Damages

- 1) Force Majeure – Liquidated damages shall not be assessed for a delay resulting from the Contractor’s 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, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor’s control, or for any of the foregoing that subcontractors 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 the Customer in writing of the delay or potential delay and describe the cause of the delay either 1) within ten (10) days after the cause that creates or will create the delay first arose, if the vendor could reasonably foresee that a delay could occur as a result, or 2) if delay is not reasonably foreseeable, within five (5) days after the date the vendor first had reason to believe that a delay could result. The foregoing shall constitute the Contractor’s sole remedy or excuse with respect to delay.

### 3.14 HEAVY EQUIPMENT TRUCK INSPECTION, ACCEPTANCE, AND TITLE

Inspection and acceptance of all Heavy Equipment will be at the Customer’s place of business unless otherwise provided. Title to and risk of loss or damage to all items shall be the responsibility of the Contractor until acceptance by the Customer unless loss or damage results from negligence by the Customer.

If the materials or services supplied to the Customer are found to be defective or do not conform to specifications, the Customer reserves the right to cancel the

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order upon written notice to the Contractor. The Customer may return the product to the Contractor at the Contractor's expense.

## 3.15 ACCEPTANCE

It is the Customer's responsibility to thoroughly inspect the Heavy Equipment prior to acceptance. Copies of the Bid specifications and PO for the Heavy Equipment will be delivered with the Heavy Equipment. Customers are to inspect the Heavy Equipment and compare Bid specifications, PO and manufacturer's invoice to ensure the Heavy Equipment meets or exceeds the requirements of the technical Bid specifications and PO. Prices are to inspect the Heavy Equipment for physical damage upon delivery.

Delivery of Heavy 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 Heavy Equipment meets contract specifications and the requirements listed below.

Should the delivered Heavy Equipment differ in any respect from the specifications, payment may be withheld, depending on the severity of the error, by the Customer until such time as the Contractor completes the necessary corrective action. Heavy Equipment and equipment shall be delivered with each of the following documents completed/included:

- a. copy of "Customer's PO"
- b. copy of the applicable "Heavy Equipment specification"
- c. copy of "manufacturer's invoice." Prices may be deleted from manufacturer's invoice.
- d. copy of "pre-delivery service report"
- e. "warranty certification"
- f. owner's manual
- g. North Carolina Division of Motor Heavy Equipment Title Application Form – MRV-1 (for signature of authorized representative).
- h. North Carolina State Inspection

Deliveries that do not include the above forms and publications will be considered as incomplete and will be refused.

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## 3.16 INVOICING AND PAYMENTS

Invoicing and payments shall be the responsibility of the Contractor and the Customer placing orders under this HEPP. Contractors must invoice each Customer independently from the NCSA for Heavy Equipment priced from this HEPP.

The Contractor shall be paid upon submission of properly certified invoices to the Customer at the prices stipulated in the HEPP 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, PO number, contract number, quantity shipped, price, date, make, model, and serial number of Heavy Equipment(s)

Copies of invoices shall be submitted to the NCSA, Post Office Box 20049, Raleigh, North Carolina 27619.

## 3.17 INADEQUATE SERVICE

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

The provisions of the delivery paragraph (Section 3.13B) shall remain in effect until the redelivery is accomplished and the equipment is accepted by the Customer. The cost of any transportation required shall be the responsibility of the Contractor.

## 3.18 WARRANTY, REPAIRS AND SERVICE

Failure by any manufacturer'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

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suspension from the approved vendor listing until satisfactory evidence of correction is presented to the Contract Administrator.

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

Copies of purchase orders from Customers that are to be sent to the NCSA:

- Are due upon receipt by the dealer. They are considered late after 10 (ten) business days.
- Scan a complete copy of the PO and forward by email to kmitman@ncsheriffs.net.
- Place the following in the subject line – PO (dealer's name)  
Commission Fees to NCSA:
- Reports setting out Heavy Equipment and equipment transactions and corresponding commission fees are due quarterly no later than the 10<sup>th</sup> of each month (following the end of the quarter) and should be sent by email to kmitman@ncsheriffs.net.
- All awarded Contractors MUST file a signed and dated quarterly report with their commission fees. Should there be no activity during a given quarter, the Contractor is required to submit a report, and must indicate "no sales this quarter" on the report.
- No copies of POs are required to be filed with the quarterly report. They should already be on file.
- The report must be complete with the name of the dealer and the date. It is not necessary to indicate the quarter on the top of the report.
- All checks or EFTs for the commission fee must be received by the NCSA no later than the 15<sup>th</sup> of each month following the closing of the quarter. Any delays in sending the commission fees should be approved by the Contract Administrator.
- Reports which do not adhere to the required format and/or not supported by complete, legible copies of all POs in their entirety will be returned to the reporting dealership for correction of cited deficiencies.

By submission of these Quarterly Activity Reports and corresponding fee deposits, the Contractor is certifying the accuracy of such reports and deposits. All reports and fee deposits shall be subject to audit by the NCSA or their designee. Copies of Customer's original purchase orders will be used by the NCSA as a check and balance measure.



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**Contractors that fail to submit fees and Quarterly Activity Reports will incur a \$25 per day late fee for every day that fees and reports are past due, beginning on the sixteenth (16<sup>th</sup>) day of the month following the end of the quarter.**

Such late fees are to be included in Contractor's fee submission. Late fees which are outstanding more than 45 days can result in a Bidder's disqualification in the following year's solicitation.

All notices for quarterly reports will be sent by the NCSA via email ten (10) business days prior to their due date – there will be no additional faxed or email reminders for Contractors to submit quarterly reports. All participating Contractors will be responsible for making sure that the Contract Administrator has the correct email address for the person responsible for all quarterly reports. This information must be submitted to Kaylyn Mitman at [kmitman@ncsheriffs.net](mailto:kmitman@ncsheriffs.net).

Failure to submit fees with accompanying quarterly reports to the NCSA within 30 calendar days following the end of each quarter will result in the Contractor being found in default. A Contractor can be found in default if the Contractor fails to submit their sales summary reports even when there are no reported sales.

### 3.20 DEALER/CONTRACTOR INSTALLED EQUIPMENT

All Contractors' installed accessories shall be installed according to the manufacturer's specifications.

All Contractor installed accessories must be manufactured by a manufacturer recognized by the industry of the accessory provided, unless the accessory is not available from a recognized manufacturer. The dealer is required to disclose the "make/model" of the product being offered and the location, design, and model must be approved by the Customer prior to installation. The dealer must also disclose the warranty of any item that is less than or exceeds factory Heavy Equipment factory warranty coverage.

An awarded Contractor that employs or subcontracts technicians to install equipment on Heavy Equipment priced on this contract are required to utilize technicians that are certified in Heavy Equipment Installation through an approved agency.



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The Contract Administrator may at any time during the contract period request proof of the required certification.

Any awarded Contractor that violates this provision will be considered in default of the contract. The contract may then be terminated upon a ten day written notice of said violation.