



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Solicitation

NUMBER
7014EC05

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
CRYSTAL RINK 304-558-2306

*709043435 304-372-9875
 FAIRPLAIN TRACTOR SALES INC
 1169 RIPLEY RD
 RIPLEY WV 25271-8710

VENDOR

SHIP TO

DIVISION OF HIGHWAYS
 EQUIPMENT DIVISION
 ROUTE 33
 BRUSHY FORK ROAD
 BUCKHANNON, WV
 26201 304-472-1750

DATE PRINTED
01/07/2014

BID OPENING DATE: 02/12/2014 BID OPENING TIME: 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		020-67	\$86,627.00	\$86,627.00
	2			WHEEL DRIVE TRACTOR		
	1			MASSEY FERGUSON 5611 TRACTOR		
	1			DIAMOND DBM-C-P 20' REAR CRADLE w/BOOM MOWER		
REQUEST FOR QUOTATION (OPEN-END CONTRACT) THE WEST VIRGINIA STATE PURCHASING DIVISION FOR THE AGENCY, THE WEST VIRIGINA DIVISION OF HIGHWAYS, IS SOLICITING BIDS TO PROVIDE THE AGENCY WITH AN OPEN-END CONTRACT FOR TWO (2) WHEEL DRIVE UTILITY TRACTOR WITH MID MOUNTED ARTICULATED BOOM MOWER PER THE ATTACHED SPECIFICATIONS.						
***** THIS IS THE END OF RFQ 7014EC05 ***** TOTAL:						\$86,627.00
03/17/14 04:15:03PM West Virginia Purchasing Division						

SIGNATURE <i>Carroll T Fisher</i>	TELEPHONE 304-372-9875	DATE 2/14/14
TITLE PRESIDENT	FEIN 55-0540441	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening.

A **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

January 23, 2014 at 10:30 AM EST
 WV Division of Highways, Equipment Division
 RT 33
 Brushy Fork Road
 Buckhannon, WV 26201

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

The bid should contain the information listed below on the face of the envelope or the bid may not be considered:

SEALED BID

BUYER: CRYSTAL RINK

SOLICITATION NO.: RFQ 7014EC05

BID OPENING DATE: _____

BID OPENING TIME: _____

FAX NUMBER: 304-372-2713

In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus N/A convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: Technical
 Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when time stamped by the official Purchasing Division time clock.

Bid Opening Date and Time: February 12, 2014 at 1:30 PM EST

Bid Opening Location: Department of Administration, Purchasing Division
 2019 Washington Street East
 Charleston, WV 25305-0130

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. **DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.
 - 2.1 **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.
 - 2.2 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.
 - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.
 - 2.4 **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.
 - 2.5 **"Purchase Order"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.
 - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.
 - 2.7 **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.
 - 2.8 **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

One Time Purchase: The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event shall this Contract extend for more than one fiscal year.

Other: See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed

5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

Open End Contract: Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

Service: The scope of the service to be provided will be more clearly defined in the specifications included herewith.

Combined Service and Goods: The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

One Time Purchase: This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

- LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

- 9. LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.
- 10. ALTERNATES:** Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
- 11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or

failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

- 22. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
- 23. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- 24. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.
- 25. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.
- 26. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
- 27. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
- 28. COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.
- 29. PREVAILING WAGE:** On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage

38. [RESERVED]

39. CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

40. DISCLOSURE: Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

41. LICENSING: In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

42. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired

by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

- 47. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 49. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.
- 50. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:
- Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.
 - Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.
- 51. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Solicitation in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

FAIRPLAIN TRACTOR SALES, INC
(Company)

Carroll G Fisher
(Authorized Signature)

CARROLL G. FISHER, PRESIDENT
(Representative Name, Title)

304-372-9875 304-372-2713
(Phone Number) (Fax Number)

2/14/14
(Date)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: 7014EC05

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input checked="" type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input checked="" type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input checked="" type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input checked="" type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

FAIRPLAIN TRACTOR SALES, INC

Company

Carroll M Fisher

Authorized Signature

2/14/14

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids On behalf of the West Virginia Division of Highways, Department of Transportation to establish an open-end contract for a Two (2) Wheel Drive Utility Tractor with Mid Mounted Articulated Boom Mower.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Item” or “Contract Items”** means the list of items identified in Section 3, Subsection 1 below.
 - 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals attached hereto as Exhibit A and used to evaluate the RFQ.
 - 2.3 **“RFQ”** means the official request for quotation published by the Purchasing Division and identified as 7014EC05.
 - 2.4 **“WVDOH”** means West Virginia Division of Highways.
 - 2.5 **“EPA”** means Environmental Protection Agency.
 - 2.6 **“PTO”** means Power Take Off.
 - 2.7 **“OAT”** means organic acid technology.
 - 2.8 **“OSHA”** means Occupational Safety and Health Act.
 - 2.9 **“MPH”** means miles per hour.
 - 2.10 **“GPM”** means gallons per minute.
 - 2.11 **“PSI”** means pounds per square inch.
 - 2.12 **“ROPS”** means Roll-over Protection Structures.
 - 2.13 **“RPM”** means Revolutions per minute.

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the contract Items listed below on an open-end and continuing basis. Contract items must meet or exceed the mandatory requirements as shown below.

3.1.1 General – 2 Wheel Drive Tractor general mandatory requirements.

3.1.1.1 Unit shall be 2 wheel drive.

3.1.1.2 Wheelbase shall be 94 inches minimum.

3.1.1.3 Tractor dry weight (without ballast): shall be 10,000 lbs. minimum.

3.1.1.4 Unit shall be equipped with manufacturer's lockable side panels.

3.1.1.5 Shall have tilt up hood with manufacturers approved prop system.

3.1.1.6 All daily services shall be done from ground level.

3.1.1.5 Vendor must certify that unit offered will meet or exceed the "Occupational Safety and Health Act of 1970" or subsequent changes that are in effect at the time of manufacture of the unit. Please see Exhibit C.

3.1.2 Engine – The following are mandatory requirements related to the tractor's engine.

3.1.2.1 Engine shall be; Tier 4 Compliant.

3.1.2.2 Shall have 80 PTO horsepower minimum.

3.1.2.3 Shall be Manufacturers water cooled, diesel powered engine.

3.1.2.4 Shall be Manufacturers standard governor with engine key shut off, wire sealed by Manufacturer.

3.1.3 Engine Lubrication System – The following are mandatory requirements related to engine's lubrication system.

3.1.3.1 The engine shall have full pressure lubrication with oil filter and oil by pass system.

3.1.3.2 Shall have engine oil cooler

3.1.4 Engine Cooling System – The following are mandatory requirements related to the engine's cooling system.

3.1.4.1 Shall have a pressurized cooling system with thermostat and by pass, supplied with permanent OAT (organic acid technology) type extended life antifreeze or equal rated to -30 degrees F or lower.

3.1.4.2 Cooling system shall be equipped with a coolant recovery tank and sight glass.

3.1.4.3 Cooling system shall have an Air Induction System.

3.1.4.4 Dry type dual element (2 stage) air cleaner with self dumping valve shall be provided.

3.1.4.5 Unit shall have dash mounted air filter restriction indicator with light that is operator visible when service is required.

3.1.5 Exhaust System – The following are mandatory items related to the exhaust system.

3.1.5.1 Shall have muffler under hood with manufacturers approved vertical exhaust with rain and weather protection.

3.1.6 Electrical System – The following are mandatory items related to the electrical system.

3.1.6.1 Unit's electrical system shall be manufacturers noise suppression wiring, and must have 12 volts negative ground.

3.1.6.2 Neutral start switch (for safety purposes) shall be provided.

3.1.7 Charging System – The following are mandatory items related to the charging system.

3.1.7.1 Charging system shall be manufacturer heavy duty for model bid.

3.1.8 Engine Fuel System – The following are mandatory requirements related to the engine's fuel system.

3.1.8.1 If fuel tank is exposed, manufacturers skid plate must be provided.

3.1.8.2 Dual stage filtering shall be provided.

3.1.8.3 Unit shall have a fuel water separator.

3.1.9 Lighting – The following are mandatory requirements related to the lights.

3.1.9.1 Unit shall have Class 1 LED amber beacon; mounted in front center of cab roof with brush guard.

3.1.9.2 OSHA approved back up alarm shall be provided on unit.

3.1.9.3 Shall have two (2) high-low beam head light (halogen) with manufacturers heavy duty console mounted switch.

3.1.9.4 Shall have four (4) roof mounted work lights; two (2) front and two (2) rear.

3.1.9.5 Shall have fender mounted rear tail lights and turn signals shall be shock mounted.

3.1.9.6 Unit shall have seven (7) terminal out sockets to provide lighting for towed equipment.

3.1.9.7 Shall have four (4) roof mounted flashing warning lights; two (2) front and two (2) rear .

3.1.9.8 Unit shall be provided with console and dome lighting.

3.1.10 Unit Instrumentation – The following are mandatory requirements related to the units instrument panel.

3.1.10.1 Unit Instrumentation shall include:

- A. Tachometer
- B. Speedometer
- C. Hour meter operable from engine operation not key switch
- D. Coolant temperature indicator with audible buzzer or warning light
- E. Oil pressure indicator with audible buzzer or warning light
- F. Hydraulic oil temperature indicator with audible buzzer or warning light, to warn operator when manufacturers recommended hydraulic oil temperature is exceeded.

3.1.11 Clutch - The following are mandatory requirements related to the clutch.

3.1.11.1 Clutch shall be wet type, heavy duty available.

3.1.12 Transmission – The following are mandatory requirements related to the transmission's design and arrangement.

3.1.12.1 Shall have power shift design and must have a transmission that can be shifted on the go without using a clutch (within the speed gears) and with a left hand reverser that can be shifted from forward to reverse without the use of a clutch and shifted on the go.

3.1.12.2 The unit shall have a minimum of 16 forward speeds and 16 reverse speeds.

3.1.12.3 Speed ranges shall be 1.5 – 20 MPH.

3.1.12.4 Transmission manual shift lever shall be console mounted.

3.1.13 Differential – The following are mandatory requirements related to the differential.

3.1.13.1 Differential shall be manufacturers heavy duty.

3.1.13.2 Shall have manufacturer's differential lock engagement and disengagement capability and must be able to engage differential lock on the go.

3.1.14 Front Axle – The following are mandatory requirements related to the front axle.

3.1.14.1 Front axle shall be manufacturers heavy duty for use with boom mounted mower and shall be capable of 20 degree oscillation minimum.

3.1.15 Rear Axle – The following are mandatory requirements related to the rear axle.

3.1.15.1 The rear axle shall be heavy duty available.

3.1.16 Planetary Final Drives – The following are mandatory requirements related to the tractor's planetary final drives.

3.1.16.1 Planetary final drives shall be in board type.

3.1.17 Hydraulic System – The following are mandatory requirements related to the tractor's hydraulic system.

3.1.17.1 Tractor hydraulic system shall provide sufficient pressure and flow to operate all tractor functions at peak efficiency.

3.1.17.2 Tractor shall have two (2) control valves with three (3) detent position and flow.

3.1.17.3 Shall have hydraulic hoses that can be coupled and uncoupled while under pressure.

3.1.18 Brakes – The following are mandatory requirements related to the brakes.

3.1.18.1 Recommended manufacturers emergency braking system shall be provided.

3.1.18.2 Tractor shall have hydraulic actuated service brakes.

3.1.18.3 Tractor shall have wet type disk brakes which must be self or manual adjusting and equalizing.

3.1.19 Tires – The following are mandatory requirements related to the tires.

3.1.19.1 Front tires shall be: 10.00 x 16 – 6 ply F2 tread

3.1.19.2 Rear tires shall be: 18.4 x 30 – 8 ply R1tread

3.1.20 Three Point Hitch – The following are mandatory requirements related to the hitch.

3.1.20.1 Hitch shall have external switch to control raising and lowering from rear of tractor for safety purposes.

3.1.20.2 Hitch lift capacity shall be 4,630 lbs minimum at 24 inches behind lift point.

3.1.20.3 Hitch shall be electro-hydraulically operated.

3.1.20.4 Three point hitch shall be Category 2.

3.1.21 Cab and Related Accessories – The following are mandatory requirements related to the cab and accessories.

3.1.21.1 Cab shall be OSHA approved ROPS.

3.1.21.2 Cab shall be mounted by the manufacturer, insulated and pressurized.

3.1.21.3 Cab shall have safety glass, tinted at all locations.

3.1.21.4 Cab unit shall be equipped with heater, defroster, and air conditioning and shall be installed by the manufacturer.

3.1.21.5 Cab shall have two (2) lockable entry doors keyed alike; one (1) left and one (1) right.

3.1.21.6 Seat shall be cloth covered type protected with scotch guard (or equal) and equipped with a seat belt.

3.1.21.7 Seat shall have a height and weight adjustment and swivel left and right 20 degrees minimum for easier operation.

3.1.21.8 Seat shall be equipped with adjustable arm rests.

3.1.21.9 Unit shall be equipped with a tilt/telescoping steering wheel.

3.1.21.10 Tool box shall be provided, weather resistant, lockable, and mounted for operator convenience.

3.1.21.11 Cab unit shall have front and rear windshield wipers and washers.

3.1.21.12 Left and right side view mirrors and in cab rear view mirror shall be provided.

3.1.21.13 Cab and tractor shall have a type of non-skid step (steps) and hand holds for safety purposes.

3.1.21.14 Unit shall be equipped with a first aid kit mounted inside of cab.

3.1.21.15 All features that are considered to be manufacturers standard equipment that are not specifically addressed above shall be provided.

3.1.21.16 Unit shall be delivered to the WVDOH with all manufacturers recommended safety related decals and safety features intact.

3.1.22 PTO Requirements – The following are mandatory requirements related to the PTO (power take off).

3.1.22.1 Tractor shall have a minimum of 540 PTO R.P.M.

3.1.22.2 PTO shall be engaged and disengaged on the go.

3.1.23 Advertisement – The following are mandatory requirements related to advertising.

3.1.23.1 Manufacturer shall attach a metal plate on the unit stating manufacturer, serial number, or model number, etc. No decals or painted advertisement are permitted.

3.1.24 Paint – The following are mandatory items related to the color of unit.

3.1.24.1 The tractor shall be painted manufacturers standard color.

3.2 20 Foot Universal Mid Mounted Articulated Hydraulic Powered Boom Mower – The following are general mandatory requirements related to the above mower.

3.2.1 General

3.2.1.1 Mower shall have universal frame.

3.2.1.2 Mower shall have hitch assembly that will allow the use of a 60 inch side mounted short arm rotary grass mower or a 74 inch side mounted flail.

3.2.1.3 Vendor must certify that unit offered will meet or exceed the “Occupational Safety and Health Act of 1970” or subsequent changes that are in effect at the time of manufacture of the unit. See Exhibit C attached.

3.2.2 Frame – The following are mandatory items related to the frame.

3.2.2.1 Frame shall be mid mounted to underside of tractor utilizing a modular center weldment with attaching rails adequately secured to the front bolster and rear axle.

3.2.2.2 Main Frame shall be a minimum of 4 inch x 4 inch x ¼ inch steel tubing bracing frame with a minimum of 4 inch x 4 inch x ¼ inch steel

tubing main structure mounted over hood of tractor to 4 inch x 4 inch minimum mounting rail.

3.2.2.3 Unit shall be counterweighted to maintain the most possible ground pressure of tires on opposite side of mower during all reach out, up, and down operations of boom with specified head.

3.2.3 Hydraulic Reservoir – The following are mandatory items related to the hydraulic reservoir.

3.2.3.1 Shall have Manufacturer's properly sized hydraulic oil reservoir that is capable to operate all mower functions including forward, aft, up, down, and rotary head.

3.2.3.2 Tank shall have a built-in oil level sight glass and thermometer.

3.2.3.3 Hydraulic filter shall be capable of providing suitable filtration for system.

3.2.3.4 Tank shall be equipped with a shut off valve for closing when changing filter or hoses and for draining of tank.

3.2.3.5 Unit shall be equipped with front piston type pump to run mower head and piggy pump shall be gear or piston pump to run all other mower functions.

3.2.3.6 Hydraulic GPM shall be manufacturers specified to operate all mower functions at maximum efficiency.

3.2.3.7 All motor circuit hoses shall be a minimum of 1 inch four wire braid.

3.2.3.8 All hoses shall be routed through conduit and securely fastened for best brush protection.

3.2.3.9 Deck hoses shall be four (4) wire braid fitted with cordura sleeving for brush protection.

3.2.3.10 Mower controls shall be a five (5) section valve controlled through a single electronic joystick.

3.2.3.11 Valve shall allow a minimum of four (4) functions simultaneously.

3.2.3.12 The swing, lift, and dipper sections shall have individual relief valves to give breakaway protection.

3.2.3.13 Mower cutter shall have a 6 second maximum emergency shutdown.

3.2.3.14 Mower head motor shall take 6 seconds minimum to wind up to full RPM for a "no-shock-load startup".

3.2.4 Boom Rest – The following are mandatory items related to the boom rest.

3.2.4.1 A boom rest shall be mounted to mower frame to cradle boom during transport.

3.2.4.2 Boom rest shall take pressure off all cylinders when in transport.

3.2.4.3 When in stow, tractor and mower shall be maximum 108 inches with 50 inch rotary and 12 foot high maximum.

3.2.5 Safety Cage – The following are mandatory items related to the safety cage.

3.2.5.1 A safety cage shall be installed on right side and top of operator's position and a sloping guard or rail over entire hood area.

3.2.5.2 Cage shall be constructed of expanded metal and permanently mounted to tractor.

3.2.5.3 A lexon safety glass window shall be a part of the safety cage. This window is to cover the door window and shall be hinged mounted so that it and the tractor window can be cleaned.

3.2.6 Boom – The following are mandatory items related to the boom.

3.2.6.1 Boom shall be two (2) piece design with all pivot points having replaceable bronze bearings or greasable steel bearings.

3.2.6.2 Pivot pins shall be a minimum of 1 ½ inch diameter.

3.2.6.3 Inner boom shall be made of 6 inch x 6 inch x 3/8 inch steel tubing minimum, with a 50,000 lb square inch minimum yield strength.

3.2.6.4 Dipper boom shall be made of 5 inch x 5 inch x 3/8 inch steel tubing minimum, with a 50,000 lb square inch minimum yield strength.

3.2.6.5 All hinge points shall be T-1 steel reinforcement.

3.2.6.6 Boom swing from stow position shall be 140 degrees forward minimum.

3.2.6.7 Boom reach up shall be minimum 21 feet.

3.2.6.8 Boom reach out shall be minimum 21 feet from tractor centerline to outside edge or cutting blade arc.

3.2.6.9 Boom reach down shall be minimum 21 feet below tractor ground level.

3.2.6.10 Boom mower head shall be capable of mowing within inches of rear tractor tire allowing tractor to stay further out of traffic lane.

3.2.7 Brush Head – The following are mandatory items related to the brush head.

3.2.7.1 Cutting width shall be minimum 50 inches.

3.2.7.2 Top deck shall be A606 alloy steel or equal.

3.2.7.3 Side skirts shall be a minimum of 3/8 inch steel.

3.2.7.4 Top deck shall be reinforced with channel frame with a reinforced spindle mount plate.

3.2.7.5 Deck shall have replaceable full length skid shoes.

3.2.7.6 Spindle bearings shall be tapered roller type in a sealed housing.

3.2.7.7 Blades shall be a minimum of 4 inch wide x 5/8 inch thick double edge tempered steel and full swing 360 degrees.

3.2.7.8 Blade bolt shall be minimum 1 1/8 inch x 3 heat treated, Grade 8 shoulder bolt with a castel nut and roll pin.

3.2.7.9 Motor shall be cast steel and shall be sized to match the hydraulic pump proposed by the mower manufacturer.

3.2.7.10 Shall have a front safety shield, hydraulic actuated, center feed metal door operational from joystick control.

3.2.7.11 Cutter deck tilt rotation shall be 160 degrees minimum.

3.2.7.12 Rear shield shall be rubber/fabric material.

3.2.8 Paint – The following are mandatory items related to the color.

3.2.8.1 Mower shall be manufacturer's standard color.

3.2.9 Advertising – The following is a mandatory requirement related to advertising.

3.2.9.1 Shall have only one (1) manufacturer name plate, which must include model number, may appear on exterior of unit. Logos created through the stamping or casting process of manufacturer are also acceptable.

3.2.10 Miscellaneous – The following mandatory items are related to the mower.

3.2.10.1 Complete unit shall be delivered with all manufacturers' safety features intact.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

4.2 Pricing Pages: Vendor should complete the Pricing Pages (Exhibit A) by completing the Year, Make, Model, and inserting quoted price. Vendor should complete the pricing pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Page contains a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery.

- 6.4 Representative Unit for Test:** The successful vendor must (if specified) provide the DOH one (1) completed representative unit to be observed and evaluated on each order to insure compliance with specification. If requested, the time period for testing and evaluation shall be seven (7) working days following receipt of the unit. DOH will incur no obligation for deterioration of surfaces, finishes, seals, and mechanical or electrical parts on the unit resulting from operation and testing within the limits of these specifications; nor will DOH incur obligation for damage to the unit resulting from failure to meet specifications when due care and attention is given by DOH and testing is done within the limits of these specifications. Failure of the pilot unit to satisfactorily meet specifications as bid may be cause for cancellation of the purchase order, and return of the delivered unit along with all associated equipment to the vendor at the vendor's expense.
- 6.5 Condition of Unit(s) Upon Delivery:** All units must arrive at the prescribed delivery point having been completely pre-serviced with oil, lubricants, and coolant. All prescribed precautions pertaining to first operations and break-in of the unit are to be posted conspicuously on the unit for ready observance by the operator.
- 6.6 Delivery Point:** Delivery point of the completed representative unit will be the WVDOH, Equipment Division, Rt. 33 and Brushy Fork Road, Buckhannon, WV 26201.

7. MISCELLANEOUS:

7.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the RFQ unless a contract modification is approved in accordance with the provisions contained in this Contract.

7.2 Exception to Non-Mandatory Specifications: Exception to a non-mandatory specification may be made by the bidder, providing the exception is not available from the manufacturer. Any exception must be indicated on a separate attachment and labeled as "Exceptions to Specifications" and supported by documentation from the manufacturer. The state reserves the right to waive minor irregularities in bids or specifications in accordance with §148-1-4(f) of the WV Legislative Rules and Regulations.

prior to delivery of the pilot unit. Training seminar to be held at the WVDOT, Equipment Division, Buckhannon, WV.

- 7.7 Preventative Maintenance & Operator Procedures:** Manufacturers and/or dealers will be required to submit to the Equipment Division, in addition to the operating and service manuals, booklets and pamphlets explaining the Preventative Maintenance and Operator Procedures to be used by the operators of this equipment, and must include such things as daily prestart inspection procedure, service schedule, and routine maintenance required, safety precautions, etc. The successful vendor shall furnish all training aids; i.e. videos, projectors as required in conducting the training.
- 7.8 Warranty and Service Policy:** The unit must be accompanied upon delivery by the unit's manufacturers executed warranty and service policy.
- 7.9 Unspecified Accessories & Features:** All parts, equipment, accessories, material, design and performance characteristics not specified herein, but which are necessary to provide a complete unit, must be furnished with each unit and required to conform to strength, quality of material, and quality of workmanship to those which are advertised and provided to the market in general by the unit industry. All parts and accessories advertised and regularly supplied as standard shall be included, except those which would represent duplication of these specified and except those which, by specification, are not to be furnished. All standard safety features, required by Federal and State Law, shall be included.

UNITED STATES
DEPARTMENT OF LABOR

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OSHA Act of 1970 - Table of Contents

Public Law 91-596
84 STAT. 1590
91st Congress, S.2193
December 29, 1970,
as amended through January 1, 2004. (1)

An Act

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970."

Footnote (1) See Historical notes at the end of this document for changes and amendments affecting the OSH Act since its passage in 1970 through January 1, 2004.

SEC. 2. Congressional Findings and Purpose

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

29 USC 651

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources --

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions; (2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

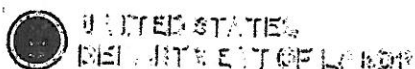
(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health; affecting the OSH Act since its passage in 1970 through January 1, 2004.

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the



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29 USC 651

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(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions; (2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health; affecting the OSH Act since its passage in 1970 through January 1, 2004.

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

SEC. 5. Duties

(a) Each employer --

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; 29 USC 654

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

6. Occupational Safety and Health Standards

(a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees. 29 USC 655

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of

treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines --

(A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and

(B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6 (b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

SEC. 7. Advisory Committees; Administration

(a) (1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health and Human Services, without regard to the provisions

29 USC 656

punished by said court as a contempt thereof.

(c) (1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health and Human Services, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health and Human Services, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health and Human Services, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) (1) The Secretary and Secretary of Health and Human Services are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health and Human Services shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

(h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.

Pub. L. 105-198 added subsection (h).

SEC. 9. Citations

(a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations

29 USC 658

The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

Pub. L. 98-620

(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

SEC. 12. The Occupational Safety and Health Review Commission

(a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

29 USC 661

(b) The terms of members of the Commission shall be six years except that

(1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and

(2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term.

A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) (Text omitted.)

See notes on omitted text.

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

Pub. L. 95-251

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such administrative law judges and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5, United States Code.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative

confidentiality of trade secrets.

16. Variations, Tolerances, and Exemptions

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

29 USC 665

SEC. 17. Penalties

(a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.

29 USC 666

Pub. L. 101-508
Increased the civil penalties in subsections (a)-(d) & (f). See Historical notes.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$7,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

Pub. L. 98-473
Maximum criminal fines are increased by the Sentencing Reform Act of 1984, 18 USC § 3551 et seq. See Historical notes.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

See historical notes.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h) (1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health and Human Services to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to \$7,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in

certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

SEC. 19. Federal Agency Safety Programs and Responsibilities

(a) It shall be the responsibility of the head of each Federal agency (not including the United States Postal Service) to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof) --

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6; Pub. L. 50-241

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports. Pub. L. 97-375

(c) Section 7902(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

SEC. 20. Research and Related Activities

(a) (1) The Secretary of Health and Human Services, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems. 29 USC 669

(2) The Secretary of Health and Human Services shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health and Human Services shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health and Human Services shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

Services, shall --

(1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and

(2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

Pub. L. 105-97,
§2 added
subsection (d).
See Historical
notes.

(d) (1) The Secretary shall establish and support cooperative agreements with the States under which employers subject to this Act may consult with State personnel with respect to --

(A) the application of occupational safety and health requirements under this Act or under State plans approved under section 18; and

(B) voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment. Such agreements may provide, as a condition of receiving funds under such agreements, for contributions by States towards meeting the costs of such agreements.

(2) Pursuant to such agreements the State shall provide on-site consultation at the employer's worksite to employers who request such assistance. The State may also provide other education and training programs for employers and employees in the State. The State shall ensure that on-site consultations conducted pursuant to such agreements include provision for the participation by employees.

(3) Activities under this subsection shall be conducted independently of any enforcement activity. If an employer fails to take immediate action to eliminate employee exposure to an imminent danger identified in a consultation or fails to correct a serious hazard so identified within a reasonable time, a report shall be made to the appropriate enforcement authority for such action as is appropriate.

(4) The Secretary shall, by regulation after notice and opportunity for comment, establish rules under which an employer --

(A) which requests and undergoes an on-site consultative visit provided under this subsection;

(B) which corrects the hazards that have been identified during the visit within the time frames established by the State and agrees to request a subsequent consultative visit if major changes in working conditions or work processes occur which introduce new hazards in the workplace; and

(C) which is implementing procedures for regularly identifying and preventing hazards regulated under this Act and maintains appropriate involvement of, and training for, management and non-management employees in achieving safe and healthful working conditions, may be exempt from an inspection (except an inspection requested under section 8(f) or an inspection to determine the cause of a workplace accident which resulted in the death of one or more employees or hospitalization for three or more employees) for a period of 1 year from the closing of the consultative visit.

(5) A State shall provide worksite consultations under paragraph (2) at the request of an employer. Priority in scheduling such consultations shall be

assigned to requests from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request.

SEC. 22. National Institute for Occupational Safety and Health

(a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health and Human Services in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health and Human Services under sections 20 and 21 of this Act.

29 USC 671

(b) There is hereby established in the Department of Health and Human Services a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health and Human Services, and who shall serve for a term of six years unless previously removed by the Secretary of Health and Human Services.

(c) The Institute is authorized to --

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health and Human Services under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary of Health and Human Services, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health and Human Services.

(b) Findings and purpose

(1) Findings
Congress finds that--

Pub. L. 102-522,
Title II, §209
added this text.

- (A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons;
- (B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;
- (C) additional information is needed concerning issues related to employee transported contaminant releases; and
- (D) additional regulations may be needed to prevent future releases of this type.

(2) Purpose
It is the purpose of this section to--

- (A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);
- (B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;
- (C) clarify regulatory authority for preventing and responding to such incidents; and
- (D) assist workers in redressing and responding to such incidents when they occur.

(c) Evaluation of employee transported contaminant releases

(1) Study

(A) In general

Not later than 18 months after October 26, 1992, the Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplaces of such workers.

(B) Matters to be evaluated

In conducting the study and evaluation under subparagraph (A), the Director shall--

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by--

- (I) the National Institute for Occupational Safety and Health;
- (II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);
- (III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and
- (IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

(ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;

(iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including--

- (I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;
- (II) the health effects, if any, of the resulting exposure on workers and their families;
- (III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers' homes and personal clothing;
- (IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the result of such determination.

(2) Additional regulations or standards If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate, pursuant to the Secretary's authority under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) Authorization of appropriations There are authorized to be appropriated from sums otherwise authorized to be appropriated, for each fiscal year such sums as may be necessary to carry out this section.

SEC. 23. Grants to the States

(a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them -- 29 USC 672

- (1) in identifying their needs and responsibilities in the area of occupational safety and health,
- (2) in developing State plans under section 18, or
- (3) in developing plans for --

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health and Human Services, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health and Human Services, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

SEC. 24. Statistics

(a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. 29 USC 673

(b) To carry out his duties under subsection (a) of this section, the Secretary may --

- (1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

SEC. 32. Separability

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. 29 USC 677

SEC. 33. Appropriations

There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary. 29 USC 678

SEC. 34. Effective Date

This Act shall take effect one hundred and twenty days after the date of its enactment.

Approved December 29, 1970.

As amended through January 1, 2004.

HISTORICAL NOTES

This reprint generally retains the section numbers originally created by Congress in the Occupational Safety and Health (OSH) Act of 1970, Pub. L. 91-596, 84 Stat. 1590. This document includes some editorial changes, such as changing the format to make it easier to read, correcting typographical errors, and updating some of the margin notes. Because Congress enacted amendments to the Act since 1970, this version differs from the original version of the OSH Act. It also differs slightly from the version published in the United States Code at 29 U.S.C. 661 *et seq.* For example, this reprint refers to the statute as the "Act" rather than the "chapter."

This reprint reflects the provisions of the OSH Act that are in effect as of January 1, 2004. Citations to Public Laws which made important amendments to the OSH Act since 1970 are set forth in the margins and explanatory notes are included below.

NOTE: Some provisions of the OSH Act may be affected by the enactment of, or amendments to, other statutes. Section 17(h)(1), 29 U.S.C. 666, is an example. The original provision amended section 1114 of title 18 of the United States Code to include employees of "the Department of Labor assigned to perform investigative, inspection, or law enforcement functions" within the list of persons protected by the provisions to allow prosecution of persons who have killed or attempted to kill an officer or employee of the U.S. government while performing official duties. This reprint sets forth the text of section 17(h) as enacted in 1970. However, since 1970, Congress has enacted multiple amendments to 18 U.S.C. 1114. The current version does not specifically include the Department of Labor in a list; rather it states that "Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance shall be punished . . ." as provided by the statute. Readers are reminded that the official version of statutes can be found in the current volumes of the United States Code, and more extensive historical notes can be found in the current volumes of the United States Code Annotated.

Amendments

On January 2, 1974, section 2(c) of Pub. L. 93-237 replaced the phrase "7(b)(6)" in section 28(d) of the OSH Act with "7(b)(5)". 87 Stat. 1023. Note: The text of Section 28 (Economic Assistance to Small Business) amended Sections 7(b) and Section 4(c)(1) of the Small Business Act. Because these amendments are no longer current, the text of section 28 is omitted in this reprint. For the current version, see 15 U.S.C. 636.

In 1977, the U.S. entered into the Panama Canal Treaty of 1977, Sept. 7, 1977, U.S.-Panama, T.I.A.S. 10030, 33 U.S.T. 39. In 1979, Congress enacted implementing legislation. Panama Canal Act of 1979, Pub. L. 96-70, 93 Stat. 452 (1979). Although no corresponding amendment to the OSH Act was enacted, the Canal Zone ceased to exist in 1979. The U.S. continued to manage, operate and facilitate the transit of ships through the Canal under the authority of the Panama Canal Treaty until December 31, 1999, at which time authority over the Canal was transferred to the Republic of Panama.

On March 27, 1978, Pub. L. 95-251, 92 Stat. 183, replaced the term "hearing examiner(s)" with "administrative law judge(s)" in all federal laws, including sections 12(e), 12(j), and 12(k) of the OSH Act, 29 U.S.C. 661.

On October 13, 1978, Pub. L. 95-454, 92 Stat. 1111, 1221, which redesignated section numbers concerning personnel matters and compensation, resulted in the substitution of section 5372 of Title 5 for section 5362 in section 12(e) of the OSH Act, 29 U.S.C. 661.

On October 17, 1979, Pub. L. 96-88, Title V, section 509(b), 93 Stat. 668, 695, redesignated references to the Department of Health, Education, and Welfare to the Department of Health and Human Services and redesignated references to the Secretary of Health, Education, and Welfare to the Secretary of Health and Human Services.

On September 13, 1982, Pub. L. 97-258, §4(b), 96 Stat. 877, 1067, effectively substituted "Section 3324(a) and (b) of Title 31" for "Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529)" in section 22 (e)(8), 29 U.S.C. 671, relating to NIOSH procurement authority.

On December 21, 1982, Pub. L. 97-375, 96 Stat. 1819, deleted the sentence in section 19(b) of the Act, 29 U.S.C. 668, that directed the President of the United States to transmit annual reports of the activities of federal agencies to the House of Representatives and the Senate.

On October 12, 1984, Pub. L. 98-473, Chapter II, 98 Stat. 1837, 1987, (commonly referred to as the "Sentencing Reform Act of 1984") instituted a classification system for criminal offenses punishable under the United States Code. Under this system, an offense with imprisonment terms of "six months or less but more than thirty days,"

The text of section 28 (Economic Assistance to Small Business) amended sections 7(b) and section 4(c)(1) of the Small Business Act to allow for small business loans in order to comply with applicable standards. Because these amendments are no longer current, the text is omitted here. For the current version see 15 U.S.C. 636.

The text of section 29, (Additional Assistant Secretary of Labor), created an Assistant Secretary for Occupational Safety and Health, and section 30 (Additional Positions) created additional positions within the Department of Labor and the Occupational Safety and Health Review Commission in order to carry out the provisions of the OSH Act. The text of these sections is omitted here because it no longer reflects the current statutory provisions for staffing and pay. For current provisions, see 29 U.S.C. 553 and 5 U.S.C. 5108 (c).

Section 31 of the original OSH Act amended 49 U.S.C. 1421 by inserting a section entitled "Emergency Locator Beacons." The text of that section is omitted in this reprint because Pub. L. 103-272, 108 Stat.745, (July 5, 1994), repealed the text of section 31 and enacted a modified version of the provision, entitled "Emergency Locator Transmitters," which is codified at 49 U.S.C. 44712.

Notes on other legislation affecting the administration of the Occupational Safety and Health Act. Sometimes legislation does not directly amend the OSH Act, but does place requirements on the Secretary of Labor either to act or to refrain from acting under the authority of the OSH Act. Included below are some examples of such legislation. Please note that this is not intended to be a comprehensive list.

STANDARDS PROMULGATION.

For example, legislation may require the Secretary to promulgate specific standards pursuant to authority under section 6 of the OSH Act, 29 U.S.C. 655. Some examples include the following:

Hazardous Waste Operations. Pub. L. 99-499, Title I, section 126(a)-(f), 100 Stat. 1613 (1986), as amended by Pub. L. 100-202, section 101(f), Title II, section 201, 101 Stat. 1329 (1987), required the Secretary of Labor to promulgate standards concerning hazardous waste operations.

Chemical Process Safety Management. Pub. L. 101-549, Title III, section 304, 104 Stat. 2399 (1990), required the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, to promulgate a chemical process safety standard.

Hazardous Materials. Pub. L. 101-615, section 29, 104 Stat. 3244 (1990), required the Secretary of Labor, in consultation with the Secretaries of Transportation and Treasury, to issue specific standards concerning the handling of hazardous materials.

Bloodborne Pathogens Standard. Pub. L. 102-170, Title I, section 100, 105 Stat. 1107 (1991), required the Secretary of Labor to promulgate a final Bloodborne Pathogens standard.

Lead Standard. The Housing and Community Development Act of 1992, Pub. L. 102-550, Title X, sections 1031 and 1032, 106 Stat. 3672 (1992), required the Secretary of Labor to issue an interim final lead standard.

EXTENSION OF COVERAGE.

Sometimes a statute may make some OSH Act provisions applicable to certain entities that are not subject to those provisions by the terms of the OSH Act. For example, the Congressional Accountability Act of 1995, Pub. L. 104-1, 109 Stat. 3, (1995), extended certain OSH Act coverage, such as the duty to comply with Section 5 of the OSH Act, to the Legislative Branch. Among other provisions, this legislation authorizes the General Counsel of the Office of Compliance within the Legislative Branch to exercise the authority granted to the Secretary of Labor in the OSH Act to inspect places of employment and issue a citation or notice to correct the violation found. This statute does not make all the provisions of the OSH Act applicable to the Legislative Branch. Another example is the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Title IX, Section 947, Pub. L. 108-173, 117 Stat. 2066 (2003), which requires public hospitals not otherwise subject to the OSH Act to comply with OSHA's Bloodborne Pathogens standard, 29 CFR 1910.1030. This statute provides for the imposition and collection of civil money penalties by the Department of Health and Human Services in the event that a hospital fails to comply with OSHA's Bloodborne Pathogens standard.

PROGRAM CHANGES ENACTED THROUGH APPROPRIATIONS LEGISLATION.

Sometimes an appropriations statute may allow or restrict certain substantive actions by OSHA or the Secretary of Labor. For example, sometimes an appropriations statute may restrict the use of money appropriated to run the Occupational Safety and Health Administration or the Department of Labor. One example of such a restriction, that has been included in OSHA's appropriation for many years, limits the applicability of OSHA requirements with respect to farming operations that employ ten or fewer workers and do not maintain a temporary labor camp. Another example is a restriction that limits OSHA's authority to conduct certain enforcement activity with respect to employers of ten or fewer employees in low hazard industries. See Consolidated Appropriations Act, 2004, Pub. L. 108-199, Div. E - Labor, Health and Human Services, and Education, and Related Agencies Appropriations, 2004, Title I - Department of Labor, 118 Stat. 3 (2004). Sometimes an appropriations statute may allow OSHA to retain some money collected to use for occupational safety and health training or grants. For example, the Consolidated Appropriations Act, 2004, Div. E, Title I, cited above, allows OSHA to retain up to \$750,000 of training institute course tuition fees per fiscal year for such uses. For the statutory text of currently applicable appropriations provisions, consult the OSHA appropriations statute for the fiscal year in question.

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U.S. Department of Labor | Occupational Safety & Health Administration | 200 Constitution Ave., NW, Washington, DC 20210
Telephone: 800-321-OSHA (6742) | TTY: 877-889-5627

www.OSHA.gov

Exhibit A

Cost Sheet

RFQ 7014EC05

Item Number	Estimated Quantity	Unit of Measure	Description	Unit Price	Total
1	20	Each	One complete unit: 2 Wheel Drive Tractor with Mid Mounted Articulated Boom Mower.	\$86,627.00	

Vendor should also supply the year, make, and model of the following:

MASSEY FERGUSON TRACTOR 5611 80PTO HP
DIAMOND DBMCP 20' REAR CRADLE BOOM MOWER

2 Wheel drive tractor with mid mounted articulated boom mower _____

EXEMPTIONS – RFQ 7014EC05

Original: 3.1.1.3

Exception: -- The tractor (MFG) weight specs show 8929 lbs with standard wheels, but with cast iron wheels tractor will weigh over 10,000 lbs. Each wheel weighs over 550 lbs.

Originals: 3.1.2.1 3.1.3.2 3.1.5.1

No exceptions

Original: 3.1.14.1

Exception: 12-degree oscillation

Original: 3.1.19.1 3.1.19.2

No exceptions

Original: 3.1.20.2

Exceptions: 8575 at 24”

Original: 3.2.2.2

Exception: -- Main frame is one solid piece of steel full length of tractor.

Frame does not go across the hood. Does not need bracing tube.

State of WV has 75 units in stock since 2005 and have not had any problem with the frame.

Original: 3.2.3.5

Exception: Cast Iron pump

Originals: 3.2.4.3 3.2.5.3 3.2.6.9 6.1

No exceptions



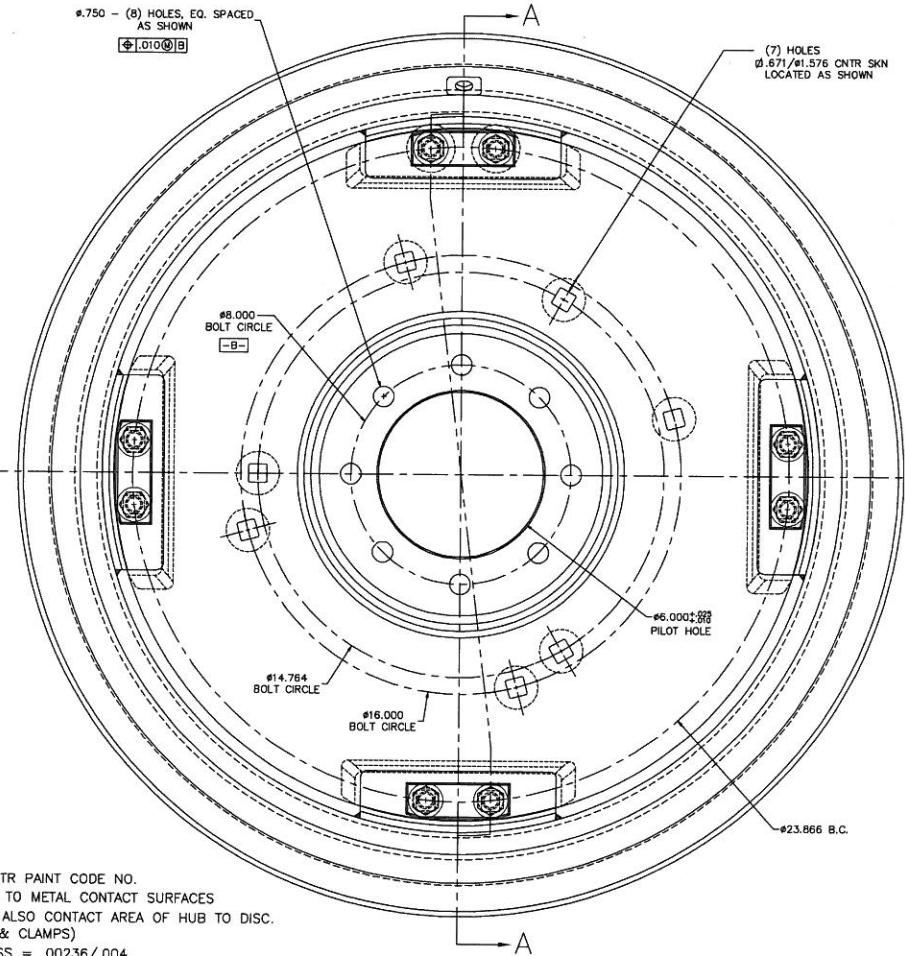
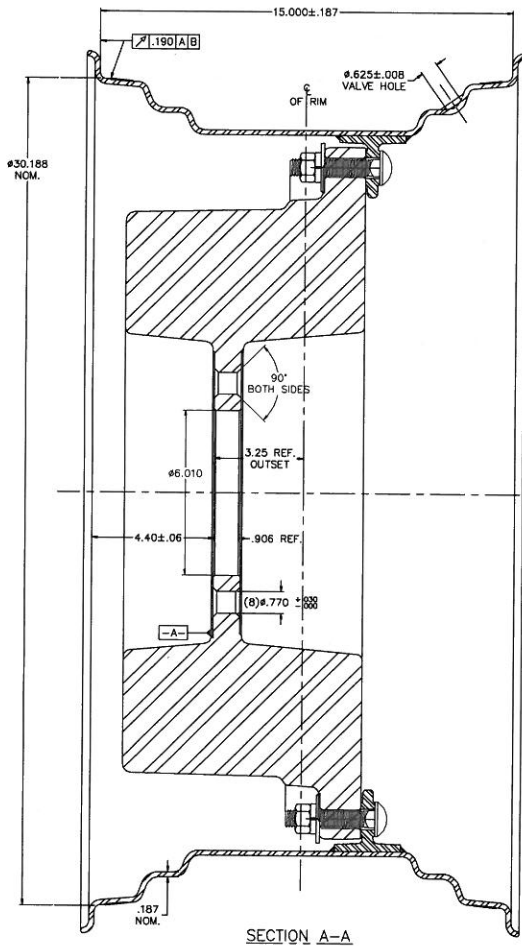
30" CAST WHEEL FOR MASSEY TRACTOR MF 5611 INFORMATION

THE WHEEL IS 30X15 WITH A CENTER CAST DISC THAT WEIGHS APPROXIMATELY 550 LBS. THE COMPLETE WHEEL WILL WEIGH APPROXIMATELY 630 LBS ONCE THE DISC IS INSTALLED AND THE RIM AND RING CLAMP. WE SAY "APPROXIMATELY" BECAUSE UNTIL WE BUILD THE MOLD FOR THE CAST CENTER DISC, AND MAKE A DISC, WE WON'T KNOW FOR SURE THE WEIGHT. OUR ESTIMATE IS WITHIN 10-15 POUNDS EITHER SIDE OF THE PROJECTED 550LBS.

THE MF 5611 TRACTOR WEIGHS 8,929 LBS WITH THE CURRENT WHEELS. IF WE REMOVE THE CURRENT WHEELS AND ADD THE CAST IRON WHEELS THE WEIGHT WILL GO UP TO 10,029 LBS

Curtis Morris

February 19, 2014



PAINT:

- 1.) PRIMER & TOP COAT OTR PAINT CODE NO.
- 2.) PRIME ONLY ON METAL TO METAL CONTACT SURFACES OF DISC AND CLAMPS, ALSO CONTACT AREA OF HUB TO DISC. (BOTH SIDES OF DISC & CLAMPS)
PRIMER PAINT THICKNESS = .00236/.004

"REFER TO RIM AND DISC DRAWINGS FOR MASKING DIMENSIONS"

RECOMMENDED TORQUE SPEC: 225-240 FT. LBS. (DRY) GRADE 8

THE SUBJECT MATTER OF THIS DRAWING IS THE PROPERTY OF OTR WHEEL ENGINEERING, INC. IT IS TO BE USED ONLY AS AUTHORIZED BY OTR WHEEL IN WRITING. ALL COPIES AND DRAWINGS WILL BE RETURNED UPON REQUEST. ALL INFORMATION CONTAINED IN THIS PRINT IS CONFIDENTIAL. ANY DISTRIBUTION OF THIS PRINT TO OTHER COMPANIES WITHOUT PRIOR CONSENT IN WRITING FROM OTR WHEEL ENGINEERING, INC. CAN AND WILL RESULT IN LEGAL ACTION.

	OTR WHEEL ENGINEERING	
	ROME, GEORGIA 30161	Ph. 706-235-9781 Fax 706-234-8137
DWG. NO.	3015016	REV.
DRAWN: A LUSK CHECKED: * DATE: 1/31/14 FILE:		

ITEM	PART NO.	DESCRIPTION	QTY	ZONE	REV	PRE RELEASE	DESCRIPTION	ECO	APP	DATE
1										1-31-14

UNLESS OTHERWISE SPECIFIED-DIMENSIONS ARE IN INCHES	3 PLACE DIM ± 0.010 2 PLACE DIM ± 0.020 1 PLACE DIM ± 0.060 ANGULAR DIM ± 1°
SCALE: N.T.S.	

TITLE
30 X DW15A WHEEL ASSY. - CAST DISC
8 HOLES ON 8.00 B.C. - 6.01 PILOT
3.25 NEG. OUTSET (REF.)

State of West Virginia VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. **Application is made for 5% resident vendor preference for the reason checked:**
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (*West Virginia Code*, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: FAIRPLAIN TRACTOR SALES, INC

Signed: *Carroll A Fisher*

Date: 2/14/14

Title: PRESIDENT

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

RFQ No. 7014EC05

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Fairplain Tractor Sales INC.
Authorized Signature: Carol Estep Date: 2/14/14

State of West Virginia
County of Jackson, to-wit:

Taken, subscribed, and sworn to before me this 14th day of February, 2014.
My Commission expires September 26, 2021.

AFFIX SEAL HERE

NOTARY PUBLIC

Terri Lee Hackney

Purchasing Affidavit (Revised 07/01/2012)



NOTE:

Vendor and Notary's date must be the same.
Notary required to AFFIX SEAL on Purchasing Affidavit.