



Washington State
**DEPARTMENT OF
ENTERPRISE SERVICES**

SOURCEWELL – WASHINGTON PARTICIPATION AGREEMENT

Sourcewell Agreement No.: 011723-KBL

Contract Category: Heavy Construction Equipment

Awarded Contractor: Kobelco Construction Machinery, USA, Inc.

Washington Statewide Contract No.: 19622

This Participation Agreement (“Participation Agreement”) for the above referenced Sourcewell Cooperative Purchasing Agreement (“Sourcewell 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 Kobelco Construction Machinery, USA, Inc., a Delaware Corporation, (“Contractor”) and is dated and effective as of April 1st, 2024.

RECITALS

- A. The Washington State Legislature created Enterprise Services to function, in part, as Washington State’s central procurement authority for goods and/or services and authorized Enterprise Services to enter into contracts on behalf of the State to provide goods and/or services for state agencies and other designated entities. *See* RCW 43.19.005 and 43.19.011; *see also*, RCW 39.26.050.
- B. The Washington State Legislature further authorized Enterprise Services, on behalf of the State of Washington, to participate in cooperative purchasing agreements with designated entities (e.g., other states engaged in public procurement for goods and/or services) to utilize their competitively solicited and awarded contracts to procure goods and/or services and to make such contracts available to Washington state agencies and designated eligible purchasers, to function as enterprise procurement solutions, consistent with terms and conditions set forth by Enterprise Services. *See* RCW 39.26.060.
- 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 Agreements). Sourcewell 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 Agreements.

- E. The above-referenced Sourcewell Agreement is the result of a competitive solicitation process undertaken by Sourcewell.
- F. Enterprise Services timely provided public notice, through Washington's Electronic Business Solutions (WEBS) system, of the competitive solicitation process conducted by Sourcewell.
- G. Sourcewell, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded the above-referenced Sourcewell Agreement to Contractor.
- H. Enterprise Services has determined that participating in this Sourcewell Agreement is in the best interest of the State of Washington.
- I. The purpose of this Participation Agreement is to enable eligible purchasers, as defined herein, to utilize the Sourcewell 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. TERM.** This Participating Agreement shall terminate upon: (a) expiration of the term set forth in the Cooperative Purchasing Agreement; (b) Contractor's breach of any representation and warranty set forth in this Participating Agreement; or (c) written notice of termination for convenience by Enterprise Services, whichever first occurs. Termination of this Participating Agreement, however, shall not relieve any Purchasing Entity of its responsibility to pay for goods and/or services timely ordered by such Purchasing Entity and provided to Purchasing Entity by Contractor.
- 2. SCOPE.** This Participation Agreement covers the above-referenced contract category for the above-referenced Sourcewell Agreement with the above-referenced awarded Contractor.
- 3. PRICING.** Pricing shall be as specified in the above-referenced Sourcewell Agreement.
- 4. PARTICIPATION.** Pursuant to this Participation Agreement and the Interagency Joint Powers Agreement between Enterprise Services and Sourcewell, the above-referenced Sourcewell Agreement may be utilized by the following, each of which is an authorized eligible purchaser ("Purchaser").
 - 4.1. WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - 4.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION.** Any the following specific institutions of higher education (colleges) 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.

4.3. **CONTRACT USAGE AGREEMENT PARTIES.** The Sourcewell Agreement also may be utilized by any of the following types of entities that have executed a Contract Usage Agreement 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., public benefit nonprofit corporations as defined in RCW 24.03A.245 who 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 Agreement. Each Purchaser is responsible for its compliance with such terms and conditions.

5. STATE OF WASHINGTON MODIFICATIONS OR ADDITIONS TO THE SOURCEWELL AGREEMENT.

- 5.1. **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 Agreement, Contractor shall maintain an accurate profile in WEBS.
- 5.2. **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](#).
- 5.3. **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) **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.
 - (c) **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 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.

- (d) 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:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

5.4. VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 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:

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .01250.$$

- (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 invoice number.
- (d) Contractor’s failure accurately and timely to report total net sales, to submit timely usage reports, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participation Agreement or exercise 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.

5.5. NONDISCRIMINATION.

- (a) NONDISCRIMINATION REQUIREMENT. During the term of this Participation Agreement, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (b) OBLIGATION TO COOPERATE. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Participation Agreement pursuant to RCW 49.60.530(3).
- (c) DEFAULT. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Participation Agreement, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Participation Agreement in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- (d) REMEDIES FOR BREACH. Notwithstanding any provision to the contrary, in the event of termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Participation Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.

- 5.6. 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 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) **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- (b) **TAXES.** Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- (c) **LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS.** Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- (d) **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 49.46, 49.48, or 49.52.
- (e) **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (f) **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.

5.7. 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 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 Agreement, each Purchase Order must include the following information and be submitted to Contractor or its authorized dealer:

1. Each of following contract identification numbers, which are set forth on the first page of this Participation Agreement:
 - Washington Statewide Contract Number; and
 - Sourcewell Agreement Number;
2. Purchase Order amount; and
3. 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. Each of following contract identification numbers, which are set forth on the first page of this Participation Agreement:
 - Washington Statewide Contract Number; and
 - Sourcewell Agreement Number;
2. Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM);
3. Applicable Purchaser's Purchase Order number; and
4. Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).

6. **PRIMARY CONTACTS.** The primary contacts for this Participation Agreement are as follows (or their named successors):

State of Washington

Attn: Alec La Brayere
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-2212
Email:
DESContractsTeamMaple@des.wa.gov

Attn: _____

Tel: (____) _____
Email: _____

7. **SUBCONTRACTORS AND DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Contractor is authorized, without additional consent, to utilize its Designated Subcontractors, Dealers, Distributors, and/or Resellers ("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

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.

- 7.1. **SUBCONTRACTOR AUTHORIZATION.** Contractor is authorized, without additional Participating Entity consent, to utilize its 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 Sourcwell Agreement and this Participating Addendum. Contractor shall maintain a list of such Subcontractors utilized for this Participating Addendum, and, upon request, promptly provide Enterprise Services with such list and any updates.
- 7.2. **CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.** Contractor shall be responsible to ensure that all requirements of the Sourcwell Agreement (including, but not limited to, insurance requirements, indemnification, Washington State business registration, registration in WEBS, etc.) flow down to any and all 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 Sourcwell 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 Subcontractors.
- 7.3. **PURCHASER PAYMENT REGARDING CONTRACTOR'S SUBCONTRACTORS.** Notwithstanding any provision to the contrary, the parties understand and agree that for any contract sales or service provided pursuant to the Sourcwell 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 an Subcontractor for Contractor, Contractor may instruct such Purchaser to make payment for such sales or services to Contractor's Subcontractor. Regardless of whether Contractor instructs a purchaser to make such payment to Contractor's Subcontractor, Contractor shall remain responsible for performance.
- 7.4. **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 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 Sourcwell Agreement's records retention requirements.

8. ORDERS. Unless the parties to the Purchase Order agree in writing that another contract or agreement applies to such order, any Purchase Order placed by a Purchaser for any good and/or service in the above-referenced contract category for the above-referenced Sourcwell Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Sourcwell Agreement as conditioned by this Participation Agreement.

9. GENERAL.

- 9.1. INTEGRATED AGREEMENT; MODIFICATION. This Participation Agreement and Sourcewell 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.
- 9.2. 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.
- 9.3. ELECTRONIC SIGNATURES. An electric signature or electronic record this Participation Agreement or any other ancillary agreement 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.
- 9.4. 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: Elena McGrew
 Elena McGrew
 Its: Enterprise Procurement Manager

KOBELCO CONSTRUCTION MACHINERY, USA, INC.
A DELAWARE CORPORATION

By: Holly Rink
 Holly Rink
 Its: Business Manager

**Solicitation Number: 011723****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Kobelco Construction Machinery USA, Inc., 22350 Merchants Way, Katy, TX 77449 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Heavy Construction Equipment with Related Attachments and Technology from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires April 14, 2027, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcwell and Participating Entity inquiries; and
- Business reviews to Sourcwell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcwell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcwell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcwell, the Supplier will pay an administrative fee to Sourcwell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcwell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. Use; Quality Control.

- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for bodily injury by disease
- \$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

- \$1,000,000 each occurrence Bodily Injury and Property Damage
- \$1,000,000 Personal and Advertising Injury
- \$2,000,000 aggregate for products liability-completed operations
- \$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

- \$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:
\$2,000,000 per occurrence
\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other

insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all

references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of

not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any

person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

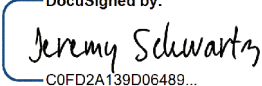
22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's

Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell


Kobelco Construction Machinery USA, Inc.

DocuSigned by:

 By: C0FD2A139D06489...
 Jeremy Schwartz
 Title: Chief Procurement Officer
 Date: 4/4/2023 | 2:28 PM CDT

DocuSigned by:

 By: B97D83E8468F48A...
 Holly Rink
 Title: Business Manager
 Date: 4/11/2023 | 10:10 AM CDT

Approved:

DocuSigned by:

 By: 7E42B8F817A64CC...
 Chad Coquette
 Title: Executive Director/CEO
 Date: 4/11/2023 | 10:17 AM CDT

RFP 011723 - Heavy Construction Equipment with Related Attachments and Technology

Vendor Details

Company Name: Kobelco Construction Machinery U.S.A.
Does your company conduct business under any other name? If yes, please state: No
Address: 22350 Merchants Way
Katy, TX 77449
Contact: Jon Koski
Email: jon.koski@kobelco.com
Phone: 920-202-4705
Fax: 281-888-8430
HST#: 58-2649910

Submission Details

Created On: Tuesday November 15, 2022 10:13:55
Submitted On: Tuesday January 17, 2023 11:06:30
Submitted By: Jon Koski
Email: jon.koski@kobelco.com
Transaction #: ae7efcb3-df78-45a6-99b3-24fddc1fdae7
Submitter's IP Address: 107.133.110.202

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	KOBELCO Construction Machinery USA, Inc. (KOBELCO)
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	KOBELCO does not have any subsidiary entities included.
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	KOBELCO does not have a assumed or DBA for this proposal.
4	Provide your CAGE code or Unique Entity Identifier (SAM):	N/A. KOBELCO does not need a CAGE code or a Unique Entity Identifier.
5	Proposer Physical Address:	22350 Merchants Way Katy, TX 77449
6	Proposer website address (or addresses):	https://kobelco-usa.com/excavators
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Holly Rink Business Manager 22350 Merchants Way Katy, TX 77449 holly.rink@kobelco.com (281)888-8430
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Jon Koski National Sales Manager 22350 Merchants Way Katy, TX 77449 jon.koski@kobelco.com (920)202-4705
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Jack Fendrick Chief Operating Officer 22350 Merchants Way Katy, TX 77449 jack.fendrick@kobelco.com (281)888-8430 ext. 159 Dan Collins Product Marketing Manager 22350 Merchants Way Katy, TX 77449 dan.collins@kobelco.com (281)624-9914 Holly Rink Business Manager 22350 Merchants Way Katy, TX 77449 holly.rink@kobelco.com (281)888-8430 ext 117

Table 2: Company Information and Financial Strength

Line Item	Question	Response *

10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>Since 1930, we've built KOBELCO excavators to be leaders in the industry, adding innovation to our machines at every turn. It's that attitude that lead to the development of the first short rear swing excavator, as well as the demolition machine with the longest reach in the world. Today, we're continuing our commitment to quality and innovation. We're building the strongest dealer network in North and Latin America. And we're stocking our parts facility in Texas with more than 54,000 items ready to ship overnight. With one eye on the future, we're staying ahead of the competition and anticipating what you'll need tomorrow.</p> <p>KOBELCO's unrivaled reputation for building enduring, long-lasting, low maintenance machinery that can withstand some of the toughest job site conditions. For over 90 years, and over 300,000 excavators produced, quality has been our priority, and this philosophy has never changed.</p> <p>KOBELCO Core Values are to provide technologies, products and services that win the trust and confidence of our customers we swerve and the society in which we live. We value and support the growth of each employee on an individual basis while creating a cooperative and harmonious environment. Through continuous and innovative changes, we create new values for the society of which we are a member.</p>	*
11	What are your company's expectations in the event of an award?	If KOBELCO is awarded the contract, this will be our main driver, through our dealer network, to increase our municipal sales in North America. We will strive to keep our dealer network educated and up-to-date on all of the contract terms and pricing through our District Business Managers and sales support group to ensure our products, parts and service meet the expectations of the Sourcewell members.	*
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	KOBELCO Construction Machinery USA, Inc. is a wholly owned subsidiary of KOBE Steel, Ltd. KOBE Steel, Ltd. consolidated financial results for Fiscal Year 2021 (March 2022) and Supplementary Financial Information For Fiscal Year 2021 and Forecast 2022 are attached.	*
13	What is your US market share for the solutions that you are proposing?	<p>Mini Excavators - 1.10%</p> <p>Heavy Excavators - 6.60%</p> <p>Crawler Cranes - 34.20%</p>	*
14	What is your Canadian market share for the solutions that you are proposing?	<p>Mini Excavators - 0.94%</p> <p>Heavy Excavators - 3.65%</p> <p>Crawler Cranes - not segmented between US market and Canadian market</p>	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No, KOBELCO has never filed a petition for bankruptcy protection.	*
16	<p>How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.</p> <p>a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?</p> <p>b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?</p>	KOBELCO is best described as a manufacturer of crawler excavator and crane equipment. Our sales and service teams work closely with the 58 independently owned dealerships with 163 locations across the U.S. and Canadian markets. Each dealership has a KOBELCO District Sales Manager, Field Service Representative, Parts Sales Representative and Inside Service Representative that assist in the day-to-day business operations as needed. Our dealerships are the avenue to sell, deliver and service the product to the municipalities.	*
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	KOBELCO is not aware of any licenses or certifications that are required to pursue the business covered with this RFP.	*
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	There have been no suspension or debarment in the last 10 years for KOBELCO.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
19	Describe any relevant industry awards or recognition that your company has received in the past five years	<p>Industry Awards earned by KOBELCO:</p> <p>AEM Pillar of the Industry Award</p> <p>World Demolition Summit 2022 Innovation Award</p> <ul style="list-style-type: none"> • SK1300DLC <p>Construction Equipment Top 100 New Products 2022</p> <ul style="list-style-type: none"> • SK55SRX-7 • SK45SRX-7 • SK260LC-11 • SK130LC-11 • SK170LC-11 • SK130LC-11 • SK210LC-11 • SK260LC-11 • SK300LC-11 • SK350LC-11 <p>Equipment Watch Lowest Cost of Ownership 2021</p> <ul style="list-style-type: none"> • SK130LC-11 • SK170LC-11 • SK130LC-11 • ED160BR-7 • SK210LC-11 <p>Equipment Today Contractors top 50 Products 2020</p> <ul style="list-style-type: none"> • SK550DLC <p>Equipment Today Contractors top 50 Products 2022</p> <ul style="list-style-type: none"> • SK55SRX-7 <p>Innovative & Inventive Design Excellence Award IDEA</p> <ul style="list-style-type: none"> • SK75SR-7, 7-ton class new model <p>Karakuri Kaizen Engineering Exhibition</p> <ul style="list-style-type: none"> • Gold Winner for engineering design works <p>Minister of Agriculture, Forestry and Fisheries</p> <ul style="list-style-type: none"> • Winner of carbon offset Initiatives
20	What percentage of your sales are to the governmental sector in the past three years	<p>The governmental and public utility sector is a growing industry and is a focus area of KOBELCO business. With the ability to offer only the excavator product, the percentage of our sales for the last three years was:</p> <ul style="list-style-type: none"> - 2022: 4.81% - 2021: 4.13% - 2020: 6.95%
21	What percentage of your sales are to the education sector in the past three years	<p>KOBELCO sales to the education sector the past three years was:</p> <ul style="list-style-type: none"> - 2022: 0.97% - 2021: 0.81% - 2020: 0.88%
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>KOBELCO currently only has the State of Ohio STS515 Contract #800842. Annual sales for the last three years have been:</p> <ul style="list-style-type: none"> - 2022: \$2,869,459 - 2021: \$1,730,568 - 2020: \$2,590,428 <p>However we have individual dealers that participate in the State of Florida Sheriff's Association Cooperative Purchasing Program, North Carolina Sheriff's Association Cooperative Purchasing Program and the Houston-Galveston Area Council that we would encourage these and all of our dealer network to use Sourcewell if we were chosen to be awarded a contract.</p>
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>KOBELCO does not have any GSA or SOSA contracts.</p>

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Town of Webster, NY	Pat Stephens	(585)370-7713	*
Madison County Highway Dept., NY	Richard Durant	(315)366-2221	*
Muskingum Watershed Conservancy District, OH	Doug Lemon	(330)340-1110	*
Franklin Township - Tuscarawas County, OH	Chad Bonafent	(330)447-6257	
Chautauqua County Public Facilities	Ken France	(716)363-3761	

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
St. Martin Parish Government	Government	Louisiana - LA	Crawler Excavators	Four (4) machines	\$568,590	*
Ohio Department of Transportation	Government	Ohio - OH	Crawler Excavators	Twenty-two (22) machines	\$2,735,059	*
Brevard County, FL	Government	Florida - FL	Crawler Excavators	Seven (7) machines	\$900,490	*
City of North Ridgeville, OH	Government	Ohio - OH	Crawler Excavators	Five (5) machines	\$581,182	*
Licking County, OH	Government	Ohio - OH	Crawler Excavators	Four (4) machines	\$434,156	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
26	Sales force.	The KOBELCO sales force consists of regional teams, each made up with a District Business Manager, Field Service Representative, Parts Sales Representative and Inside Service Representative. These teams are tasked with the promotion, sale and service of KOBELCO excavators through the dealer network, along with an inside sales support and marketing group to assist. These six (6) managers oversee our 58 independent dealers with 163 dealer locations. KOBELCO District Business Managers are responsible for growing the dealership and customer relationships. They are available to provide training, support and educate the end user during and after the transaction.	*
27	Dealer network or other distribution methods.	KOBELCO has a dealer network of 58 independent dealers with 163 locations across North America that are fully trained in the sale, service and parts supply for KOBELCO excavators and cranes.	*
28	Service force.	KOBELCO's service team is made up of eight (8) Field Service Representatives living within the territories that they cover. We also have three (3) Inside Service Representatives and two (2) engineers located in our Katy, TX corporate office to assist as needed.	*

29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	The KOBELCO dealer network will be responsible for handling all orders for Sourcewell members. Since the dealers work directly with the customers, they will meet with the member, discuss what the needs are and assist in making sure that the proper specifications are included. Once this has been completed, our dealers will have the Sourcewell pricing and discount structure to be able to quote the machine to the Sourcewell member. If the quote is accepted, the dealership will order the equipment if they do not have it currently in stock or on order. KOBELCO will process the order and register it internally as a Sourcewell sale for quarterly tracking purposes.	*
30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>If a Sourcewell member would have a mechanical issue with the KOBELCO product, their local dealer has the capability to handle and resolve the issue. If the issue is caused by a manufacturing defect, KOBELCO will cover it in its entirety within the standard warranty time frame. The dealer network should have the capability to respond with 24 hours in not sooner.</p> <p>Dealerships are required to have up-to-date service tools and technician certified training. They also have remote diagnostic tools and access to the KOBELCO online portal which contains technical support materials like Service Bulletins, Service Manuals, Operation Manuals and Online Technical Troubleshooting Database.</p> <p>Dealership service technicians also have direct access to the KOBELCO Field Service Representatives and Inside Service Representatives as needed.</p>	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	KOBELCO is able and willing to provide all of our product and services to Sourcewell members within the United States.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	KOBELCO is able and willing to provide all of our product and services to Sourcewell members within Canada.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	KOBELCO will support any geographic area of the United States and Canada if we are fortunate enough to be awarded a contract with the exception of Hawaii and Alaska where we do not have a physical dealership presence. However, KOBELCO currently is in discussions with a dealer prospect that would cover these states and anticipate finalizing this during 2023.	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	KOBELCO will service all Sourcewell members within the United States and Canada.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	There are no specific contract requirements or restrictions to Sourcewell members in Hawaii, Alaska or US Territories.	*

Table 7: Marketing Plan

Line Item	Question	Response *
36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<p>If awarded the contract, the first piece of marketing would be a press release. This release would not only go to our dealer network, but it would also be in industry trade magazines and on our social media and company websites, which include:</p> <p>https://kobelco-usa.com/excavators</p> <p>Facebook, Twitter, LinkedIn, Instagram, YouTube.</p> <p>We would also use Webinars, dealer open house events, dealer demo events and the free mobile App that can be downloaded from the Apple Store or Google Play.</p> <p>KOBELCO provides Dealer on-line training classes and face to face sales schools in which it would become part of the curriculum.</p> <p>KOBELCO will also create various promotional sales and marketing videos to promote the Sourcewell offering. Some examples of marketing videos can be found at:</p> <p>https://www.youtube.com/watch?v=o4uRWkpamsk.</p> <p>KOBELCO, if awarded will also add a direct link to the Sourcewell website on our corporate website.</p> <p>KOBELCO attends over 10 national trade shows per year along with local trade shows with our Dealer Network. We would display within our booths that KOBELCO was an approved vendor for Sourcewell.</p> <p>Promotional and Marketing items include but not limited to, Equipment Brochures, Ad's in industry periodicals, etc.</p> <p>Finally, KOBELCO would use any preferred Sourcewell marketing resources that you may have and willingly take suggestions if offered.</p> <p>Links to mentioned websites are included within the supplementary attachment included.</p>
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>KOBELCO USA website is https://kobelco-usa.com/excavators. We continuously make improvements and updates to help the customer educate themselves about the product offerings. Our website will have links to Sourcewell and tools to help educate about the benefits of this tool if awarded. KOBELCO also uses software for mass email marketing campaigns. A company profile example is located at:</p> <p>https://www.dropbox.com/s/pctx2abgdnz9wc6/CompanyProfile_Short.mp4?dl=0.</p> <p>Currently KOBELCO has the following social media stats:</p> <ul style="list-style-type: none"> • Facebook:179,837 people like this,183,017 people follow • Instagram:303 posts, 2,660 followers • LinkedIn: 23,964 followers • YouTube: 4.12k subscribers <p>Please see uploaded file with links to the above referenced sites.</p>
38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>If KOBELCO was awarded a contract under this RFP, we would rely upon Sourcewell to promote themselves and the specific contracts along with the advantages of a cooperative purchasing contract.</p> <p>KOBELCO will include Sourcewell as a partnership and promote this relationship proactively. KOBELCO will support, promote and train our internal and dealer sales force to utilize Sourcewell and its added value and available tools. KOBELCO's goal is to be easy to do business with as well as educate the end user and the dealerships about the Sourcewell offering through sales schools, dealer, and customer communications. Sourcewell's offering will be integrated into all aspects of our Dealer training efforts.</p>
39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	<p>KOBELCO does not offer an e-procurement ordering process. Our dealers may have an e-procurement ordering process in place, and since they will be the avenue of the sale, if they have the process, it can be used.</p>

Table 8: Value-Added Attributes

Line Item	Question	Response *
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>KOBELCO provides online product training on every current production model at no charge to the dealer or end user. All Product guides are available on-line in electronic format. All KOBELCO authorized dealers are required to participate in online Product, Service and Parts training. This allows our dealer sales and service personnel to be proficient in the product and provide on time training.</p> <p>Regional face-to-face operator, safety and sales training at Dealer locations is also provided by KOBELCO at no charge to the dealer.</p> <p>Once a machine is sold, KOBELCO will work with the local dealer to provide the required training that the Sourcewell member needs. This would most likely take place at time of delivery or shortly thereafter. Attending for KOBELCO will be the District Sales Manager and Field Service Representative if needed along with the dealer personnel.</p>
41	Describe any technological advances that your proposed products or services offer.	<p>Since 1930, we've built KOBELCO excavators to be leaders in the industry, adding innovation to our machines at every turn. It's that attitude that led to the development of the first short rear swing excavator, as well as the demolition machine with the longest reach in the world. Some other examples of this technology offering include:</p> <ul style="list-style-type: none"> - State of the art operator's cabin - Independent Travel allowing to lift and travel simultaneously. - No time limit powerboost at the ready when needed in tough digging situations. - On-board hydraulic release system to safety change attachments - Standard telematics - Remote troubleshooting and software installation - Swing flashers on the counterweight for safety - Multi-brand machine guidance ready brackets - Heavy duty falling Object Protection (FOPS II) - Travel and swing alarms - In cab auxiliary flow and pressure adjustment for multiple attachments - Industry exclusive Integrated Noise and Dust Reduction (iNDR) system on all the following short radius excavaors: <ul style="list-style-type: none"> *35SR-6 *45SRx-7 *55SRx-7 *140SR-7 *ED160-7 *SK230SR-7 *SK270SR-7 - Standard three (3) camera "Eagle Eye" system for job-site safety - K-Load measuring: Precisely measure the weight of each bucket load - Industry exclusive ED160 featuring a full size 6-way blade. Allows end user full excavator and bulldozer in one combined machine, saving money on capital purchases, freight, fuel, etc. <p>Promotional videos are included in the upload section.</p>
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>Kobe Steel, Ltd. announces that it has received an "A- (A-minus)" rating for the third consecutive year in the evaluation by CDP*, an international non-profit organization that provides an environmental information disclosure system. The rating was given for its excellence in environmental performance and information disclosure in the climate change sector.</p> <p>CDP conducts annual environmental surveys and evaluates companies by scores of A to D-based on how effectively they respond to issues such as climate change, deforestation, and water security. To date, CDP has surveyed over 18,700 companies around the world.</p> <p>In promoting sustainability management based on the Group Corporate Philosophy, we have identified priority issues of materiality. Contributing to a Green Society is one of the key efforts. We consider addressing the global environmental issues to be a management priority, and we are undertaking various</p>

		<p>efforts. In December 2020, Kobe Steel announced its support for the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)** and has been working to enhance the disclosure of relevant information.</p> <p>Recognizing that the effective use of water resources is essential for the sustainable development of the Kobe Steel Group (also known as the KOBELCO Group), we are making thorough efforts to improve the efficiency of water use, reuse, and promote recycling of water in our production processes, and have achieved an extremely high water recycling rate of 96%.</p> <p>Kobe Steel was awarded “A-” in the climate change category for the efforts to address climate change.</p> <p>Going forward, our Group will further promote sustainability management with the aim of improving sustainable corporate value while contributing to a green society and addressing other environmental challenges our global society faces.</p> <p>*CDP was established in 2000 in the UK as a non-profit organization (NPO) that conducts surveys on climate change and water resource management in the private sector and publishes the results. Its operations are supported by investors in various countries. This year’s survey was conducted on behalf of more than 680 institutional investors whose total assets under management reach US \$130 trillion. In 2022, about 20,000 organizations worldwide disclosed their data through CDP, including more than 18,700 companies, more than 1,100 cities, states and regions, accounting for half of the world’s market capitalization.</p> <p>**TCFD refers to the Task Force on Climate-related Financial Disclosures, established by the Financial Stability Board (FSB), at the request of G20, with Michael Bloomberg as its chairman to develop consistent climate-related financial risk disclosures and discuss how these issues should be addressed by financial institutions. TCFD published its final report in June 2017 and recommends companies to disclose information in four areas: Governance, Strategy, Risk Management, Metrics & Targets.</p> <p>***The Financial Stability Board (FSB) is an international body that monitors and makes recommendations about the global financial system. The FSB is comprised of national financial authorities, which include central banks and finance ministries.</p> <p>For more on KOBELCO sustainability, please see the 2022 report at: https://www.kobelco.co.jp/english/about_kobelco/outline/integrated-reports/files/integrated-reports2022_e.pdf</p> <p>The report can also be uploaded from the attached documents.</p> <p>KOBELCO strives to assist the end user to be more productive while using less fuel and lower emissions during the process. To do this, KOBELCO has the following standard features:</p> <ul style="list-style-type: none"> - High efficient Tier IV Final or Tier IV Final Stage 5 engines - Auto idle down: Automatically idles engine down after five seconds of inactivity using joystick functions - Auto idle engine stop: Automatically shuts engine down after a period of inactivity (programmable for 1 - 5 minutes) - ECO operating mode: Automatically adjusts engine and hydraulic system power for the best fuel economy - Arm/Boom regeneration: During boom down/arm out function, boom forces oil to arm cylinder in place of hydraulic system - Biodegradable oil option - Patented industry exclusive Integrated Noise and Dust Reduction System (iNDr): Lower operating decibels outside of machine for noise pollution
43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	<p>KOBELCO Construction Machinery USA, Inc., as a wholly owned subsidiary of Kobe Steel, Ltd. is a participating supporter of climate change initiatives and has been recognized as a supporting member of the Task Force on Climate-Related Financial Disclosures (TCFD) and joined the TCFD Consortium that consists of companies, financial institutions, and other entities supporting the recommendations. The Corporate Group will contribute to the realization of a sustainable society by setting CO2 emissions reduction targets for the achievement of carbon neutrality in 2050.</p> <p>KOBELCO manufacturing facilities proudly hold ISO14001 certification.</p> <p>received an “A- (A-minus)” rating for the third consecutive year in the evaluation by CDP</p>

<p>44</p>	<p>Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.</p>	<p>Kobelco has an Aggressive Diversity and Inclusion initiative</p> <p>We have been working to enhance the growth potential of the entire organization by encouraging people with diverse backgrounds and values to make the most of their abilities in the workplace. We believe this will lead to vigorous development of our business. As stated in Medium-Term Management Plan (Fiscal 2021-2023) as well as in the messages from the directors and executive officers, our Group has positioned the development of D&I as an important management issue and set forth its vision for the future, basic policy, and key performance indicators (KPIs). Our Group will further strengthen its D&I development so that people with diverse backgrounds and values can fully demonstrate their abilities in the workplace.</p> <p>Initiative to Support LGBT People Results We are working to promote greater understanding of the LGBT community. We provide training to senior management and managers/supervisors and e-learning to all employees on LGBT topics. Also, we have established the KOBELCO Family ship Program, in which LGBT individuals who are unable to legally marry can use the internal family program in the same way as legally married couples in order to create an environment in which all employees can work with their unique qualities fully demonstrated. We are also working to increase the number of people who become an Ally 1 through seminars and by distributing stickers with the KOBELCO LGBT ALLY logo. In November 2021, we received the highest ranking of Gold in the PRIDE Index 2 in recognition of these initiatives.</p> <p>Vision for the Future Creating a work environment where diverse human resources can all play active roles</p> <ul style="list-style-type: none"> • Each employee achieves self-improvement by demonstrating their own individuality and strengths. • "KOBELCO One Team" takes on challenges and creates new value from diverse ideas and experiences <p>See ESG Data Report included in attachments.</p>
<p>45</p>	<p>What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?</p>	<p>Kobelco Construction Machinery provides many unique benefits to our end users. These benefits begin with our singular focus on manufacturing hydraulic crawler excavators and crawler cranes. This product focus allows all of our R&D, Engineering, Manufacturing, Product support, Training and Investment dollars to be channeled with one result in mind – Providing the lowest cost of ownership in the industry.</p> <p>The singular focus has allowed KOBELCO to create a "Triangular Relationship" between KOBELCO, the local dealer and the end user that encourages communication between all three. The ability for an end user to communicate directly with the OEM and the local dealer results in less downtime, creative job-site solutions and direct input into product improvement. The Triangular strategy has been developed over decades with a Contractor centric mindset.</p> <p>A Sourcewell / KOBELCO relationship will provide a unique opportunity for the government entities that participate in your program. They will benefit from our Singular focus, Product expertise & Relationship support and be able to do so at a price point provided through Sourcewell that will truly give them the Best Value Package in North America.</p>

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	Yes. KOBELCO has comprehensive warranty to cover all products, parts and labor. A copy of the warranty certificates are included in the upload section.	*
47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	KOBELCO does not impose usage restrictions or limitations on warranty when the machine is operated and used in the matter for which it was designed. A copy of the warranty certificates are included in the upload section.	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	KOBELCO warranty Coverage is the cost of replacement parts, the labor to install and for mileage, but not travel time separately. Reasonable labor times are reimbursed for repairs on warrantable defects under standard warranty. Labor will be adjusted to the published Standard Repair Times (SRT) unless excessive labor is justified and supported by the claim's description. Labor expenses for time spent traveling to/from a repair site (i.e. "field repairs") is not a compensatable expense through KCMU warranty.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	KOBELCO currently has no geographical restrictions. However, support is limited to Dealer parts and technician availability depending on the geographical location.	*
50	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?	KOBELCO provides a limited warranty for all parts manufactured or installed by KOBELCO as the original equipment manufacturer. Refer to the attached standard warranty certificate for terms of the standard warranty coverage. Other manufacturer products and/or attachments included with the sale of KOBELCO product are passed on the the original equipment manufacturer.	*
51	What are your proposed exchange and return programs and policies?	Under standard warranty and within the warranty period, and subject to the limitations set forth in section 3 and 4 on the KOBELCO warranty certificate form 1122 , KCMU will repair or replace at its discretion any part or parts of the warranted machine which are found by KCMU to be defective in material and/or workmanship. All warranty parts shall be kept by our independent dealer and available for return/inspection for a period of ninety (90) days following date of claim	*
52	Describe any service contract options for the items included in your proposal.	KOBELCO offers optional extended warranty at various terms. KOBELCO administrates an extended warranty program completely in-house through the Warranty Department. The KOBELCO Premium Protection Plan (KPPP) is available on all genuine KOBELCO hydraulic excavators sold to our North American Dealer network and their customers. We offer 2 types of coverage terms, extended base (full) machine and Powertrain + Hydraulic (PT+HYD) coverage. With any KPPP purchased on full size machines (SK75 and larger), KOMEXS telematics is also included for the length of the extended term. Pricing is available from a KOBELCO dealer.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	KOBELCO excavators will be sold and invoiced through our independent dealer network. Therefore, payment terms, typically Net 30 after receipt of invoice, will be set by these dealers.	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	KOBELCO offers both leasing and finance options through KOBELCO Financial Services. Sourcewell members should contact the KOBELCO dealer to discuss available options.	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	<p>Our dealer network will be handling the sales to Sourcewell members. They will be quoting, delivering and collecting payment. To re-assure that all reporting is done accurately and in a timely fashion, KOBELCO will provide the selling dealer with a unique authorization number for each quote. After the dealer has quoted the Sourcewell member and the sale consummated, the dealer will be required to report back details of transaction, which include date of sale, Sourcewell member name and ID#, model, serial number, deliver date and sale amount. At this time, KOBELCO will record this on a tracking document for quarterly reporting and fee submission.</p> <p>An example copy of these documents are included in the upload section.</p>	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Because KOBELCO dealers will be invoicing and receiving the payments directly from the Sourcewell member, P-card procurement will be at their sole discretion.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *
57	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 of 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. Upload your pricing materials (if applicable) in the document upload section of your response.	KOBELCO is offering a competitive discounted price off of current published list prices. A full copy of the price pages, showing list price and Sourcewell member pricing is included within the upload section.
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	KOBELCO is offering a percentage discount off of list price to Sourcewell members. This discount is: Excavators: 30% off of list price Cranes: 19% off of list price Copy of pricing is included in the upload section.
59	Describe any quantity or volume discounts or rebate programs that you offer.	KOBELCO is offering the best available pricing for our product to Sourcewell members upfront, no matter the quantity.
60	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.	KOBELCO equipment has standard and optional features that are line item listed within the price pages. If a Sourcewell member wants to purchase an open market or nonstandard option that is not included within the price pages, KOBELCO will work with our authorized dealer and member to provide a quote for the requested item.
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Everything that KOBELCO provides will be included within our price quote. Costs that may be added by the servicing dealer network include, but may not be limited to, pre-delivery inspection, additional allied manufacturer attachments and installation, extended warranties and local freight.
62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	KOBELCO will provide a quote for the Sourcewell member that is FOB Port of Entry. KOBELCO provides freight quotes to our dealerships by model on an annual basis to assist them in being able to provide constant cost estimates to their end use customers. The Sourcewell member may choose to pick up the equipment from the dealership or have it delivered for an additional charge. These terms are usually discussed prior to sale and total costs are known deal consummation.
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Freight for Canada is the same for the continental U.S.A. Freight for Hawaii and Alaska have an additional charges because of permitting and sea freight costs. These will be discussed with the authorized dealer at time of quotation.
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	KOBELCO dealers stock our products, giving the end user the option to look at and even demonstrate before purchase. The product size and weight will determine the delivery method and cost.

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	KOBELCO has performed an apples-to-apples comparison study on our other governmental pricing program and the Sourcewell RFP proposed prices are better. KOBELCO price sheets are included in the upload section.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
66	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 participating entities 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. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	<p>KOBELCO does an internal audit for invoicing to our dealers quarterly, making sure that everything was invoiced properly at time of sale. For sales to a Sourcewell member, KOBELCO will provide a unique authorization number that will be tracked to our dealer. Included with this authorization number will be a price quote detailing the options, showing list and Sourcewell member discounted price. These authorizations will be tracked internally and on a quarterly basis, KOBELCO will verify with their dealers that a sale was consummated. No sale to a Sourcewell member will be approved without this quote and authorization. Once the internal audit is completed, KOBELCO will report the quarterly sales and associated fee due to Sourcewell through the system that is required.</p> <p>A copy of an example tracking form is included within the upload section.</p>
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	<p>KOBELCO will continue to track our governmental and non-profit success by using the same procedures currently in place. Each quote provided is given a unique authorization number and logged. Since the quotes are good for 90 days, on a monthly we contact the dealer and request information on status:</p> <p>Active Closed with sale Closed, no sale</p> <p>After 90 days, KOBELCO either extends the authorization number if still active or records as no sale.</p> <p>At the end of each year, KOBELCO examines the tracking documentation to check for accuracy and uses to track our success with the program.</p>
68	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 the RFP and template Contract for additional details.)	KOBELCO proposes to pay Sourcewell an administrative fee equal to 1% of sales processed for our company's equipment sold through the Sourcewell contract. This fee does not include amounts for freight, pre-delivery or non-KOBELCO attachments.

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>KOBELCO is offering for sale to Sourcewell members:</p> <p>Nineteen (19) excavators models ranging from 1.7 metric ton through 39 metric ton operating weight</p> <p>Six (6) Lattice crawler cranes ranging from 110 U.S. ton to 300 U.S. ton capacity</p>
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	<p>Excavators:</p> <p>Mini: 1.7 metric ton to 5.5 metric ton - Short tail swing radius</p> <p>Midi: 7.5 metric ton to 8.5 metric ton - Short tail swing radius</p> <p>Heavy: 13 metric ton to 39 metric ton - Standard car body and short tail swing radius depending on model - ED160 with industry exclusive 6 way dozer blade</p>

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
71	Wheeled, tracked, and backhoe loaders	<input type="radio"/> Yes <input checked="" type="radio"/> No	KOBELCO is a provider of crawler excavators and cranes only.
72	Motor Graders	<input type="radio"/> Yes <input checked="" type="radio"/> No	KOBELCO is a provider of crawler excavators and cranes only.
73	Wheeled and tracked excavators	<input checked="" type="radio"/> Yes <input type="radio"/> No	Tracked/crawler excavators from 1.7 metric ton through 35 metric ton class. Crawler cranes
74	Bulldozers, compactors, scapers, articulated and rigid haulers	<input type="radio"/> Yes <input checked="" type="radio"/> No	KOBELCO is a provider of crawler excavators and cranes only.
75	Cranes	<input checked="" type="radio"/> Yes <input type="radio"/> No	Crawler cranes with the following lift capacities: 110 ton 120 ton 160 ton 200 ton 275 ton 300 ton
76	Accessories or attachments for the offering in #71-75 above	<input type="radio"/> Yes <input checked="" type="radio"/> No	KOBELCO is a provider of crawler excavators and cranes only. Any work tools we be quoted and provided by our authorized dealer network.
77	Technology or services for the offering in #71-75 above	<input checked="" type="radio"/> Yes <input type="radio"/> No	Access to KOBELCO machine diagnostic monitoring system KOMEXs while unit is under standard or extended warranty coverage free to Sourcwell members.

Table 14C: Required Offering of Equipment

Indicate below if the proposer's proposal includes at least one (1) of the following listed types or classes of equipment. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
78	Wheel loader with published net horsepower (HP) of at least 300 HP	<input type="radio"/> Yes <input checked="" type="radio"/> No	
79	Wheeled or tracked excavator with a published net horsepower (HP) of at least 150 HP	<input checked="" type="radio"/> Yes <input type="radio"/> No	Excavators ranging from 14.5 hp to 265 hp
80	Motor Grader with a published maximum operating weight of at least 30,000 lbs.	<input type="radio"/> Yes <input checked="" type="radio"/> No	
81	Rough terrain, all terrain, crawler, floating, lattice, or telescopic crane with a published maximum lifting capacity of at least 300 tons and a published maximum boom length of at least 150 feet	<input checked="" type="radio"/> Yes <input type="radio"/> No	Lattice crawler cranes ranging from 110 U.S. ton through 300 U.S. ton capacity and required boom length.

Table 15: Exceptions to Terms, Conditions, or Specifications Form

Line Item 82. NOTICE: To identify any exception, or to request any modification, to the Sourcewell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcewell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents**Ensure your submission document(s) conforms to the following:**

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
 - [Pricing](#) - Kobelco Construction Machinery USA Sourcewell Price Pages_Final.pdf - Monday January 16, 2023 08:09:06
 - [Financial Strength and Stability](#) - KOBELCO Financial Strength and Stability.zip - Monday January 09, 2023 08:54:44
 - [Marketing Plan/Samples](#) - KOBELCO Marketing Samples.zip - Monday January 09, 2023 08:53:48
 - [WMBE/MBE/SBE or Related Certificates](#) - KOBELCO ESG Data Report.pdf - Monday January 09, 2023 08:53:01
 - [Warranty Information](#) - KOBELCO STANDARD WARRANTY.zip - Monday January 09, 2023 08:47:39
 - [Standard Transaction Document Samples](#) - KOBELCO Standard Transaction Documents.zip - Monday January 09, 2023 08:52:33
 - [Upload Additional Document](#) - KOBELCO Additional Documents.zip - Monday January 09, 2023 08:51:57

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, 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.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Holly Rink, Business Manager, KOBELCO Construction Machinery USA, Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

Yes No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_5_Heavy_Construction_Equipment_RFP_011723 Tue January 10 2023 08:47 AM	<input checked="" type="checkbox"/>	1
Addendum_4_Heavy_Construction_Equipment_RFP_011723 Fri January 6 2023 09:51 AM	<input checked="" type="checkbox"/>	2
Addendum_3_Heavy_Construction_Equipment_RFP_011723 Thu December 29 2022 12:33 PM	<input checked="" type="checkbox"/>	2
Addendum_2_Heavy_Construction_Equipment_RFP_011723 Wed December 21 2022 01:49 PM	<input checked="" type="checkbox"/>	1
Addendum_1_Heavy_Construction_Equipment_RFP 011723 Thu December 15 2022 09:27 AM	<input checked="" type="checkbox"/>	1