Attachment B - Buy Back Terms and Conditions

BUY BACK TERMS AND CONDITIONS

The vendor shall not adjust their guaranteed Buy Back price without prior written consent from the Division of Administration, Office of State Procurement and DOTD. The one (1) year and one (1) day Buy Back date shall be one (1) year and one (1) day after DOTD inspects and accepts delivered equipment as complete, in compliance with specifications, and ready for immediate use and operation by DOTD.

The ratio of the Buy Back price to the purchase price is to remain constant throughout the life of the contract. This amount shall be calculated by dividing the new purchase price by the previous purchase price and multiplying by the previous Buy Back price to determine the new Buy Back price.

All purchased equipment shall be used for DOTD operations. DOTD shall be responsible for non-warranty repairs and damages beyond normal wear and tear. Warranty repairs shall be performed by the manufacturer's designated service provider. NOTE: 48 hours in downtime, per occurrence, for repairs or parts on this machine will be considered the maximum allowable. If after this timeframe, the machine is not back in service, DOTD reserves the right to exercise the buyback option. This will be handled on a case-by-case basis and at DOTD's discretion.

DOTD will provide the vendor with written notice thirty (30) days prior to the one (1) year and one (1) day guaranteed buy back date if equipment is to be retained by DOTD. DOTD may select to retain any quantity of equipment. There is no all or none provision for retaining equipment. If DOTD determines that repairs and/or damage costs exceed economic feasibility, DOTD reserves the right to retain any quantity of equipment without providing any prior notice.

DOTD reserves the right to extend its possession of equipment beyond the one (1) year and one (1) day term at the vendor's regular published rental rate submitted at the time of bid. If this right is exercised, all buy back rights and responsibilities existing at the one (1) year and one (1) day date are extended until the end of this rental term. If the vendor fails to provide published rental rates at the time of bid, compensation to vendor for an extension of term by rental shall not exceed fifty dollars ($50.00) per day.

Should DOTD opt to release the equipment, the vendor shall be responsible for equipment pickup and associated costs. Equipment shall be picked up at 7686 Tom Drive, Baton Rouge, LA or the location of the DOTD equipment section at time of pickup. If it is determined to be in the best interest of DOTD, DOTD may deliver the equipment to a location specified by the vendor in lieu of pickup.

The vendor shall have the right and the responsibility to inspect equipment after pickup and issue a written condition report assessing all damages agreeably deemed beyond normal wear and tear. Said condition report shall be presented to DOTD within thirty (30) days of receipt of equipment by vendor and subject to verification, approval, or denial by DOTD. DOTD shall be responsible for agreed repairs. In lieu of repairs, with consent of the Division of Administration (DOA), Office of State Procurement, DOTD reserves the right to authorize an adjustment to the vendor's guaranteed Buy Back price. Adjustments shall not exceed the then current State contract prices for the necessary repair parts, the manufacturer's flat rate service schedule, and published dealer service rates.

If DOTD opts to release the equipment, the vendor shall issue payment by cash or electronic funds transfer to DOTD in an amount equal to their guaranteed Buy Back price as quoted, or any authorized adjustment. Vendor's payment shall be delivered to DOTD equipment section during normal business hours or electronically transferred to the designated DOTD account within thirty (30) days from the time of equipment receipt by the vendor. This requirement for payment within thirty (30) days is not subject todelay due to equipment inspection, damage assessments, acceptance of damage assessment, or any other cause.

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Delivery of the equipment shall be no later than the date specified on the purchase order. This delivery requirement shall not be satisfied by delivery of equipment found by DOTD to be incomplete or notcompliant with specifications. If vendor is unable to satisfy this requirement, the vendor shall provide equipment equal to bid equipment at no cost to DOTD until the bid equipment is received by DOTD. This loaner provision shall also apply if equipment that is incomplete or not compliant with specifications is delivered.

Neither party shall be liable for any delay or failure in performance beyond its control resulting from Acts of God or Force Majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this contract.

Vendor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify and hold harmless DOTD from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by vendor, its agents, employees, partners or subcontractors in the performance of this contract, without limitation including but not limited to any period of time when equipment owned by DOTD is in the possession of vendor; provided, however, that the vendor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of DOTD.

BUY BACK METHODS OF AWARD

The Division of Administration, Office of State Procurement, with the Department of Transportation and Development reserves the right to purchase equipment using either Option A or Option B for the method of award as specified below:

Option A, Outright Purchase:
Award shall be made to the lowest responsive, responsible bidder (that bidder who first satisfies all requirements and specifications presented in the bid solicitation, and second-quotes the lowest outright purchase price).

Option B, Buy Back Purchase Price:
Award shall be made to the lowest responsive, responsible bidder with preventive maintenance included (that bidder who first satisfies all requirements and specifications presented in the bid solicitation, and second-quotes the lowest calculated total one (1) year and one (1) day cost in accordance with the award formula below).

- Guaranteed Buy Back Repurchase Price:
  Each bidder must include its guaranteed repurchase price of the equipment quoted in Option B above, one (1) year and one (1) day from its original delivery date, to be considered responsive for Option B.

Award Formula:
Option B award prices will be calculated with the following formula: **TC = P + (D or A) + LE**

Where:

- **TC** is the total one-year cost including purchase price (P), depreciation (D) or appreciation (A), and potential lost earnings.
- **P** is the purchase price with guaranteed buy back.
- **BB** is the guaranteed buy back repurchase.

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- **D** is the depreciation, or positive difference, after subtracting the buy back repurchase price from the initial buy back purchase price.

- **A** is the appreciation, or negative difference, after subtracting the buy back repurchase price from the initial buy back purchase price.

- **$I** is the dollar increase between the vendor's bid and the lowest responsive bid.

- **IR** (Interest Rate) is the cost of money charge. IR is the sum of the current Prime Rate & Inflation Rate for the twelve (12) months ending July of current year.

  The Prime Rate used in the Buy Back Award Formula is the monthly rate published by the Federal Open Market Committee (FOMC) in effect for July 1st of the given state fiscal year.

  Inflation is the annualized percentage change of the Consumer Price Index (CPI), over time. It is calculated by using the Consumer Price Index – Urban (CPI-U) in effect on July 1st of the given state fiscal year. The CPI-U is published monthly by the Bureau of Labor Statistics: https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm

  Inflation Rate = [((Current Period CPI-U) – (Prior Period CPI-U)) / Prior Period CPI-U] * 100

  Prime Rate (July 1, 2023) = 8.29%
  CPI-U (July 1, 2023) = 305.691   CPI-U (July 1, 2022) = 296.276

  $$\text{IR} = 8.25\% + \left[\frac{305.691 - 296.276}{296.276} * 100\right]\% = 8.25\% + 3.18\% = 11.43\%$$

- **LE** is lost earnings, derived from multiplying the dollar increase ($I) by the interest rate (IR).

  LE = $I x IR