

Participating Addendum Number OK-SW-192-300
for
Heavy Construction & Industrial Equipment
between
State of Kansas
and
Clark Equipment Company

This Participating Addendum is entered into by State of Kansas ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number OK-SW-192-300, executed by Contractor and the State of Oklahoma for Heavy Construction & Industrial Equipment ("Master Agreement"):

Clark Equipment Company ("Contractor")
250 East Beaton Drive
West Fargo, ND 58078

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Randy Fuss
Director – Government Accounts
Randy.Fuss@doosan.com
701-241-8746

Participating Entity's contact for this Participating Addendum is:

Kindra Gribble
Procurement Officer
Kindra.gribble@ks.gov
785-296-2732

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or 07/10/2023, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- a) The laws of the State of Kansas shall govern this Participating Addendum.
 - b) State of Kansas Contractual Provisions Attachment, DA-146a attached and incorporated into this Participating Addendum as Attachment A will have prior precedence over the Order of Precedence for the Master Agreement (OK-SW-192-300).
 - c) Travel expenses if applicable, shall be reimbursed under the same rates and conditions as noted in the "Employee Travel Expense Reimbursement Handbook" found at: <https://admin.ks.gov/offices/chief-fnancial-officer/travel-information-for-state-employees> unless otherwise agreed upon with the Purchasing Entity.
 - d) Leasing is outside the scope of the NASPO ValuePoint Agreement and this Participating Addendum.

**Participating Addendum Number OK-SW-192-300 for
Heavy Construction & Industrial Equipment**

Between State of Kansas and
Clark Equipment Company

- e) **Business Procurement Card:** Agencies may use a Business Procurement Card (Visa) in lieu of a state warrant to pay for its purchases. No additional charges will be allowed for using the card.
- f) **Reports and Administrative Fees:**
The Contractor shall submit calendar quarterly reports to the Division of Purchases for all acquisitions, less returned product ("actual, net invoice sales"), made from this Participating Addendum. This report should include as a minimum the agency name, quantity, description, and amount. The report will be provided electronically, and a check sent payable to the State of Kansas - Office of Procurement and Contracts for an amount equal to one percent (1.0%) of the total actual sales. The report is to be sent to: reports@ks.gov. The report and fee shall be submitted by these quarterly dates:
 - Quarter #1: July 1st through September 30th, due by November 30th
 - Quarter #2: October 1st through December 31st, due by February 28th
 - Quarter #3: January 1st through March 31st, due by May 31st
 - Quarter #4: April 1st through June 30th, due by August 31st
- g) This contract is not an exclusive contract. The State of Kansas is not precluded from the purchase of goods and services from other sources.
- h) A State of Kansas, Tax Clearance Certificate is required to execute this contract.
- i) The contractor shall sign and submit a "Policy Regarding Sexual Harassment Acknowledgment form" per Executive Order 18-04. This form is required to execute this contract.
- j) The contractor shall sign and submit a "Boycott of Israel certification Form" per HB 2482, 2018 Legislature. This form is required to execute this contract.
- k) The contractor shall sign and submit a "Certificate of Procurement Form" pursuant to Public Law 115-2332, Section 889 of the John S. McCain National Defense Authorization Act of 2019. This form is required to execute this contract.
- l) The contractor acknowledges the assigned State of Kansas contract number is: 0000000000000000000055575.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.

- a. **Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- b. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

**Participating Addendum Number OK-SW-192-300 for
Heavy Construction & Industrial Equipment**

Between State of Kansas and
Clark Equipment Company

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- VIII. NOTICE.** Any notice required herein shall be sent to the following:
- | | |
|--|--|
| For Contractor: | For Participating Entity: |
| Randy Fuss | Kindra Gribble |
| Director – Government Accounts | Procurement Officer |
| Randy.Fuss@doosan.com | Kindra.gribble@ks.gov |
| 701-241-8746 | 785-296-2732 |
- IX. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

**Participating Addendum Number OK-SW-192-300 for
Heavy Construction & Industrial Equipment**

Between State of Kansas and
Clark Equipment Company

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:

Barry Hanson
Signature

Barry Hanson
Printed Name

Government Account Manager
Title

04/16/2024
Date

PARTICIPATING ENTITY:

Kelly Johnson
Signature

Kelly Johnson
Printed Name

Deputy Director
Title

5/24/24 KMG
Date

1.1 Important

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract, and made a part thereof. The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 27th day of March, 2024.

1.2. Terms Herein Controlling Provisions

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

1.3. Kansas Law and Venue

This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

1.4. Termination Due to Lack of Funding Appropriation

If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year.

State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

1.5. Disclaimer of Liability

No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).

1.6. Anti-Discrimination Clause

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g)

Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

1.7. Acceptance of Contract

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

1.8. Arbitration, Damages, Warranties

Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

1.9. Representative's Authority to Contract

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

1.10. Responsibility For Taxes

The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

1.11. Insurance

The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

1.12. Information

No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, et seq.

1.13. The Eleventh Amendment

"The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

1.14. Campaign Contributions / Lobbying

Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.