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ADDENDUM NO. 3  
RFP 01-14 – Wrecker/Towing Services

To All Bidders:

The following information is provided in accordance with RFP 1-14 – Wrecker/Towing Services as fully and as completely as if the same were fully set forth therein:

Attached you will note questions from the McGovern Law Firm, answers from the Key West Police Department, and equipment list.



The  
McGovern  
Law Firm

MAILING ADDRESS: P.O. BOX 5536 ■ KNOXVILLE, TENNESSEE 37928  
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865.686.4891 ■ Fax 865.687.1732 ■ michael@themcgovernlawfirm.com

*Via e-mail only:* [dlee@keywestcity.com](mailto:dlee@keywestcity.com)

January 15, 2014

Donald Lee, Chief of Police  
City of Key West Police Department  
1604 N Roosevelt Boulevard  
Key West, Florida 33040

RE: Request for Proposal #01-14; Wrecker/Towing Services

Dear Chief Lee:

Pursuant to the Paragraph (1)(B), page 3, of the above-referenced Request for Proposals, and on behalf of proposer Anchor Towing, please respond to the following questions:

**Page 5: Free towing of City-owned and seized vehicles**

What types of vehicles and/or vessels are included in the City's fleet? Is the contractor required to tow Key West Transit buses for free? Ambulances? Fire trucks? Boats ("vessels")?

The RFP provides that the contractor is to provide "towing *and/or servicing* of disabled vehicles" for no charge. Does "servicing" include any necessary automotive repairs? Does "servicing" include vehicle recovery, *e.g.*, extraction of a City-owned vehicle from Garrison Bight?

How many City-owned vehicles required towing in the last 12 months?

How many seized vehicles were towed in the last 12 months?

Is there a limit on the number of City-owned and/or seized vehicles that must be towed for free?

**Page 7: Payment to the City**

Does the per-tow "fee" paid by the contracting towing company constitute an improper revenue-raising measure in violation of Art. VII, Sections 1(a) and 9(a) of the Florida Constitution, and Ch. 166 of the Florida Statutes?

Does the per-tow "fee" constitute an indirect, discriminatory tax levied upon the owners of towed vehicles?  
*See Gross v. Township of Ocean*, 92 N.J. 539, 457 A.2d 836 (N.J. 1983).

Donald Lee, Chief of Police  
City of Key West Police Department  
January 15, 2014  
Page Two

**Page 8: Prohibited charges**

How many vehicles were towed in error by the City in the last 12 months?

Is there a limit on the number of mistaken tows that the contractor must subsidize?

**Page 9: Storage facilities**

Does “vehicles ... must be separately fenced and locked” mean that vehicles impounded pursuant to the contract must be segregated by fencing and separated from all other impounded vehicles?

What is the difference between “storage space” and “working area”? Does the “working area” of 9’ x 20’ include the space for the vehicle being examined or is it in addition to the “storage space”?

**Pages 9/10: Storage facilities**

What is the definition of “physical plant” for purposes of the RFP?

May a proposer have more than one storage location as long as each storage location meets the specifications of the RFP/contract?

**Page 11: Vehicle “holds”**

Does the requirement of unlimited evidentiary vehicle “holds” without compensation for storage fees or costs violate Florida Statute § 323.001?

**Page 12: Wrecker equipment and towing company personnel**

Does a life-time ban of all felons, even those with convictions unrelated to the operation of a towing company or tow truck, violate the Equal Protection Clause of the U.S. Constitution? See *Gregg v. Commissioner Larson*, 732 F.Supp. 849 (E.D. Tenn. 1989) and *Brown v. Murphy*, 224 N.Y.S.2d 423 (N.Y. Sup. 1962).

The RFP provides that a conviction of a municipal ordinance violation “directly relating to the business of operating a wrecker” results in a life-time ban. Is speeding in a tow truck directly related to the business of operating a wrecker, thus disqualifying the company owner or driver? A municipal ordinance motor vehicle equipment violation, e.g., inoperable headlight on a tow truck? A municipal zoning or land use violation?

The RFP provides that a conviction of a felony or misdemeanor “directly relating to the business of operating a wrecker” results in a life-time disqualification. However, another paragraph on page 12 indicates that a conviction for DUI – which clearly relates to the business of operating a wrecker – only disqualifies for five years. Is a DUI conviction a life-time ban or only a 5-year ban?

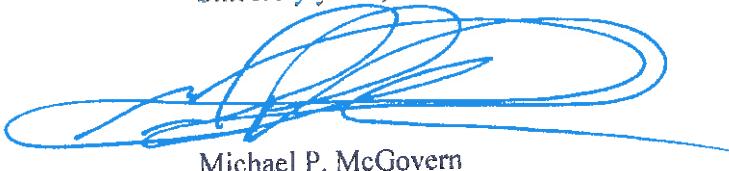
Donald Lee, Chief of Police  
City of Key West Police Department  
January 15, 2014  
Page Three

**Page 19: Cash bond**

The winning contractor must post a \$5,000 cash performance bond “for the purpose of defraying costs incurred by the City in making adequate arrangements for the removal of vehicles.” Throughout the RFP, it is repeatedly stated that the City shall incur no expense or cost in the towing of vehicles, *i.e.*, the vehicle owner is responsible for all charges and fees. What costs does the City expect to have in the event of a breach by the contractor? In other words, why is a cash performance bond necessary?

I will look forward to your prompt response to these inquiries.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Michael P. McGovern".

Michael P. McGovern

MPM:rld

cc: Anchor Towing (via e-mail)  
Shawn Smith, City Attorney (via e-mail)  
Loriellen Robertson, Esq. (via e-mail)

Donald J. Lee, Jr.

Chief of Police



Key West

**POLICE DEPARTMENT**

January 26, 2014

RE: Request for Proposal #01-14; Wrecker/Towing Services

Dear Mr. McGovern:

Pursuant to Paragraph (1)(B) written questions were submitted and the answers are contained herein:

Question:

What types of vehicles and/or vessels are included in the City's fleet? Is the contractor required to tow Key West Transit buses for free? Ambulances? Fire Trucks? Boats (vessels)

Answer:

The fleet currently consists of vehicles on the list attached hereto. Yes. Yes, although the city does not own any ambulances at the current time. Yes. Yes.

Question:

The RFP provides that the contractor is to provide "towing and/or servicing of disabled vehicles" for no charge. Does "servicing" include any necessary automotive repairs? Does "servicing" include vehicle recovery e.g. extraction of a City-owned vehicle from Garrison Bight?

Answer:

Services include those typically related to the towing industry to include such activities as flat tires, lockouts and dead batteries but does not include vehicle repair. Recovery such as provided in the example would be expected.

Question:

How many City-owned vehicles required towing in the last 12 months?

Answer:

37 City vehicles were towed in 2013, mostly City buses.



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**Donald J. Lee, Jr.**

**Chief of Police**



**Key West**

**POLICE DEPARTMENT**

**Question:**

How many seized vehicles were towed in the last 12 months?

**Answer:**

1 seized scooter towed in 2013. 9 vehicles and 7 scooters were towed when the seizure lots were relocated.

**Question:**

Is there a limit on the number of City-owned and/or seized vehicles that must be towed for free?

**Answer:**

No.

**Question:**

Does the per-tow "fee" paid by the contracting towing agency constitute an improper revenue-raising measure in violation of Art. VII, Sections 1(a) and 9(a) of the Florida Constitution, and Ch. 166 of the Florida Statutes?

**Answer:**

Question no longer applicable. Please see second addendum.

**Question:**

Does the per-tow "fee" constitute an indirect, discriminatory tax levied upon the owners of towed vehicles? See *Gross v. Township of Ocean*, 92 N.J. 539, 457 A.2d 836 (N.J. 1983).

**Answer:**

Question no longer applicable. Please see second addendum.

**Question:**

How many vehicles were towed in error by the City in the last 12 months?



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**Donald J. Lee, Jr.**

**Chief of Police**



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**POLICE DEPARTMENT**

Answer:

1 vehicle was towed in error in 2013.

Question:

Is there a limit on the number of mistaken tows that the contractor must subsidize?

Answer:

No.

Question:

Does "vehicles...must be separately fenced and locked" mean that vehicles impounded pursuant to the contract must be segregated from all other impounded vehicles?

Answer:

No.

Question:

What is the difference between "storage space" and "working area"? Does the "working area" of 9' by 20' *include* the space for the vehicle being examined or is it in addition to the "storage space"?

Answer:

Working area may include the storage space.

Question:

What is the definition of "physical plant" for purposes of the RFP?

Answer:

As indicated in the RFP, the "physical plant" is the grounds or location of the business.

Question:



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*Donald J. Lee, Jr.*

*Chief of Police*



**Key West**

**POLICE DEPARTMENT**

May a proposer have more than one storage location as long as each storage location meets the specifications of the RFP/contract?

Answer:

Yes, but each location must *independently meet all* criteria and specifications.

Question:

Does the requirement of unlimited evidentiary vehicle "holds" without compensation for storage fees or costs violate Florida Statute §323.001?

Answer:

No. Further, the parties agree to waive fees for evidentiary holds. Receipt of this contract constitutes consideration on behalf of the tow company awarded said contract.

Question:

Does a *life-time* ban of all felons, even those with convictions unrelated to the operation of a towing company or tow-truck, violate the Equal Protection Clause of the U.S. Constitution? See *Gregg v. Commissioner Larson*, 732 F.Supp. 849 (E.D. Tenn. 1989) and *Brown v. Murphy*, 224 N.Y.S.2d 423 (N.Y. Sup. 1962).

Answer:

No.

Question:

The RFP provides that a conviction of a municipal ordinance violation "directly relating to the business of operating a wrecker" results in a life-time ban. Is speeding in a tow truck directly related to the business of operating a wrecker, thus disqualifying the company owner or driver? A municipal ordinance motor vehicle equipment violation e.g. inoperable headlight on a tow truck? A municipal zoning or land use violation?

Answer:

To receive a ban the conviction would be related to the business of operating a wrecker. A speeding citation or inoperable headlight would be a civil citation and therefore not a conviction for a municipal ordinance violation. Speeding in a wrecker to such a degree that it is reckless driving may constitute a



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**Chief of Police**



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misdemeanor and would result in a ban if it resulted in a conviction and were directly related to the operation of a wrecker. Any violation of municipal ordinances would have to be directly related to the business of operating a wrecker to qualify.

**Question:**

The RFP provides that a conviction of a felony or misdemeanor “directly relating to the business of operating a wrecker” results in a life-time disqualification. However, another paragraph on page 12 indicates that a conviction for DUI – which clearly relates to the business of operating a wrecker – only disqualifies for five years. Is a DUI conviction a life-time ban or only a 5-year ban?

**Answer:**

If the offense were committed in such a way that clearly relates to the business of operating a wrecker it would result in a lifetime ban *e.g.* a DUI in your tow truck. An offense committed that has no relation to the business and is only related to the personal life of the individual, would only result in a 5-year ban.

**Question:**

The winning contractor must post a \$5,000 cash performance bond “for the purposes of defraying costs incurred by the City in making adequate adjustments for the removal of vehicles.” Throughout the RFP, it is repeatedly stated that the City shall incur no expense in the towing of vehicles, *i.e.* the vehicle owner is responsible for all charges and fees. What costs does the City expect to have in the event of a breach by the contractor? In other words, why is a cash performance bond necessary?

**Answer:**

A performance bond is required to cover the costs of a contractor not performing. Should a contractor breach, the City would incur costs for performing that contractor’s duties or costs for hiring another to perform those duties. By definition a performance bond is to defray costs incurred when one party stops performing.

Sincerely,

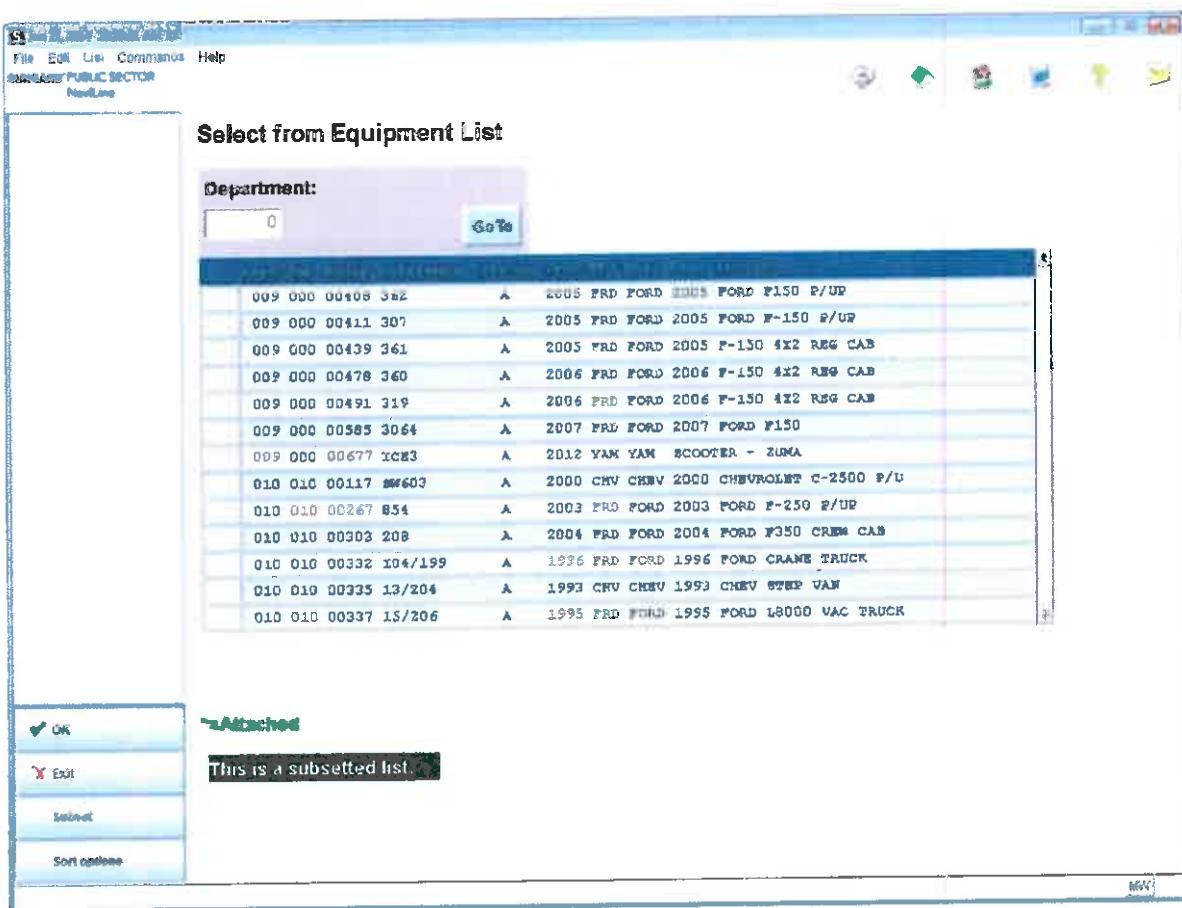
Donald J. Lee, Jr.

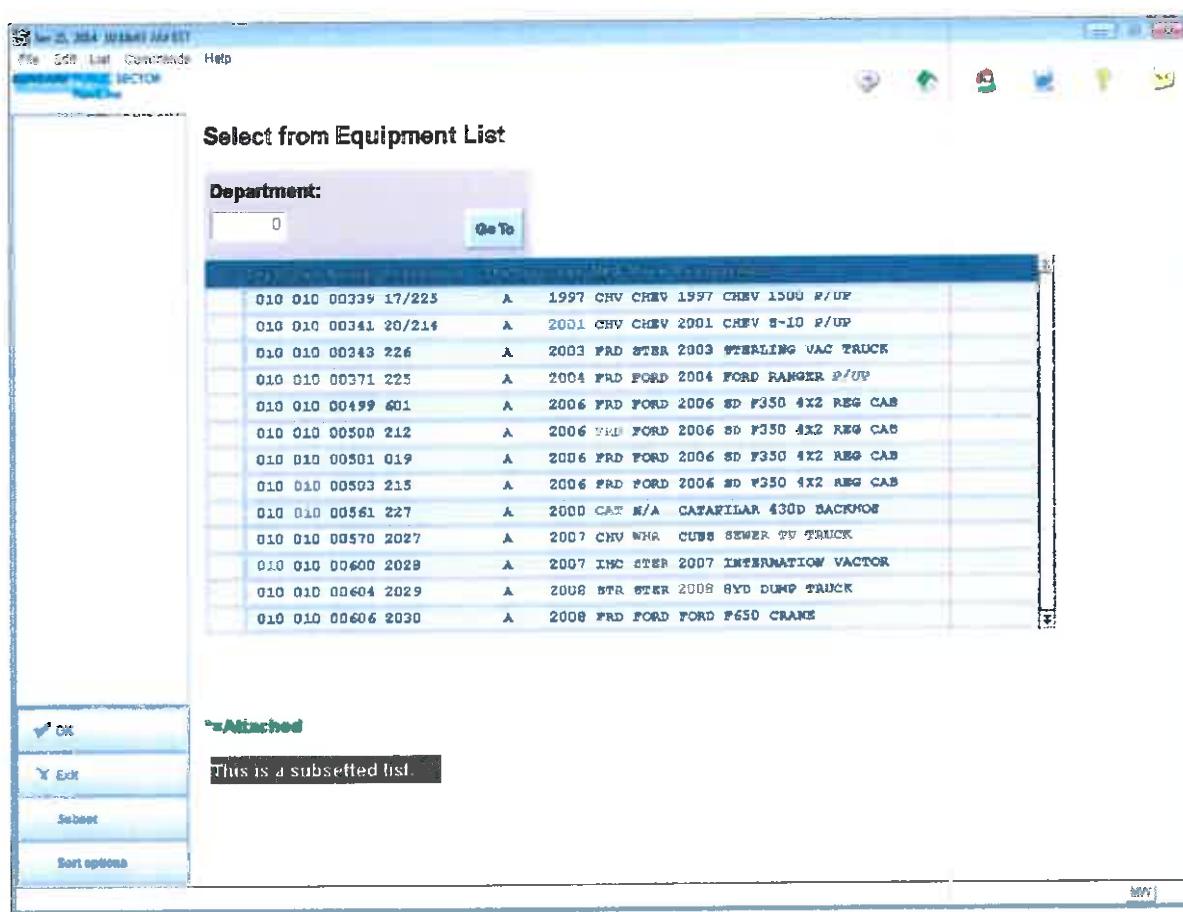


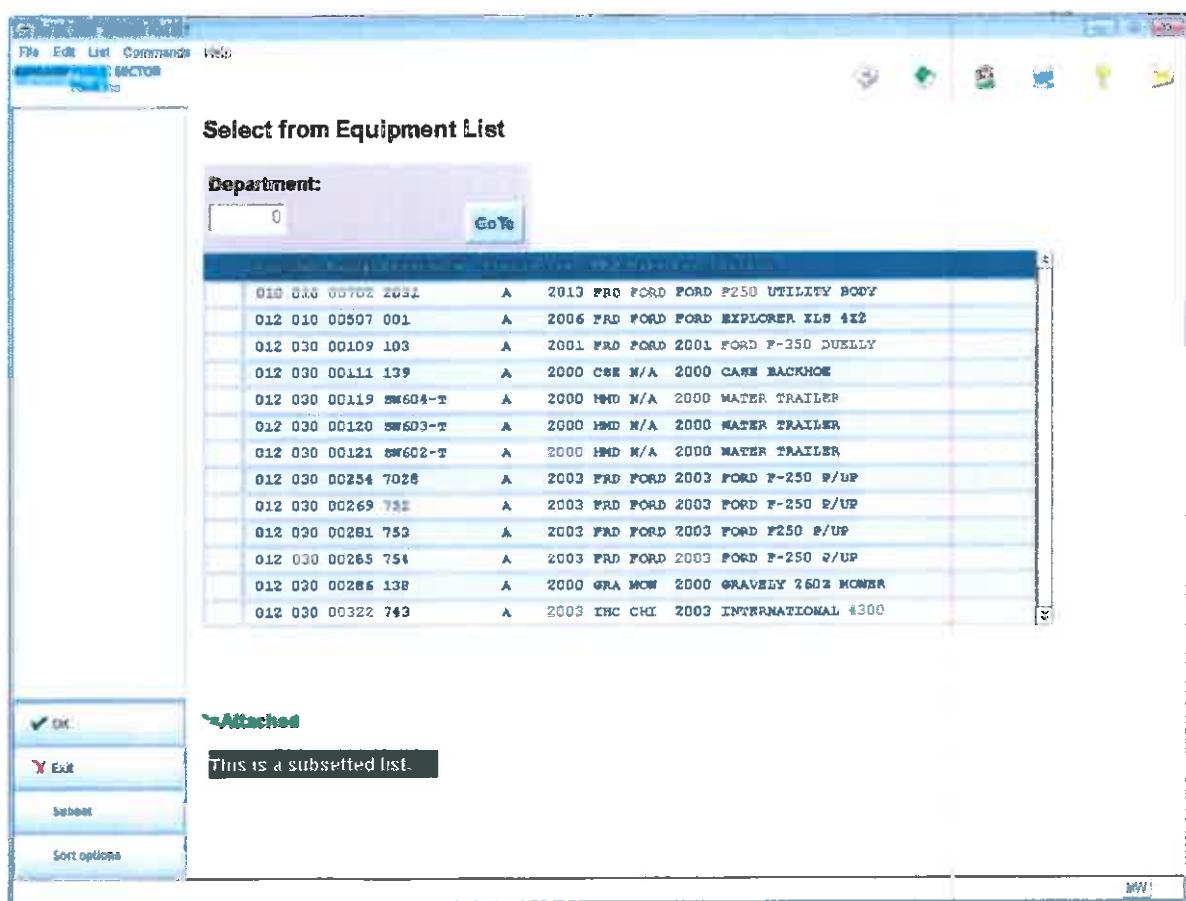
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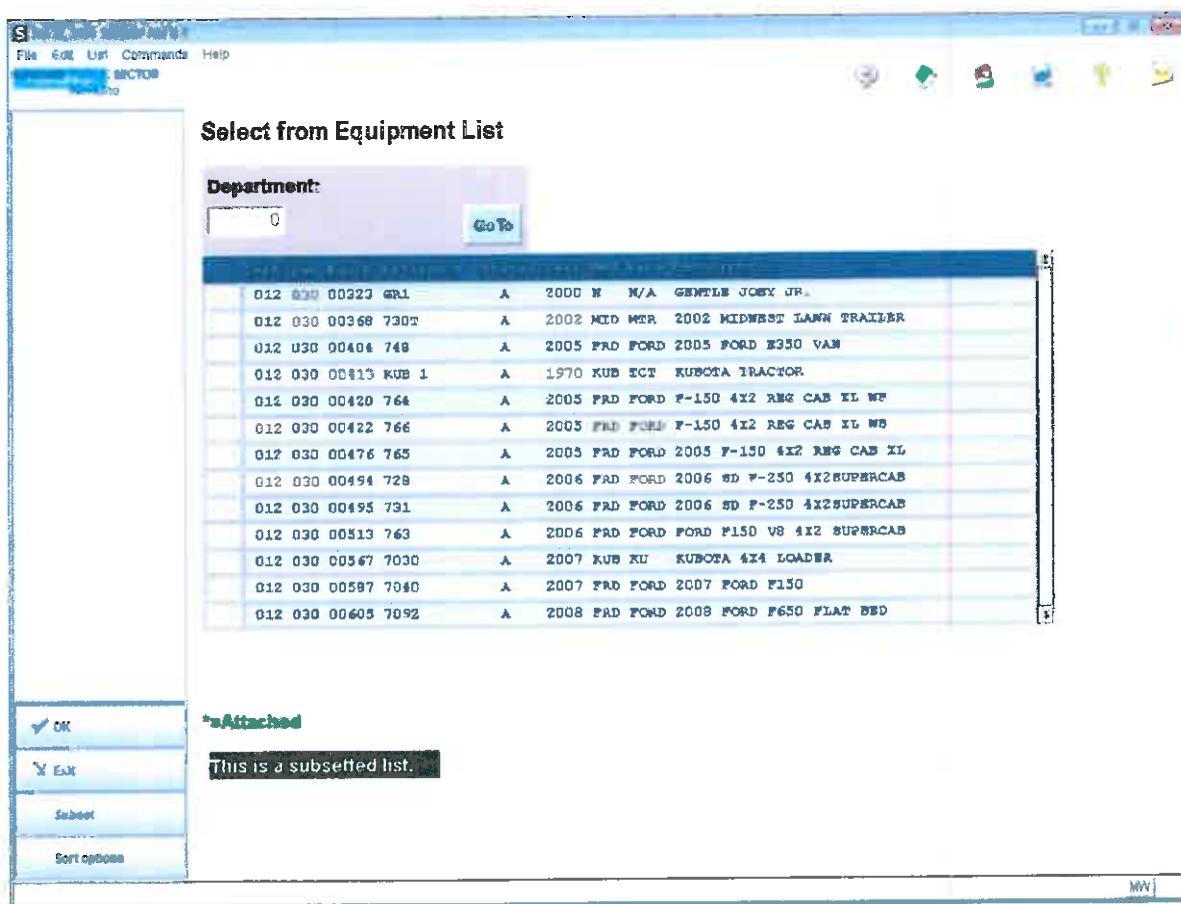
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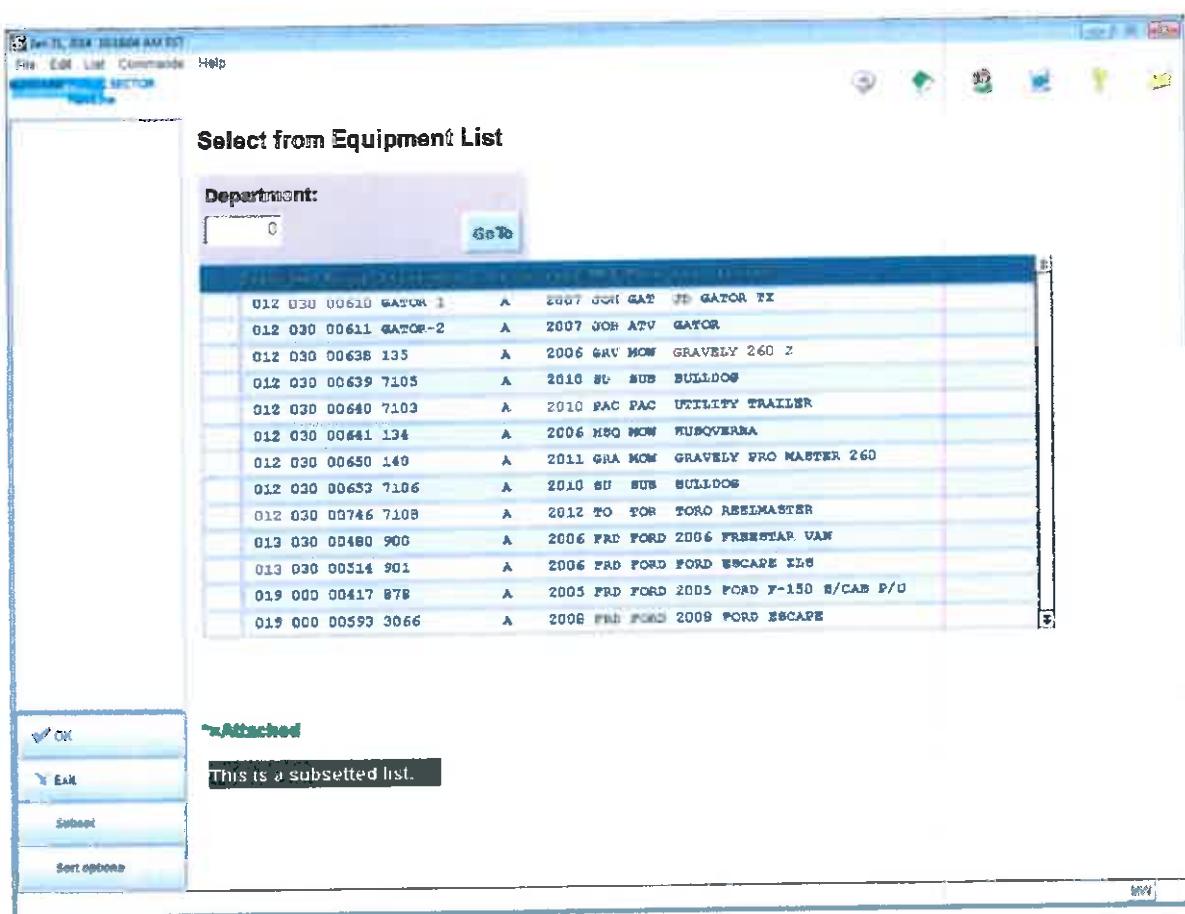


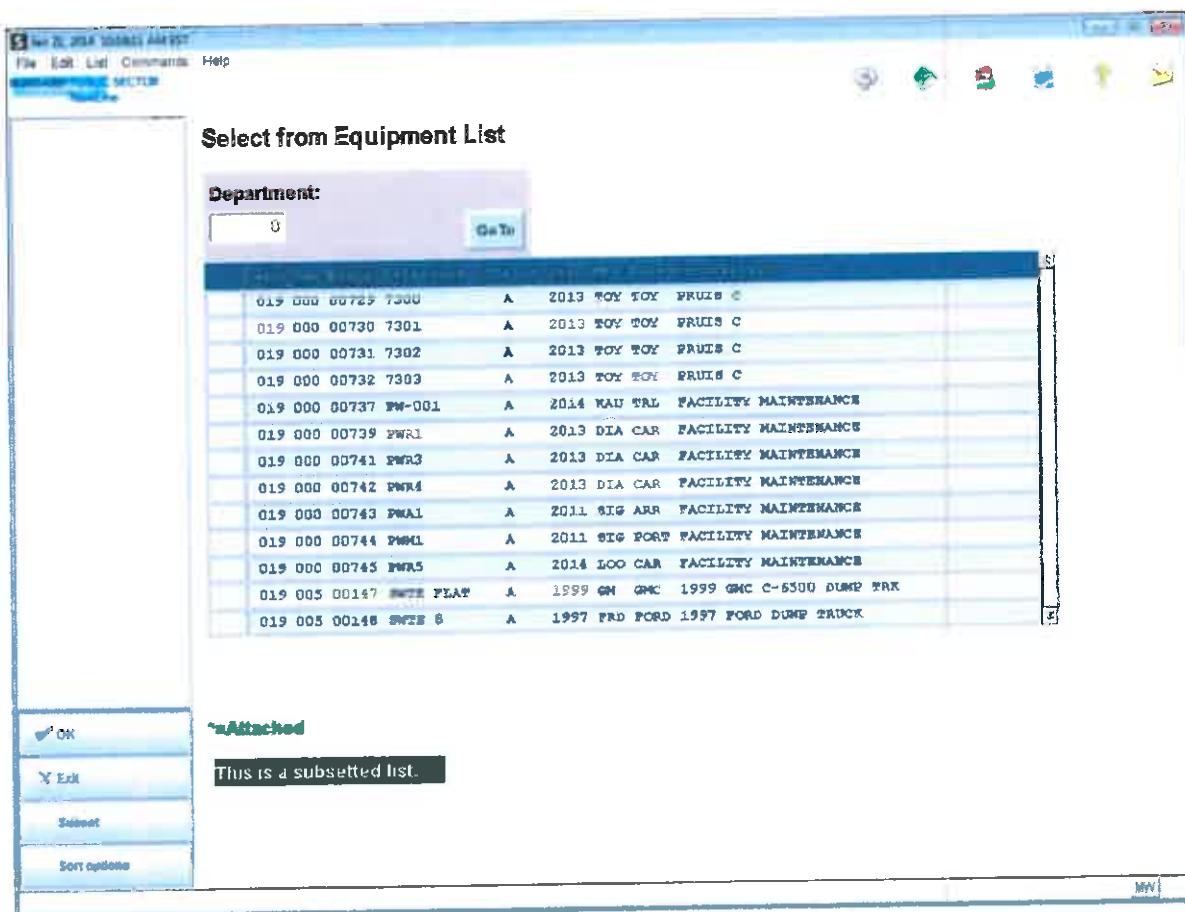


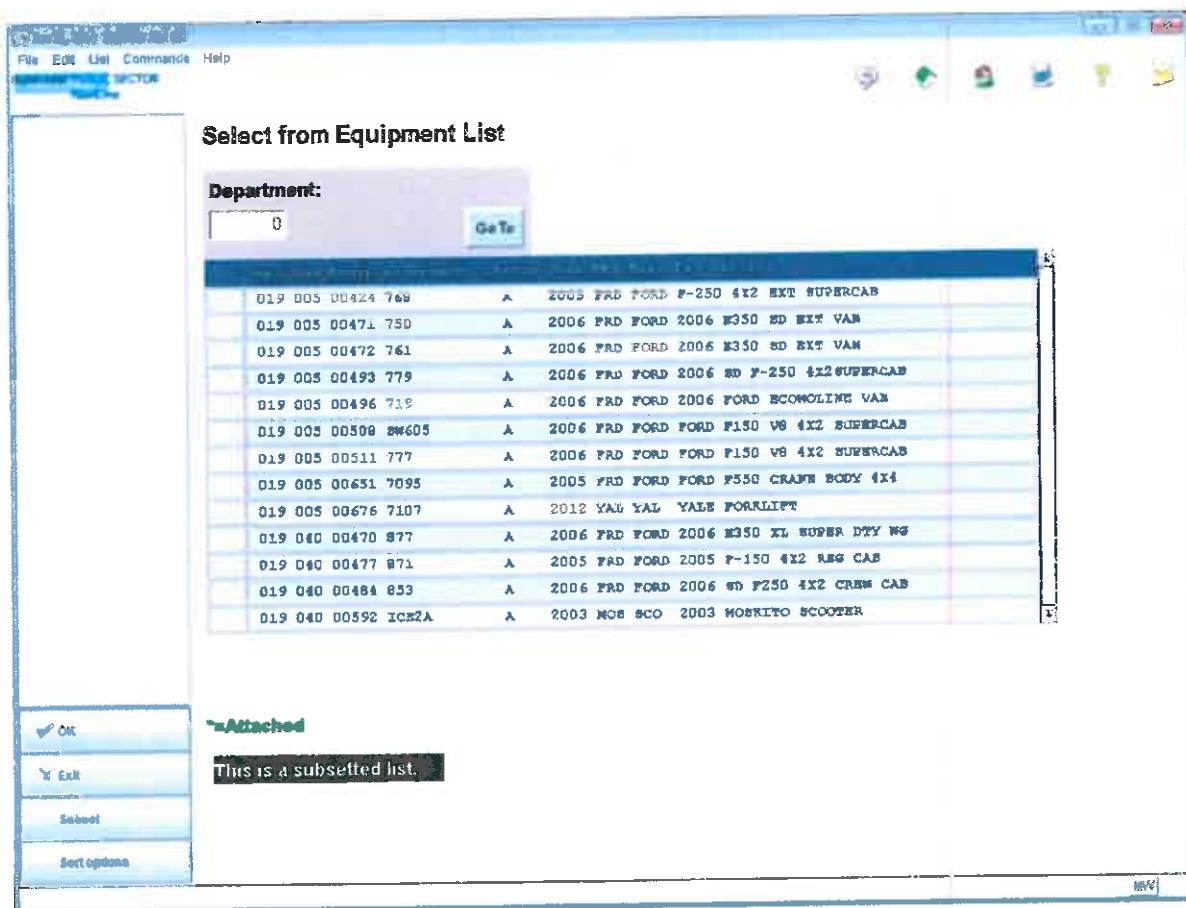


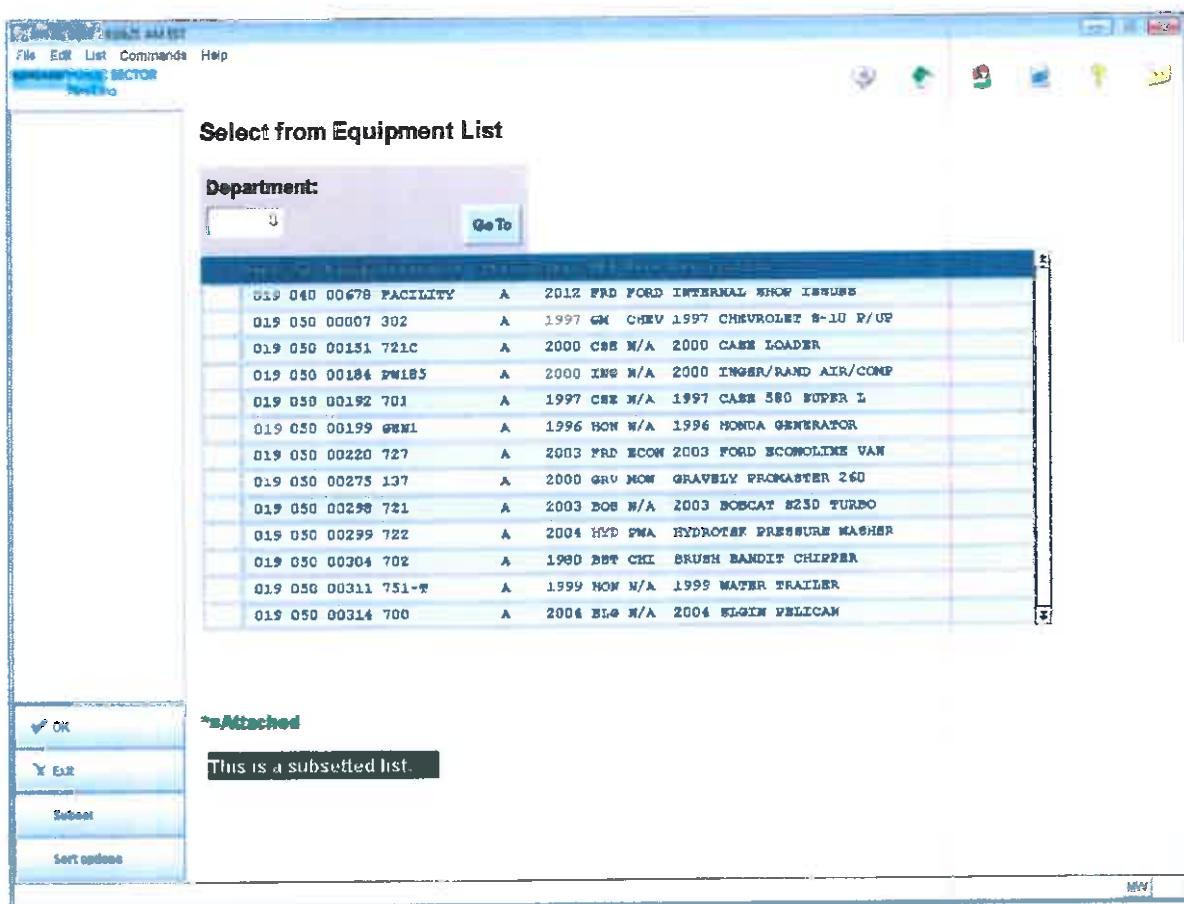


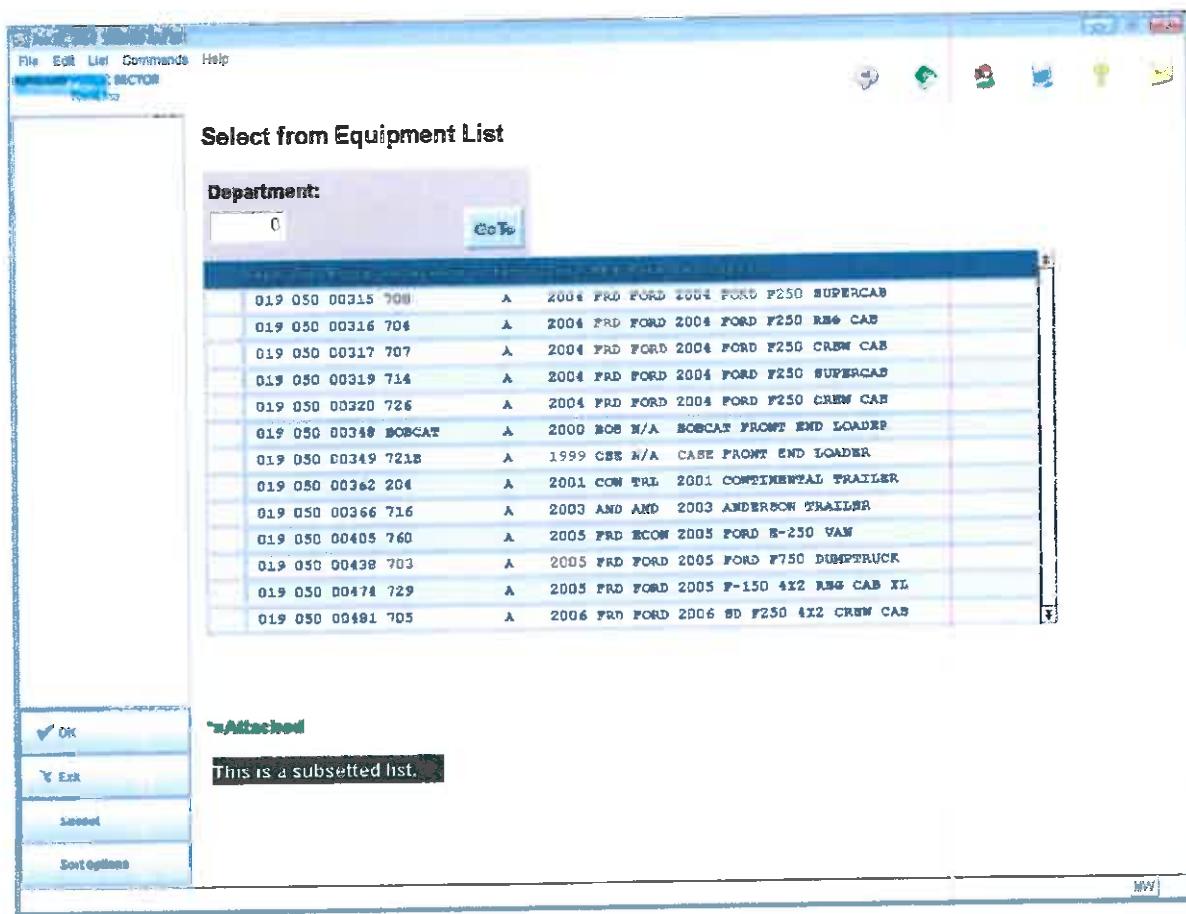


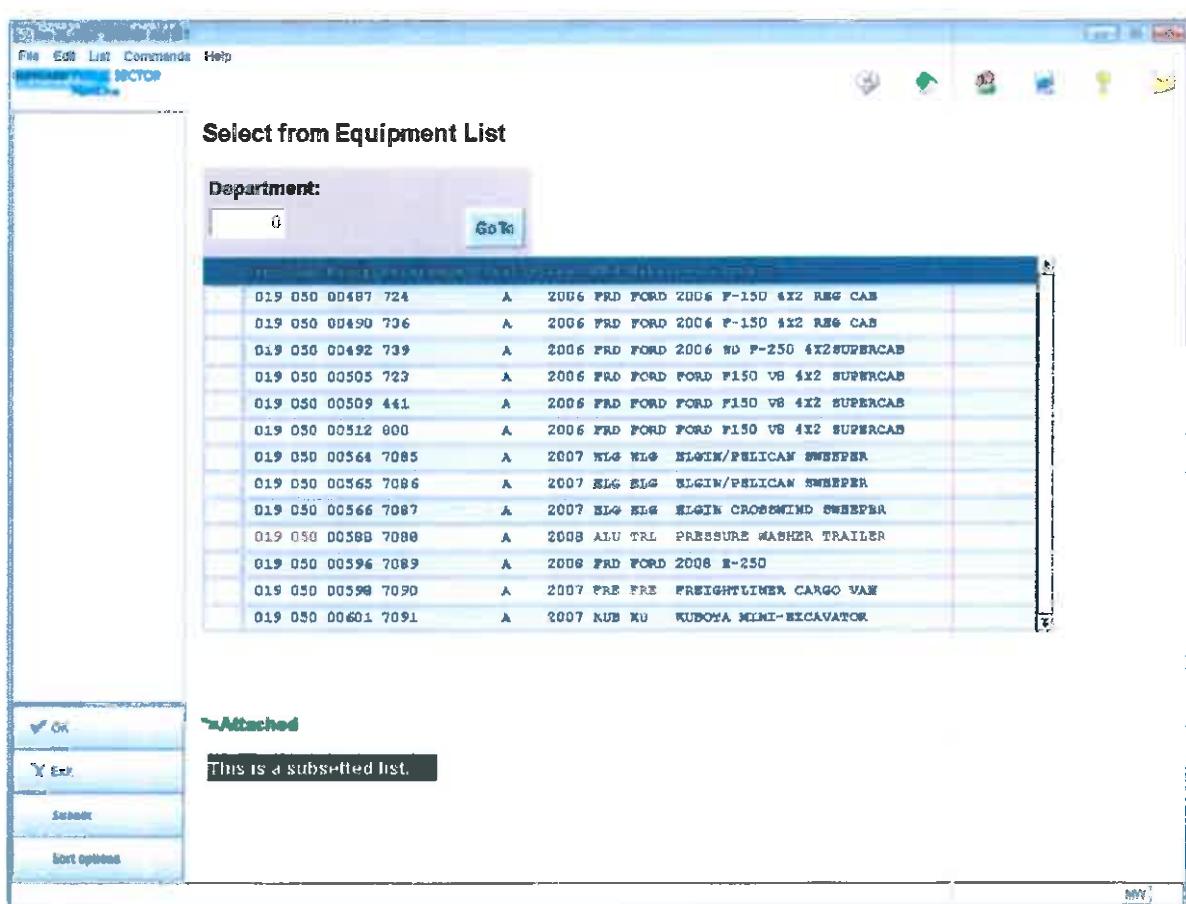


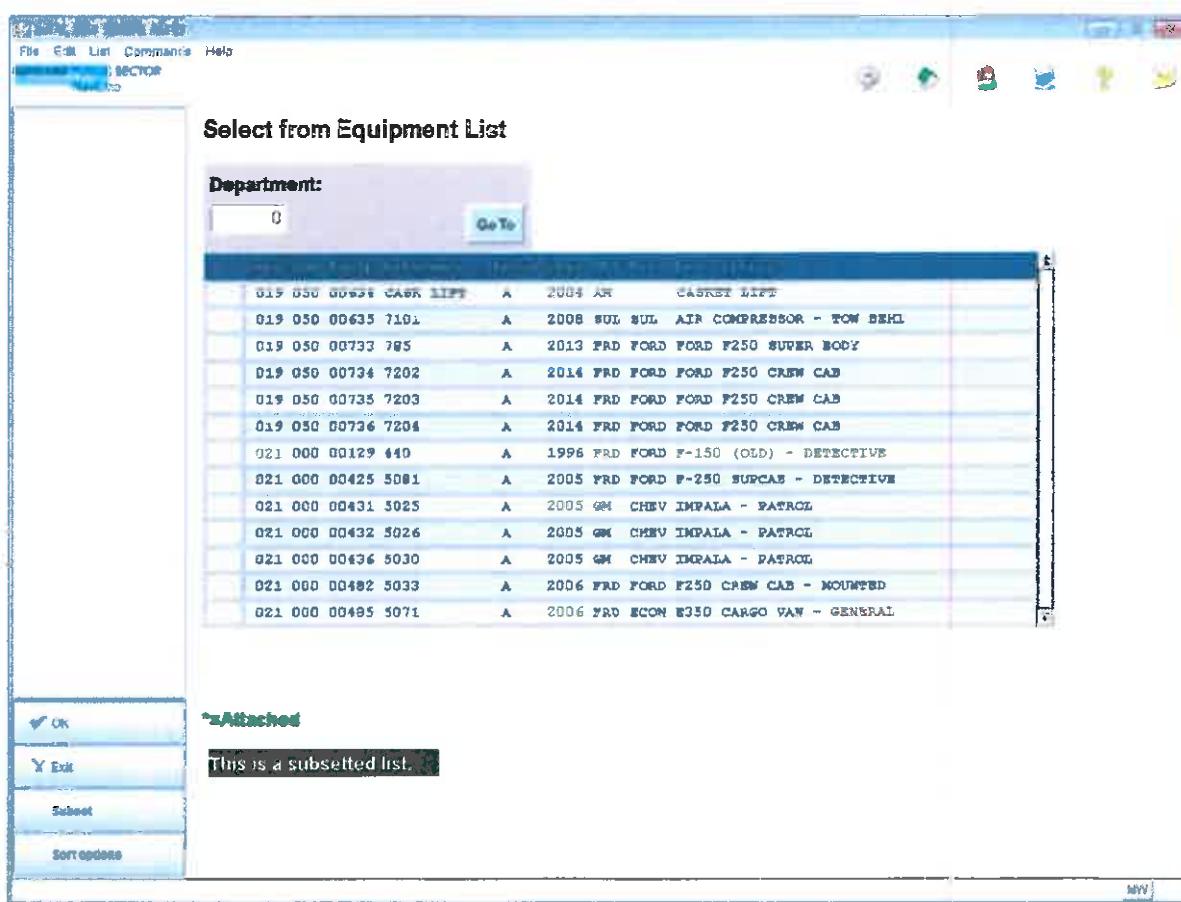


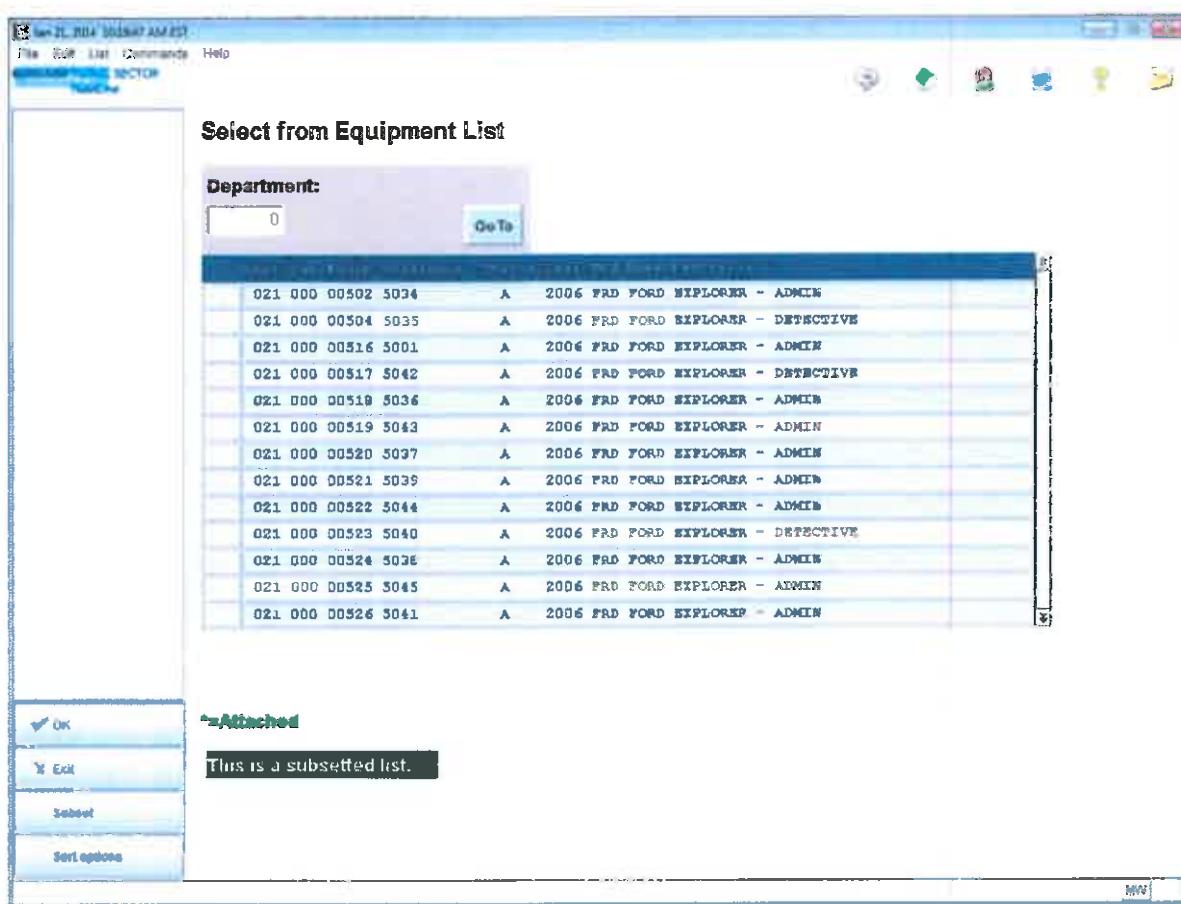


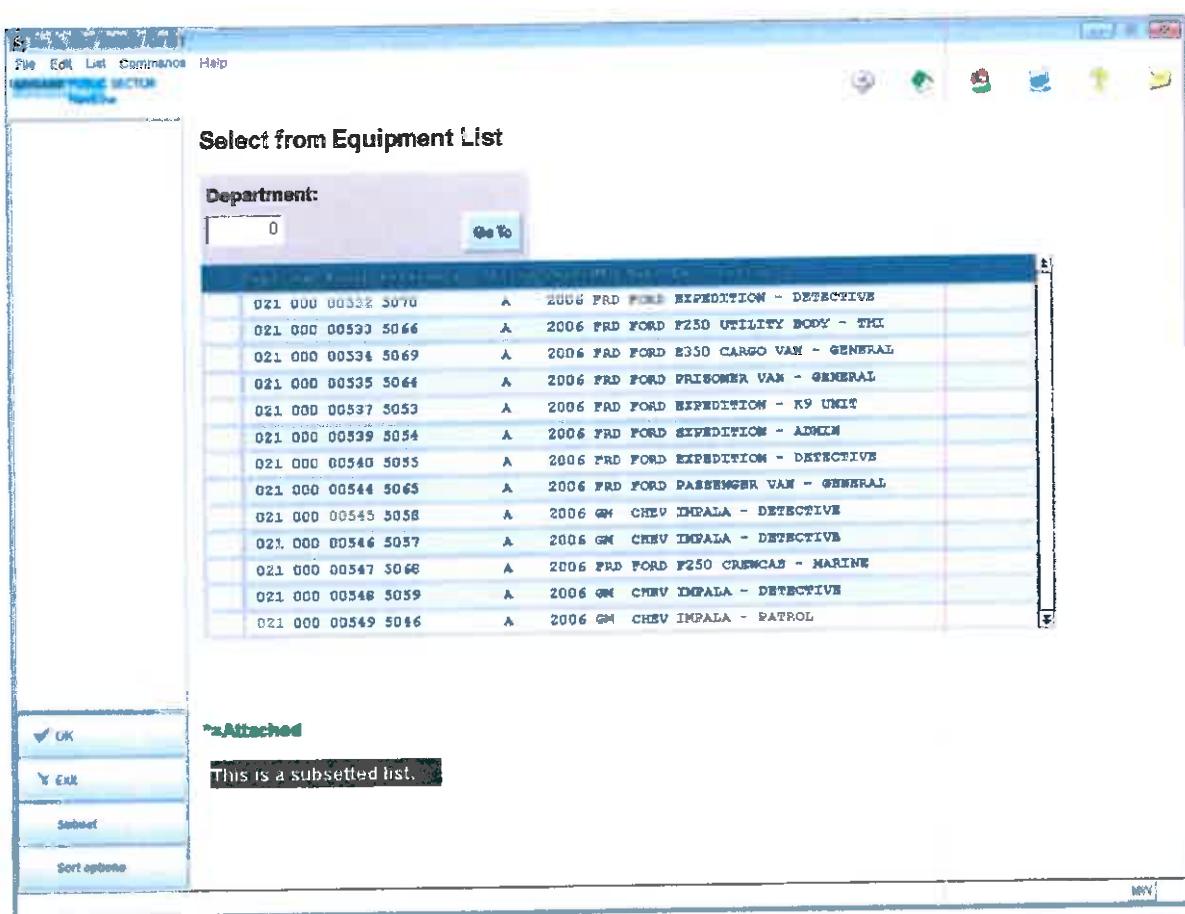


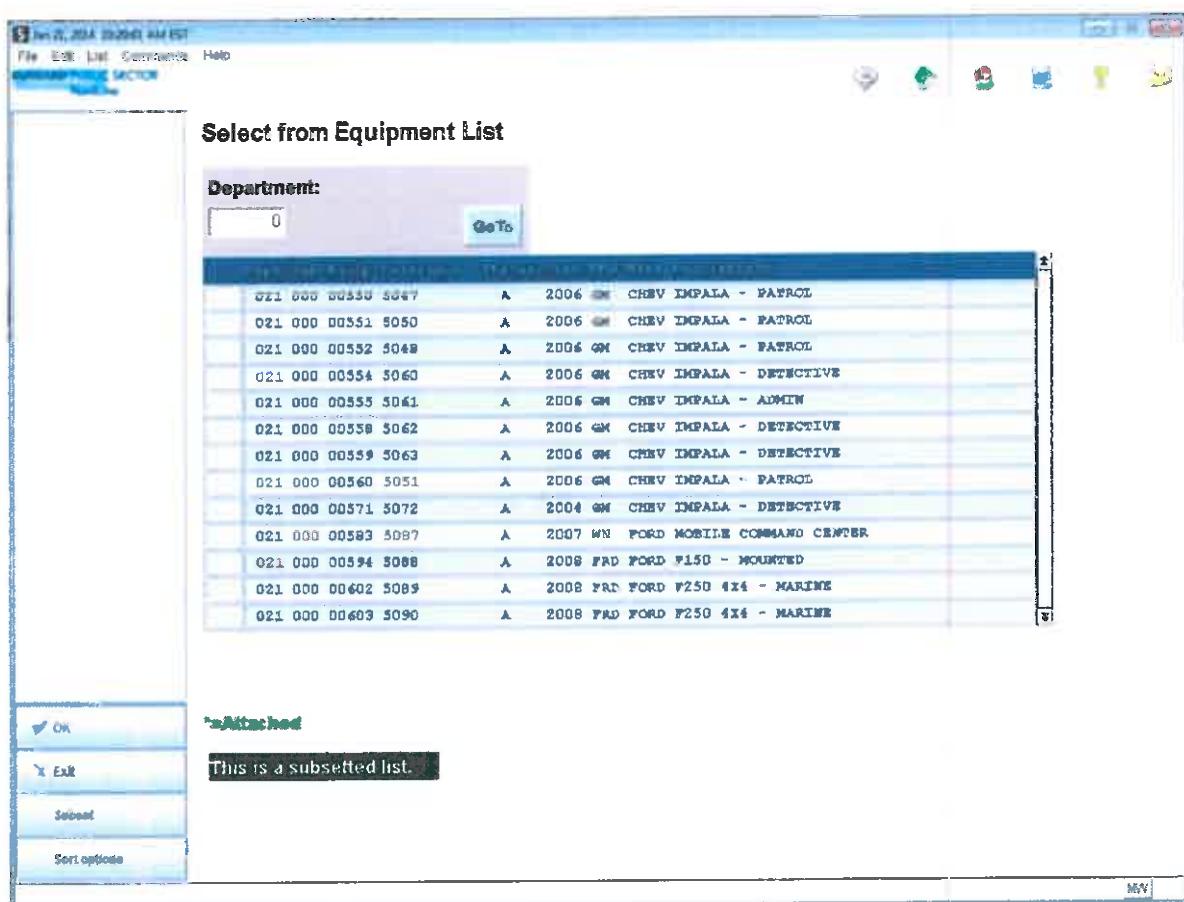


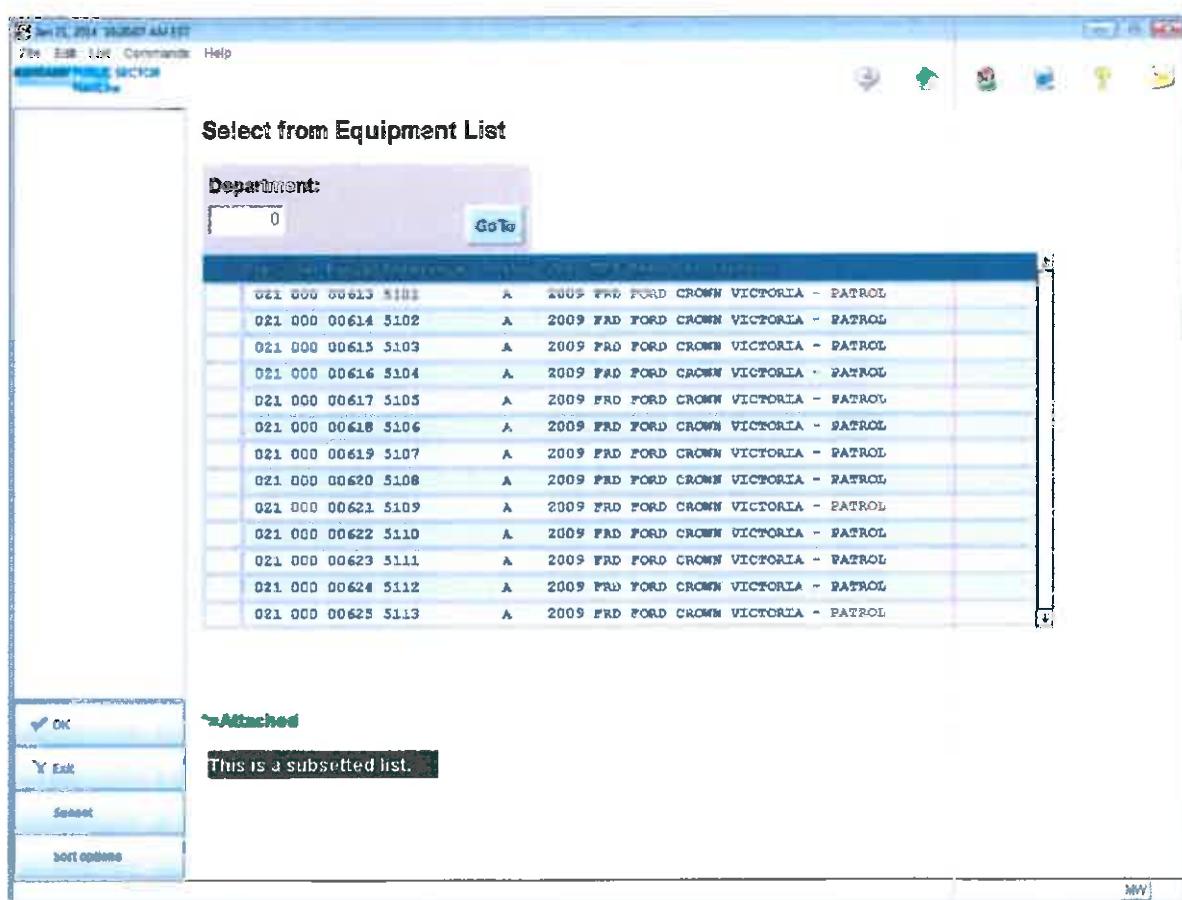


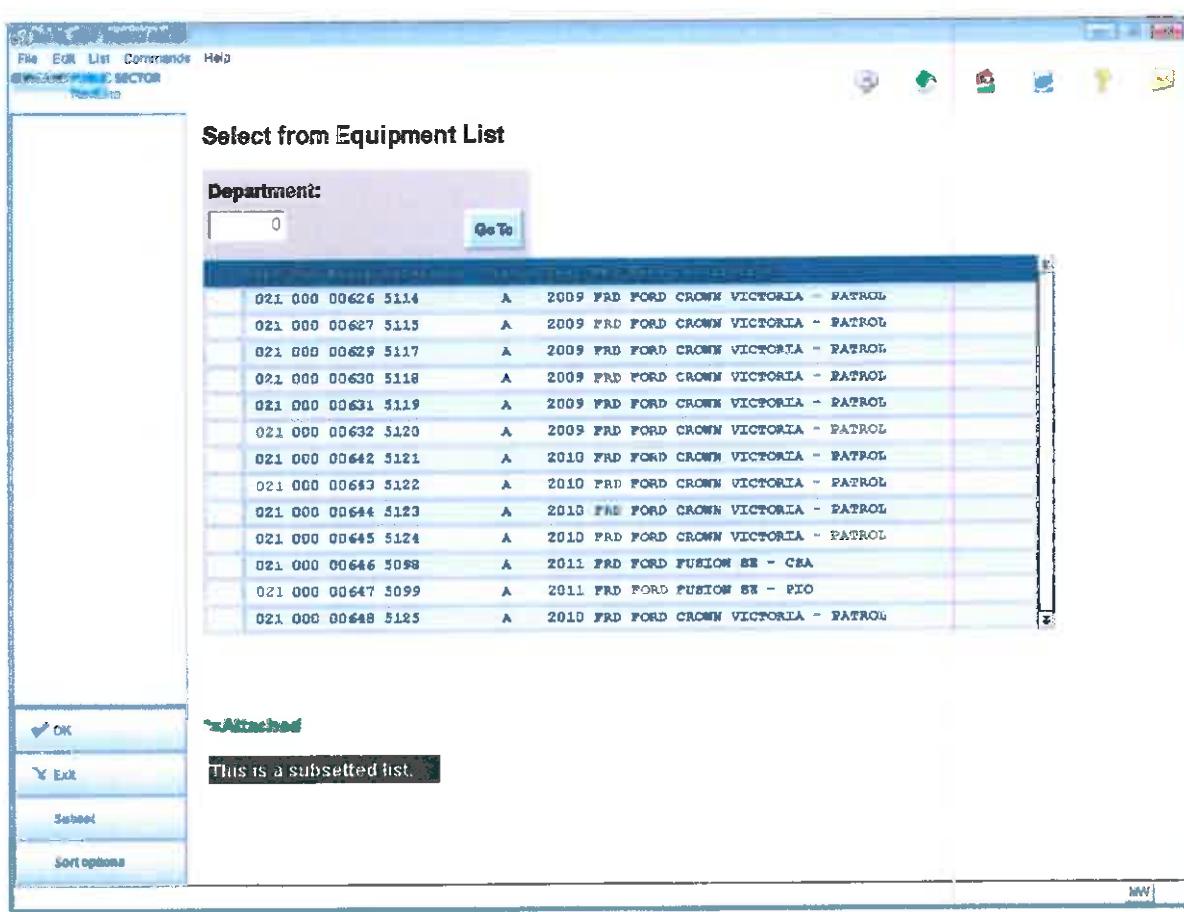


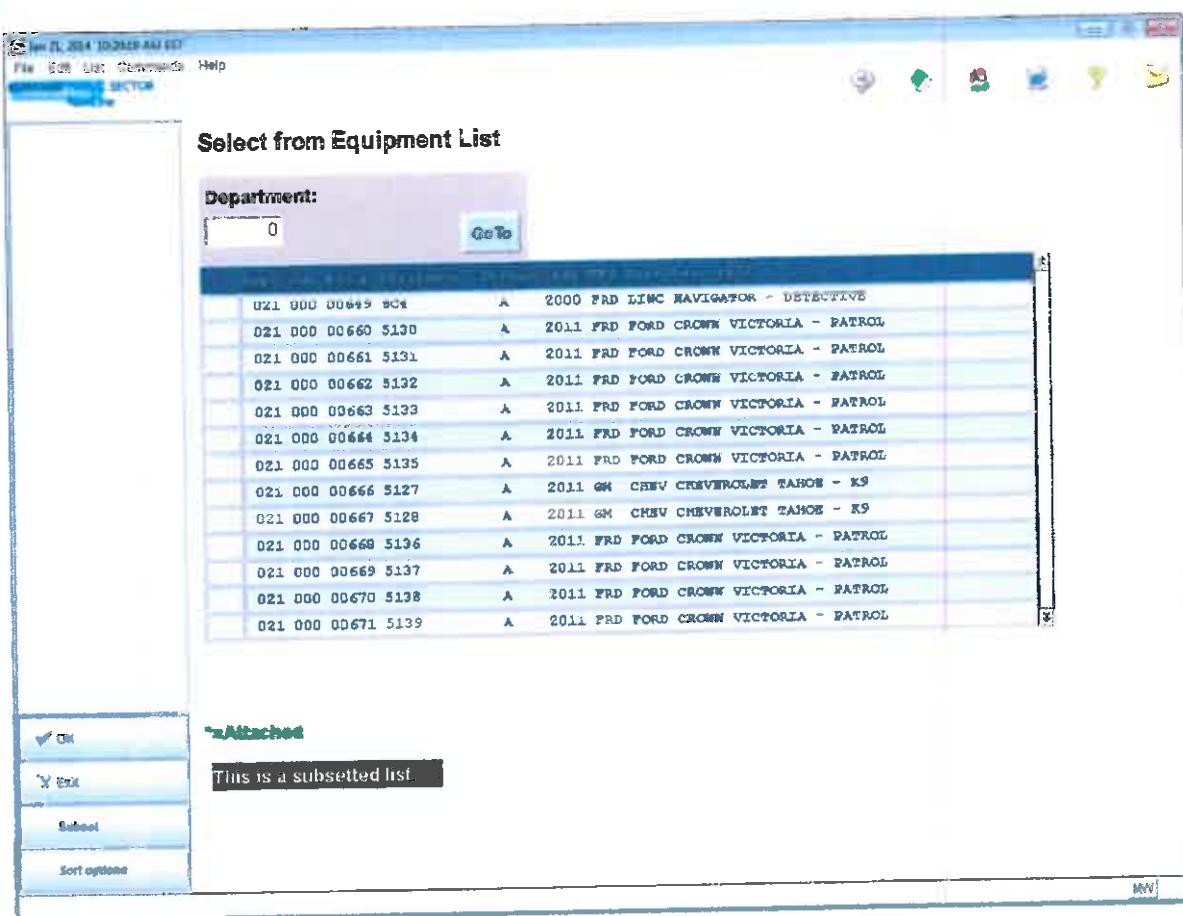


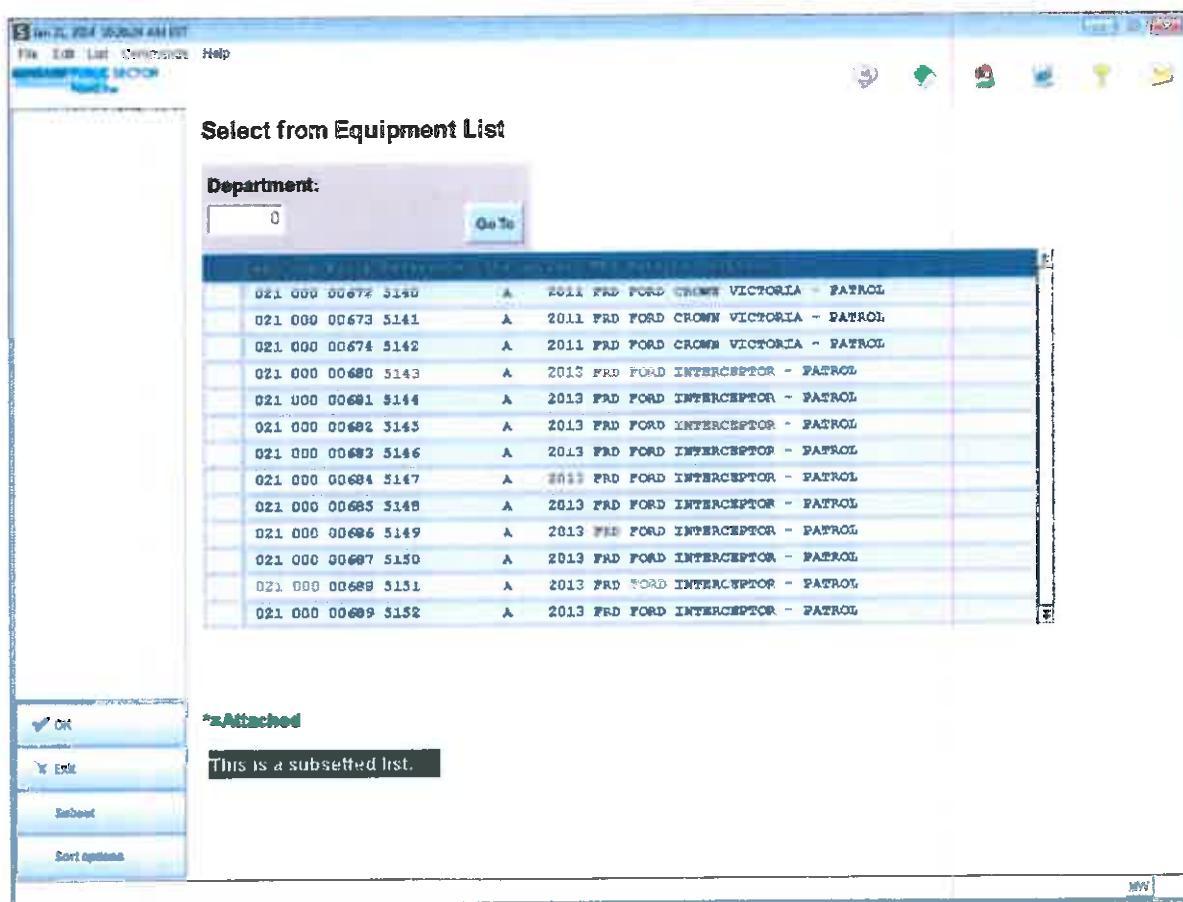


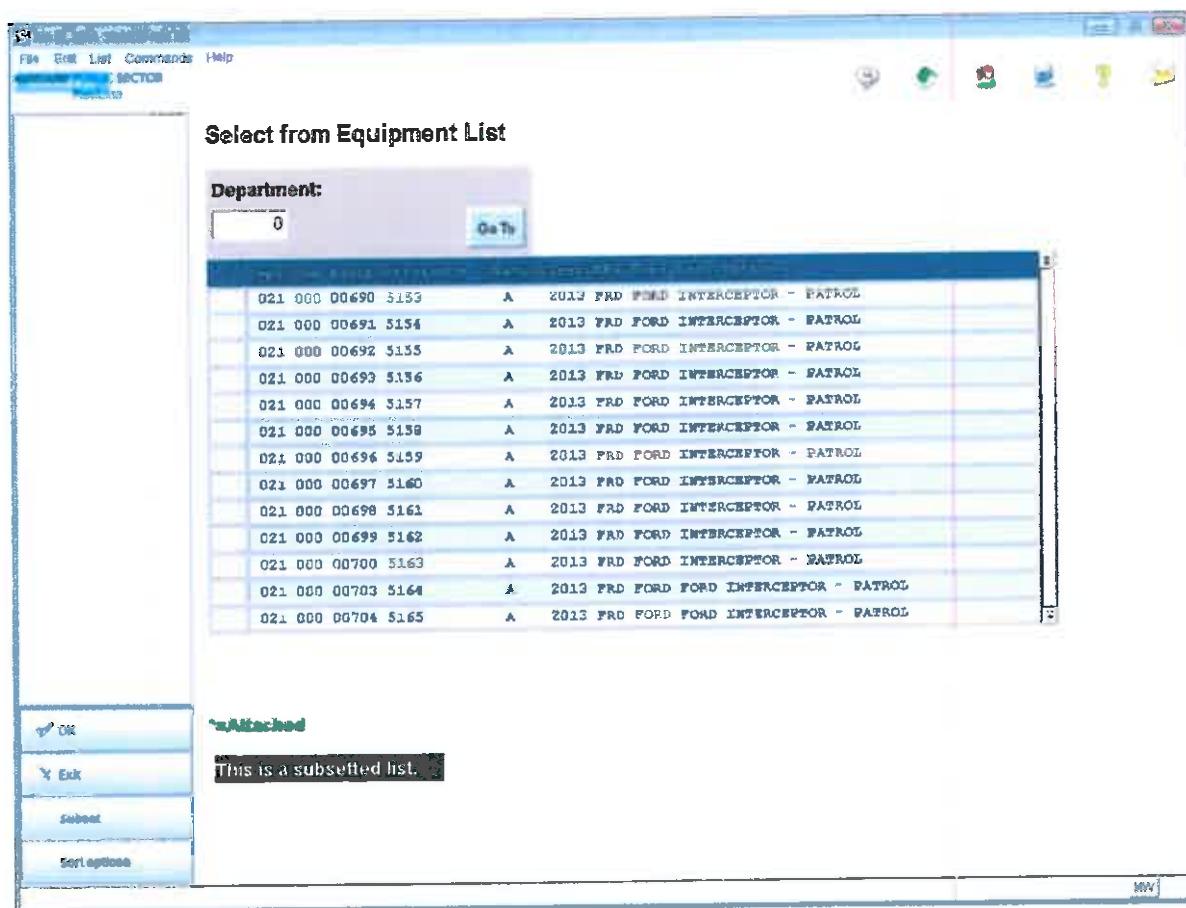


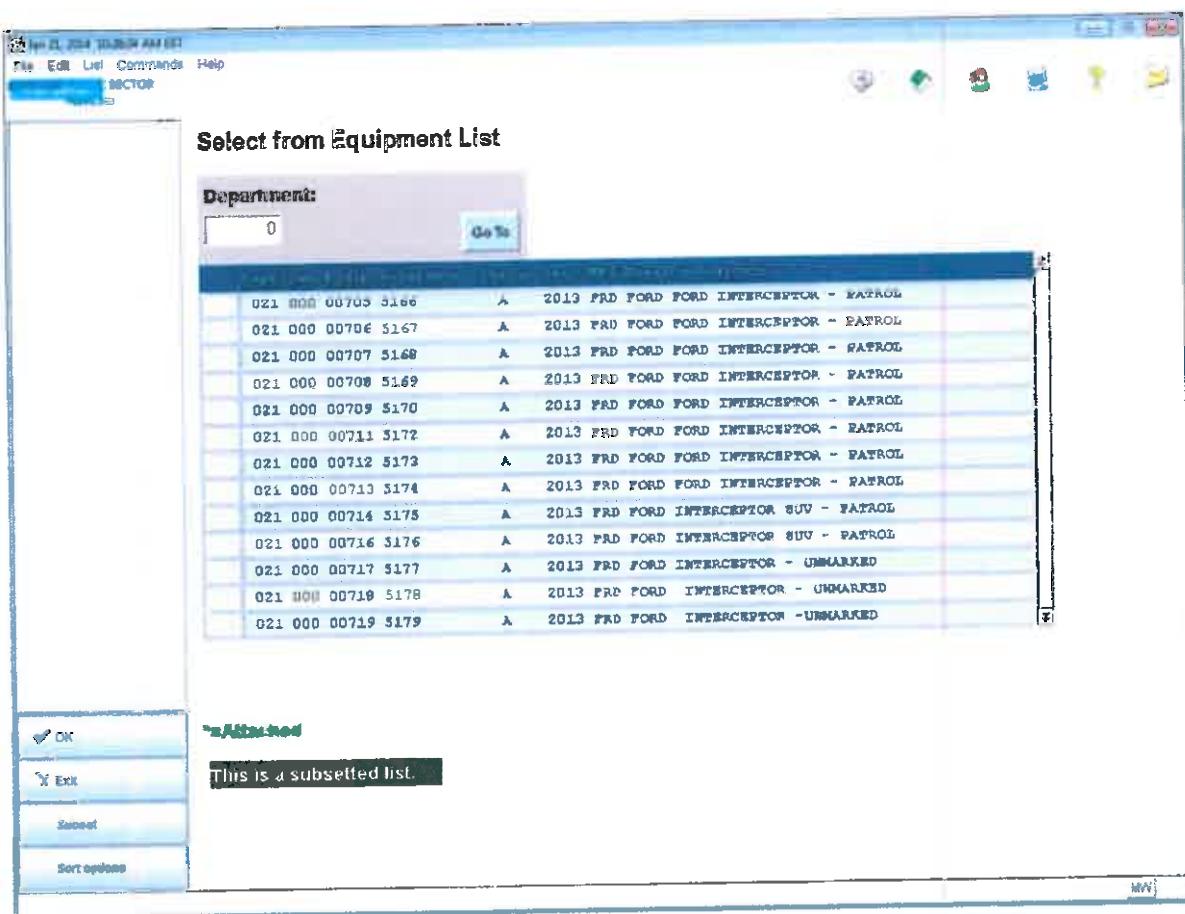


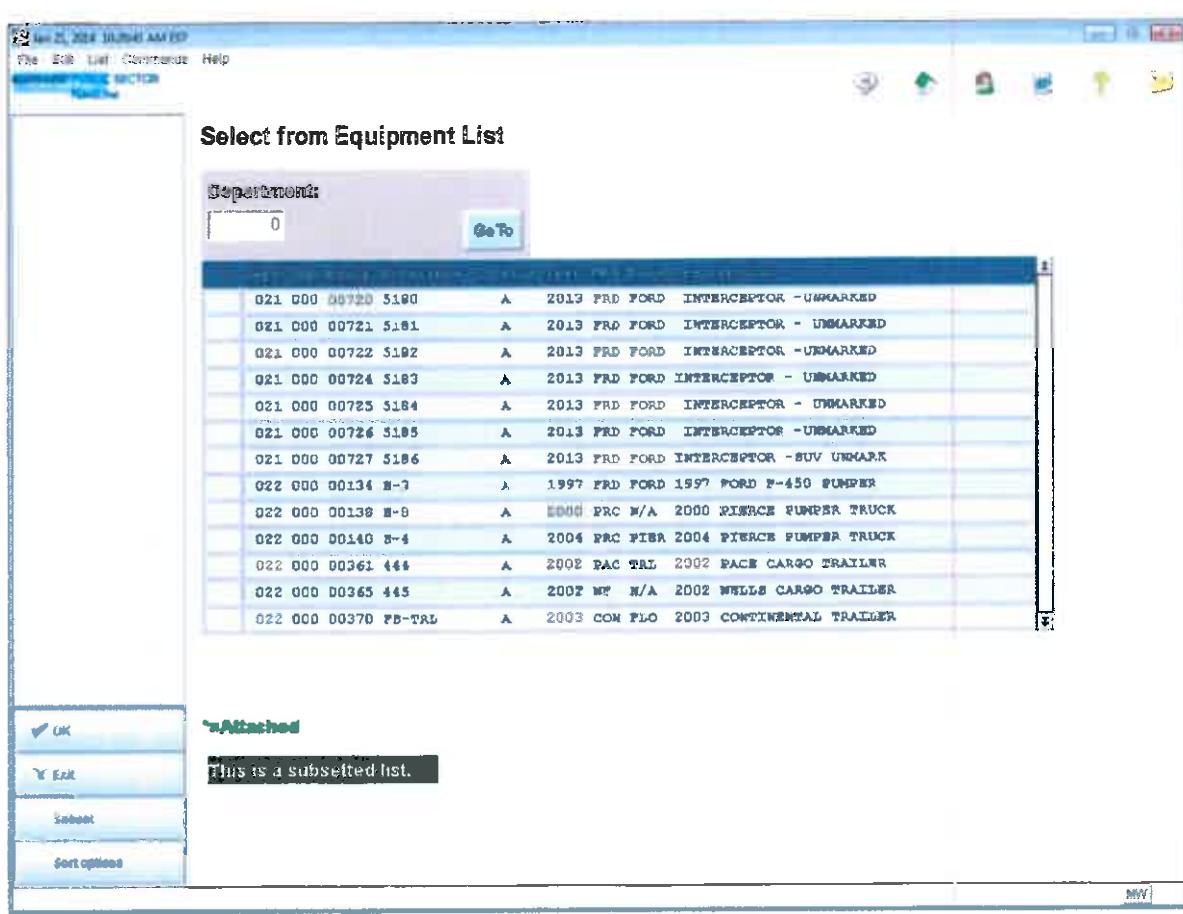


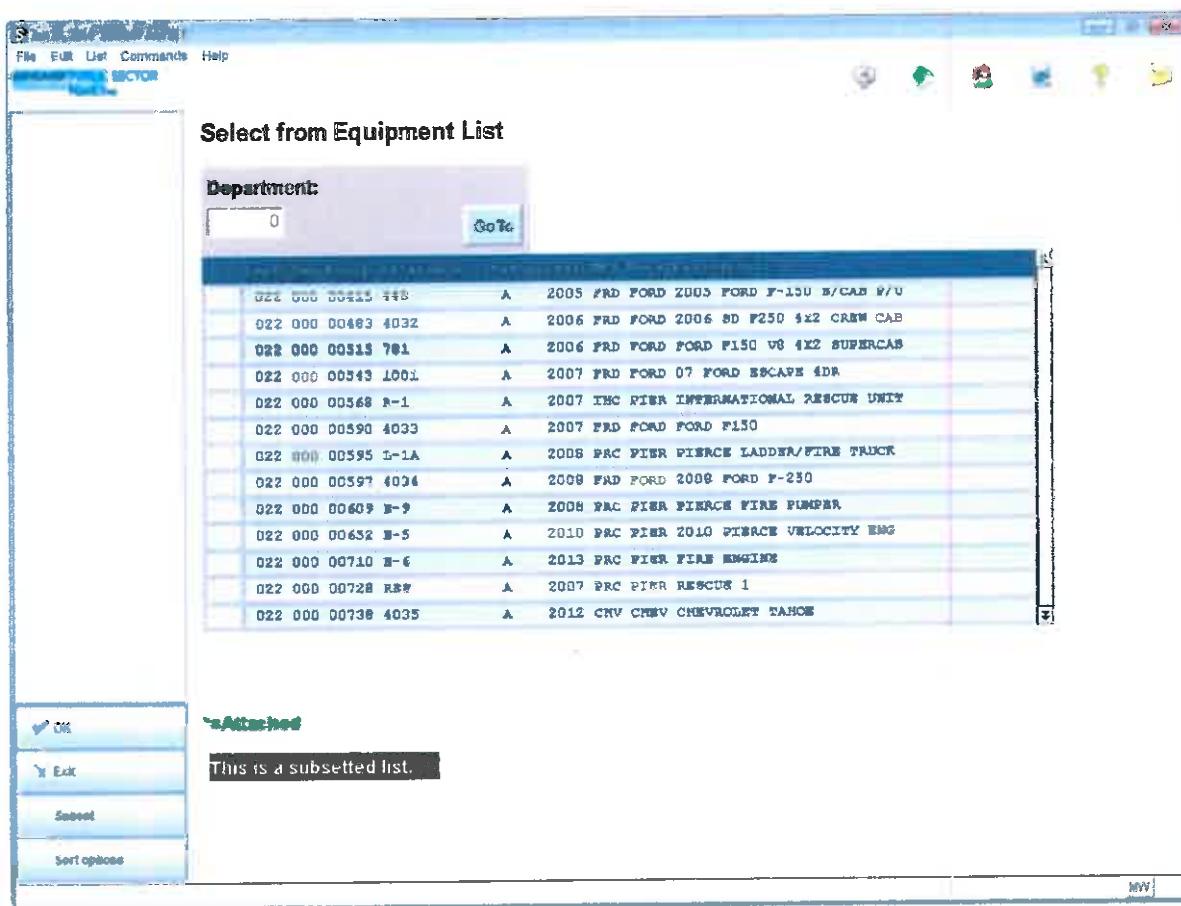


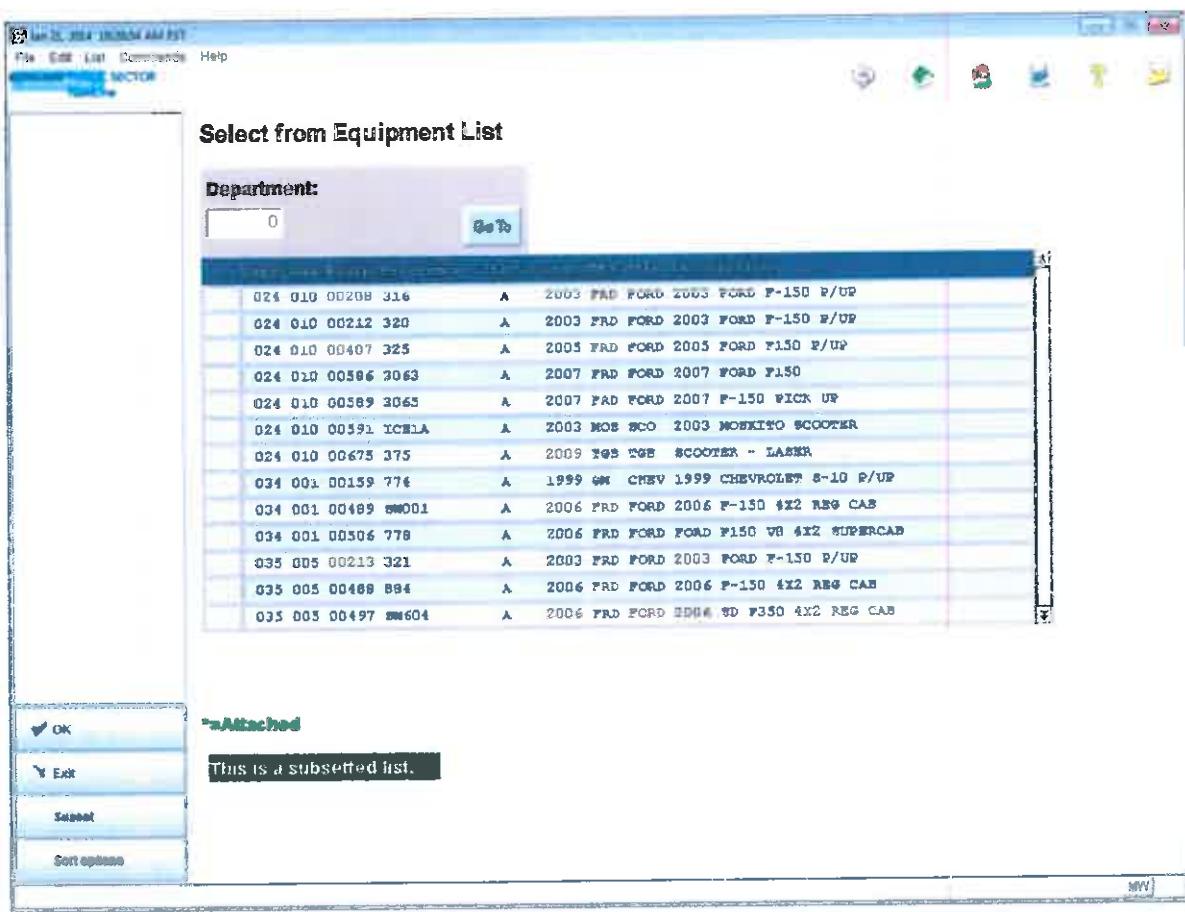


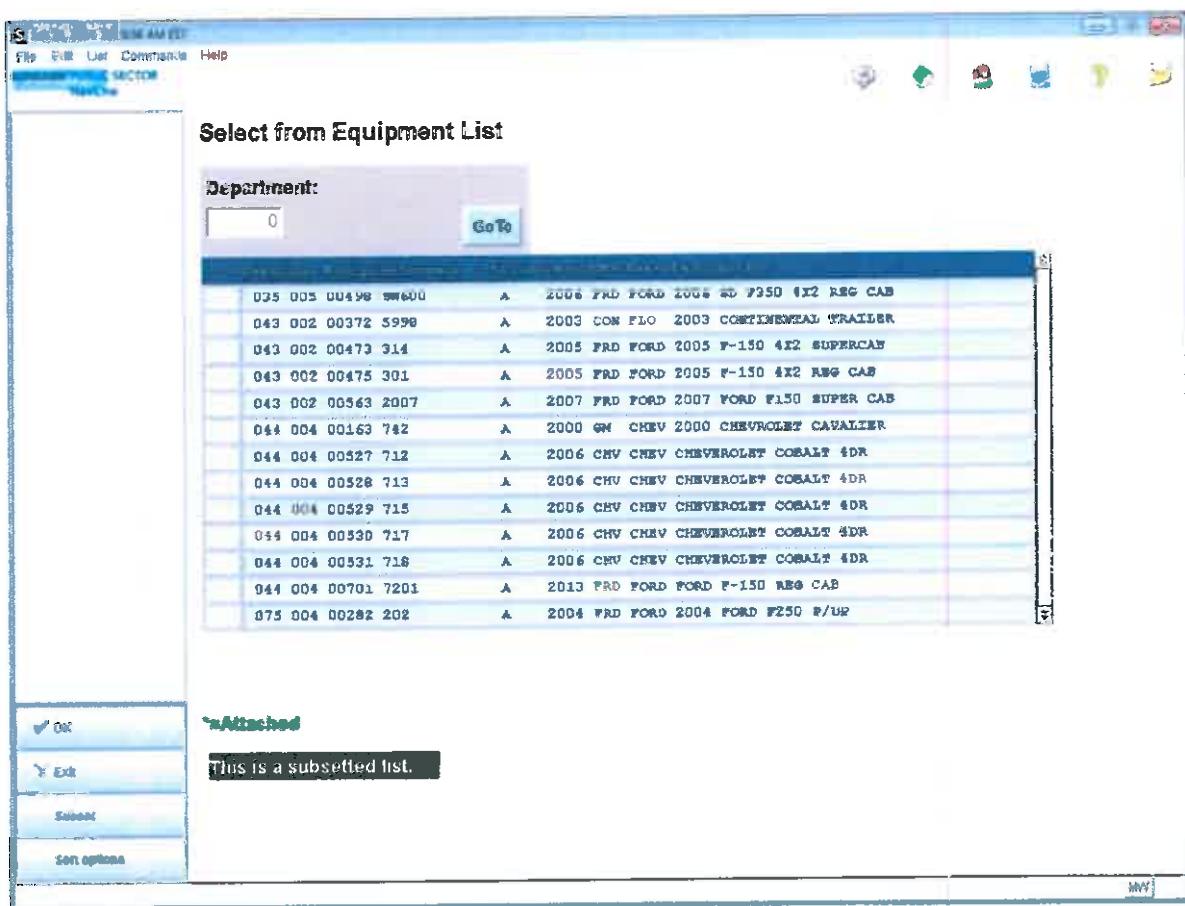


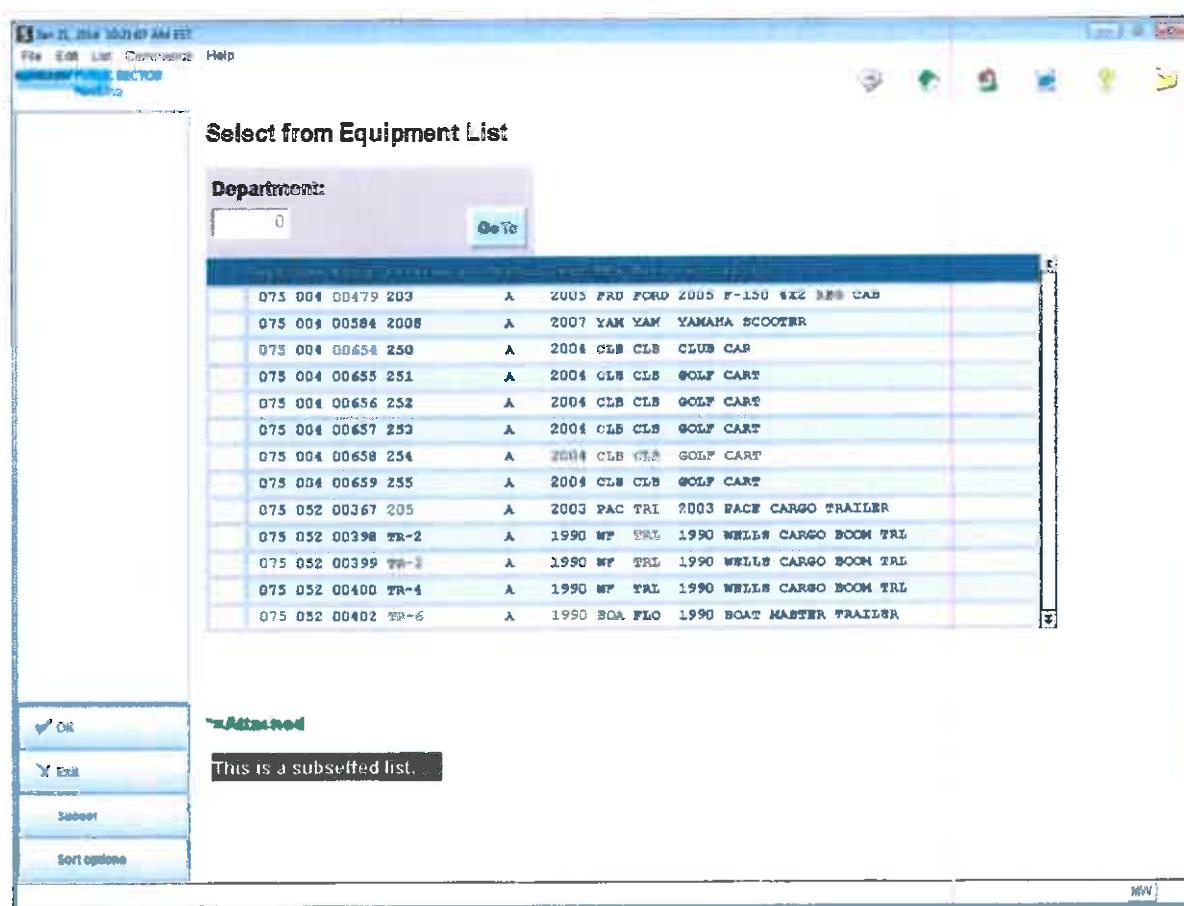


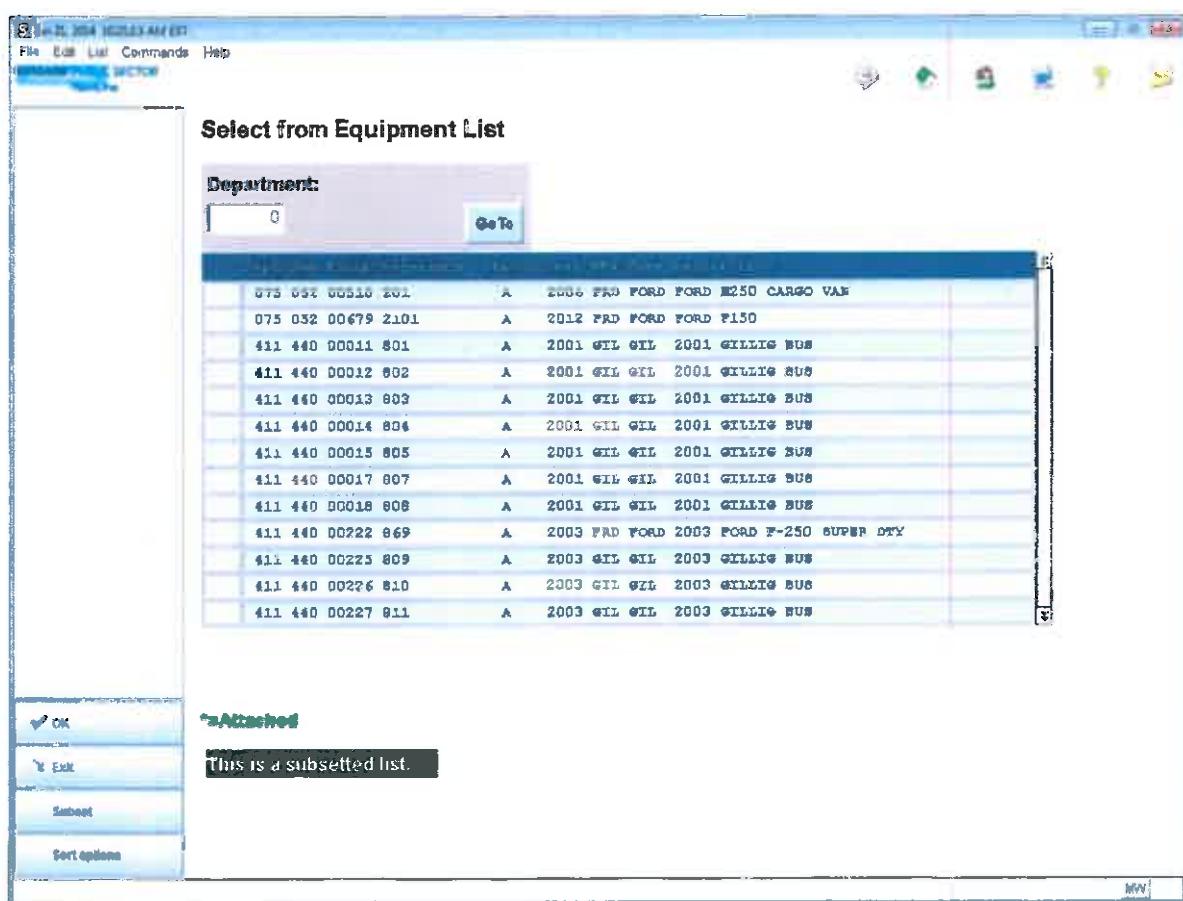


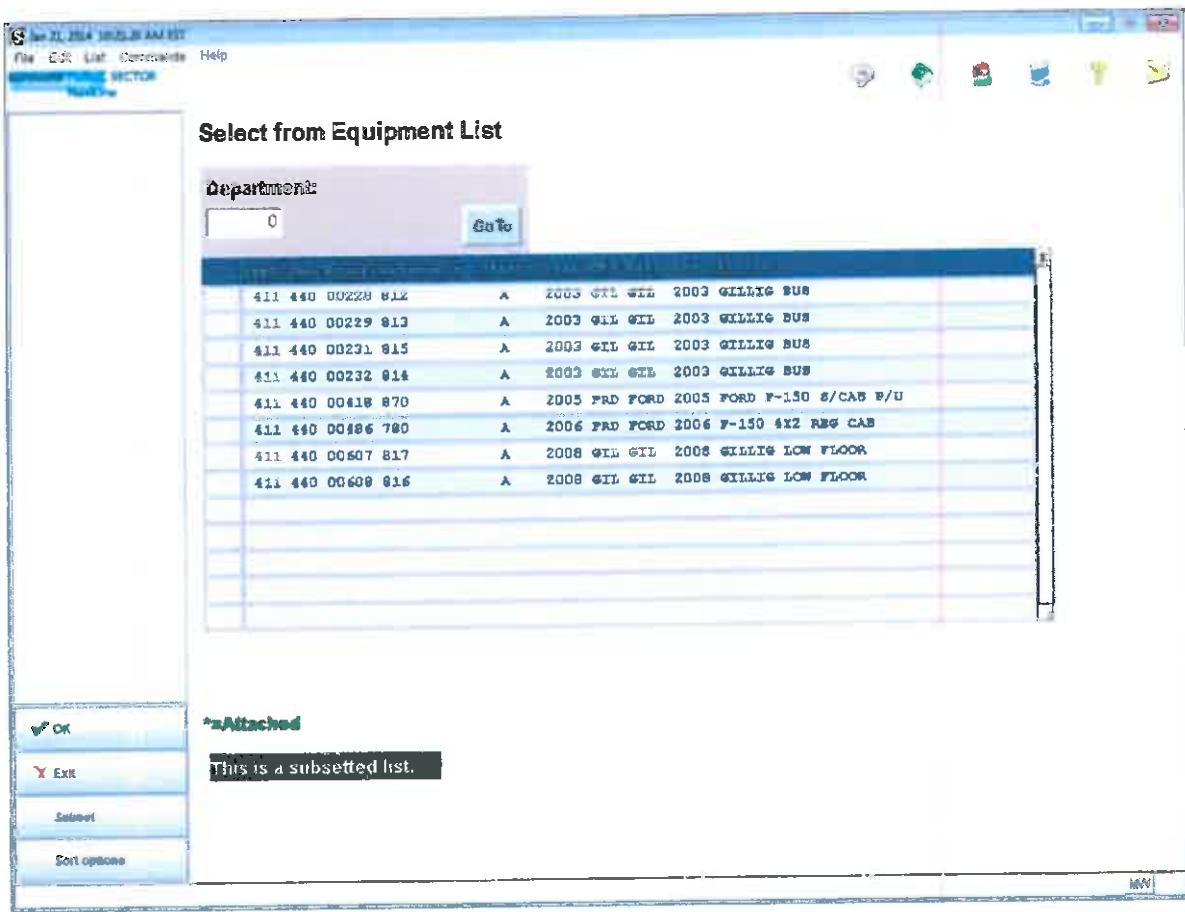












All Bidders shall acknowledge receipt and acceptance of this Addendum No. 3 by acknowledging Addendum in their proposal or by submitting the addendum with the bid package. Bids submitted without acknowledgement or without this Addendum may be considered non-responsive.

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Signature

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Name of Business