

## **RESOLUTION NO. 2011-620**

Adopted by the Sacramento City Council

November 15, 2011

### **INCREASING THE PURCHASE AUTHORITY USING A NATIONAL JOINT POWERS ALLIANCE COOPERATIVE PURCHASE AGREEMENT FOR THE PURCHASE OF THREE AERIAL EQUIPPED TRUCKS**

#### **BACKGROUND**

- A. On September 6, 2011, City Council adopted Resolution No. 2011-514, approving the use of the National Joint Powers Alliance (NJPA) cooperative purchase agreement with Altec Industries, Inc. (Contract No. 081209) for the purchase of two replacement aerial equipped trucks for the Department of Transportation and one replacement aerial equipped truck for the Department of Utilities in the total amount of \$319,000. The Department of Transportation has since modified its truck requirements to increase the length of the aerial boom, add a jib attachment, and increase the size of the outriggers, necessitating an increase in the purchase order in the amount of \$60,000 for a revised not-to-exceed amount of \$379,000. These modifications will provide more versatility to perform jobs in the field. Aerial equipped trucks are used for maintenance and repair of city facilities, trees, etc. that are located above ground level.
- B. In accordance with City Code 3.56.240, the City Manager may, by cooperative purchase agreements approved by City Council, purchase supplies or nonprofessional services through contracts of other governmental jurisdictions without separate competitive bidding, where it is advantageous to the City.
- C. Using the NJPA cooperative purchase agreement (Contract No. 081209) to purchase three aerial equipped trucks from Altec Industries, Inc. is advantageous to the City as the agreement meets the City's fleet equipment specifications and will result in cost and time savings.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. Increasing the purchase authority using the NJPA cooperative purchase agreement with Altec Industries, Inc. (Contract No. 081209) (attached as Exhibit A) by \$60,000, for a revised not-to-exceed amount of \$379,000, for the purchase of three aerial equipped trucks is approved.

Section 2. The City Manager or the City Manager's designee is authorized to execute the purchase specified above.

Section 3. Exhibit A is a part of this resolution.

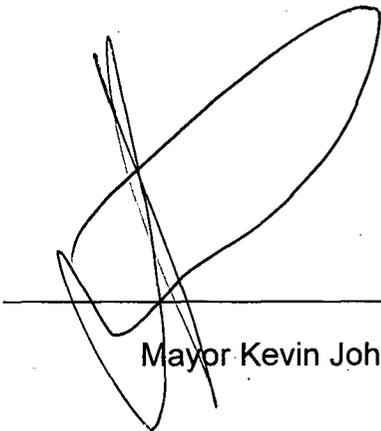
Adopted by the City of Sacramento City Council on November 15, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

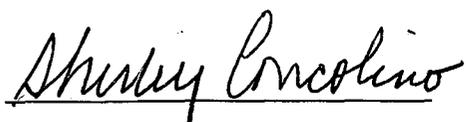
Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**Vendor Agreement #081209-ALT (Agreement)  
Between**

**ALTEC INDUSTRIES, INC. (Awarded Vendor)  
210 Inverness Center Drive  
Birmingham, AL 35242**

**AND**

**NATIONAL JOINT POWERS ALLIANCE® (NJPA)  
200 1<sup>st</sup> ST NE  
Staples, MN 56479**

Whereas; NJPA issued an Invitation For Bid #081209 (IFB) for the provision of LANDSCAPING AND GROUNDS RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES to NJPA and NJPA Members nationwide; and

Whereas; ALTEC INDUSTRIES, INC. responded to said IFB committing to the provision of LANDSCAPING AND GROUNDS RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES to NJPA and NJPA Members; and

Whereas; NJPA has awarded the contract proposed in the IFB, which is identified as NJPA contract 081209-ALT (the Contract), to Awarded Vendor, and

Whereas; NJPA and Awarded Vendor desire to further define their relationship under the Contract as contained herein.

Now therefore; In consideration of the mutual covenants contained herein, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The effective date of this agreement shall be September 10, 2009.

**ARTICLE 1. PURPOSE AND INTENT**

1.1 The purpose and intent of this Agreement is to:

- 1.1.1 Augment the terms and conditions of the Contract #081209-ALT originally identified in the IFB and modified in Schedule C of the Awarded Vendor's bid response,
- 1.1.2 Identify specific marketing and sales training responsibilities for both NJPA and Awarded Vendor, and
- 1.1.3 to finalize the administration fee to be paid by the Awarded Vendor to NJPA.

**ARTICLE 2. TERMS AND CONDITIONS**

2.1 NJPA and Awarded Vendor agree to the terms and conditions contained in IFB #081209 AND the exceptions to those terms and conditions identified in Form C of Awarded Vendor's bid response EXCEPT as identified herein:

No further exceptions made.

**ARTICLE 3. AWARDED VENDOR MARKETING RESPONSIBILITIES**

**3.1 Sales Force Training.**

3.1.1 Awarded Vendor will be responsible for the facilitation of training for Awarded Vendor's sales force and appropriate levels of management by NJPA with regard to the use and value of the Contract.

3.1.2 Awarded Vendor will be responsible for facilitation of training their sales force and appropriate levels of management by Awarded Vendor regarding internal matters relevant to the Contract including, but not limited to, order process, product delivery, and funds flow.

3.1.3 Awarded Vendor will be responsible for identifying and organizing follow-up training(s) on these subjects as needed.

3.1.4 Awarded Vendor agrees to facilitate the meeting of specific marketing individual(s) to meet and plan overall marketing goals and initiatives.

3.1.5 Awarded Vendor will be responsible to allow opportunities for NJPA staff to meet with management and sales level staff of Awarded Vendor at national and regional functions.

**3.2 Trade Shows.**

3.2.1 Awarded Vendor will be responsible for and agrees to consider exhibit at the following national trade shows environments in cooperation with NJPA:

NAEP	National Association of Education Procurement	April
I-ASBO	International Association of School Business Officials	November
NACO	National Association of Counties	July
NIGP	National Institute of Government Purchasing	July

Participation will generally be through a display booth setting where Awarded Vendor will be responsible for the provision of personnel, marketing material, and equipment for the purposes of promoting this contract at various defined trade shows. Awarded Vendor will be responsible for co-branding marketing material distributed at these shows in the name of Awarded Vendor and NJPA. Awarded Vendor may request waiver of participation in any trade show Awarded Vendor feels is inapplicable to their Contract.

3.2.2 Awarded Vendor will give strong consideration to attending and displaying at additional trade shows recommended by NJPA.

**3.3 Marketing Material.**

3.3.1 Awarded Vendor will be responsible for creating, and up-dating as needed, marketing material co-branded by both Awarded Vendor and NJPA in both print and electronic forms for disbursement through various appropriate channels, such as the NJPA Cooperative Purchasing catalog, or as agreed to by both parties. Any such marketing materials or any notification or description of the Contract distributed by NJPA to Members shall be approved in advance by Awarded Vendor.

3.3.2 Awarded Vendor shall be granted use of the NJPA trademarks, service marks, logos, name or any other proprietary description of NJPA, whether registered or unregistered, subject to NJPA's prior approval. In addition, Awarded Vendor shall be entitled to inform, both orally and in printed form, any and all prospects that Awarded Vendor has a contractual benefit relationship with NJPA for the purposes of serving NJPA members.

3.3.3 NJPA membership listings provided as a result of the Contract and this Agreement shall be confidentially used by Awarded Vendor and not disseminated to its customers or the business community.

#### 3.4 Contract operations and delivery.

3.4.1 Awarded Vendor will be responsible for processing and shipping orders for contracted products and services requested from qualified and participating NJPA Members.

3.4.2 Awarded Vendor will be responsible for submitting calendar quarterly reports to NJPA showing the gross sales for each Participating NJPA Member or qualified Member sold during a quarterly time frame. (Article 6 - 6.1)

3.4.3 Awarded Vendor will be responsible to pay NJPA an administrative fee as defined herein.

3.4.4 Awarded Vendor will be responsible for maintaining current product and price lists with NJPA according to the terms and conditions of the Contract.

3.4.5 Awarded Vendor will be responsible for delivering technical assistance and education regarding the equipment and products purchased through the IFB and resulting Contract.

3.4.6 Awarded Vendor will be responsible for offering and promoting the Program and Contract to all current and qualified NJPA members.

### **ARTICLE 4. NJPA ADMINISTRATIVE/ MARKETING RESPONSIBILITIES**

#### 4.1 Sales Force Training.

4.1.1 NJPA Will work with Awarded Vendor to identify the appropriate levels of management as well as the Awarded Vendor's sales force to be trained in the use and effectiveness of the Contract.

4.1.2 NJPA will provide personnel to train identified individuals in the use and effectiveness of the Contract in person on Awarded Vendor's site, or through webcast or webinar, where reasonable efficiencies of such training can be achieved.

4.1.3 NJPA will work with Awarded Vendor to identify ongoing training needs.

#### 4.2 Trade Shows.

4.2.1 NJPA will work with Awarded Vendor to identify appropriate trade show venues for the promotion of the Contract.

#### 4.3 Marketing Material.

4.3.1 NJPA will be responsible for assisting in the development of marketing brochures, as well as providing general support, retention, and assistance in the marketing of the program.

4.3.2 NJPA shall not use the trademarks, service marks, logo, name or any other proprietary description of Awarded Vendor, whether registered or unregistered, without Awarded Vendor's prior approval.

4.3.3 NJPA agrees to supply Awarded Vendor with access to NJPA Members through regular updates of its membership list and various communications. Awarded Vendor agrees that NJPA Members' list remain the property of NJPA and can only be used with prior permission of NJPA.

4.3.4 NJPA shall provide opportunity to participate in the NJPA catalog marketing program at no cost to Awarded Vendor.

4.3.5 NJPA agrees to promote the Awarded Vendor Contract as a new member benefit in NJPA publications.

#### 4.4 Contract Operations and Delivery.

4.4.1 NJPA will be responsible for receiving available leads and forwarding of those leads to Awarded Vendor for follow-up.

4.4.2 NJPA will be responsible for acting as a liaison as necessary between NJPA Members and Awarded Vendor to communicate the NJPA message and resolve any contract issues.

4.4.3 NJPA will receive, evaluate, process, and respond in a reasonably timely manner to requests from Awarded Vendor for changes in prices and products covered by this contract.

### ARTICLE 5. AUDITS

5.1 During the Term, Awarded Vendor will, upon not less than thirty (30) business days prior written request, make available to NJPA no more than once per calendar year, at Awarded Vendor's corporate offices, during normal business hours, the invoice reports and/or invoice documents from Awarded Vendor pertaining to all invoices sent by Awarded Vendor and payments made by NJPA members for all products purchased under this contract. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Awarded Vendor shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Awarded Vendor will permit the auditor to review the relevant Awarded Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties.

### ARTICLE 6. FEES

6.1 Awarded Vendor will pay NJPA an administrative fee of 1.0% (one Percent) of the sales resulting from NJPA #081209-ALT net of returns and allowances to NJPA or NJPA Members during each calendar quarter. Said administrative fees are to be paid within thirty (30) days after the end of each calendar quarter and commencing on the effective date of this contract.

## ARTICLE 7. MISCELLANEOUS

7.1 Notices. Notices permitted or required to be given hereunder shall be deemed sufficient if delivered to the address identified herein, or any updated address for which proper notice of address change has been affected. Notices may be delivered by hand or through the use of a third party delivery service. The sender is responsible for the documentation of delivery for any notice.

7.2 Entire Agreement. The individuals signing this Contract hereby represent that they are authorized on behalf of their respective organizations to execute this Agreement and the Contract contains the entire understanding between the parties concerning the subject matter.

7.3 Severability. In the event that any of the terms of this Contract are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Contract, but such invalidity or unenforceability shall not invalidate any of the other terms of this Contract. This Contract shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial harm to, or where the invalid or unenforceable provisions compromise an integral part of, or are otherwise inseparable from the remainder of this Contract.

7.4 Waiver. Failure by either party to take action or assert any right hereunder shall not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

7.5 Relationship of Parties. This agreement is not a contract of employment. The relationship between NJPA and Awarded Vendor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend this agreement to create and this agreement is not to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this agreement, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate or bid the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

7.6 Indemnity: Each party agrees that it will be responsible for its own negligent acts and the result thereof to the extent authorized by law and shall not be responsible for the negligent acts of the other party and the results thereof, NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law. Neither party shall be liable to the other for any incidental or consequential damages of any kind under this agreement.

IN WITNESS WHEREOF, the parties have executed this Contract effective the day and year referenced below.

ALTEC INDUSTRIES, INC.

NATIONAL JOINT POWERS ALLIANCE®

By Charles D. Corp.  
Authorized Signature-Signed

By [Signature]  
Authorized Signature-Signed

By CHARLES D. Corp.  
Authorized Signature-Printed

By Gary L. Nyles  
Authorized Signature-Printed

Date 9.21.09

Date 9/24/09

Notice Address:

Notice Address:

210 Inverness Center Drive  
Birmingham, AL 35242

200 1<sup>st</sup> Street NE  
Staples, MN 56479

**ALTEC Primary Contact Information**

Awarded Vendor Name ALTEC INDUSTRIES

Address 210 INVERNESS CENTER DR.  
BIRMINGHAM, AL. 35242.

Phone 205-213-9862 Fax \_\_\_\_\_

Program Contact Name CHARLIE CULP Title DIRECTOR GOV. SALES

Email CHARLIE.CULP@ALTEC.COM

Web Site WWW.ALTEC.COM