



SOURCEWELL – PARTICIPATION AGREEMENT

Sourcewell Master Agreement No.:	032119-VCE
Contract Category:	Heavy Construction Equipment With Related Accessories, Attachments, and Supplies
Awarded Contractor:	Volvo Construction Equipment North America, LLC
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 Volvo Construction Equipment North America, LLC, a Delaware 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: [Receiving Payment 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	July 31
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-VCE**
 - 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-VCE**;
 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. Sourcewell Master Agreement No. **032119-VCE**;
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 Sourcewell 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

Volvo Construction Equipment North
America, LLC
312 Volvo Way
Shippensburg, PA 17257

Attn: Tom Schanz
Tel: 717-530-6164
Email: tom.schanz@volvo.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 Sourcewell 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 Sourcewell website for this Sourcewell Master Agreement. Contractor shall ensure that each of its Authorized Distributors perform in accordance with the terms and conditions set forth in the Sourcewell 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 Sourcewell 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: Chief Procurement Officer

VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA,
LLC
A DELAWARE CORPORATION

By:  8/28/2020
Tom Schanz
Its: Senior Government Sales Manager






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Final Audit Report

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