



Virginia Sheriffs' Association

Tire Procurement Program and Related Services

Invitation for Bids

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Section I

Pre-Bid Procedures

1.0 PURPOSE AND EXPLANATION OF PROGRAM

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 Invitation for Bids is to establish a Contract with Manufacturers for the purpose of providing tires to members of the VSA and all local Virginia public bodies (see Section 1.7).

- Every year the Virginia Sheriffs' Association (VSA) will solicit participation from vetted Manufacturers to participate in the Association's Tire Procurement Program.
- Every year the VSA will provide public bodies within the Commonwealth of Virginia and other states comprehensive Price Sheets made up of tire specifications.
- Each participating Manufacturer's Price Sheet will be placed on the VSA's website and consist of all available tires from each participating Manufacturer. Each tire listed on the Price Sheet will include competitively bid prices to also include the tire name, the VSA contracted price, waste fee, tire disposal fee, tire valve fee, tire mount fee, tire balance fee, and the total VSA tire price with options.
- Public bodies may use the VSA's Price Sheet to fulfill their local procurement regulations by meeting or exceeding the requirement of having to go out to bid on tires.
- If a Public Body requires a tire(s) and the tire(s) is included on the VSA's Tire Procurement Program, the Public Body is advised to visit the VSA's Tire Procurement Program to find a local (to the public body) participating and authorized tire dealer to begin the purchase process. The Public Body is instructed to inform their local tire dealer that the Public Body is using the VSA's Tire Procurement Program, this way the Public Body will receive the discounted and negotiated VSA price.

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- There is no Contract between the Virginia Sheriffs' Association and any participating public body. The only Contract the Virginia Sheriffs' Association enters is that between the VSA and each participating Manufacturer.

1.1 THE VIRGINIA PUBLIC PROCUREMENT ACT

The VSA is not a “public body.” However, for the purposes of this agreement, the VSA will follow the intent and spirit of the Virginia Public Procurement Act (VPPA), Section 2.2-4300 *et seq.* of the Code of Virginia 1950, as amended, except as otherwise specified in this Tire Procurement Program.

1.2 JOINT AND COOPERATIVE PROCUREMENT

According to the Code of Virginia, Section 2.2-4304, any Virginia public body may participate in, sponsor, or purchase from another public body's contract or from the Contract of the VSA for the purpose of increasing efficiency or reducing administrative expenses in any acquisition of goods.

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 use of a VSA Contract.

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

1.3 DEFINITIONS

The following terms are defined as follows:

- A) Bid – A competitive Bid procedure initiated through the issuance of a Solicitation for Bids. The term “Bid” as used herein, refers to a request for price quotations by the VSA and the subsequent submission of price quotations from a Manufacturer.
- B) Bid Title – The Bid Title for the TPP is “Tires and Related Services” and includes the Bid number assigned to each Contract term by the VSA.
- C) Bidder – The Manufacturer that submits a Bid and documentation to the

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Contract Administrator in accordance with the terms and conditions contained herein.

- D) Commonwealth – To be defined as the Commonwealth of Virginia.
- E) Contract – The signed agreement between the Virginia Sheriffs' Association and each participating Manufacturer. This Contract requires each Manufacturer to abide by these terms and conditions.
- F) Contract Administrator – A VSA representative who is responsible for the procurement process and the administering of the resulting Contracts for the Tire Procurement Program.
- G) Contractor – A Bidder that agrees to sell tires/ and or related services, which meet the requirements, specifications, terms and conditions of this agreement, to eligible Public Bodies, as defined herein in return for the ability to post their price sheets with the VSA.
- H) Cooperative Bid Coordinator – A VSA representative who is responsible for the day-to-day operations of the Tire Procurement Program.
- I) Cooperative Purchasing Program – Per Virginia Senate Bill 1548, approved March 20, 2017, a public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies.
- J) Customer – The VSA's Tire Procurement Program is available to all Virginia public bodies. An eligible Public Body is also defined in Section 1.7.
- K) Dealer – An entity authorized by the Manufacturer to market and sell tires and provide related services in accordance with the pricing provided by the Manufacturer pursuant to this Invitation for Bids. Authorized Dealers may be Contractor owned and/or controlled, in whole, or in part independently owned and controlled. VSA acknowledges that Contractor does not exercise ownership or control over its non-company independent authorized Dealers and cannot indemnify or otherwise be held responsible

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for such acts. Accordingly, Contractor's independent authorized Dealers are deemed to be excluded from any and all references to Bidder, Contractor, its authorized representatives, agents, Contractors, Subcontractors, dealers, partners or any other words of similar import in these terms and conditions and Contractor makes no agreements, representations, warranties or guarantees with respect to such independent authorized Dealers.

- L) Dealer Option – A product or service provided by the dealer or other third party; not the factory.
- M) Invitation for Bids – A solicitation document used in the competitive sealed bidding procedure and is abbreviated by (IFB).
- N) Manufacturer – The entity that produces the tire and related components or assembly line for tires.
- O) MSRP – The Manufacturer's suggested retail price, which represents the Manufacturer's recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser.
- P) Price Sheets – A comprehensive listing of all tires and their corresponding pricing, fees, and additional service fees, such as tire valves, and tire mounting and balancing. These sheets are provided by each Manufacturer in their official Bid summary.
- Q) Public Body - A body, organization or agency that is financed by a form of government, acts independently of it and has the responsibility to report key data, evidence, facts, statistics, to the government and is accountable for their role, responsibility and objectives. Each Public Body is responsible for abiding by their local purchasing governing ordinances. The Virginia Sheriffs' Association is not defined as a Public Body.
- R) Tire Procurement Advisory Committee (TPAC) – A body composed of employees of sheriffs' offices in Virginia, and any other person who the VSA identifies as subject matter experts that assists with the development of bid specifications, contract awards, and evaluation of bid responses.
- S) Tire Procurement Program (TPP) – A program managed by the VSA for the

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purpose of providing public procurement of quality goods (tires) to support effective and efficient government ensuring the prudent use of public funds.

The primary goals of the TPP are:

- Providing efficient delivery of tires;
- Obtaining best value through competition;
- Offering fair and equitable competitive contracting opportunities for suppliers; and
- Maintaining public confidence through ethical and transparent procurement practices.

1.4 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 herein. 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 use of a VSA Contract.

The VSA assumes no responsibility of notifying public bodies of the availability or lack thereof of any tires listed on the VSA's tire Price Sheets.

1.5 TPP OVERVIEW AND CRITERIA TO PARTICIPATE

The VSA will solicit Manufacturers licensed to do business in the Commonwealth of Virginia to participate in the TPP. These Manufacturers will provide VSA with set pricing for tires and related services in the form of Price Sheets. The Manufacturers will also provide VSA with a list of approved Dealers authorized by the Manufacturer to market and sell tires and provide related services in accordance with the set pricing provided by the Manufacturer to VSA. The Price Sheets and Dealer list will be posted in a central repository on the VSA website and made available to Public Bodies for the purchase of tires and related services.

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

- Agree to the terms and conditions contained in the solicitation for Bids and

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Contract terms and conditions documented herein;

- Possess the ability, capacity, and skill to perform the Contract;
- Perform the Contract within the time specified, without delay or interference;
- Possess the character, integrity, reputation, judgment, experience, and efficiency to perform the Contract in the judgment of the Contract Administrator;
- Demonstrate quality of performance of previous Contracts;
- Demonstrate previous and existing compliance with laws and ordinances relating to the Contract

1.6 BID CORRESPONDENCE

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

The VSA point of contact for the TPP's solicitations for Bids, unless otherwise indicated and posted on the VSA website, is:

Jason Bennett
Contract Administrator
Virginia Sheriffs' Association
E-Mail – jbennett@virginiasheriffs.org
Phone – (919) 459-8195

1.7 ELIGIBLE PUBLIC BODIES OF TPP

The TPP is available to all Virginia public bodies.

All Public Bodies are bound by their individual governing purchasing ordinances, rules and regulations. All Contractor/dealers are governed by their Manufacturer's agreement. See also Section 1.10.

1.8 TERM OF CONTRACT

If awarded, a Contract shall remain in effect for a one (1) year period or until the next official VSA Contract is awarded. 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 (2) additional consecutive years, on a year-to-year basis.

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Contract renewals will only be executed when conditions indicate it is in the best interest of the VSA and the Public Bodies.

In the event that a Contract is continued beyond the term provided by mutual consent, the Contract may be extended up to one hundred and eighty (180) days at the discretion of the VSA, 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.

If the successful Bidder is awarded a Contract under this Invitation for Bids, 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 price is in the best interest of the program.

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

1.9 SHERIFFS' PURCHASING AUTHORITY

Individual sheriffs do not necessarily have independent statutory authority to Contract on behalf of or bind the resources of the county or city unless delegated this authority by the local governing body. Therefore, it may be necessary for a sheriff and/or an appropriate official of the local public body to sign any necessary agreements between the Contractor and a Public Body.

1.10 FUNDING

The continuation of the terms, conditions, and provisions of a resulting Contract 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 and appropriations by them of the necessary money to fund said Contract for each succeeding year. In the event of non-appropriation of funds, the Contract shall be automatically terminated with no recourse for the Contractor.

1.11 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 Contract Administrator no later than ten (10) calendar days prior to the scheduled Bid

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opening date.

During the solicitation for Bids period, all questions/communication will only be accepted through electronic communication directly to the 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 thereto. Bidders should verify with the Contract Administrator prior to submitting a Bid that all addenda have been received.

1.12 CONTRACTOR'S AUTHORIZATION TO TRANSACT BUSINESS

A. The VSA shall include in every written Contract a provision that a Manufacturer 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 of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. Refer to VSA Form 3, The Virginia State Corporation Commission Registration Information Form.

B. Any Bidder described in subsection A that fails to provide the required information shall not receive an award 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 authorized tire dealer described in subsection A that enters into a purchase order with a public body pursuant to this Invitation for Bids shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract.

D. The VSA may void any Contract with a Contractor if the Contractor fails to

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remain in compliance with the provisions of this section or any law.

1.13 BIDDER QUALIFICATIONS

In order for Bids to be considered, Bidders to the TPP must submit with their Bid, evidence that they are qualified to satisfactorily perform the specified service and provide the specified good. Evidence shall include all information necessary to certify that the Bidder maintains a permanent place of business; and has not had sustained claims filed against the Bidder or the Bidder's firm. The evidence also will consist of listings of Contracts for similar products or services that have been provided to public and private sector clients. See Section 1.18.

1.14 DRUG FREE WORKPLACE

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

- A) Provide a drug-free workplace for the Contractor's employees;
- B) 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;
- C) 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
- D) 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 Invitation for Bids, 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.

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1.15 EMPLOYMENT DISCRIMINATION

Each Bidder certifies that it is in compliance with all local, state, and federal laws, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin or other protected categories.

1.16 COMPLIANCE

A) 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 of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

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

1. All public bodies shall include in every written Contract a provision that a Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law.
2. 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 of Virginia pursuant to Title 13.1 or Title 50 of the Code of Virginia 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 of Virginia as a foreign business entity under Title 13.1 or Title 50 of the Virginia Code, 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.
3. Any Bidder described in subsection 2 that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section.

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4. Any business entity described in subsection 1 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 of Virginia, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract.
5. 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.

1.17 LATE BIDS

At the time, date, and place indicated in the published Bid calendar, the Bids will be opened. Any Bid(s) received after the time and date specified as the deadline for the submission of Bids will be rejected by the VSA. In order to ensure delivery of the Bid, a VSA representative will send a confirmation electronic communication (e-mail) to the Bidder in a timely manner.

The responsibility for submitting a Bid before the stated time and date deadline for the submittal of Bids is solely and strictly the responsibility of the Bidder. The VSA is not responsible for delays.

1.18 SUBMITTAL OF BID

Bids are accepted by electronic communication only. The electronic communication shall indicate the Bid title, and the date and time of the Bid opening. Bids not submitted on the forms included with these solicitation documents shall be rejected. Each Bidder is responsible for ensuring that their Bid is delivered at the proper time and to the proper e-mail address. Late Bids shall not be considered. **BIDS MUST BE RECEIVED AT THE TIME DESIGNATED IN THIS SECTION** for the confirmation of submission. A Bidder may withdraw its proposal at any time prior to the fixed time for opening Bids without prejudice to itself.

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

The completed Bid must be submitted electronically with the Bid Title in the e-mail

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subject line to the Virginia Sheriffs' Association (VSA), Attn: Jason Bennett, Contract Administrator, at jbennett@virginiasheriffs.org.

The Bidder must furnish Price Sheets in Excel for Windows on a USB drive. The USB must be formatted as follows:

- “Excel for Windows”
- Font: Arial – 12 point
- Margins: one-half inch (.5) all the way around
- Landscape ONLY
- No Headers or Footers

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

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

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

Bids received on separate emails and not attached to the complete specifications will be rejected. All prices must be clearly typed on lines provided on the Price Sheets. Any variations from these specifications must be clearly stated by the Bidder on the proposal blank.

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

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authorization to bind the Bidder.

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

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

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

1.19 AMENDMENTS TO SOLICITATION DOCUMENTS

The Contract Administrator may use its discretion in issuing amendments to the solicitation prior to the deadline for Bid submission only. Notice of any amendment will be emailed to all Manufacturer representatives. Such notice will contain the appropriate details for identifying the changes to the solicitation. Each Bidder is responsible for monitoring its email for new or changing information concerning the solicitation.

1.20 VSA COMMISSION FEES FOR ALL SPECIFICATIONS

Bidders must include a three-quarters-of-one percent (.0075%) commission fee in their base Bid prices, and their quotes and pricing for all additional equipment items (Add Options), excluding any state regulated fees including tags. The three-quarters-of-one percent fee will be incorporated into, and made a part of, the total invoice amount and shall not be treated or added as a separate line item. Fees are based on the total invoice cost of the new tire. No other commission fee(s) will be applicable to any transaction relative to the Contract. All quarterly payments for collected commission fees are to be payable to the Virginia Sheriffs' Association.

1.21 BID OPENING AND ELECTRONIC POSTING OF MANUFACTURER PRICING

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

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

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

1.22 RESPONSIVENESS TO THE REQUIREMENTS OF THE INVITATION FOR BIDS

All Bids will be evaluated to determine the responsiveness to the requirements of the Invitation for Bids. Bids that do not meet all requirements of this solicitation, or fail to provide all required information, documents, or materials may be rejected as nonresponsive.

A Bidder must have the necessary facilities, personnel, and expertise, and must be prepared, if requested by the Contract Administrator, to present evidence of such experience, including evidence of EVT certified technicians to perform installation of emergency lighting for applicable specifications.

The Contract Administrator reserves the right to investigate or inspect at any time during the evaluation period, 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. The Contract Administrator may use discretion in determining which Bids meet the requirements of this solicitation, and which respondents are responsive and responsible.

The Contract Administrator may use discretion in accepting or rejecting any and all Bids, or separable portions thereof, in whole or in part; and/or make or limit awards either as individual items or as a total combined Bid; and to waive any informality if determined that doing so will serve the best interest of the VSA and other public bodies of the Commonwealth of Virginia. The Contract Administrator may reject any responses not submitted in the manner specified by solicitation documents.

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1.23 BID EVALUATION CRITERIA

Bid acceptance will be based on the qualifications of a Manufacturer and Manufacturer's authorized tire dealers' facilities and financial resources and demonstrated ability to perform the work. The spirit and the intention of the VSA Bid(s) are to obtain the lowest cost for the tire and the related service which is representative of the VSA published specification.

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

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

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

Contractors/Dealers, whose Bids, past performance, or current status do not, in the judgment of the Contract Administrator, reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of the Contract may be rejected as nonresponsive. In determining past performance, the Contract Administrator will give consideration to the nature and number of complaints received from Public Bodies regarding a previously utilized Contractor/Dealer. Bidders who routinely demonstrate deficiencies in providing satisfactory Public Body service during a Contract period prior to the issuance of this Bid, may have their Bid rejected.

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

The Contract Administrator may use discretion in accepting or rejecting any and all Bids, or separable portions thereof, in whole or in part; and to waive any minor irregularities, technicalities, or omissions if determined that doing so will serve the best interest of the Public Body of the Commonwealth of Virginia. The Contract

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Administrator may reject any responses not submitted in the manner specified by solicitation documents.

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

1.24 TAX EXEMPTIONS FOR PUBLIC BODIES

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

1.25 TAX EXEMPTIONS FOR THE VSA

The VSA is a 501(c)(6) organization. The VSA's tax identification number is 54-1020904.

1.26 TIRE MODELS AND RELATED SERVICES

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

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

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

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

SPECIFICATION 1: PASSENGER
Tire, Automobile, Radial, Standard Passenger

SPECIFICATION 2: PURSUIT AND EMERGENCY HIGH SPEED
Tire, Police Pursuit, Radial

SPECIFICATION 3: LIGHT TRUCK
Tire, Light Truck, Radial; Tire, Light Truck, Steel

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Casing (Includes Off-Road Applications)

SPECIFICATION 4: MEDIUM TRUCK
Tire, Medium Truck, Radial

SPECIFICATION 5: OFF ROAD TIRES, INTERMITTENT HIGHWAY SERVICE
Tire, Off Road, Radial; Tire, Off Road, Bias

SPECIFICATION 6: IMPLEMENT/FARM
Tire, Implement, Farm

SPECIFICATION 7: SPECIALTY
Tire, Specialty

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

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

1.27 FACTORY ORDERED OPTIONS

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

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1.28 FEDERAL AND STATE TIRE MANUFACTURING STANDARDS

It is intended that all specifications be in full and complete compliance with all federal and Virginia laws and regulations that apply to tires and other related services. This includes, but is not limited to the, U.S. Department of Transportation, Virginia Department of Transportation, National Highway Traffic Safety Administration, Federal Motor Vehicle Safety Standard, Occupational Safety & Health Administration and Environmental Protection Agency standards, and Virginia requirements for external noise control that apply to the type tire or related service being provided.

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

Testing – Samples of delivered tires may be selected at random and tested by either the Public Body, the VSA, or their agent for compliance with these specifications using the following standards:

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

Delivery of non-conforming product(s) shall be grounds for terminating the Contract.

1.29 EXECUTION OF BID

Bids must contain a manual signature of an authorized representative of a Manufacturer in the space provided on the Bid signature page. Failure to properly sign a Bid shall invalidate same and it shall NOT be eligible to be posted. All Bids must be completed and signed. If a correction is necessary, draw a single line through the entered figure and enter the corrected figure above it. Corrections must be initialed and dated by the person signing the Bid. Any illegible entries or pencil Bids will not be posted. The Bid specifications posted by the VSA CANNOT be

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changed or altered in any way by any Manufacturer or Dealer. No alterations in the format or content of product specifications can be made.

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

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

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

Notifications of withdrawal received outside of the Bid posting date will not be considered.

Circumstances under which withdrawal of a Bid/cancellation of a Contract resulting from this solicitation are permissible after the opening of Bids are addressed in Section 3.1.

1.30 NO BID

If a Manufacturer declines to submit a Bid, the Manufacturer shall respond by returning the No Bid Form (VSA Form 5) and explain the reason. Repeated failure to Bid without sufficient justification shall be cause for removal of a Manufacturer's name from the Bid mailing list.

1.31 PRICE QUOTED

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

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

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

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1.32 PRICES SHALL BE FIXED AND FIRM

Pursuant to this Bid solicitation and the Manufacturer's subsequent submission of a Bid, the prices quoted by the Bidder on the Bid forms shall remain fixed and firm during the entirety of this one (1) year Contract and during any one (1) year Contract extension unless adjusted pursuant to Section 1.33 below.

1.33 OPTION TO RENEW WITH PRICE ADJUSTMENT

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

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

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

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

1.34 REQUIRED RELATED SERVICES

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

- Mounting of the tire

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- New valve stem and installation
- Dynamic balancing including weights

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

Additional required related services are:

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

1.35 MISTAKES

Mistakes discovered following Bid opening but prior to award:

If there is a significant and obvious disparity between the prices of the lowest apparent responsive Bidder and other Bidders, the low Bidder may be contacted by the VSA to confirm the Bid price. This does not relieve a Bidder from the responsibility for the submission of a correct Bid. If the Bidder then alleges a mistake in the Bid and can provide clear and convincing evidence that supports the existence of a clerical error to the satisfaction of the VSA, the Bid may be withdrawn and not re-bid in accordance with the withdrawal procedure provided herein.

Mistakes discovered after award:

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Bids containing mistakes by Bidders shall not be withdrawn after award of a Contract or issuance of a purchase order, unless determined otherwise by the Contract Administrator.

1.36 CONDITION AND PACKAGING

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

1.37 UNDERWRITERS' LABORATORIES (UL)

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

1.38 EQUIVALENTS

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

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

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

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

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

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

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

1.39 INTERPRETATIONS

Unless otherwise stated in the Bid, any questions concerning conditions and specifications should be submitted e-mailed to Jason Bennett, VSA Contract Administrator, to jbennett@virginiasheriffs.org.

1.40 GOVERNING LAW

In event of any dispute under the TPP, the parties agree to the exclusive jurisdiction of the Circuit Court of the City of Williamsburg and County of James City, Virginia, and waive any and all objections to such venue.

1.41 PATENTS AND ROYALTIES

The Bidder, without exception, shall indemnify and hold harmless the VSA, its officers, members, and its employees from liability of any nature or kind, including without limitation, costs, expenses, and attorneys' 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 cost arising from the use of such design, device, or materials in any way involved in the work.

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1.42 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 Section 2.2-4317 of the VPPA shall not be subject to the Virginia Freedom of Information Act (Section 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.

1.43 PERMITTED CONTRACTS WITH CERTAIN RELIGIOUS ORGANIZATIONS; PURPOSE; LIMITATIONS

The VSA does not discriminate against faith-based organizations.

1.44 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 at 919-459-8195 or jbennett@virginiasheriffs.org.

1.45 ANTI-DISCRIMINATION

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

1.46 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 Public Bodies.

1.47 QUALITY

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

1.48 FACILITIES

The VSA reserves the right to inspect the Bidder's facilities at any time with two (2)

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weeks' (calendar days) prior written notice.

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

1.49 COPY OF PRICE SHEETS

Bidders desiring a copy of Price Sheets may request same by e-mail with the Bid Number along with an electronic request for the Price Sheets.

1.50 DEMONSTRATION OF COMPETENCY

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

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

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

The VSA may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a Bidder or Dealer, including past performance (experience) with the VSA in determining which Manufacturer(s) to Contract with, in the best interest of the VSA and Public Bodies.

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

1.51 LAWS, PERMITS AND REGULATIONS

The Bidder shall obtain and pay for all licenses, permits, and inspection fees

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required for this project; and shall comply with all laws, ordinances, regulations, and requirements applicable to the work contemplated herein.

1.52 ELIMINATION FROM CONSIDERATION

A Contract shall not be entered into with any Manufacturer 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.

1.53 WAIVER OF INFORMALITIES

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

1.54 REQUESTS FOR CLARIFICATION AND ADDENDA

In case of doubt as to the meaning or intent of any items contained in the Invitation for Bids, inquiry should be made to the Contract Administrator prior to the Bid Period Opening (see official calendar enclosed in the Invitation for Bid Package) via e-mail. Telephone clarifications will not be accepted, and no clarifications will be accepted after the date listed in the Invitation for Bids calendar. All requests for clarification from Bidders and VSA responses will be emailed by the date listed on the Invitation for Bids calendar.

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

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

Any questions or clarifications concerning this Invitation for Bids shall be submitted by email to jbennett@virginiasheriffs.org with the Invitation for Bids Title referenced on all correspondence.

All Bidders will be required to acknowledge any formal addenda by signing in the space provided on the formal addendum and including the signed

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acknowledgement along with the Bidder's Bid package. Failure to acknowledge receipt of addendum by a Bidder will deem its Bid non-responsive.

1.55 GRATUITIES

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

1.56 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.

1.57 DELIVERY TIME

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

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

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

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

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1.58 RIGHT TO AUDIT

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

VSA, and its authorized representatives, shall have the right to audit, examine, and make copies of, or extracts from, all of Contractor's financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the TPP. Similarly, all government sales and potential eligible Public Bodies' 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; all paid vouchers including those for out of pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; Contract amendments and change order files; back charge logs and supporting documentation; insurance documents; memoranda; and correspondence.

The Contractor, shall, at all times during the term of a Contract and for a period of three (3) years after the completion of a Contract, maintain the above referenced records, together with supporting or underlying documents and materials. The 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 three (3) days' written notice) during normal business hours.

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

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

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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 Public Body in excess of three percent (3%) of the total Contract billings, the Contractor shall reimburse the VSA for the total costs of the audit. If the audit discovers findings related to fraud, misrepresentation, or nonperformance, the VSA may recoup all of the costs of the audit work from the Contractor.

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 ninety (90) days) from presentation of the VSA's findings to the Contractor.

1.59 AMENDMENTS TO CONTRACTS

Any Contract resulting from this Invitation for Bids may only be amended by e-mail and signed by Contractor and the VSA.

1.60 WITHDRAWALS OF BIDS

A) Bidder may withdraw its Bid from consideration if the price Bid was substantially lower than the other Bids due solely to a mistake in the Bid, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

If a Bid contains both clerical and judgment mistakes, a Bidder may withdraw its Bid from consideration if the price Bid would have been substantially lower than the other Bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

B) The Bidder shall give notice by e-mail of its claim of right to withdraw its Bid

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within two (2) business days after the conclusion of the Bid opening procedure and shall submit original work papers with such notice; or

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the Bidder shall, at the Bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of Section 2.2-4342 of the Code of Virginia.

C) No Bid shall be withdrawn under this section when the result would be the awarding of the Contract on another Bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent (5%).

D) No Bidder who is permitted to withdraw a Bid 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 was submitted.

E) The VSA shall notify the Bidder by e-mail within five (5) business days of its decision regarding the Bidder's request to withdraw its Bid. If the VSA denies the withdrawal of a Bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the Contract to such Bidder at the Bid price, provided such Bidder is a responsible Bidder and responsive Bidder.

1.61 EXCEPTIONS TO INVITATION FOR BIDS

Should a proposed Bid not be able to meet one (1) or more of the requirements set forth in this Invitation for Bids, and the Bidder is proposing alternatives to said requirements, the Bidder must notify the VSA Cooperative Bid Coordinator by e-mail at least ten (10) 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.

1.62 PRICE MATCHING PREFERENCE

The TPP does not recognize a price matching preference for any out of state Bidders.

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1.63 MODIFICATION OF THE CONTRACT

The Contract shall not be amended, modified, or otherwise changed except by the electronically communicated consent of the Contractor and the VSA given in the same manner and form as the original signing of the Contract.

1.64 SPECIFICATION EXCEPTIONS, OMISSIONS, OR ERRORS

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

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

1.65 FINANCIAL RESPONSIBILITY

The Bidder affirms by its signature on the Invitation for Bids Cover Page that it or an authorized agent:

- Has fully read and understands the scope, nature, and quality of work to be performed or the services to be rendered under this Invitation for Bids and has the adequate facilities and personnel to fulfill such requirements;
- Accepts the financial responsibility associated with this Invitation for Bids and declares that it 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, Bidder shall consider items such as the specifications Bid, and the quantity of specifications Bid, as well as timing of payment from Public Bodies, which can be forty-five (45) days from receipt of invoice; and
- Assumes full responsibility that all tires delivered to the Public Body are free and clear of all outside liens, encumbrances, security interests apart from the Dealer floor plan or other Dealer inventory finance security interest.

1.66 LICENSING

Bidders are required to possess all applicable license certificates allowing the

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Manufacturer or Dealer to conduct and carry on business as a Manufacturer or Dealer of tires in the Commonwealth of Virginia, as applicable. Bidders may be required to have some additional licenses.

Contractors conducting sales outside the Commonwealth of Virginia using the VSA Contract as a purchase authority must be in possession of an equivalent license issued within the state in which their facility resides and allows for the manufacturing and sale of tires or related service to end users.

Section II

Post Award Procedures

2.0 AUTHORITY TO RESOLVE PROTESTED BIDS AND PROPOSED AWARDS

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

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

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

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

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

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

Failure to timely protest a Contract resulting from the Invitation for Bids constitutes a waiver of the ability to protest the resulting Contract.

B) Once the protest has been decided by the Contract Administrator, the Contract Administrator shall promptly issue a decision by electronic communication to the protestor. The decision shall specifically state the reasons for the action taken.

C) Additionally, a copy of each decision by the Contract Administrator shall be e-mailed, immediately after a decision is made, to the protestor, and all other parties shall receive a copy of each decision by electronic communication.

2.1 TERMINATION FOR DEFAULT

If through any cause within the reasonable control of the Contractor, it shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, Contracts, or stipulations material to the agreement, the VSA shall thereupon have the right to terminate the Contract.

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

Notwithstanding the above, the Contractor shall not be relieved of liability to the Public Body for damages sustained by the Public Body by virtue of any breach of the agreement by the Contractor, and the Public Body 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 Public Body from the Contractor is determined.

All re-procurement cost may be charged against the defaulting Contractor and may result in immediate removal from the TPP.

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2.2 WARRANTY OF AUTHORITY

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

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 Vehicle Procurement Advisory Committee (VPAC) and its decision shall be final and binding on both parties.

In the event of a conflict between the Invitation for Bids documents, the order of priority of the bid documents shall be as follows: any agreement resulting from the award of this Invitation for Bids (if applicable); then addenda released for this Invitation for Bids with the latest addendum taking precedence; then this Invitation for Bids; 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 and/or Public Body shall give electronic notice of the deficiencies to the Contractor giving the Contractor ten (10) business days after receipt of notice to correct the deficiencies. If the deficiencies are not corrected, the Contract Administrator will immediately cancel the Contract.

3.2 SEVERABILITY

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

3.3 ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract, including any or all of its right, title, or interest therein, or 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 ninety (90) 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 tires and materials shall be dispensed with by agreement between Contractor and Public Body.

The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to fulfill the remaining Contract requirements, 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 Public Body'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 (in all cases excluding the Contractor's non-owned authorized independent dealers) and shall fully indemnify, defend, and hold harmless the VSA, the participating agencies, and their officers, agents, and employees from suits, actions, damages, and costs of every name and description, including reasonable legal counsels' fees, to the extent arising from personal injury and damage to real or personal tangible property proximately caused by the negligence or willful misconduct of Contractor, its agents, employees, partners, or subcontractors (in all cases excluding the Contractor's non-owned authorized independent dealers); provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the acts or omissions of the VSA and participating agencies and their officers, agents, and employees.

The VSA and any participating Public Body 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

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not be liable for any cost, expense or compromise incurred by the VSA, or participating Public Body 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. The Contractor shall specifically and distinctly assume, and does so assume, all risks of damage or injury to property or persons used or employed on or in connection with the work and of all damage or injury to any person or property wherever located, resulting from any action or operation under the Contract or in connection with the work.

The Contractor, at all times during the full duration of work under this Contract, including extra work in connection with this project, shall meet the following requirements:

- Maintain automobile liability insurance including property damage covering all owned, non-owned, or hired automobiles and equipment used in connection with the work.
- No change or cancellation in insurance shall be made without thirty (30) days advance written notice to the Contract Administrator.
- All insurance policies shall be issued by companies authorized to do business under the laws of the 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 Contractor may self-insure all insurance obligations contained in Section 3.5.

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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.

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

“The Contractor hereby agrees to indemnify and hold harmless the VSA, a Virginia non-stock 501(c)(6) corporation, its officers, agents, and employees from all claims for bodily injuries to the public in and up to the amount of \$1,000,000 for per occurrence and for all damages to the property of others in and up to the amount of \$1,000,000 per occurrence in accordance with the insurance requirement set out in the specifications of the Invitation for Bids, to the extent proximately caused by the negligence or willful misconduct of Contractor, its agents, employees, partners or subcontractor (in all cases excluding the Contractor’s non-owned authorized independent dealers). This agreement includes costs of investigation, all expenses of litigation, including reasonable legal counsel fees and the cost of appeals arising out of any such claims or suits because of any and all acts of omission or commission of any by the Contractor, his agents, servants, or employees, or through the mere existence of the project under Contract.”

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

The Contractor will obtain and maintain Contractual liability insurance in adequate limits (as referred to in VSA Form 5) for the purpose of protecting the VSA under the Hold Harmless Agreement from any and all claims arising out of this Contractual operation.

Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying of insurance shall not relieve the Contractor and all subcontractors of their liabilities and obligations under any section or provisions of this Contract. Contractor shall be as fully responsible to the VSA and the Public Body for the acts and omissions of the subcontractor and of persons employed by them as Contractor is responsible for acts and omissions of persons directly employed by it.

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Insurance coverage required in the Invitation for Bids shall be in force throughout the Contract term. Should any Contractor fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written request at any time during the Contract term, the VSA shall have the right to consider the Contract breached and terminate the Contract.

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

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 Purchases and Supply, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the VSA and the Public Body in writing if its ability to perform is compromised in any manner during the term of the Contract.

3.7 NON-CONFORMANCE TO CONTRACT CONDITIONS

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

3.8 OPTION TO RENEW

Any Contract may be renewed 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.

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Prior to completion of each Contract term, the VSA may consider an adjustment to price due to increases or decreases in the Consumer Price Index; but in no event will the prices be increased by a percentage greater than the percentage change reflected in the nationally published Consumer Price Index-Goods and Services computed sixty (60) days prior to the anniversary date of the Contract.

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 shall be submitted sixty (60) days prior to expiration of the then current Contract term.

The Contractor adjustment request must clearly substantiate the requested increase. If no adjustment request is received from the Contractor within the sixty (60) day period, the VSA will assume that the Contractor 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 re-advertise 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 Public Body 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 Contract deficiencies. In situations where there is evidence the Contractor, fleet sales manager or other representative has demonstrated egregious breaches of the Contract or trust to either the VSA or the Public Body, the Contract will be terminated, and the dealer and its representative may be removed from future solicitations. An egregious breach of Contract would be defined as one that would materially change the specifications of the Contract or

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prevent the Contracted tires from being delivered to the Public Body in a timely manner.

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

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

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

Any Contractor or Contractor's authorized dealer, who is presented with a valid purchase order as a result of a Contract resulting from this solicitation for Bids, is required and bound to accept such purchase order and deliver the product; regardless of whether the tires or service is at a higher cost than that Bid. The Contractor must deliver the tires or service regardless of profit or loss based on its respective Bid. Failure to deliver said tires or service could result in the Public Body 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.

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3.10 NON-CONFORMING TIRES

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

3.11 EQUITABLE ADJUSTMENT

The VSA may make an equitable adjustment in the Contract terms or pricing at its 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:

- A) The volatility is due to causes wholly beyond the Contractor's control
- B) The volatility affects the marketplace or industry, not just the particular Contract source of supply
- C) The effect on pricing or availability of supply is substantial per VSA's discretion
- D) 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:

- A) An e-mail of request for an adjustment from the Contractor, including the specification number and model listed in the Contract, along with the requested changes
- B) When requested adjustment is based on production cutoff of a currently listed model, a letter of affirmation from the Manufacturer
- C) 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
- D) Currently published MSRP listing

A Contract shall not be amended, modified, or otherwise changed except by the written consent of the Contractor and the Public Body given in the same manner and form as the original signing of the Contract.

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

3.12 ORDER, DELIVERY, AND LIQUIDATED DAMAGES

A) Order

1. Eligible Public Bodies shall issue a purchase order to the Manufacturer's authorized dealer and such purchase order shall bear the Contract or Bid number, the VSA Public Body Code as provided by the Manufacturer's authorized dealer, the specification number, and the Public Body's federal identification number and contact information (phone number and email address). The purchase order shall be placed by the Public Body directly with the Manufacturer's authorized dealer and shall be deemed to incorporate the Contract solicitation terms and conditions contained herein. Required delivery or due dates should be discussed between the Public Body and the Contractor and/or Dealer at the time the purchase order is made.

2. If a Manufacturer's authorized dealer receives a purchase order for a specification for which they did not submit a Bid, the Contractor must notify the Public Body and the Contract Administrator and return the purchase order to the Public Body within three (3) business days.

3. The Manufacturer's authorized dealer shall state in the space provided on each Price Sheet, the approximate time required for delivery after receipt of purchase order.

B) Delivery

1. The Warranty Start Date will begin at the time of delivery of the products and acceptance by the Public Body.
2. All Bids are F.O.B. Destination to the Public Body purchasing the tires or related service.

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3. The Manufacturer's authorized dealer shall notify, through the most efficient means available a Public Body's designated representative, as listed on the purchase order, no less than 72 hours prior to delivery of the products. The Manufacturer's authorized dealer is responsible for contacting the Public Body to establish all delivery requirements including but not limited to date and time. Deliveries not complying with these requirements may be rejected and will have to be redelivered at Manufacturer's authorized dealer expense. The Public Body may choose to pick up the tires at the Manufacturer's authorized dealer's facility or other location previously agreed upon by both Public Body and Contractor.

C) Force Majeure

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

3.13 ACCEPTANCE

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

Delivery of a tire and/or related equipment to a Public Body does not constitute acceptance for the purpose of payment. Final acceptance and authorization of

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payment shall be given only after a thorough inspection indicates that the tire(s) and or service meets Contract specifications.

3.14 INVOICING AND PAYMENTS

Invoicing and payments shall be the responsibility of the Manufacturer's authorized dealer and the Public Body placing orders under this TPP. Manufacturer's authorized dealer must invoice each Public Body independently from the VSA for tires purchased from this TPP.

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

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

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

If the Manufacturer's authorized dealer performs all of the obligations of the Contract to the satisfaction of the Public Body, the Public Body shall pay the Manufacturer's authorized dealer for the performance of the work in the manner and within the time specified in the Contract documents, which shall be consistent with the provisions of the Code of Virginia Sections 2.2-4352 and 2.2-4354, as amended. Furthermore, the Manufacturer's authorized dealer shall, within seven (7) days after receipt of payment by the Public Body, take the following actions:

1. Pay the subcontractor for the proportionate share of the total payment received from the Public Body attributable to the work performed by the subcontractor under that Contract; or
2. Notify the Public Body and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

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3.15 WARRANTY, REPAIRS AND SERVICE

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

3.16 MANUFACTURER'S PUBLIC BODY CODE(S) ASSIGNED TO VSA

Dealers representing Manufacturer(s) are required to report sales to the appropriate Contractor's representative based on the "VSA Public Body Code" as provided by the Contractor. Please refer to Section 1.59 of this Invitation for Bids.

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

3.17 CONTRACTORS' ACTIVITY REPORTS AND SCHEDULE AND FEE DEPOSIT REQUIREMENTS

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

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

- Public Body Making Purchase
- Public Body Purchase Order Number
- Tire Dealer Name
- Tire Brand
- Type Product (i.e. – Light Truck or Passenger)
- Tire Description
- Units Sold
- Total Dollars

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

- March 1 – May 31
- June 1 – August 31
- September 1 – November 30
- December 1 – February 28

PLEASE SUBMIT YOUR SUMMARY OF TOTAL SALES BY USING THE “CONTRACTOR OR VENDOR USER FEE REPORT” FORM which will be provided to you in Invitation for Bids packet and is also available on the VSA website. You will need to maintain an original in order to make the necessary copies needed. All commission fees shall be payable by the Contractor to the VSA no later than thirty (30) business days after the end of each quarter.

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