

Town of Nags Head
Public Works Contract Review Cover Form

Your review and comments are needed no later than:

PE

March 7, 2012

Contract Name : Knuckle Boom Loader truck Purchase

Contract Originator: Karen

- New contract Change Order Task Order
 Service Contract Equipment Contract Engineering Contract Construction Contract

Reviewer	Approval Date	
Eddie V.	3/6/12	
Finance Director	3/5/12	Dates need to be changed to reflect delivery within 60 days not 180 as bid.- Changed KBH
Town Clerk	3/4/12	"2011" to "2012" in Terms of Contract-Corrected) KBH
Town Attorney	3/6/12	Made minor language changes. KBH



Town of Nags Head

Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

NORTH CAROLINA
DARE COUNTY

PURCHASE ORDER # 12-02373

**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/
CORRESPONDING PURCHASE ORDER**


(SELLER initials)

THIS CONTRACT is made and entered into this the 6th day of March 2012, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and Public Works Equipment and Supply, Inc., 3405 Westwood Industrial Drive, Monroe, Chesapeake, NC 28110 (hereinafter referred to as "SELLER"), party of the second part.

1. ITEMS TO BE PROVIDED AND AGREED CHARGES

SELLER hereby agrees as follows:

To furnish one (1) New 2013 Freightliner Knuckle Boom grapple Loader "Brush Hawg" mounted on a New 2012 Freightliner M2-106 cab-chassis, as per the Contractor's bid dated February 22, 2012 (copy attached) to The Town of Nags Head, with all equipment included in the bid packet (training, inspections, etc.), and an Allison 3500 RDS Automatic Transmission with PTO provision series transmission (collectively, the "Equipment"). Entire unit to have a one (1) year parts and labor warranty, three (3) year structural warranty, towing extended/roadside service warranty with unlimited mileage. The total price of this contract is \$127,266.00 (one hundred twenty-seven thousand two hundred sixty-six dollars and no cents).

It is mutually agreed by and between the TOWN and SELLER that SELLER will provide the equipment required under this contract no later than May 8, 2012 with time being of the essence. If SELLER fails to meet this deadline, the TOWN will be damaged thereby, and because the amount of the TOWN's damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the amount of such damages shall be \$500.00 as liquidated damages for every day's delay in furnishing the Equipment beyond the deadline prescribed; and the SELLER hereby agrees that said sum shall be deducted from monies due the SELLER under the contract or, if no money is due the SELLER hereby agrees to pay to the TOWN as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay computed aforesaid.

2. WARRANTIES

The Town agrees to take delivery of the equipment at TOWN's place of business, but shall not be deemed to have accepted the Equipment until the Town has had a reasonable opportunity to inspect and operate the Equipment. SELLER hereby expressly warrants and represents that the Equipment provided shall be as represented to the Town and shall conform to the description given to the Town; shall be fit for the Town's use and purposes; shall meet the Town's needs and requirements for such equipment; and shall be merchantable. SELLER further represents that it has full right and title to the Equipment and there are no restrictions or limitations on SELLER's right to transfer title and ownership to the Equipment to the Town. SELLER shall be responsible for all repair and replacement as necessary in order for the Equipment to be as warranted.

3. TERM OF CONTRACT

The term of this CONTRACT for EQUIPMENT is from March 6th, 2012 to June 15th, 2012.

Notwithstanding provisions of this Section 3 to the contrary, the following shall survive the termination of this CONTRACT: any provision in Section 1 regarding liquidated damages; any warranty provided with regard to the Equipment; the provisions of Section 2; the provisions of Section 6 regarding indemnity; and the provisions of Section 9.

4. PAYMENT TO SELLER

The TOWN agrees to pay the price specified for the Equipment in accordance with this contract. Unless otherwise specified, the SELLER shall submit an itemized invoice to the TOWN within thirty (30) days from the Town's receipt of the Equipment. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the SELLER agree that the SELLER shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the SELLER'S duties under this contract. Accordingly, the SELLER shall be responsible for payment of all Federal, State and local taxes arising out of the SELLER'S activities in accordance with this contract, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the SELLER is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the

SELLER'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

6. INSURANCE AND INDEMNITY

The SELLER shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of its obligations under the terms of this CONTRACT.

The SELLER shall be fully responsible to the TOWN for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the SELLER is for the acts and omissions of persons directly employed by it.

In addition, the SELLER shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the SELLER is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the SELLER shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents during the performance of SERVICES.

The SELLER agrees to furnish the TOWN proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

The SELLER upon request by the TOWN shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the TOWN prior to execution of this contract. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

7. HEALTH AND SAFETY

The SELLER shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The SELLER shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

8. NON-DISCRIMINATION IN EMPLOYMENT

The SELLER shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The SELLER shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the SELLER is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by the TOWN, and the SELLER may be declared ineligible for further contracts.

9. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

10. OTHER PROVISIONS

This Contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

11. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents, the contract language will prevail.

12. SIGNATURES

Both the TOWN and the SELLER agree to the above contract.

Witnessed or Attested By:

Michelle H. [Signature]



**PUBLIC WORKS EQUIPMENT
AND SUPPLY, INC.**
3405 Westwood Industrial Drive
Monroe, NC 28110

[Signature]

Corporate Seal:

TOWN OF NAGS HEAD

By: *[Signature]*

Title: TOWN MANAGER

Date: 3/15/12

SELLER

By: *[Signature]*

Printed Name: LARRY J. DAVIS

Title: President

Date: 03/06/2012

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

[Signature] 3-14-12
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
TOWN ATTORNEY

PUBLIC WORKS % KAREN HEAGY
 TOWN OF NAGS HEAD
 2200 LARK AVE
 NAGS HEAD, NC 27959

12-02373

ORDER DATE: 03/02/12
 REQUISITION NO: R1200646
 DELIVERY DATE:
 STATE CONTRACT:
 F.O.B. TERMS: Destination

VENDOR #: PUBLI010

PUBLIC WORKS EQUIP & SUPPLY
 3405 WESTWOOD INDUSTRIAL DR
 MONROE,, NC 28110

Phone: (800)222-6803 Fax: (704)283-2266

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	New Knuckle Boom Loader Truck As per contract.	2-10-580-5-5774-00 CAPITAL OUTLAY EQUIPMENT	127,266.0000	127,266.00
			TOTAL	127,266.00

Please contact the Town of Nags Head if the prices indicated are not correct. The Town of Nags Head will not be responsible for incorrect pricing after the Purchase Order is received by vendor for processing.