

Form C**EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS,
AND SOLUTIONS REQUEST**Company Name: Komatsu America Corp.

Any exceptions to the terms, conditions, specifications, or proposal forms contained in this RFP must be noted in writing and included with the Proposer's response. The Proposer acknowledges that the exceptions listed may or may not be accepted by Sourcewell or included in the final contract. Sourcewell will make reasonable efforts to accommodate the listed exceptions and may clarify the exceptions in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception	Sourcewell ACCEPTS
Section 6.26 / Page 23 Subcontractors	Vendors' certificate(s) must include all subcontractors as additional insureds under its policies, or the Vendor must furnish to Sourcewell separate certificates for each subcontractor. All coverage for subcontractors are be subject to the minimum requirements identified above.	Komatsu distributors, identified as subcontractors in this RFP, maintain their own insurance policies. Upon being awarded the contract, Komatsu America Corp. will supply separate certificates for each distributor.	Sourcewell accepts
Section 7.5 / Page 26 Performance Bonds	At the request of the Member, a Vendor will provide all performance bonds typically, and customarily required in their industry.	Performance bonds are not a part of our daily business process. If a request is made, Komatsu will make every effort to comply but cannot guarantee that a performance bond can be supplied.	Sourcewell accepts
FEMA Terms & Conditions Certification Part (E)	During the term of an award for this contract by Sourcewell, all rights to inventions and/or discoveries that arise or are developed, in the course of or under this request for proposal and contract award, shall belong to the Sourcewell Member and be disposed of in accordance with their policy. Sourcewell and Sourcewell members, at its own discretion, may file for patents in connection with all rights to any such inventions and/or discoveries.	All Intellectual Property rights in products supplied by Komatsu belong to Komatsu. If while using Komatsu Equipment under a federal grant or contract funded by FEMA, there is an invention or discovery made by a Sourcewell member not related to the Komatsu Equipment, the rights to that invention or discovery belong to the Sourcewell member.	Sourcewell accepts

Proposer's Signature: _____

Date: 03/18/2019**Sourcewell's clarification on exceptions listed above:**

Contract Award
RFP #032119



FORM D

Formal Offering of Proposal
(To be completed only by the Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

In compliance with the Request for Proposal (RFP) for **HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES**, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer's response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name: Komatsu America Corp. Date: March 18, 2019

Company Address: 1701 Golf Road, Suite 1-100

City: Rolling Meadows State: IL Zip: 60008

CAGE Code/DUNS: 69-054-1560

Contact Person: Doug Morris Title: Director, Sales and Marketing

Authorized Signature:  Douglas R Morris
(Name printed or typed)

FORM E
CONTRACT ACCEPTANCE AND AWARD



(Top portion of this form will be completed by Sourcewell if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

Sourcewell Contract #: 032119-KOM

Proposer's full legal name: Komatsu America Corp.

Based on Sourcewell's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by Sourcewell.

The effective date of the Contract will be May 13, 2019 and will expire on May 13, 2023 (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the Sourcewell Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at Sourcewell's discretion.

Sourcewell Authorized Signatures:

DocuSigned by:

Jeremy Schwartz

C0FD2A139D06489
SOURCEWELL DIRECTOR OF OPERATIONS AND
PROCUREMENT/CPO SIGNATURE

DocuSigned by:

Chad Coauette

7E42B8F817A64CC
SOURCEWELL EXECUTIVE DIRECTOR/CEO SIGNATURE

Jeremy Schwartz
(NAME PRINTED OR TYPED)

Chad Coauette
(NAME PRINTED OR TYPED)

Awarded on May 10, 2019

Sourcewell Contract # 032119-KOM

Vendor Authorized Signatures:

The Vendor hereby accepts this Contract award, including all accepted exceptions and amendments.

Vendor Name KOMATSU AMERICA CORP.

Authorized Signatory's Title DIRECTOR, SALES AND MARKETING

[Signature]
VENDOR AUTHORIZED SIGNATURE

Douglas R Morris
(NAME PRINTED OR TYPED)

Executed on MAY 10, 2019

Sourcewell Contract # 032119-KOM

Form F**PROPOSER ASSURANCE OF COMPLIANCE****Proposal Affidavit Signature Page****PROPOSER'S AFFIDAVIT**

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to Sourcewell members agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.
2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of Sourcewell, or any person, firm, or corporation under contract with Sourcewell, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
3. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer's RFP response.
4. The Proposer will, if awarded a Contract, provide to Sourcewell Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
5. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
6. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
7. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
8. The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify Sourcewell for reasonable measures that Sourcewell takes to uphold such a data designation.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

Company Name: Komatsu America Corp.

Address: 1701 Golf Road, Suite 1-100

City/State/Zip: Rolling Meadows, IL, 60008

Telephone Number: (847) 437-4361

E-mail Address: drmorris@komatsuna.com

Authorized Signature: 

Authorized Name (printed): Douglas R Morris

Title: Director, Sales and Marketing

Date: March 18, 2019

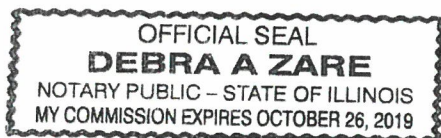
Notarized

Subscribed and sworn to before me this 18th day of MARCH, 2019

Notary Public in and for the County of Cook State of ILLINOIS

My commission expires: 10-26-19

Signature: 



Form P

PROPOSER QUESTIONNAIRE

Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions

Proposer Name: Komatsu America Corp.

Questionnaire completed by: Doug Morris and Victor Gasbarre

Payment Terms and Financing Options

1) What are your payment terms (e.g., net 10, net 30)?

As part of this proposal, the payment terms will be Net 45 Days.

2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?

We are not offering a financing option as part of this proposal; however, we will offer a competitive lease option through Komatsu Finance, subject to credit approval for the Sourcewell member. The buying agency will need to contact their local Komatsu distributor to discuss this lease option.

3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to Sourcewell. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell Members' purchase orders.

Each Komatsu distributor will be provided the Sourcewell "billing rates" for this contract. When a Sourcewell member requests a quote, they will contact their local Komatsu distributor for assistance. The distributor will quote the machine and eligible options using the Sourcewell billing rates. The distributor will add non-contracted costs to the quote, including freight, assembly, or sourced goods and will also communicate the lead time of the product and options. If accepted, the Sourcewell member will issue the PO directly to the distributor who will process the order. The PO should note the Sourcewell contract number. If the buying agency wants to add terms or conditions to the PO, the agency will need to discuss these with the distributor who takes responsibility for agreeing with the terms. The distributor will ship the machine to the buying agency and will invoice upon receipt. Komatsu dealers are responsible to report sales to Komatsu monthly in accordance with our standard reporting process for national account customers.

4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell Members for using this process?

Komatsu America Corp. does not accept the P-card procurement and payment process. We recommend that the Sourcewell member contact their local distributor directly to determine if that distributor does accept the P-card process and whether any fees would apply.

Warranty

5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.

All warranty work is completed by an authorized Komatsu distributor. Sourcewell members should contact their dealer when repair work is needed. The enclosed flash drive contains additional information regarding the warranty process and procedure.

- All Komatsu products come with a Standard Product Warranty for 12 months / unlimited hours, covering against defect in materials and workmanship. See attached "Product Warranty Certificate Form".

- All products with Tier 4 engines come with an Emission Control Warranty, covering defects in workmanship or materials which would cause the products not to meet emission regulations. If an engine is first placed in California, a separate California Emission Warranty also applies. See attached "Product Warranty Certificate Form".
- Four of the compact excavator models in this proposal (PC30MR-5, PC35MR-5, PC45MR-5, PC55MR-5) come with complimentary Extended Powertrain Coverage. See attached "Advantage Brochure".
- Intelligent Machine Control (IMC) products have additional IMC Component Coverage.
- The Hybrid Excavator products have Hybrid Component Coverage. See attached "Hybrid Warranty" document.
- **Do your warranties cover all products, parts, and labor?**
 - ❖ The Standard Product and Emission Control Warranties cover parts and labor. See attached "Product Warranty Certificate Form".
 - ❖ The Extended Powertrain Coverage for the compact excavator models covers parts and labor.
 - ❖ The IMC Component Warranty covers the IMC monitor panel, iMC receiver, cylinder stroke sensors, GNSS antenna, the inertia measuring unit, and up to 8 hours for troubleshooting.
 - ❖ The Hybrid Component Warranty covers the inverter, capacitor, motor-generator, and swing motor. No labor is included with this coverage offering.
- **Do your warranties impose usage restrictions or other limitations that adversely affect coverage?**
 - ❖ The Standard Product Warranty is 12 months / unlimited hours
 - ❖ The Emission Warranty is 5 years / 3,000 hours
 - ❖ Compact Excavator Extended Powertrain Coverage is 3 years / 3,000 hours
 - ❖ IMC Component Coverage is 4 years / 4,000 hours
 - ❖ Hybrid Component Coverage is 7 years / 10,000 hours
 - ❖ As defined in Section 6 of the Product Warranty Certificate Form, there are limitations which include, but are not limited to, misuse or unauthorized modifications to the products. Please see the Certificate Form for all limitations.
- **Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?**
 - ❖ The Product, Emissions, and Extended Powertrain Warranties cover mileage but exclude travel time.
 - ❖ The IMC and Hybrid Component Warranties exclude travel time and mileage.
 - ❖ We recommend customers return the product to the distributor from which it was purchased, however machines can be taken to the most convenient authorized Komatsu distributor contracted to service the product.
- **Are there any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell Members in these regions be provided service for warranty repair?**
 - ❖ All geographic regions of the United States are assigned to a Komatsu distributor, each of which is equipped with technicians that are factory trained and certified to conduct warranty or repair work.
- **Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?**
 - ❖ Some products within this proposal offer options supplied by what Komatsu calls "Allied" vendors (buckets, couplers, etc.). Allied vendors offer their own specific warranties. For warranty on these options, the buying agency will contact the local distributor for the repair work. The distributor will process warranty claims directly back to the Allied vendor.
- **What are your proposed exchange and return programs and policies?**
 - ❖ Komatsu America Corp. does not offer any exchange or return programs for machinery.

6) Describe any service contract options for the items included in your proposal.

As described in Form A #31, Tier 4 Final machines come standard with Komatsu Care, an industry exclusive program that offers complimentary maintenance for 3 years / 2,000 hours as well as a complimentary KDPF exchange program for machines equipped with this engine technology. Four of the compact excavator models in this proposal do not have the Komatsu Care program, however come with extended powertrain coverage.

Komatsu America Corp. is not offering any other service contract options beyond Komatsu Care as part of this proposal, however Sourcewell members can discuss other options with their distributor such as extended maintenance programs or extended warranty. These would be quoted and managed through the Komatsu distributor.

Pricing, Delivery, Audits, and Administrative Fee

7) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

As part of this RFP response, Komatsu America Corp. is offering 52 models across 9 product groups to Sourcewell members. The individual model designations are included in the attached "Sourcewell Contract Billing Rates" Excel file provided on the flash drive submitted with this proposal. The product lines included in this response are:

- | | |
|----------------------------|--------------------------------|
| 1) Articulated Dump Trucks | 6) Hydraulic Excavators |
| 2) Compact Excavators | 7) Hybrid Hydraulic Excavators |
| 3) Crawler Dozers | 8) IMC Hydraulic Excavators |
| 4) IMC Crawler Dozers | 9) Wheel Loaders |
| 5) Motor Graders | |

8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. (Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)

Included with this submission are the price lists for products offered in this proposal. Within each price list are the list prices of the base machine as well as all options that are available (identified by sales codes). The price lists also identify items that are standard equipment or included in the base machine price. Some price lists contain options supplied by "Allied", or non-Komatsu vendors. Komatsu has provided billing rates for every model. The billing rates when multiplied by the List Price represents the Sourcewell member price, FOB the factory or stockyard. This also includes PDI (see additional details in Form P #13). The billing rate will only be applied to the base machine, factory options, or Allied options listed in the price list, which we consider contracted items. Any Sourced Good that a buying agency requests to be quoted that is not included within the Komatsu price list will be negotiated directly with the local distributor and added to the Komatsu purchase price. Included in the enclosed flash drive is a sample price build up for a WA270-8 wheel loader.

9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents is a 50% percent discount from the MSRP or your published list.

The Sourcewell member discount range is between 33.0% and 55.5% off List Price, depending on the model.

10) The pricing offered in this proposal is

- _____ a. the same as the Proposer typically offers to an individual municipality, university, or school district.
- _____ b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
- _____ **X** c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
- _____ d. other than what the Proposer typically offers (please describe).

11) Describe any quantity or volume discounts or rebate programs that you offer.

Komatsu does not have set volume discounts or rebate programs as part of this proposal, however if the buying agency is purchasing more than 3 units on the same purchase order, the distributor will contact Komatsu to receive additional incentives for volume purchases. Because Komatsu will review all volume purchases, any additional discounting will be consistent across North America.

- 12) Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.**

Komatsu considers “sourced” products as non-contract items, or items that are not included in the price list for a model. Komatsu distributors are capable and authorized to supply non-contact items to Sourcewell members. If requested, sourced products will be quoted and negotiated directly to the Sourcewell member by the Komatsu distributor. This process is separate from the pricing methodology outlined in the response to Form P #8.

- 13) Identify any total cost of acquisition costs that are NOT included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial/pre-delivery inspection. Identify any parties that impose such costs and their relationship to the Proposer.**

All machine pricing within this proposal is FOB the factory or stockyard and includes PDI. On the enclosed flash drive you will find product specific PDI details that the dealer is responsible to complete prior to delivery at no additional charge to the customer. The dealer is responsible to ensure the machine has proper fluid levels, system pressures, and is operating to Komatsu's standard specification, all included with the price of the machine from the factory.

Prep / Assembly Costs: If there are any prep or assembly costs associated with the product before delivery, such as but not limited to machine assembly, bucket / coupler installation, or Allied vendor product installation and setup, the dealer will quote these costs separately from the machine itself.

Fuel Charge: A dealer may elect to quote delivery of the machine with a full tank of fuel which would be identified as a separate cost item on the quote. A Sourcewell member may request the distributor not fill the fuel tank prior to delivery.

Sourced Goods: If a buying agency requests any sourced good items, such as but not limited to attachments or extended warranty / maintenance programs, these items will be quoted in addition to the price of the machine directly by the distributor.

- 14) If travel expense, delivery or shipping is an additional cost to the Sourcewell Member, describe in detail the complete travel expense, shipping and delivery program.**

The Komatsu price (List Price x Billing Rate) will be FOB from the factory or stockyard. This will also apply to machines shipping to Alaska, Hawaii, and Canada. At the time of quote, the distributor will add the costs for inbound and outbound freight from the dealer branch location to the delivery point. A buying agency may also elect to pick up the machine which can be arranged directly with the distributor.

- 15) Specifically describe those travel expense, shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.**

The Komatsu price will be FOB from the factory or stockyard, and the dealer will be responsible to quote all freight and delivery charges directly to the Sourcewell member, including to locations in Alaska, Hawaii, and Canada. A buying agency may also elect to pick up the machine which can be arranged directly with the distributor.

- 16) Describe any unique distribution and/or delivery methods or options offered in your proposal.**

There is nothing in this proposal that we would describe as unique distribution or delivery method options.

- 17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.**

Komatsu America Corp. will manage the Sourcewell contract by using internal processes already utilized to manage existing national account contracts. At this time, every Komatsu distributor in North America has assigned a key point of contact to support the Sourcewell contract and its members. Each distributor will be provided with the Sourcewell billing rates and will always have the most up to date Komatsu price list. The distributor is responsible for pricing the products in accordance with the Sourcewell member discounts. Each distributor is responsible to report their quotations to Komatsu America Corp. which will employ a process to spot check quotes and verify accuracy. Corrective action will take place immediately if there are any mistakes or issues. Each key point of contact at the dealer is also responsible to report sales monthly. Komatsu will audit this data to confirm that 100% of sales to Sourcewell members are reported and the proper administrative fee is submitted to Sourcewell.

- 18) Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See RFP Section 6.29 and following for details.)

Komatsu America Corp. is proposing an administrative fee of 1.0% payable to Sourcewell for this contract.

Industry-Specific Questions

- 19) Describe any industry-specific quality management system certifications obtained by your organization.

Komatsu factories are ISO 9001:2015 certified for quality management.

- 20) Describe any environmental management system certifications obtained by your organization.

Komatsu factories are ISO 14001:2015 certified for environmental management systems.

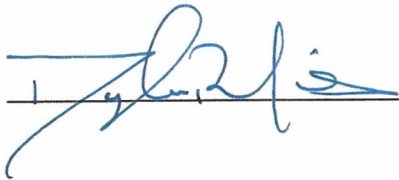
Komatsu factories are either ISO 45001 or OHSAS 18001 certified for occupational health and safety management systems.

- 21) Describe any preventive maintenance programs that your organization offers for the solutions you are proposing in your response.

Tier 4 Final machines come standard with Komatsu Care, an industry exclusive program that offers complimentary maintenance for 3 years / 2,000 hours as well as a complimentary DPF exchange program for machines equipped with this engine technology. Four of the compact excavator models in this proposal do not have the Komatsu Care program, however come with extended powertrain coverage.

Beyond the Komatsu Care program, Komatsu America Corp. is not offering any other preventative maintenance programs as part of this contract. If a buying agency requests an extended maintenance program beyond Komatsu Care, the Komatsu dealer can quote this as a "sourced good", or non-contract item directly to the customer.

Signature: _____



Douglas R Morris

Date: March 18, 2019

**AMENDMENT #1
TO
CONTRACT #032119-KOM**

This Amendment is by and between **Sourcewell** (Sourcewell), having its principal office located at 202 12th Street NE, PO Box 219, Staples, MN 56479 and **Komatsu America Corp** (Vendor), having its principal office located at 1701 Golf Road, Suite 1-100, Rolling Meadows, IL 60008. Sourcewell and Vendor will be collectively known hereinafter as "Parties."

Vendor was awarded a Sourcewell Contract for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies effective May 13, 2019, through May 13, 2023, relating to the provision of services by Vendor and to Sourcewell and its Members.

The parties agree that certain terms within the Agreement shall be updated and amended and only to the extent as hereunder provided.

In consideration of the mutual covenants and agreements described in this Amendment, the parties agree as follows:

1. This Amendment is effective upon the date of the last signature below.
2. Form P – Payment Terms and Financing Options, Question #2 in the Vendor's Response to the above-mentioned Request for Proposal is deleted in its entirety and replaced with the following:

RESPONSE: We are not offering a subsidized financing option as part of this proposal. We will offer a competitive lease option through Komatsu Finance, subject to credit approval for the Sourcewell member. The buying agency will need to contact their local Komatsu distributor to discuss this lease option. If financing is requested by the member, they can work with their local Komatsu distributor for financing options.

3. The Agreement and any previous amendments are incorporated into this Amendment by reference.

(This Section Intentionally Left Blank.)

Except as amended by this Amendment, the Agreement remains in full force and effect.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
Autho: C0FD2A139D06489...

Jeremy Schwartz
Name – Printed

Title: Director of Operations & Procurement/CPO

Date: 9/26/2019 | 3:51 PM CDT

APPROVED:

DocuSigned by:
By: Chad Coauette
Autho: 7E42B8F817A64CC...

Chad Coauette
Name – Printed

Title: Executive Director/CEO

Date: 9/26/2019 | 4:35 PM CDT

Komatsu America Corp

By: [Signature]
Authorized Signature

Douglas R Morris
Name – Printed

Title: Director, Sales & Marketing

Date: 09/05/2019



SOURCEWELL- PARTICIPATION AGREEMENT

Sourcewell Master Agreement No.:	032119-KOM
Contract Category:	Heavy Construction Equipment With Related Accessories, Attachments, and Supplies
Awarded Contractor:	Komatsu America Corp
Washington Master Contract No.:	01020

This Participation Agreement for the above referenced Sourcewell Master Agreement ("Participation Agreement") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Komatsu America Corp, a Georgia corporation, ("Contractor") and is dated and effective as of August 1, 2020.

RECITALS

- A. Pursuant to Legislative direction codified in RCW 43.19.005 and RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to provide goods and services to support state agencies and to enter into agreements with other governmental entities to furnish such goods and services as deemed appropriate by both parties.
- B. Pursuant to Washington law, Enterprise Services is authorized, on behalf of the state, to participate in cooperative purchasing agreements for any goods or services. See RCW 39.26.060(1). Any such cooperative purchasing must be done in accordance with an agreement entered into between the participants. See RCW 39.26.060(1). Enterprise Services, through a participation agreement or similar authorization may authorize specified eligible purchasers to utilize the Washington State master contract resulting from Enterprise Services' participation in the cooperative purchasing agreement.
- C. Sourcewell is a State of Minnesota local government unit and service cooperative created by the Minnesota legislature under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21). See Minn. Const. art. XII, sec. 3. Under its enabling statute, Sourcewell is authorized to provide cooperative purchasing services to eligible members. Minn. Stat. § 123A.21 Subd. 7(23). Sourcewell follows the competitive contracting law process to solicit, evaluate, and award cooperative purchasing contracts for goods and services {Sourcewell Master Agreements}. Sourcewell Master Agreements are made available through the joint exercise of powers law to eligible agencies. Minn. Stat. § 471.59 (2019).
- D. Pursuant to an Interagency Joint Powers Agreement between Enterprise Services and Sourcewell, Enterprise Services may participate in and authorize participation in competitively procured Sourcewell Master Agreements.

- E. In regard to the above-referenced Sourcewell Master Agreement, Enterprise Services timely provided public notice, through Washington's Electronic Business Solutions (WEBS) system, of the competitive solicitation process conducted by Sourcewell.
- F. Sourcewell, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful proposer/bidder and awarded a Sourcewell Master Agreement to Contractor.
- G. Enterprise Services has determined that participating in this Sourcewell Master Agreement is in the best interest of the State of Washington.
- H. The purpose of this Participation Agreement is to enable eligible purchasers, as defined herein, to utilize the Sourcewell Master Agreement as conditioned by this Participation Agreement.

AGREEMENT

Now THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE**: This Participation Agreement covers the above-referenced contract category for the above-referenced Sourcewell Master Agreement with the above-referenced awarded Contractor.
2. **PARTICIPATION**: Pursuant to this Participation Agreement and the Interagency Joint Powers Agreement between Enterprise Services and Sourcewell, the above-referenced Sourcewell Master Agreement may be utilized by the following, each of which is an authorized eligible purchaser ("Purchaser"):
 - (a) WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - (b) WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following specific Institutions of higher education In Washington:
 - State universities - i.e., University of Washington & Washington State University;
 - Regional universities - i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - (c) MCUA PARTIES. The Sourcewell Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participation Agreement, each Purchaser agrees to be bound by the terms and conditions of this Participation Agreement, including the Sourcewell Master Agreement. Each Purchaser is responsible for its compliance with such terms and conditions.

3. **STATE OF WASHINGTON MODIFICATIONS OR ADDITIONS TO THE SOURCEWELL MASTER AGREEMENT:**

- 3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participation Agreement, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at WEBS. Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Sourcewell Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 3.2. **WASHINGTON'S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractor must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiv&i.fil'.ment from the State](#).
- 3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services' Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number.
- (b) **DATA.** Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of this Participation Agreement, which term shall run from the effective date of this Participation Agreement until the end of the Sourcewell Master Agreement; Provided, however, that Enterprise Services may terminate this Participation Agreement earlier by written notice. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
- (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July31
September 30	October 31
December 31	January 31

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participation Agreement.

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services= Total contract sales invoiced (not including sales tax) x .0150.

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:
- This Washington Master Contract No.: **01020**
 - The Sourcewell Master Agreement No.: **032119-KOM**
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth above, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participation Agreement or the exercise of any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. **CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor makes each of the following representations and warranties as of the effective date of this Participation Agreement and at the time any order is placed pursuant to the above-referenced Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Participation Agreement and the three (3) year period immediately preceding this Participation Agreement, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- (b) **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow

differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participation Agreement and Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Participation Agreement.

- (c) EXECUTIVE ORDER 18-03 - WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participation Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- 3.6. COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION: Contractor shall comply with all applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

3.7. **CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:**

- (a) **CONTRACTOR'S SALES AUTHORITY.** Pursuant to this Participation Agreement, Contractor is authorized to provide only those goods and/or services set forth in the above-referenced contract category for the above-referenced Sourcewell Master Agreement as conditioned by this Participation Agreement. Contractor shall not represent to any Purchaser hereunder that it has any authority to sell any other goods and/or services.
- (b) **PURCHASE ORDERS.** To utilize the Sourcewell Master Agreement, each order must include the following information and be submitted to an authorized dealer for Contractor:
 - 1. Sourcewell Master Agreement No. **032119-KOM**;
 - 2. Washington Master Contract No. **01020**;
 - 3. Purchase Order amount; and
 - 4. Purchaser's contact information (i.e., name, address, telephone number, email).
- (c) **INVOICES.** Contractor must provide a properly completed invoice to Purchaser. All

invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the following:

1. Sourcwell Master Agreement No. **032119-KOM**;
 2. Washington Master Contract No. **01020**;
 3. Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM);
 4. Applicable Purchaser's order number;
 5. Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).
4. **LEASE AGREEMENTS:** The above-referenced Sourcwell Master Agreement, at Section 5.4 Pricing, enables Contractor to sell or lease equipment included within the above-referenced contract category to a Purchaser. Notwithstanding any provision to the contrary, Purchasers that are Washington state agencies must comply with rules and guidelines for capital leases established by the Washington State Treasurer's Office.
5. **PRIMARY CONTACTS:** The primary contacts for this Participation Agreement are as follows (or their named successors):

Contractor

Komatsu America Corp.
8770 W. Bryn Mawr Ave., Suite 100
Chicago, IL 60631

Attn: Doug Morris
Tel: 847-437-4361
Email: sourcwell@komatsuna.com

State of Washington

State of Washington
Department of Enterprise Services
Contracts & Procurement Division
P.O. Box 41411
Olympia, WA 98504-1411

Attn: Ashly McBunch - Team Cypress
Tel: (360) 407- 2889
Email: DESContractsTeamCypress@des.wa.gov

6. **CONTRACTOR'S AUTHORIZED DISTRIBUTORS:** Contractor shall provide the goods/services through its Authorized Distributors. For purposes of the Sourcwell Master Agreement and this Participation Agreement, Contractor's Authorized Distributors for the State of Washington are those firms provided by the Vendor Contact listed on the Sourcwell website for this Sourcwell Master Agreement. Contractor shall use commercially reasonable efforts to ensure that each of its Authorized Distributors perform in accordance with the terms and conditions set forth in the Sourcwell Master Agreement and this Participation Agreement.
- (a) **DIRECT PAYMENT OF ANY SUBCONTRACTORS (E.G., RESELLERS, DISTRIBUTORS, FULFILLMENT PARTNERS):** Except for subcontracts with Contractor's designated resellers/distributors/fulfillment partners ("Designated Subcontractors"), Contractor shall not subcontract, assign, or otherwise transfer its obligations under the Sourcwell Master Agreement and this Participation Agreement without Enterprise Services' prior written consent. Violation of this condition shall constitute a material breach establishing grounds for termination of this Participation Agreement.
1. **SUBCONTRACTOR AUTHORIZATION.** Contractor is authorized, without additional consent, to utilize its Designated Subcontractors to provide sales and service support to Purchasers hereunder; *provided*, however, that such participation shall be In

accordance with the terms and conditions set forth in the Sourcewell Master Agreement and this Participation Agreement. Contractor shall maintain a list of such Designated Subcontractors utilized for this Participation Agreement, and, upon request, promptly provide Enterprise Services with such list and any updates.

2. **CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.** Contractor shall be responsible to ensure that all requirements of the Sourcewell Master Agreement (including, but not limited to, insurance requirements, indemnification, Washington State business registration, etc.) flow down to any and all Designated Subcontractors. In no event shall the existence of a subcontract between Contractor and its subcontractor operate to release or reduce Contractor's liability to Enterprise Services or any Purchaser for any breach of the Sourcewell Master Agreement or this Participation Agreement. As to Enterprise Services and Purchasers hereunder, Contractor shall have full and complete responsibility and liability for any act or omission by Contractor's Designated Subcontractors.
 3. **PURCHASER PAYMENT REGARDING CONTRACTOR'S DESIGNATED SUBCONTRACTORS.** Notwithstanding any provision to the contrary, the parties understand and agree that for any contract sales or service provided pursuant to the Sourcewell Master Agreement and this Participation Agreement, Purchaser payment shall be made directly to Contractor as the awarded vendor pursuant to the competitive procurement; *provided*, however, that, in the event any such sales or services are performed by a Designated Subcontractor for Contractor, Contractor may instruct such Purchaser to make payment for such sales or services to Contractor's identified Designated Subcontractor. Regardless of whether Contractor instructs a Purchaser to make such payment to Contractor's Designated Subcontractor, Contractor shall remain responsible for performance.
 4. **CONTRACT SALES REPORTING.** Notwithstanding any provision to the contrary, Contractor shall report to Enterprise Services total contract sales, delineated by purchaser, made by each individual Designated Subcontractor and also report total contract sales, delineated by purchaser, on a consolidated Contractor 'roll-up' basis. Contractor shall maintain records supporting such reports in accordance with the Sourcewell Master Agreement's records retention requirements.
7. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Purchaser for any good and/or service in the above-referenced contract category for the above-referenced Sourcewell Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Sourcewell Master Agreement as conditioned by this Participation Agreement.
8. **GENERAL:**
- (a) **PUBLIC INFORMATION:** This Participation Agreement, all related documents, and all records created as a result of the Participation Agreement and Master Contract, are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. Consistent with the Public Records Act, to the extent that any such Contractor document or record - in whole or in part - includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record - the exempted or protected portions only - with the specific basis for protection under the Public Records Act. In the

event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining such disclosure. In the event Contractor fails to file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor's failure properly to identify exempted or protected information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are protected or exempt from disclosure.

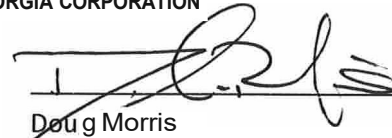
- (b) **INTEGRATED AGREEMENT; MODIFICATION.** This Participation Agreement and Sourcewell Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participation Agreement may not be modified except in writing signed by the Parties.
- (c) **AUTHORITY.** Each party to this Participation Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participation Agreement and that its execution, delivery, and performance of this Participation Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (d) **ELECTRONIC SIGNATURES.** A signed copy of this Participation Agreement or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participation Agreement or such other ancillary agreement for all purposes.
- (e) **COUNTERPARTS.** This Participation Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participation Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participation Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: _____
Corinna Cooper
Its: Enterprise Procurement Manager

KOMATSU AMERICA CORP
A GEORGIA CORPORATION

By: 
Doug Morris
Its: Director, Sales and Marketing






01020_KOM_PA_9.8.2020

Final Audit Report

2020-09-08

Created:	2020-09-08
By:	Ashly McBunch (Ashly.mcbunch@des.wa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA3Ud5-xLgzRrDmSv9zp0WPLtF3EeVJxHc

"01020_KOM_PA_9.8.2020" History

-  Document created by Ashly McBunch (Ashly.mcbunch@des.wa.gov)
2020-09-08 - 6:20:25 PM GMT- IP address: 198.238.242.30
-  Document emailed to Corinna Cooper (corinna.cooper@des.wa.gov) for signature
2020-09-08 - 6:21:03 PM GMT
-  Email viewed by Corinna Cooper (corinna.cooper@des.wa.gov)
2020-09-08 - 7:23:55 PM GMT- IP address: 198.238.242.30
-  Document e-signed by Corinna Cooper (corinna.cooper@des.wa.gov)
Signature Date: 2020-09-08 - 7:25:16 PM GMT - Time Source: server- IP address: 198.238.242.30
-  Signed document emailed to Ashly McBunch (Ashly.mcbunch@des.wa.gov) and Corinna Cooper (corinna.cooper@des.wa.gov)
2020-09-08 - 7:25:16 PM GMT



CONTRACT EXTENSION


Contract Number: #032119-KOM

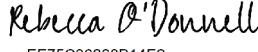
Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Komatsu America Corp., 1701 Golf Road, Rolling Meadows, IL 60008 have entered into Contract #032119-KOM for the procurement of Heavy Construction Equipment with Related Accessories, Attachments and Supplies. The Contract has an expiration date of May 13, 2023, but the parties may extend the Contract by mutual consent.

Sourcewell and Vendor acknowledge that extending the Contract benefits the Vendor, Sourcewell and Sourcewell's Members. Vendor and Sourcewell agree to extend the Contract listed above for an additional period, with a new Contract expiration date of May 13, 2024. All other terms and conditions of the Contract remain in full force and effect.

Sourcewell

Komatsu America Corp.

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 12/1/2022 | 1:46 PM CST

DocuSigned by:

By: EE75C36260B14E2...
Rebecca O'Donnell
Title: National Accounts Manager
Date: 12/7/2022 | 10:47 AM CST