

**FAUQUIER COUNTY GOVERNMENT
PROCUREMENT DIVISION**

320 Hospital Drive Ste. 23
Warrenton, Virginia 20186

Phone: (540) 422-8354

Fax: (540) 422-8355

NOTICE OF CONTRACT RIDER

DATE: September 30, 2024

COMMODITY NAME: Heavy Equipment-Compactor

CONTRACT NUMBER: 25-020-C-R (Riding Va. Sheriffs Association IFB 24-05-0713R)

CONTRACT PERIOD: September 30, 2024, through August 14, 2025

RENEWAL OPTIONS: Two (2), one-year renewal options

CONTRACTOR: Mid Atlantic Waste Systems
VN: **636734** 7700 Old Alexandria Ferry Road
Clinton, MD. 20735
Attn: Dennis Velez
PH: 301-856-6840
Dvelez@mswaste.com

TERMS: Net 45 days

FOR FURTHER INFORMATION CONTACTS Scott Bargas, Procurement Officer III
PH (540) 422-8354
scott.bargas@fauquiercounty.gov

NOTICE TO ALL FAUQUIER COUNTY GOVERNMENT USING DEPARTMENTS: This contract is the result of a competitive bid program, and its use must follow the FCG Procurement Policy/Procedures for the purchase of the commodity listed herein. Please see the reverse side of this notice for further instructions regarding this contract.

INSTRUCTIONS

1. Orders: All FCG Using Departments must order services listed by issuing FCG Purchase Orders per FCG Procurement Procedures Manual. An extra copy of the Procedures Manual can be obtained by calling Procurement at (540) 422-8351 or 8352.
2. The applicable contract number, vendor number, estimated total dollar amount (can be done as a “Not to exceed” estimated figure), contact person with phone number, and billing/delivery address must be shown on each purchase order for Finance & Contractor use.
3. Inspection of services provided, and approval of contractor’s invoice is the responsibility of the receiving using department.
4. Any complaint as to quality of service, faulty or delinquent delivery, or violation of contract provisions by contractor shall be reported to FCG Procurement for handling with the Contractor. All complaints must be submitted in writing and can be forwarded to Procurement via email, fax or courier.
5. Renewals: As stated on the face of this notice, two (2) one-year renewals exist on this contract. The decision as to whether to exercise the renewal option will be made by the Contract Officer, with input requested from FCG Using Departments, before the expiration of the current term, but after Loudoun County has exercised their renewal option.
6. Pricing: See attached. (*Riding Va. Sheriffs Association IFB 24-05-0713R*)

FAUQUIER COUNTY GOVERNMENT
a political subdivision of the Commonwealth of Virginia

Contract # 25-020-C-R

Riding Va. Sheriffs Association Contract (IFB 24-05-0713R) Mid Atlantic Waste Systems

This Agreement is made and entered into this 30 day of **September 2024**, by the Fauquier County Government, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as "Owner") and **Mid Atlantic Waste Systems**, having its principal place of business at **7700 Old Alexandria Ferry Road, Clinton, MD 20735**, hereinafter referred to as "**Contractor**".

WITNESSETH that the Contractor and the Owner, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide Heavy Equipment-Compactor

COMPENSATION: The Owner will pay, and the Contractor will accept in full consideration for the performance during the contract term "pricing as negotiated and attached".

CONTRACT PERIOD: Date of execution, through August 14, 2025, with the option to renew for 2 1-year renewals, at the mutual agreement of both parties.

The contract documents shall consist of **and for the purpose of resolving ambiguity or conflicts shall be interpreted in the following order of priority:**

- (1) This signed form;
- (2) Fauquier County General Terms & Conditions;
- (3) IFB 24-05-0713R, dated February 9, 2024, including any Addenda and Attachments; and,
- (4) Final Contract dated August 15, 2023, and the Contract Roll Over Agreement dated August 15, 2024, including all Attachments and documents incorporated by reference.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Mid Atlantic Waste Systems

By: 

Title: Sr Director

Date: 9/27/24

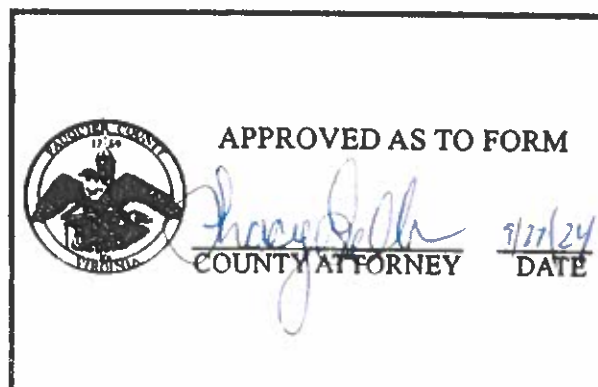
Fauquier County Government
a political subdivision of the Commonwealth
of Virginia

By: 

Kristen Hyton

Title: Procurement Manager

Date: 9/30/2024



GENERAL TERMS, CONDITIONS AND INSTRUCTIONS TO BIDDERS/OFFERORS

Revised 08/05/2021

Vendor: These general rules and conditions shall apply to all purchases and be a part of each solicitation and every contract awarded by the Procurement Division, unless otherwise specified. The Procurement Division is responsible for the purchasing activity of Fauquier County, which is comprised of the Fauquier County Board of Supervisors, a body politic and political subdivision of the Commonwealth of Virginia, and the Constitutional Officers of Fauquier County, Virginia, and the Fauquier County School Board, a body corporate. The term "Owner" as used herein refers to the contracting entity which is the signatory on the contract and may be either Fauquier County or the Fauquier County School Board, or both. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/Offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, bids/proposals on all solicitations issued by the Procurement Division will bind bidders/Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

- 1. AUTHORITY**-Except as delegated in the Procurement Procedures Manual, the Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the Owner. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the Purchasing Agent, no other Owner officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the Owner for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the Owner shall not be bound thereby.
- 2. COMPETITION INTENDED:** It is the Owner's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

- 3. CLARIFICATION OF TERMS:** Unless otherwise specified, if any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the Buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.
- 4. MANDATORY USE OF OWNER FORMS AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official Owner forms provided for that purpose shall be a cause for rejection of the bid/proposal. Unauthorized modification of or additions to any portion of the Invitation to Bid or Request for Proposal may be cause for rejection of the bid/proposal. However, the Owner reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any bid or proposal which has been modified.
- 5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/PROPOSALS:**

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/modification. The Owner is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Procurement Division by the designated date and hour.

 - The official time used in the receipt of bids/proposals is that time stamp within the Bonfire Portal.
 - Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
 - If the Owner closes its offices due to inclement weather or other unforeseen emergency scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- 6. WITHDRAWAL OF BIDS/PROPOSALS:**

A Bidder/Offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

 - Bids/Proposals may be withdrawn on written request from the Bidder/Offeror received at the address shown in the solicitation prior to the time of acceptance.
 - Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Owner may exercise its right of collection.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid/Proposal of the same bidder/Offeror or of another bidder/Offeror in which the ownership of the withdrawing bidder/Offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/Offeror that is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.
- 7. ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/Offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror. Bidders/Offeror's are cautioned to recheck their bids/proposals for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
- 8. IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

ADDRESSED AS INDICATED ON PAGE 1

IFB/RFP NUMBER
TITLE
BID/PROPOSAL DUE DATE AND TIME
VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeree takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeree. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
10. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part.
11. **BIDDERS PRESENT:** At the time fixed for the opening of responses to a bid, bid contents will be made public for the information of bidders and other interested parties who may be present either in person or by representative. All bids will be opened at the time and place specified and read publicly. Bid tabulations are posted on the Procurement Division's Bulletin Board for a minimum of 10 days from award date. At the time fixed for the receipt of responses for Request for Proposals, only the names of the Offerors will be read and made available to the public.
12. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the Owner's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the Owner's Bidders List.
13. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
14. **TAX EXEMPTION:** The Owner is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeree.
15. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerees certify that they are not currently debarred from submitting bids/proposals on contracts by the Owner, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by the Owner or any agency, public entity/locality or authority of the Commonwealth of Virginia.
16. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in *Code of Virginia* §§ 2.2-4367 through 2.2-4377 (the Virginia Public Procurement Act), as amended from time to time, shall be applicable to all contracts solicited or entered into by the Owner. By submitting their bids/proposals, all Bidders/Offerees certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
17. **NO CONTACT POLICY:** No Bidder/Offeree shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the Procurement Division, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeree with any Owner representative, other than the Procurement Division, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeree from this procurement process.
18. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (*Code of Virginia* § 2.2-3700 *et. seq.*) and § 2.2-4342 of the Virginia Public Procurement Act except as provided below:
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of bids but prior to award, except in the event that the Owner decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Owner decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, Offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information and Virginia Public Procurement Acts; however, the bidder, Offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the Owner, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of reasons why a particular proposal was not deemed to be the most advantageous to the Owner.
19. **CONFLICT OF INTEREST:** Contractor certifies by signing bid to the Owner that no conflict of interest exists between Contractor and Owner that interferes with fair competition and no conflict of interest exists between Contractor and any other person or organization that constitutes a conflict of interest with respect to the contract with the Owner.

SPECIFICATIONS

20. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the Owner

in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Owner to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

21. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
22. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeree shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. **CONDITION OF ITEMS:** Unless otherwise specified in the solicitation, all items shall be new, in first class condition.

AWARD

24. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Owner to accept it. Awards made in response to a RFP will be made to the highest qualified Offeror whose proposal is determined, in writing, to be the most advantageous to the Owner taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the Owner. Award may be made to as many bidders/Offeror's as deemed necessary to fulfill the anticipated requirements of the Owner. The Purchasing Agent also reserves the right to reject the bid if a bidder is deemed to be a non-responsible bidder.
25. **ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a contract as a result of this solicitation, the Procurement Division will publicly post such notice on the Procurement Website at <http://www.fauquiercounty.gov/government/departments-h-z/procurement>
26. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** The Owner may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. The Owner further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeree fails to satisfy the Owner that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
27. **TIE BIDS:** In the case of a tie bid, the Owner may give preference to goods, services and construction produced in Fauquier County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to *Code of Virginia* § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.

CONTRACT PROVISIONS

28. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed and construed in all respects by the laws of Virginia, and any litigation with respect thereto shall only be brought in the appropriate General District or Circuit Court of Fauquier County, Virginia. The Contractor shall comply with all applicable federal, state and local laws and regulations.
29. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Owner all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Owner under said contract. This includes, but is not limited to, overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under United States' or the Commonwealth's antitrust laws. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for antitrust violations.
30. **INVOICING AND PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.
 - a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
 - b. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
 - c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
 - d. The Owner's fiscal year is July 1 - June 30. Contractors must submit invoices, especially for goods and/or services provided in the month of JUNE, for the entire month i.e. June 1 - June 30, so that expenses are recognized in the appropriate fiscal year.
 - e. Any payment made by the Contractor to the Owner shall only be made in U.S. Dollars. If payment is received in foreign currency the Owner may, in its sole discretion, reject such payment and require immediate compensation in U.S. Dollars.
31. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:
 - a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Owner for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify the Owner and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month compounded monthly (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Owner, except for amounts withheld as stated in 2 above. The date of mailing of any payment by postage prepaid U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Owner.

32. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Agent.
33. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Owner, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which the Owner may have.
34. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offeror's certify to the Owner that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act, the Virginia Human Rights Act (*Code of Virginia* § 2.2-3900 *et seq.*) and § 2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1(E)).

In every contract over \$10,000 the provisions in A and B below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
- 1) 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.
 - 2) 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.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
35. **CHANGES TO THE CONTRACT:** Changes can only be made to the contract in one of the following ways:
- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- b. The Owner may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods.
- 1) By mutual agreement between the parties in writing; or
 - 2) By agreeing in writing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the Contractor's records and/or determine the correct number of units independently; or
 - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Procurement Division within thirty (30) days from the date of receipt of the written order from the Procurement Division. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.
- c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater without the advanced written approval of the Board of Supervisors or the School Board, as applicable.
- 36.. **INDEMNIFICATION:** Contractor shall indemnify, keep and save harmless the Owner, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Owner in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the Owner in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner as herein provided.
37. **DRUG-FREE WORKPLACE:** 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 purchase order 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 specific contract awarded to a contractor 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.

38. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the Owner upon thirty (30) days advance written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- Termination for Convenience:** In the event that the contract is terminated upon request and for the convenience of the Owner, without the required thirty (30) days advance notice, then the Owner shall be responsible for payment of services up to the termination date.
 - Termination for Cause:** Termination by the Owner for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default provision of these General Conditions, the Owner may hold the contractor responsible for any resulting additional purchase and administrative costs. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
 - Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled without any liability or penalty to Owner.

39. USE OF CONTRACT BY OTHER PUBLIC BODIES: Except as prohibited by the current *Code of Virginia*, all resultant contracts will be extended, with the authorization of the Contractor, to other public bodies of the Commonwealth of Virginia and all currently active members of the Metropolitan-Washington Council of Governments (MWCOG) or, Mid-Atlantic Purchasing Team, to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor must deal directly with that public body concerning the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. Fauquier County acts only as the “Contracting Agent” for these public bodies. Any resulting contract with other public bodies shall be governed by the laws of that specific entity. It is the Contractor’s responsibility to notify the public bodies of the availability of the contract. Fauquier County shall not be held liable for any costs or damage incurred by another public body as a result of any award extended to that public body by the Contractor.

40. **AUDIT:** The Contractor hereby agrees to retain all books, records and other documents relative to this contract for five years after final payment, or until audited by the Owner, whichever is sooner. The agency, its authorized agents, and/or Owner auditors shall have full access to and right to examine any of said materials during said period.
41. **SEX OFFENDER REGISTRY NOTIFICATION:** The Contractor shall not employ on school property any employee who is a registered sex offender and shall enforce the same restriction upon all sub-contractors and agents of Contractor. Prior to starting work and quarterly during performance of the work, the Contractor shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of Contractor and Sub-Contractors who are employed on school property by the Contractor or Sub-Contractor. The Contractor shall furnish the Owner with evidence verifying compliance with the services.

Prior to starting work on-site, the Contractor shall submit a completed Fauquier County Public Schools “CERTIFICATION OF NO CRIMES AGAINST CHILDREN” form, a copy of which is included in this solicitation.

42. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND FEDERAL IMMIGRATION LAW:** During the term of any contract, the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
43. **ASBESTOS NOTIFICATION:** As required by the Environmental Protection Agency Asbestos Hazard Emergency Response Act 40 CFR, subpart E, 763.93, information regarding asbestos inspections, response actions, and post response activities is on file in a full asbestos report located in the main office of each school. Contractors bear full responsibility to review this material prior to commencing any activity at a school site.
44. **VIRGINIA STATE CORPORATION COMMISSION:** If required by law, the Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Title 13.1 of the *Code of Virginia*, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the contract. If the Contractor fails to remain in compliance with the provisions of this section, the contract is voidable at the option of Owner.
45. **ADA WEBSITE-RELATED ACCESSIBILITY:** Any Contractor who performs services, designs, develops content, maintains or otherwise bears responsibility for the content and format of Owner’s website(s) or third-party programs accessed through Owner’s website(s), acknowledges receipt of, and responsibility to implement the accessibility standards found in the U.S. Department of Justice publication entitled “Accessibility of State and Local Government Websites to People with Disabilities,” available at www.ada.gov/websites2.htm or, as attached directly to the solicitation. Contractor services as noted, shall conform to § 508 of Title III of the Americans with Disabilities Act (ADA) and the World Wide Web Consortium’s (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA), most current versions, in addition to the Owner’s web accessibility policy.

DELIVERY PROVISION

46. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor’s name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 a.m. – 2:30 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
47. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Owner may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. **INSPECTIONS:** The Owner reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Owner will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Owner for such materials or supplies as are not in accordance with the specifications.
49. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Procurement Division when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Procurement Division, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Owner, there shall be added to the time of completion a time equal to the period of such delay caused by the Owner. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
50. **POINT OF DESTINATION:** All materials shipped to the Owner must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
51. **REPLACEMENT:** Materials or components that have been rejected by the Procurement Division, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the Owner.
52. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number,
 - Name of Article and Stock Number,
 - Quantity Ordered,
 - Quantity Shipped,
 - Quantity Back Ordered,
 - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BIDDER/CONTRACTOR REMEDIES

53. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeror who desires to protest the award or decision to award a contract, by either Fauquier County or the Fauquier County School Board, shall submit such protest in writing to the County Administrator (if the award or decision to award was made by Fauquier County) or the Superintendent of Schools (if the award or decision to award was made by the Fauquier County School Board), no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator or the Superintendent of Schools, as the case may be, shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/Offeror appeals within ten (10) days of the written decision by instituting legal action as provided in § VIII.H.3 of the County's Procurement Policy. Nothing in this paragraph shall be construed to permit an Offeror to challenge the validity of the terms or conditions of the solicitation.
- 54.. **DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing to the Superintendent of Schools (if the claim is against the Fauquier County School Board) or the County Administrator (if the claim is against Fauquier County) no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the School Board (if the claim is against the Fauquier County School Board) or the County Board of Supervisors (if the claim is against Fauquier County) within sixty (60) days after submittal of the claim. The Contractor may not institute legal action prior to receipt of the School Board or Board of Supervisors (whichever is applicable) decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the School Board or Board of Supervisors (as applicable) shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in *Code of Virginia* § 2.2-4364. Failure of the School Board or Board of Supervisors to render a decision within sixty (60) days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. Should the School Board or Board of Supervisors (as applicable) fail to render a decision within sixty (60) days after submittal of the claim, the Contractor may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to *Code of Virginia* § 2.2-4365 has been established for contractual claims under this contract.



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**

Virginia Sheriffs' Association Heavy Equipment Procurement Program – Solicitation for Bids and Contract Terms and Conditions

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."

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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

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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,

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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

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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

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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

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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

Any bidder that has been awarded a contract and has not sold off of the contract for three (3) consecutive years shall not be qualified to submit a bid for a period of 12 months following the third consecutive year of failing to sell off of an awarded contract.

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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

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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

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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

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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. A bid may also be rejected if the bidder has been awarded a contract and has not sold off of the contract for three (3) consecutive years (see section 1.10 above).

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.

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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. As stated in section 1.10 above, any bidder that has been awarded a contract and has not sold off of the contract for three (3) consecutive years shall not be qualified to submit a bid for a period of 12 months following the third consecutive year of failing to sell off of an awarded contract.

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

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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.

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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

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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,

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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

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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

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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

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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.

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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

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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

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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.

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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.

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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

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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

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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

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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.

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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.

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- (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

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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 reprourement 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

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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.

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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

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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.

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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.

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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

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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

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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.

Finally, any contractor that has been awarded a contract and has not sold off of the contract for three (3) consecutive years shall not be qualified to submit a bid for a period of 12 months following the third consecutive year of failing to sell off of an awarded contract (see section 1.10).

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.

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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 Contract Administrator will consider any request for equitable adjustment at any time, provided the Contractor submits the above documentation to the Contract Administrator, in addition to any other information requested of the Contractor. However, any equitable adjustment, if approved, shall not apply to purchase orders that have already been received by the Contractor. Any adjustment of the sales price for any purchase order already received by the Contractor is exclusively between the Contractor and Customer.

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.

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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

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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.

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- 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.

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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.

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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:

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- 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@viriniasheriffs.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@viriniasheriffs.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

Virginia Sheriffs' Association Heavy Equipment Procurement Program – Solicitation for Bids and Contract Terms and Conditions

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.

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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.

Bid Award

Contract: 24-05-0713R, Heavy Equipment

Group: Compactors

Item: 941, Marathon, Self-Contained Compactor, R1250

Description: Some models may be listed within the option sheet as they may be considered to be an upgrade/downgrade to the base model listed. Please contact awarded vendor for additional information regarding these models.

Model Upgrade/Downgrade: Manufacturer's standard base unit specifications and current model year for the model/model number listed. The required minimum 6% discount off MSRP is to be included in the listed base price field.

Zone	Rank	Vendor	Price	Percent (Taken off MSRP for base price)	Percent (Taken off MSRP for options)	Build File	Options File
Nationwide	Primary	Mid Atlantic Waste Systems	\$42,150.00	6.00%	6.00%	Build	Options

Virginia Sheriffs' Association
Heavy Equipment Procurement Program
Contract Award Agreement

Heavy Equipment Procurement Program
Bid 24-05-0713

We are pleased to announce the Virginia Sheriffs' Association (VSA) has successfully completed its statewide competitive award for heavy equipment. All local public bodies are eligible to utilize this competitively bid contract while keeping with their local governing purchasing ordinances. Bid 24-05-0713 will be effective August 15, 2023 through August 14, 2024.

Congratulations, your company has been included on the Association's price sheet contract controlled by the Virginia Sheriffs' Association's Solicitation for Bids and Contract Terms and Conditions.


By the award of this contract, based on your company's bid for Solicitation Number 24-05-0713, all terms and conditions set forth in the Solicitation for Bids and Contract Terms and Conditions are incorporated herein by reference and agreed to by the Contractor and the Virginia Sheriffs' Association.


Signature of Authorized Representative

FRED SEITZ
Printed Name of Authorized Representative

MID ATLANTIC WASTE SYSTEMS
Contractor/Vendor Name (Please Print)

AUGUST 17, 2023
Date


Signature of VSA Executive Director

John W. Jones
Printed Name of VSA Executive Director

August 15, 2023
Date



**Virginia Sheriffs' Association
Heavy Equipment Procurement Program
2024-2025 Rollover Agreement
Bid 24-05-0713R**

The Virginia Sheriffs' Association (NCSA) has implemented Section 1.5 *Term of Contract* of the Association's Terms and Conditions. Upon mutual agreement, we are pleased to announce the VSA has extended your contract for one additional year. VSA Heavy Equipment Bid 24-05-0713R will be effective August 15, 2024, through August 14, 2025.

By the award of this contract based on your company's bid for Solicitation Number 24-05-0713R, all terms and conditions set forth in the Solicitation for Bids and Contract Terms and Conditions are incorporated herein by reference and agreed to by the Contractor and the Virginia Sheriffs' Association.

X [Signature]
Signature of Authorized Representative

X [Signature]
Signature of VSA Executive Director

X FRED SEITZ
Printed Name of Authorized Representative

X JOHN W. JONES
Printed Name of VSA Executive Director

X MID ATLANTIC WASTE SYSTEMS
Contractor/Vendor Name (Please Print)

X 8-15-24
Date

X 3/19/2024
Date