Virginia Sheriffs' Association
Heavy Equipment Procurement Program

Invitation for Bids

901 East Byrd Street – Suite 1301
Richmond, Virginia 23219
Main Number – (804) 225-7152
Facsimile – (804) 225-7162

Contact:

Jason Bennett
Director of Business Development
919-459-8195
jbennett@virginiasheriffs.org

Kaylyn Mitman
Cooperative Bid Coordinator
919-459-6471
kmitman@virginiasheriffs.org

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Section I

Pre-Bid Procedures

1.0 EXPLANATION OF PROGRAM

- Every year the Virginia Sheriffs' Association (VSA) will solicit participation from vetted heavy equipment dealers and manufacturers to participate in the association's Heavy Equipment Procurement Program.
- Every year the VSA will provide public bodies within the Commonwealth of Virginia and other states a comprehensive Lot Sheet made up of heavy equipment specifications.
- The contract award documents will be placed on the VSA's website and consist of heavy equipment items that have been submitted by heavy equipment dealers and manufacturers. Each piece of heavy equipment listed within the contract award documents will include competitively bid prices to include a negotiated discount on all options for each piece of listed heavy equipment.
- Public bodies may use the VSA's contract award documents to fulfill their local procurement regulations by meeting or exceeding the requirement of having to go out to bid on pieces of heavy equipment.
- If a Public Body requires a new piece of heavy equipment and it is included on the VSA's Heavy Equipment Procurement Program, the Public Body is advised to contact the heavy equipment contractor on the VSA program to initiate the buying process and the submittal of a PO.

The PO represents a contractual arrangement between the Contractor and the Public Body. There is no contractual arrangement between the VSA and the Public Body.

1.1 PURPOSE

The Virginia Sheriffs' Association (VSA) invites interested vendors, including Dealers to submit responses in accordance with these solicitation documents. The VSA 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 providing current model year Heavy Equipment on a "no trade-in basis."

Trade-ins are not addressed in this Contract. If a Public Body has a desire to offer Heavy Equipment for trade to the contractor, the Public Body and contractor may do so at their discretion, separate and apart from this Contract.

Bidders agree that upon submission of a Bid they are a party to the Terms and Conditions in this IFB. There is no contractual relationship between the VSA and bidders.

1.2 DEFINITIONS

The following terms are defined as the follows:

a) Add Option – A product or service provided by the Heavy Equipment manufacturer.

b) 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 POs based on oral or written quotations.

c) Bid Title – The Bid title consists of the Bid number assigned to each Contract term by the VSA.

d) Bidder – The entity that submits a Bid and documentation to the VSA Contract Administrator in accordance with the terms and conditions contained herein.

e) Commonwealth – Commonwealth of Virginia.

f) Contract – The Terms and Conditions of the Invitation for Bids in which a bidder must sign and abide by.

g) Contract Administrator – A VSA representative who is responsible for the procurement process and the administering of the resulting Contracts for the HEPP.

j) 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.

k) Cooperative Bid Coordinator – A Virginia Sheriffs' Association

representative who is responsible for the day to day operations of the HEPP.

l) Customer – An eligible Customer as defined in Section 1.3.

m) Dealer Option – A product or service provided by the dealer or third party but not the factory.

n) Factory – The manufacturer or assembly line for Heavy Equipment.

o) Fleet Final Order Date – The model year cutoff date by which Heavy Equipment must be ordered as set forth by the manufacturer.

p) Heavy Equipment - Heavy equipment. Examples include, but are not limited to: refuse chassis, refuse bodies, lawn mowers, earth movers, dump bodies, light towers, and generators.

q) Heavy Equipment Procurement Program (HEPP) – A program managed by the VSA for 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.

r) IFB- Invitation for bids. Also referred to as the VSA Terms and Conditions.

s) 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 buyer.

t) Price List – Also referred to as a "Lot Sheet," is a VSA authorized alternative to a submitted bid for VSA determined Heavy Equipment specifications. A Price List consists of the following required information: list price of base unit, the bidder's percentage discount on Heavy Equipment, percentage discount on attachments and accessories, and percentage discount on all pieces of Heavy Equipment within each pre-established lot.

u) PO – purchase order.

v) Public Body - means any legislative, executive or judicial body, agency,

office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this Invitation for Bids. "Public Body" shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia. Credit – Virginia Public Procurement Act, § 2.2-4300.

w) Specifications – Detailed information provided by the dealer/manufacturer describing the base model of Heavy Equipment.

x) Subcontractor or 3rd Party – An individual or business that contracts with a Contractor to perform part or the entirety of the fulfillment of a Contractor's purchase order.

y) Total Recognized MSRP – Occurs when a VSA 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 VSA option content. The Total Recognized MSRP is calculated as the differential between the bidder costs on the representative base piece of Heavy Equipment versus total MSRP of the requested VSA option modifying the piece of Heavy Equipment.

z) VendorLink – Online bid system used to submit all bids and required bid documents.

1.3 COOPERATIVE PROCUREMENT

This procurement program is being conducted by the VSA in accordance with the provisions of the Code of Virginia, Section 2.2-4304, as amended, except as modified in this Contract or a PO. If agreed to by the Contractor, public bodies may utilize this Contract. The Contractor shall deal directly with any Public Body it authorizes to use the Contract. The VSA, its officials, and staff are not responsible for placement of orders, invoicing, payments, contractual disputes, or any other transactions between the Contractor and any other public bodies, and in no event shall the VSA, its officials or staff be responsible for any costs, damages, or injury resulting to any party from the Contract or a PO.

The VSA assumes no responsibility for any notification of the availability of the Contract for use by other public bodies, but the Contractor may conduct such

notification.

1.4 ELIGIBLE CUSTOMERS OF HEPP

The HEPP is available to any and all public bodies in the Commonwealth and other states where Cooperative Purchasing is approved by their state's procurement guidelines.

All Customers are bound by their individual governing purchasing ordinances, rules and regulations. All Contractor/dealers are governed by their manufacturer's agreement. See also Section 1.5 Funding.

1.5 TERM OF CONTRACT

The Contract shall remain in effect until the next official Contract is published. A Contract may be renewed by mutual agreement between the VSA and the Contractor, at the sole option and discretion of the VSA, 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 VSA and the Customers.

If the VSA submits a request for Bids from interested dealerships, the term of each qualified, submitted Bid shall remain in effect until the next official contract award has been released by the VSA.

If 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.

Any approved price increases must be in accordance with §3.8 of this Invitation for Bids.

1.6 FUNDING

The continuation of the terms, conditions, and provisions of a resulting PO submitted by a Public Body beyond June 30 of any year, the end of the Public Body's fiscal year, are subject to approval and ratification by the governing body of the Public Body and appropriations by them of the necessary money to fund the PO for each succeeding year. In the event of non-appropriation of funds, the PO

shall be automatically terminated with no recourse for the Contractor.

1.7 COMMUNICATIONS

Communications between a Bidder, its representative(s) and the VSA are limited to matters of process or procedure. Requests for additional information or clarifications must be made through electronic communication to the VSA Contract Administrator no later than ten (10) calendar days prior to the scheduled bid opening date; all electronic communication must be sent to **jbennett@virginiasheriffs.org**.

During this Invitation for Bids period, all questions/communication will only be accepted through electronic communication directly to the VSA Contract Administrator. All electronic communication should be addressed to **jbennett@virginiasheriffs.org**.

The VSA 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 Invitation for Bids or in any written addendum to this IFB. Bidders should verify with the VSA Contract Administrator prior to submitting a bid that all addenda have been received.

1.8 CONTRACTOR'S AUTHORIZATION TO TRANSACT BUSINESS

A. The VSA shall include in every written Contract a provision that a Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Refer to The Virginia State Corporation Commission Registration Information Form.

B. Any Bidder described in subsection A that fails to provide the required information shall not participate in the HEPP unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the chief executive of a local Public Body.

C. Any business entity described in subsection A that enters into a Contract with a

Public Body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so, required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract.

D. The VSA may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section

Credit – Virginia Public Procurement Act §2.2-4311.2

1.9 REFERENCES

Bidders shall furnish the names, addresses, and telephone numbers on company letterhead of a minimum of five (5) private firms or government organizations for which the Contractor is currently providing or has provided similar services. Two (2) of the references must be government related. 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 VSA Contract Administrator that they have the appropriate experience, facilities, staffing, and financial resources to support the Contract should they receive an entry on the published Lot Sheet. See Section 1.9 Bidder Qualifications.

1.10 BIDDER QUALIFICATIONS

For Bids to be considered, new Bidders to the HEPP must submit with its Bid, 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 its 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 1.17

1.11 LATE BIDS

At the time, date, and place indicated in the published Bid Calendar, the Bids will be opened. Any Bids received after the time and date specified will be rejected by the VSA. An electronic Bid is considered received by the VSA when the Cooperative Bid Coordinator acknowledges the submission within VendorLink. All

electronic Bids are final at the date and time outlined on the official calendar. Any bid or required bid documents submitted outside of VendorLink will be rejected.

The responsibility for submitting a Bid before the stated time and date deadline is solely and strictly the responsibility of the Bidder. The VSA is not responsible for delays caused by Internet outages, disruption of internet services, or any other occurrence.

1.12 DRUG FREE WORKPLACE

This provision only applies to Contracts valued in excess of $10,000:

During the performance of this Contract, the Contractor agrees to:

(i) provide a drug-free workplace for the Contractor's employees;

(ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and

(iv) include the provisions of the foregoing clauses in every subcontract or PO of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, ''drug-free workplace'' means a site for the performance of work done in connection with a Contract in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.
Credit – Virginia Public Procurement Act - § 2.2-4312

1.13 EMPLOYMENT DISCRIMINATION

This provision only applies to Contracts valued in excess of $10,000.

1. During the performance of the Contract, the Contractor agrees as follows:

   a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting the requirements of this section.

2. The Contractor shall include the provisions of the foregoing paragraphs a., b., and c. in every subcontract or PO of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

1.14 COMPLIANCE

1) All public bodies shall provide in every written Contract that the Contractor does not, and shall not during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

2) Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

A. All public bodies shall include in every written Contract a provision that a Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all

public bodies shall include in the solicitation a provision that requires a Bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the Bidder is not required to be so authorized.

C. Any business entity described in subsection A that enters into a Contract with a Public Body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract.

D. A Public Body may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

1.15 COMPETITIVE FIXED PRICE BIDDING

This competitive process provides multiple sources of supply based on a pre-set maximum price which the Public Body will pay. Contracts will be made to all responsive and responsible Bidders. Any offers received that do not meet solicitation requirements will be considered non-responsive.

All VendorLink submissions will utilize this method of bidding.

1.16 VSA COMMISSION FEES FOR ALL VENDORLINK SUBMISSIONS

Bidders must include a three quarters of one percent (.0075) commission fee in its base Bid prices, and its quotes and pricing for all additional Heavy 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, excluding trade-ins. All fees are to be included on the quarterly report submitted to the VSA the quarter after the Heavy Equipment has been delivered. The VSA will review the report and invoice the Contractor for the total amount owed to the VSA. Trade-ins and other exchanges will not reduce or impact the fee calculation. No other commission fee(s) will be applicable to any transaction relative to the Contract.

1.17 SUBMITTAL OF BID

Bidders are to submit all required bid items within VendorLink.

Bid prices are to be rounded down to the nearest dollar.

Each Bidder is responsible for ensuring that their VendorLink entry(s) and all required bid documents are 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 1.11 Late Bids

1.18 BID OPENING AND ELECTRONIC POSTING OF NOTICE OF INTENDED AWARD

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

The VSA Cooperative Bid Coordinator will electronically post the Bid tabulation results on VendorLink according to the time table outlined in the Bid Calendar.

If the posting of the initial Bid tabulation results is delayed, the VSA Cooperative Bid Coordinator will post a notice of the delay on VendorLink and will give a revised date for posting of results.

1.19 RESPONSIVENESS TO THE REQUIREMENTS OF THE IFB

Eligible responsive 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.

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

The VSA 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 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 the sole discretion of the VSA. In determining past performance, the VSA Contract Administrator will give consideration to the nature and number of complaints received from Customers regarding a previously awarded bidder. The VSA Contract Administrator may use discretion in determining which Bids meet the Contract requirements of this solicitation, and which respondents are responsive and responsible.

The VSA Contract Administrator may use discretion in accepting or rejecting any and all Bids, or separable portions thereof, in whole or in part; and/or make or limit VendorLink entries 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 public bodies of the Commonwealth of Virginia irrespective of the lowest Bid. The VSA Contract Administrator may reject any responses not submitted in the manner specified by solicitation documents.

1.20 BASIS FOR AWARD

The VSA Contract Administrator will award a Contract to all responsible and responsive Bidders by group and by manufacturer. The Contract will be determined by qualifications based on a bidder's facilities and financial resources, and demonstrated ability to perform the work in a satisfactory manner.

Contractors who routinely demonstrate deficiencies in providing satisfactory customer service per the VSA's discretion during a Contract period prior to the issuance of this Bid, may have its Bid rejected in this Bid cycle. In cases where the manufacturer is at fault, the Contractor must provide evidence of timely communication to the complainant and to the VSA.

Bidders are hereby advised that the VSA 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 a minimum 6% discount off MSRP for all base prices and options. The percentage discount amount on the base price and options may be different from the percentage discount on Heavy 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 Bidder(s). VendorLink entries may be made to more than one Bidder. When only one entry is received, the notice of Intent to Award and the delay of the group may be waived.

1.21 TAX EXEMPTIONS FOR CUSTOMERS

All state and federal tax exemptions applicable to the units of public bodies of the Commonwealth will apply. It is the Customer's responsibility to comply with any federal, state, and local tax requirements.

1.22 TAX EXEMPTIONS FOR VSA

The VSA is a 501(c)(6) organization and exempt from all Federal Excise Taxes. The association's tax id number is 54-1020904.

1.23 FACILITIES

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

1.24 SPECIFICATIONS

All Heavy Equipment shall be the manufacturer's current basic production model, and shall, at a minimum, be equipped with ALL standard factory Heavy Equipment in accordance with the manufacturer's latest specification. 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 Bid 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 VSA Heavy Equipment Procurement Program. 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 its intended use and service.

1.25 FACTORY ORDERED OPTIONS

All factory ordered options are to be "original Heavy 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.

1.26 FEDERAL AND STATE HEAVY EQUIPMENT MANUFACTURING STANDARDS

In addition to the Heavy Equipment set out by the Lots, Heavy Equipment shall be equipped with all standard Heavy 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 and federal safety standards as established by the US Department of Transportation, National Highway Transportation Safety Administration.

1.27 EXECUTION OF BID

The Bid must contain a manual signature of the dealer principal and an authorized representative when applicable in the space provided on the Specifications and Bid Form. Failure to properly sign and submit the Specifications and Bid Form 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 VendorLink submissions CANNOT be changed or altered in any way. Altered Bids will not be considered after the program closes for Bids, please refer to the program's calendar. 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.

1.28 MISTAKES

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

1.29 CONDITION AND PACKAGING

Any item offered or shipped as a result of a VendorLink entry 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.

1.30 INTERPRETATIONS

Unless otherwise stated in the Bid, any questions concerning conditions and Lots should be submitted to Contract Administrator, Jason Bennett at **jbennett@virginiasheriffs.org**.

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 Commonwealth of Virginia. 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 the Circuit Court for the City of Richmond, Virginia.

1.32 PATENTS AND ROYALTIES

The Bidder, without exception, shall indemnify and hold harmless the VSA and its officers, members, employees and representatives from liability of any nature or kind, including costs, expenses, and reasonable attorney's fees, 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 VSA.

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 costs arising from the use of such design, device, or materials in any way involved in the work.

1.33 PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a Bidder or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 of the VPPA shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the Bidder, or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

Credit – Virginia Public Procurement Act §2.2-4342F

1.34 ANTI-DISCRIMINATION

ANTI-DISCRIMINATION: Discrimination prohibited; participation of small, women owned, minority-owned, and service disabled veteran-owned business and employment services organization is encouraged.

A. In the solicitation or awarding of Contracts, the VSA shall not discriminate against a Bidder because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the VSA shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to the VPPA or, where applicable, by the chief executive of a local governing body pursuant to §15.2-965.1 of the VPPA and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward a Contractor's small business, women-owned, and minority-owned business Contracting and subcontracting goals. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In awarding a Contract for services to a small, women owned, or minority owned

business that is certified in accordance with § 2.2-1606 of the VPPA, or to a business identified by a Public Body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the Public Body shall include in every such Contract of more than $10,000 the following:

''If the Contractor intends to subcontract work as part of its performance under this Contract, the Contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.''

E. In the solicitation or awarding of Contracts, no state agency, department or institution shall discriminate against a Bidder because the Bidder employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific Contract is not in its best interest.

F. As used in this section: "Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

''Minority individual'' means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. ''African American'' means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. ''Asian American'' means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. ''Hispanic American'' means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. ‘‘Native American’’ means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

‘‘Minority-owned business’’ means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604 of the VPPA, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

‘‘Service disabled veteran’’ means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs. ‘‘Service disabled veteran business’’ means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

‘‘Small business’’ means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

‘‘State agency’’ means any authority, board, department, instrumentality, institution, agency, or other unit of state government. ‘‘State agency’’ shall not include any county, city, or town.

‘‘Women-owned business’’ means a business that is at least 51 percent owned by

one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

Credit – Virginia Public Procurement Act §2.2-4310

1.35 PERMITTED CONTRACTS WITH CERTAIN RELIGIOUS ORGANIZATIONS; PURPOSE; LIMITATIONS

The VSA does not discriminate against faith-based organizations.

1.36 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 VSA-sponsored proceeding, please contact Jason Bennett, VSA Contract Administrator, at **jbennett@virginiasheriffs.org**.

1.37 MINORITY BUSINESS ENTERPRISE (MBE)

The VSA 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.

1.38 QUALITY

All materials used for the manufacture or construction of any supplies or Heavy 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 VSA discretion.

1.39 FACILITIES

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

1.40 REQUESTS FOR CLARIFICATION AND ADDENDA TO VENDORLINK

In case of doubt as to the meaning or intent of any items contained in the VendorLink submissions, inquiry should be made to the VSA 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 VSA responses will be posted on the VSA website by the date listed on the Bid Calendar.

The submission of a Bid presumes the Bidder thoroughly understands the terms and all VendorLink submissions.

If any person contemplating submission of a Bid under this Solicitation for Bids is in doubt as to the meaning of VendorLink or other Bid documents or any part thereof, the Bidder must submit to the VSA 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.

Any questions or clarifications concerning this Solicitation for Bids and Contract Terms and Conditions shall be submitted by email to **jbennett@virginiasheriffs.org** with the Bid Title referenced on all correspondence.

Any interpretations will be made only by Addendum issued by the Contract Administrator. All addendums will be posted on the VSA 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 any VendorLink submission 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 VendorLink. 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 VSA may waive this requirement in its best interest. The VSA will not be responsible for any other explanation or interpretation made verbally or in writing by any other VSA representative.

1.41 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 VSA's discretion, and have sufficient financial support, Heavy Equipment and organization to ensure they can adequately execute the services if awarded a Contract under the terms and conditions herein stated.

The terms "Heavy 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 VSA.

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

The VSA 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 VSA may also require information from the source of supply regarding the quality, packaging, and characteristics of the products to be supplied to the VSA 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 Lot Sheet submission may render the Bid non-responsive.

If the VSA determines, at any point in the Bid publication process, that the successful Bidder no longer possesses the financial support, Heavy Equipment and organization necessary to comply with the demonstration of competency section, the VSA may disqualify the Bidder(s) from participating in the HEPP.

1.42 DETERMINATION OF AWARD – RESPONSIBLE AND RESPONSIVE BIDDER

Multiple awards will be made; however, awards will only be made to 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

1.43 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.

1.44 ELIMINATION FROM CONSIDERATION

A Contract shall not be awarded to any person or bidder who is in arrears to the VSA for any debt, or taxes, or Contracts which are defaulted as surety or otherwise upon any obligation to the VSA.

1.45 WAIVER OF INFORMALITIES

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

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

1.47 GRATUITIES

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

1.48 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 and award by the VSA. In case of default on the part of the Contractor after the acceptance of the Bidder's offer, the VSA may procure the items or services from other sources and hold the Bidder or Contractor responsible for any excess cost occasioned or incurred thereby.

1.49 DELIVERY TIME

Bidders shall specify on the attached Bid Form, the estimated delivery time for each item.

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 PO.

1.50 RIGHT TO AUDIT

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

The VSA, 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 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, always during the term of a Contract and for a period of five (5) years after the completion of a Contract, maintain the above referenced records, together with supporting or underlying documents and materials. The 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 VSA when requested. The records shall be made available to the VSA (subject to a three-day written notice) during normal business hours.

VSA, at its option, may select the Contractor's office or place of business or an offsite location for the audit. The VSA may also allow the 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 VSA.

The Contractor shall ensure the VSA has this same right of access to information with 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 Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligation to the VSA.

The costs of any audits conducted under the authority of this right to audit, if not addressed elsewhere, will be borne by the VSA unless certain exemption criteria set forth below are met. If the audit identifies underreporting, overpricing, or overcharging (of any nature) by the Contractor to the Customer in excess of three (3%) of the total received PO billings, the Contractor shall reimburse the VSA 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 VSA may recoup all of the costs of the audit work from the Contractor. Payment must be

made to the VSA within five (5) business days.

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

1.51 MODIFICATION/WITHDRAWALS OF BIDS

A Bidder may submit a modified Bid to replace all or any portion of a previously submitted Bid up until the due date and time specified on the official VSA bid calendar. No modified Bid 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. After the expiration of the three (3) day period, all Bids are final. If a Contract is not awarded within 120 days from the opening of the Bids, any Bidder may withdraw its Bid.

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 its Bid response, that the prices will be good throughout the Bidding and Contract award period.

1.52 EXCEPTIONS TO BID

Should a proposed Bid 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 VSA Cooperative Bid Coordinator's Office via email at least five (5) days prior to the deadline for submission of Bids. The VSA reserves the right to revise the scope of services via addendum prior to the deadline for receipt of Bids.

1.53 METHOD OF AWARD

Award of this Contract will be made to each responsible and responsive Bidder. The VSA reserves the right to make multiple awards if deemed in the best interest of the VSA. See Section 1.20 Basis for Award (specific to Heavy Equipment).

1.54 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 VSA website. Bidders are responsible for monitoring the VSA website for new or updated information concerning the Bid.

1.55 AMENDMENTS TO CONTRACTS

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

1.56 VENDORLINK EXCEPTIONS, OMISSIONS OR ERRORS

VendorLink submissions are based on the most current manufacturer literature available. Bidders should immediately notify via email the Contract Administrator of any defects in the VendorLink submission 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 submissions those options which require additional Heavy 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 costs required to bring the piece of Heavy Equipment into compliance with the original VendorLink submission.

1.57 FINANCIAL RESPONSIBILITY

The Bidder affirms by its 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 all Lot Sheet submissions, and the quantity of Lot Sheet submissions bid, as well as timing of payment from Customers, which can be 45 days from receipt of invoice.

- 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.

The VSA does not give any warranty to this Heavy Equipment.

Section II

Post Bid Award Procedures

2.0 PROTEST OF AWARD

In accordance with the Virginia Public Procurement Act § 2.2 – 4360, all protests will be handled in accordance with the VPPA and should be addressed to the following address or via email to **jbennett@virginiasheriffs.org**:

Heavy Equipment Procurement Program
Contract Administrator
Post Office Box 20049
Raleigh, North Carolina 27619

2.1 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 its designee. Protests will be evaluated and resolved under the process set forth below:

(1) Any protest concerning VendorLink, 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 VendorLink submission being due to the VSA. Such protest must be made in writing to the Contract Administrator, or its 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 VendorLink submissions, requirements, and/or terms is a waiver of the ability to protest the award, 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 acceptance of VendorLink entries 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 bid award announcement. This award protest will be submitted to the Contract Administrator or its designee. All Bidders will be notified in writing (which will be transmitted by electronic communication and through the VSA website) of any protests following the release of the bid award announcement.

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 its 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.

2.2 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 VSA 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.

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.

2.3 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.

2.4 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 the 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 VSA.

3.4 TERMINATION FOR CONVENIENCE OF THE VSA

The VSA, 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 award will be provided to the VSA. 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 VSA, the participating agencies, and its 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 grossly negligent act of the VSA, and participating agencies.

The VSA and any participating agencies will give the Bidder 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 VSA, or participating agencies in any legal action without Contractor's prior written consent, which shall not be unreasonably withheld.

The Contractor shall be responsible for its 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 a resulting PO 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 liability insurance including property damage covering all owned, non-owned, or hired Heavy 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 Commonwealth of Virginia 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 VSA 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 in excess of twenty-five thousand dollars ($25,000) will be allowed in any policies issued on this Contract unless specific 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 VSA'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 VSA, a 501(c)(6) corporation, its officers, agents, members, and employees from all claims for bodily injuries to the public in and up to the amount of $1,000,000 for 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 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 gross negligence of the VSA, its officers, agents, and employees, as determined by a court of competent jurisdiction.

The Contractor will notify its 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 for the sole purpose of protecting the VSA 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 when applicable. All policies shall be made available to the VSA 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 its liabilities and obligations under any section or provisions of this Contract. Contractor shall be as fully responsible to the VSA and the Customer for the acts 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 Invitation for Bids shall be in force throughout the Contract term. Should any Contractor fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written request at any time during the Contract term, the VSA 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 its 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 Virginia 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 VSA 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 VendorLink submissions. Item(s) delivered that do not conform to the specific VendorLink submission may be rejected and returned at Contractor's expense. Any items not delivered as per the delivery date in the Bid and/or PO 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 VSA list of vendors who are allowed to Bid on upcoming Contracts.

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. VSA 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.

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 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 VSA 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 VSA reserves the right to accept the renewal adjustment or to allow the Contract to terminate and readvertise for Bids, whichever is in the best interest of the VSA.

3.9 NON-PERFORMANCE

Contractor shall at all times during the Contract term remain responsive and responsible to the Customer and the VSA. 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 Public Body 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 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 VSA or the Customer, the Contract will be terminated, and the Contractor and its representative will be removed from future solicitations for a period up to three (3) years. An egregious breach of Contract would be defined as one that would materially change the Lot Sheet submission of the Contract or prevent the ordered Heavy 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
- requiring the price of additional options over and above the base Heavy Equipment item 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 Heavy Equipment or service as being "factory" that fails to meet the definition as described in this document
- any other practice deemed by the VSA to be outside of the intent of the Contract

Any Contractor, who is presented with a valid PO as a result of a VendorLink entry, is required and bound to accept such PO 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 its respective Bid. Failure to deliver said Heavy Equipment could result in the Customer and the VSA 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 PO will be handled on a case by case basis.

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 item before or after the Heavy Equipment has been accepted by the Customer, the Contractor shall be required to replace the purchased item with an item that meets the required specifications, including all factory installed components. In the alternative, the Customer shall decide whether they will accept Contractor installed components at the time of issuing the PO.

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 VSA'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 group 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

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 PO 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 PO to the Contractor, and such PO shall bear the Contract or Bid number, group, 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 PO to the Cooperative Bid Coordinator (by email, fax, or hard copy) at the time the PO is released to the Contractor. If sending by email, all POs must be sent to **kmitman@virginiasheriffs.org**.

3) If a Contractor receives a PO for a piece of equipment for which they did not submit a VendorLink entry, the Contractor must notify the Customer and the Contract Administrator and return the PO to the Customer within three (3) business days.

4) All Heavy Equipment items ordered prior to the manufacturer's close of production shall be supplied in the manufacturer's next model run of that class piece of Heavy Equipment even it is requires supplying a later model at the original Bid prices.

5) The Contractor shall place a PO with its 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 VendorLink and the PO.

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 PO 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 Heavy Equipment and warranties.

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 Contractor 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 ¼ tank of fuel (if applicable) as indicated by the fuel gauge at time of delivery, except for Heavy 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.

C. Liquidated Damages

1) Forced 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 alternates 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 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 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 specification 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 Heavy 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. Virginia Division of Motor Heavy Equipment Title Application Form – MRV-1 (for signature of authorized representative), if applicable
h. Virginia State Inspection, if applicable

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

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 VSA 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) business days to inspect and approve the Heavy Equipment.

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

Shipping location, PO number, VSA HEPP number, quantity shipped, price, date, make, model, and serial number of Heavy Equipment(s)

Copies of invoices shall be submitted to the VSA via email to **kmitman@virginiasheriffs.org**.

3.17 INADEQUATE SERVICE

When Heavy Equipment requires service or adjustments upon delivery, the Contractor shall either remedy the defect, or be responsible for reimbursing the manufacturer's local authorized Contractor, 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 Heavy 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 Heavy 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 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 POs from Customers that are to be sent to the VSA:

- Are due upon receipt by the Contractor. They are considered late after 10 (ten) business days.
- The VSA holds the right to implement fines in the amount of $50.00 per offense on the late issuance of purchase orders. Contractors who have 3 consecutive offenses of not submitting a copy of the purchase order to the VSA, once it had been submitted by the purchasing agency, will be fined for

every following late occurrence for the duration of the active contract. Fines will be included on the quarterly report invoice.

- Scan a complete copy of the PO and forward by email to kmitman@virginiasheriffs.org
- Place the following in the subject line – PO (Contractor's name) Commission Fees to VSA:
- Reports setting out Heavy Equipment and Heavy Equipment transactions and corresponding commission fees are due quarterly no later than the 10th of each month (following the end of the quarter) and should be sent by email to kmitman@virginiasheriffs.org.
- All awarded Contractors MUST file a signed and dated quarterly report with its 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 Contractor 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 VSA no later than the 15th 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 its entirety will be returned to the reporting Contractor 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 VSA or its designee. Copies of Customer's original POs will be used by the VSA as a check and balance measure.

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 (16th) day of the month following the end of the quarter. Contractors who have to be reminded more than 2 times to submit the Quarterly Activity Report will be fined. All fines will be included on the invoice provided by the VSA during the Quarterly Report review period.

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 VSA via email ten (10) business days prior to its 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@virginiasheriffs.org.

Failure to submit fees with accompanying quarterly reports to the VSA 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 its sales summary reports even when there are no reported sales.

3.20 CONTRACTOR INSTALLED HEAVY EQUIPMENT

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

All Contractor installed options must be manufactured by a manufacturer recognized by the industry of the option provided unless the option is not available from a recognized manufacturer. The Contractor 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 Contractor 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 Heavy Equipment on Heavy Equipment priced on this Contract are required to utilize technicians that are certified in Heavy Equipment Installation through an approved agency.

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.