

Participating Addendum Number CTR033295
for
Ground Maintenance Equipment
between
Commonwealth of Virginia
and
CNH Industrial America, LLC, dba Case IH

This Participating Addendum is entered into by Commonwealth of Virginia ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 61514, executed by Contractor and the Commonwealth of Virginia ("Lead State") for Ground Maintenance Equipment ("Master Agreement"):

CNH Industrial America, LLC, dba Case IH ("Contractor") 621 State
Street.
Racine, WI 53402

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Sam Nichols
Government/Fleet Account Manager
Sam.nichols@caseih.com
507-327-9901

Participating Entity's contact for this Participating Addendum is:

Tracy Wrenn
Statewide Sourcing & Contracting Officer
Tracy.wrenn@dgs.virginia.gov
804-659-1667

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or November 1, 2024, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- b. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- c. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

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Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

VI. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number/ Contract Number on an eVA Purchase Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND SURCHARGE ADJUSTMENT (SCA) FEE.

- a. SURCHARGE ADJUSTMENT FEE:** Contractor shall pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this Contract. DGS will not issue invoices or statements. The Contractor must remit the SCA fee by the last day of the month following the end of the calendar quarter. The SCA fee equals two percent (2%) of the quarterly reported total invoiced sales. The SCA fee amount due must be paid by check with identification of "Contract Number," "Report Amounts," and "Report Period" on either the check stub or other remittance material. DGS may, at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates the agreement, then the payment shall be made by check as described herein.

Checks shall be payable to: Treasurer, Commonwealth of Virginia.

Checks shall be mailed to:

DGS/Division of Purchases and Supply ATTN: VSSI Coordinator PO Box 1199 Richmond, VA 23218-1199

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia, and the Commonwealth may exercise all rights and remedies available under law. Reports shall be sent to the DPS Contracting Officer at tracy.wrenn@dgs.virginia.gov and to the following email address: vssireport@dgs.virginia.gov. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in cancellation of the Contract.

b. REPORTING AND PAYMENT SCHEDULES:

<u>SCA Fee</u>	<u>Period Sales Months</u>	<u>Payment Due</u>
1st Quarter	Jan, Feb, Mar	April 30th
2nd Quarter	Apr, May, June	July 31st
3rd Quarter	July, Aug, Sept	October 31st
4th Quarter	Oct, Nov, Dec	January 31st

Contractor shall:

1. Meet or conference call at least quarterly with the DPS Contracting Officer to review performance, usage under the Contract, and discuss opportunities for improvements.

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2. Provide any documentation or reports as requested by the DPS Contracting Officer.
3. Notify the DPS Contracting Officer, in writing, of any unresolved disputes or problems that have been outstanding for more than thirty (30) days.

VIII. FEDERAL FUNDING REQUIREMENTS. Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

IX. ATTACHMENTS. This Participating Addendum includes the following attachments:

a. Attachment A: Virginia Special Terms and Conditions

X. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Sam Nichols
Government/Fleet Account Manager
Sam.nichols@caseih.com
507-327-9901

For Participating Entity:

Tracy Wrenn
Statewide Sourcing & Contracting Officer
Tracy.wrenn@dgs.virginia.gov
804-659-1667

XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represent and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**CNH Industrial America, LLC
DBA Case IH**

Samuel Nichols

Signature

Samuel Nichols

Printed Name

National Account Manager

Title

January 6, 2025

Date

Commonwealth of Virginia:

Tracy Wrenn, VCO

Signature

Tracy Wrenn

Printed Name

Statewide Sourcing & Contracting Officer

Title

1/6/2025

Date

ATTACHMENT A COMMONWEALTH OF VIRGINIA SPECIAL TERMS AND CONDITIONS

The following terms and conditions shall be included in any Participating Addendum between the Commonwealth of Virginia and a Contractor for any resulting contract. Other Participating Entities may have their own provisions.

1. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

2. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple purchase order(s) with the applicable eVA transaction fee assessed for each order.

Contractors providing goods and/or services to the Commonwealth shall participate in the eVA e-procurement solution and agree to comply with the following: if this solicitation is for a term contract, failure to provide a static/hosted catalog (excel file) or an electronic catalog with functionality to interface with eVA (punchout catalog) for items awarded, will be just cause for the Commonwealth to reject your response or terminate the contract for default. The format of the electronic catalog shall conform to the eVA Catalog standards. Contractors shall work with the Contract Officer and eVA Catalog Team to provide the appropriate catalog option for the contract.

3. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract are always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the contractor.

4. **MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC):**

Purchasing charge cards offer Commonwealth of Virginia agencies and public entities the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services. Offerors responding to this solicitation should note that acceptance of payment by purchase card is **mandatory unless waived by DPS within 90 calendar days of contract award.**

Charge Card Levels: The amount of data passed for each charge card payment depends on the level at which the charge card is established. Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below and vendors must establish their card account at Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Purchase Card is indicated below.

Level 1 - vendors provide basic charge card purchase information, including but not limited to the data listed below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

Level 2 - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept the Purchasing Card.

- Customer Code (PCO Number from eVA); and
- Vendor Tax ID

Level 3 - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 **optional** data which is considered "Superior Data", the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

5. **ORDERS:** Authorized Users must order goods and/or services available from the Contract by issuing an eVA purchase order through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>.

6. **PERIOD FOR PERFORMANCE OF PURCHASE ORDERS:** To be valid, a purchase order issued under this Contract must be issued during the term of the Contract. The period specified for performance of the purchase order may extend past the term of the Contract. If a notice terminating this Contract is issued, the notice shall be construed as applying only to the Contract and not to any existing purchase order, unless the notice expressly states the intent to terminate the purchase order.

7. **LOBBYING AND INTEGRITY:** Offerors are cautioned that communications with individuals other than the DPS Contracting Officer may result in incorrect and/or insufficient information being provided. In addition, the Offeror shall not, in connection with this or any other agreement with the Commonwealth of Virginia, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any state officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state officer or employee.

Upon request of the Commonwealth of Virginia's, Department of General Services, the Offeror shall provide any type of information deemed relevant to the Offeror's integrity or responsibility to provide the services or goods, described herein.

8. **EXCLUSIVITY OF TERMS AND CONDITIONS:** No employee or agent of the Commonwealth or Authorized User shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions. No contractor shall be required to sign, from any employee or agent of the Commonwealth or Authorized Users, any additional agreements, contracts, or other documents that were not part of the original contract. Any documents signed by persons other than the Director of DPS or their authorized designee shall have no validity or effect upon the Contract.

9. **CONTRACTUAL DISPUTES:** In accordance with Code of Virginia § 2.2-4363, contractual claims, whether for money or other relief, shall be submitted in writing to the Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to the Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

- a. The Contractor may not invoke any available administrative procedure under Code of Virginia § 2.2-4365 nor institute legal action prior to receipt of the Commonwealth's decision on the claim, unless the Commonwealth fails to render its decision within thirty (30) days. The decision of the Commonwealth shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code of Virginia § 2.2-4364 or the administrative procedure authorized by Code of Virginia § 2.2-4365.

- b. The Commonwealth or any Authorized User, and their officers, agents and employees, including without limitation, the contracting and Ordering Officers, are executing this Agreement and any Orders issued

hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency or Authorized User that is purchasing and receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.

- c. In the event of any breach by the Commonwealth or any Authorized User, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any services hereunder.

10. **DELIVERY/SERVICE TO CORRECTIONAL INSTITUTIONS:**

The Contractor shall be responsible for adherence to the following guidelines as they pertain to delivering goods and/or providing services to correctional institutions, especially if the location is within the secured perimeter:

- a. The Contractor shall be responsible for ensuring that all personnel connected with the work comply with the rules and regulations of each ordering institution, which may reach beyond the scope of this specification.
- b. The Contractor shall maintain proper security and control over all personnel, equipment, tools, and materials at all times. The Contractor's equipment and personnel shall be subject to security checks and associated delays therefrom.
- c. There shall be no verbal discussion or physical contact between the Contractor's employees and offenders.
- d. Anyone bringing any offender any item, such as (but not limited to) weapons, tools, food, drink, clothing, cigarettes, matches, correspondence, printed or electronic media, or assisting offenders to escape is in violation of Commonwealth law and may be prosecuted to the fullest extent of the law.
- e. No weapons, alcohol, drugs, or medication of any type will be allowed on Commonwealth property.
- f. Keys shall be removed from all vehicles and other mobile equipment when not in operation. Vehicle doors and tool compartments shall be locked at all times when not in use. Ladders left on vehicles shall be chained and locked at all times.
- g. Any tools, especially cutting tools, if left unattended, will be confiscated.
- h. All security regulations shall be observed at all times. These will be made known to the Contractor and his representatives by the Institutional Security Chief, or his designee, at the point of entrance to the institution.
- i. All persons entering the prison complex are subject to search.
- j. Contractors and their representatives are limited to movement to and from, and within, the immediate area of their work.
- k. An institutional employee may be designated as a liaison between the Contractor and institution. Unless otherwise stated this person will be the Department Superintendent for whom the Contractor is performing the service or delivering the goods.
- l. Vehicles may not be permitted to leave the facility until after the daily or routine security check has been performed.
- m. All Contractor employees shall have valid identification with photograph at all times for identification. Validity of identification is determined solely at the discretion of the institution. A valid government-issued driver's license is generally acceptable. No persons will be permitted to enter the institution without valid identification.
- n. The institution reserves the right to refuse entrance to anyone who appears, in the institution's sole judgment, to be under the influence of drugs or alcohol, or otherwise impaired.