

Participating Addendum Number 505ENT-O24-CONSTEQUIP-02
for
HEAVY CONSTRUCTION & INDUSTRIAL EQUIPMENT
between
STATE OF WISCONSIN
and
CLARK EQUIPMENT COMPANY

This Participating Addendum is entered into by **State of Wisconsin** ("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:

Ron Hooker
[Contact title]
Ronald.Hooker1@wisconsin.gov
608-266-9872

- 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.
- 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. Equipment Leasing.**
 - c. Equipment Trade-in Program.**
 - d. 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. Any amendment to the Master Agreement shall be deemed incorporated into this Participating

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HEAVY CONSTRUCTION & INDUSTRIAL EQUIPMENT**

Between **State of Wisconsin** and
Clark Equipment Company

Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto. **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. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.**
- See Wisconsin Attachment A
- VIII. 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.
- IX. INFORMATION TECHNOLOGY SECURITY STANDARDS.**
- X. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Wisconsin Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions
- XI. NOTICE.** Any notice required herein shall be sent to the following:
- | | |
|--|---|
| For Contractor: | For Participating Entity: |
| Randy Fuss
[Contract Title]
Randy.Fuss@doosan.com
701-241-8746 | Ron Hooker
[Contact title]
Ronald.Hooker1@wisconsin.gov
608-266-9872 |
- XII. 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.

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.

Participating Addendum Number 505ENT-O24-CONSTEQUIP-02 for
HEAVY CONSTRUCTION & INDUSTRIAL EQUIPMENT

Between State of Wisconsin and
Clark Equipment Company

CONTRACTOR:

DocuSigned by:

Randy Fuss

0F55B103999C454...

Signature

Randy Fuss

Printed Name

Director Government Accounts

Title

4/22/2024 | 10:13 AM PDT

Date

PARTICIPATING ENTITY:

DocuSigned by:

Cheryl Edgington

E70A1AADB106453...

Signature

Cheryl Edgington

Printed Name

Bureau Director

Title

8/20/2024 | 6:22 PM CDT

Date

State of Wisconsin

1. Wisconsin Contract Number is **505ENT-O24-CONSTREQUIP-02**.
2. The State of Wisconsin Standard Terms and Conditions (DOA-3054A, revised R03/2019) as attached become part of this Participating Addendum. (Attachment 1).
3. The State of Wisconsin's Participating Addendum will be governed by the Master Agreement and the State of Wisconsin's additional terms and conditions.
4. The State of Wisconsin Standard Terms and Conditions shall prevail if there is a conflict between Wisconsin's and NASPO ValuePoint's Terms and Conditions.
5. The Contractor must sign and include the Cooperative Purchasing Agreement (DOA-3333, revised R05/2015) to allow municipalities, as defined on the Agreement, to purchase through this addendum. (Attachment 2)
6. Contractor must submit, on a quarterly basis, an itemized purchasing activity report that captures the Participating State's equipment purchases within the quarter. The report must include, at a minimum, Order date, Order Number/Purchase Order Number, Name of the purchasing entity, Manufacturer Part Number, Item Description, Unit of Measure, Quantity Ordered, Unit List Price, Extended List Price, Unit Contract Price, Extended Contract Price, Additional Shipping/Delivery costs if applicable. Additional lines at the end of the report will detail each quarter and year to date total contract spend.

The activity report is due no later than 30 calendar days after the end of each quarter from the start of the contract date (see below).

Quarter 1: January 1 through March 31 (Due on or before April 30)

Quarter 2: April 1 through June 30 (Due on or before July 30)

Quarter 3: July 1 through September 31 (Due on or before October 30)

Quarter 4: October 1 through December 31 (Due on or before January 30)

Reports must be emailed to State of Wisconsin, Dept. of Enterprise Operations, Attn: Ron Hooker at Ronald.Hooker1@wisconsin.gov ; DOA Contract Usage Reporting at doaescontractusagereporting@wisconsin.gov

7. The State of Wisconsin, Department of Administration may terminate this contract at any time upon 30-day prior written notice. Upon termination or other expiration of this contract, each party shall assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to termination becoming effective.
8. This Participating Addendum shall be effective upon approval by Wisconsin's Department of Administration and shall continue until the end of the NASPO ValuePoint contract unless terminated early in accordance with the terms and conditions of the NASPO ValuePoint contract or this Participating Addendum.

STATE OF WISCONSIN STANDARD TERMS AND CONDITIONS

Attachment 1



ANTITRUST ASSIGNMENT: The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

APPLICABLE LAW AND COMPLIANCE: This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats. and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

WORK CENTER CRITERIA: A work center must be certified under s.16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped.

INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

The state reserves the right to require higher or lower limits where warranted.

NONDISCRIMINATION / AFFIRMATIVE ACTION: In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

Pursuant to 2019 Wisconsin Executive Order 1, contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

Pursuant to s. 16.75(10p), Wis. Stats., contractor agrees it is not, and will not for the duration of the contract, engage in a prohibited boycott of the State of Israel as defined in s. 20.931(1)(b). State agencies and authorities may not execute a contract and reserve the right to terminate an existing contract with a company that is not compliant with this provision. This provision applies to contracts valued \$100,000 or over.

PATENT INFRINGEMENT: The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

PAYMENT TERMS AND INVOICING: The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute creates an exception to prompt payment.

PUBLIC RECORDS. Upon receipt of notice from the State of Wisconsin of a public records request for records produced or collected under this contract, the contractor shall provide the requested records to the contracting agency in order to ensure compliance with s. 19.36(3), Wis. Stats. Effective August 2016, the contractor, following final payment, shall retain all records produced or collected under this contract for six (6) years.

REFUND OF CREDITS: The contractor agrees to pay the state within 60 days, at the state's request, any credits resulting from the order which the state determines cannot be applied to future invoices.

TAXES: The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

TERMS AND CONDITIONS: The Standard Terms and Conditions (DOA-3054) or the Standard Terms and Conditions for State of Wisconsin Printing (DOA-3604) shall apply to all orders. Copies of these terms and conditions are available upon request from the State Bureau of Procurement.

VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

State of Wisconsin
 Department of Administration
 Division of Enterprise Operations
 DOA-3333 (R05/2015)



State Bureau of Procurement
 101 East Wilson Street, 6th Floor
 Post Office Box 7867
 Madison, WI 53707-7867
 FAX (608) 267-0600
<http://vendormet.state.wi.us>

Vendor Agreement

Wisconsin's Cooperative Purchasing Service

Wisconsin statutes (s. 16.73, Wis. Stats.) establish authority to allow Wisconsin municipalities to purchase from state contracts. Participating in the service gives vendors opportunities for additional sales without additional bidding. Municipalities use the service to expedite purchases. A "municipality" is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis.Stats.

Interested municipalities:

- will contact the contractor directly to place orders referencing the state agency contract number; and
- are responsible for receipt, acceptance, inspection of commodities directly from the contractor, and making payment directly to the contractor.

The State of Wisconsin is not a party to these purchases or any dispute arising from these purchases and is not liable for delivery or payment of any of these purchases.

The State of Wisconsin will determine the contractor's participation by checking a box below.

☐ **MANDATORY:** Bidders/Proposers must agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities. Vendors should note any special conditions below.

☒ **OPTIONAL:** Bidders/Proposers may or may not agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities. A vendor's decision on participating in this service has no effect on awarding this contract.

A vendor in the service may specify minimum order sizes by volume or dollar amount, additional charges beyond normal delivery areas, or other minimal changes for municipalities.

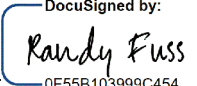
Vendor: please check one of the following boxes in response.

☒ I Agree to furnish the commodities or services of this bid/proposal to Wisconsin municipalities with any special conditions noted below.

☐ I Do Not Agree to furnish the commodities or services to Wisconsin municipalities.

Special Conditions (if applicable):

N/A

Signature DocuSigned by:  0F55B103999C454...		Date (mm/dd/ccyy) 4/22/2024 10:13 AM PDT	
Name (Type or Print) Randy Fuss		Title Director Government Accounts	
Company Clark Equipment Company		Telephone (701) 241-8746	
Address (Street) 250 East Beaton Drive	City West Fargo	State ND	ZIP + 4 58078
Commodity/Service		Request for Bid/Proposal Number	