

**PARTICIPATING ADDENDUM**  
**for Sourcewell Contract 091323-SHW**  
**Between Sherwin-Williams Company and State of Iowa**

**1.1 Scope**

This participating addendum covers the contract 091323-SHW led by Sourcewell for Paint for use by state agencies and other governmental entities located in the State of Iowa authorized by State of Iowa statutes to utilize State contracts with the prior approval of the State of Iowa - Chief Procurement Officer. The Contract, as now or hereafter amended, is incorporated into this addendum ("Participating Addendum") as if set forth at length. Issues of interpretation and eligibility for participation are solely within the authority of the State of Iowa - Chief Procurement Officer.

**1.2 Participation**

Use of specific cooperative contracts by agencies, political subdivisions, and other entities (including cooperatives) authorized by State of Iowa statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with state tax dollars, are eligible purchasers and authorized to purchase Products and Services under the terms of this Participating Addendum in lieu of a separate competitive selection process. (Exception: State of Iowa executive branch agencies must purchase according to applicable system standards and seek approval from the State of Iowa - Office of the Chief Information Officer when required as directed by Iowa Administrative Code before purchasing from this contract.)

**1.3 Order of Precedence**

1. The State of Iowa Participating Addendum ("PA");
2. The Lead Agency's Master Agreement (includes negotiated Terms & Conditions)
3. The Lead Agency's Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

**1.4 Terms**

The Agency is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

**1.5 Modifications or Additions to the Contract**

#### **1.5.1 Reports**

The Contractor shall submit quarterly reports to the State of Iowa Contract Administrator showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each Purchaser.

#### **1.5.2 Pricing**

Contractor's stated prices on the Sourcewell website shall be discounted using the discounts and price lists approved and agreed to with the Contractor's Pricing List. The stated discounts are considered to be the minimum discount offered. The Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons. Minimum discounts listed in pricelist must be held firm for the duration of the Contract's term. Agencies shall be allowed to negotiate further discounting for large volume purchases.

#### **1.5.3 Invoicing**

For the duration of the contract, all product pricing shown on invoices submitted to the State shall:

- Not fall short of the discounts quoted on the Pricing List.
- Items covered under this contract are FOB Destination and shipping charges are not to be included on any invoice unless the Agency has ordered expedited shipment. For expedited shipment, Agency would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.
- Be verifiable against the manufacturer's then current retail price list.

#### **1.5.4 Administrative Fee**

Without affecting the approved Product or Service prices or discounts specified in the Contract and this Participating Addendum, the State of Iowa shall be entitled to receive a one percent (1.00%) administrative fee on all sales made within the State of Iowa against this agreement. The administration fee due to the State of Iowa shall be paid quarterly by Contractor directly to the Participating State, made payable to the "Iowa Department of Administrative Services".

Send to:

State of Iowa – DAS/Central Procurement  
Attention: DAS – CPFSE COO  
1305 E. Walnut St.  
Des Moines, IA 50319

#### **1.5.5 Payment Terms**

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Contractor. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

#### **1.5.6 Terms and Conditions**

The terms and conditions found in Attachment 1 shall govern this Participating Addendum.

## 1.6 Orders

Any Order placed by an entity ordering under this Participating Addendum for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

## 1.7 Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

### Contractor

Name	Kevin McCoy
Address	101 Prospect Ave., Cleaveland, OH 44115
Telephone	216-566-7422
E-mail	kevin.j.mccoy@sherwin.com

### State of Iowa

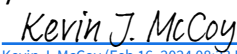
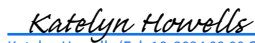
Name	Katelyn Howells
Address	1305 E. Walnut Street, Des Moines, IA 50319
Telephone	515-721-7856
E-mail	Katelyn.howells@iowa.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

## 1.8 Entire Agreement

This Participating Addendum and the Contract (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Contractor	State of Iowa
By:  <small>Kevin J. McCoy (Feb 16, 2024 08:33 EST)</small>	By:  <small>Katelyn Howells (Feb 16, 2024 08:00 CST)</small>
Name: Kevin J. McCoy	Name: Katelyn Howells
Title: National Sales Manager - SLED	Title: Purchasing Agent III
Date: Feb 16, 2024	Date: Feb 16, 2024

**ATTACHMENT 1**  
**ADDITIONAL TERMS AND CONDITIONS**

**1.1 Definitions**

The following words shall be defined as set forth below:

**“Bid Proposal”** means the Contractor’s quote, bid, or proposal submitted in response to the Competitive Bidding Document.

**“Competitive Bidding Document”** means the Request for Proposals, Request for Bids, or Request for Quotation (and any addenda thereto) identified in the Contract that was issued to solicit the goods.

**“Contract”** means the collective documentation memorializing the terms of the agreement between the State and the Contractor and includes the signed Contract , the Special Terms, these General Terms for Goods Contracts, any Special Contract Attachments, any signed certifications, and all other attachments to the Contract.

**“Contractor”** means the provider of the goods under the Contract.

**“Product”** refers to any other products, goods, materials or items that are ordered, developed, produced, delivered, installed, licensed, performed, provided, or otherwise made available, under or through this Contract or Order. The term “Product” includes all related, provided, or supplied Documentation, updates, source code, upgrades, and enhancements.

**“Purchase Instrument”** means the documentation issued by the State to the Contractor for a purchase of goods in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on Contractor’s forms or invoices shall be null and void.

**“Special Contract Attachments”** means any attachment to this Contract.

**“Special Terms”** means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms and Conditions for Goods Contracts and the Special Terms, the Special Terms shall prevail.

**“State”** means the State of Iowa, the state agency identified on the Contract, and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Contract as permitted by the Competitive Bidding Document.

**1.2 Availability of Contract to Other Entities**

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract as permitted by the Competitive Bidding Document.

### **1.3 Duration of Contract**

The term of the Contract shall begin and end on the dates specified on the Contract, unless extended or terminated earlier in accordance with the applicable terms and conditions. The State may exercise any applicable extension by giving the Contractor written notice of the extension decision at least thirty (30) days prior to the expiration of the initial term or renewal term.

### **1.4 Description of Goods**

#### **1.4.1 Specifications in Competitive Bidding Documents**

The Contractor shall provide goods that comply with the specifications contained in the Competitive Bidding Document identified by bid number in the Contract.

#### **1.4.2 Product Shipment and Delivery**

All products shall be shipped F.O.B. Destination. Destination shall be the location(s) specified in the Purchase Instrument. Contractor bears all risk of loss during shipment of goods. The Contractor shall properly package goods. The State will not accept noticeably damaged goods. The State reserves the right to inspect the goods at a reasonable time subsequent to delivery in the event the State is unable to perform an adequate inspection of the goods at the time of delivery. If the State discovers damaged or defective goods not readily apparent at the time of delivery, the State shall have the right to return goods at no cost to the State, regardless of when the damage or defect is discovered.

#### **1.4.3 Non-Exclusive Rights**

The Contract is not exclusive. The State reserve the right to select other contractors to provide goods similar or identical to goods described in the Contract during the term of the Contract.

#### **1.4.4 No Minimums Guaranteed**

The Contract does not guarantee any minimum level of purchases.

### **1.5 Compensation**

#### **1.5.1 Pricing**

The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms.

The Contractor shall submit, on the frequency established on the Contract an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with [Iowa Code 8A.514](#). The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be

solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

**1.5.2 Billings**

The Contractor shall submit, on a regular basis an invoice for goods supplied to the State under the Contract at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall verify the Contractor's performance of the services outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law.

**1.5.3 Delay of Payment Due to Contractor's Failure**

If the State determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contracts until such service or product is performed or delivered. In this event, the State may withhold that portion of the Contractor's compensation which represents payment for goods that were not delivered.

**1.5.4 Setoff Against Sums Owed by the Contractor**

In the event that the Contractor owes the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

**1.6 Termination**

**1.6.1 Immediate Termination by the State**

The State may terminate this Contract for any of the following reasons effective immediately without advance notice:

**1.6.1.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

**1.6.1.2** The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;

**1.6.1.3** The Contractor fails to comply with confidentiality laws or provisions;

**1.6.1.4** The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

**1.6.2 Termination for Cause**

The occurrence of any one or more of the following events shall constitute cause for the State to declare the Contractor in default of its obligations under its Contract.

- 1.6.2.1** The Contractor fails to deliver or has delivered nonconforming goods or fails to perform, to the State's satisfaction, any material requirement of its Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- 1.6.2.2** The State determines that satisfactory performance of its Contract is substantially endangered or that a default is likely to occur;
- 1.6.2.3** The Contractor fails to make substantial and timely progress toward performance of the Base and/or Subsequent Contracts;
- 1.6.2.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under bankruptcy laws; the Contractor terminates or suspends its business; or the State reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 1.6.2.5** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- 1.6.2.6** The Contractor has engaged in conduct that has or may expose the State or the State to liability, as determined in the State's sole discretion; or
- 1.6.2.7** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the State, or a third party.

**1.6.3 Notice of Default**

If there is a default event caused by the Contractor, the State shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the State's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the State may:

- 1.6.3.1** Immediately terminate its Contract without additional written notice; and/or,
- 1.6.3.2** Procure substitute goods from another source and charge the difference between the current contract and the substitute contract to the defaulting Contractor; and/or,
- 1.6.3.3** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**1.6.4 Termination Upon Notice**

Following 30 days' written notice, the State may terminate its Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods provided under the Contract to the State up to and including the date of termination.

**1.6.5 Termination Due to Lack of Funds or Change in Law**

The State shall have the right to terminate its Contract without penalty by giving 30 days' written notice to the Contractor as a result of any of the following:

**1.6.5.1** Adequate funds are not appropriated or granted to allow the State to operate as required and to fulfill its obligations under the Contract;

**1.6.5.2** Funds are de-appropriated or not allocated or if funds needed by the State, at the State's sole discretion, are insufficient for any reason;

**1.6.5.3** The State's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State;

**1.6.5.4** The State's duties are substantially modified.

**1.6.6 Remedies of the Contractor in Event of Termination by the State**

In the event of termination of the Contract for any reason by the State, the State shall pay only those amounts, if any, due and owing to the Contractor for goods actually rendered up to and including the date of termination of the Contract and for which the State is obligated to pay pursuant to its Contract or Purchase Instrument. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Contract in the event of termination. The State shall not be liable for any of the following costs:

**1.6.6.1** The payment of unemployment compensation to the Contractor's employees;

**1.6.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

**1.6.6.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

**1.6.6.4** Any taxes that may be owed by the Contractor in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.



### **1.6.7 The Contractor's Termination Duties**

Upon receipt of notice of termination or upon request of the State, the Contractor shall:

- 1.6.7.1** Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require.
- 1.6.7.2** Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor.
- 1.6.7.3** Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract.
- 1.6.7.4** Cooperate in good faith with the State, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.
- 1.6.7.5** Immediately return to the State any payments made by the State for goods that were not delivered or rendered by the Contractor.

## **1.7 Confidential Information**

### **1.7.1 Access to Confidential Data**

The Contractor's employees, agents, and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the State. If it is reasonably likely the Contractor will have access to the State's confidential information:

- 1.7.1.1** The Contractor shall provide to the State a written description of its policies and procedures to safeguard confidential information;
- 1.7.1.2** Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- 1.7.1.3** The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- 1.7.1.4** The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

**1.7.2 Ownership**

The private or confidential data shall remain the property of the State at all times.

**1.7.3 No Dissemination of Confidential Data**

No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the State.

**1.7.4 Subpoena**

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State or the State in any lawful effort to protect the confidential information.

**1.7.5 Reporting of Unauthorized Disclosure**

The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.

**1.7.6**

If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

**1.7.7 Survives Termination**

The Contractor's confidentiality obligation under the Contract shall survive termination of the Contracts.

**1.8 Indemnification**

**1.8.1**

The Contractor agrees to indemnify and hold harmless the State of Iowa, the States, its officers, employees, volunteers and agents (collectively the indemnified parties) from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the indemnified parties, related to or arising from:

**1.8.1.1** Any breach of the Contract;

- 1.8.1.2** Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
- 1.8.1.3** Any failure of goods to comply with applicable specifications, warranties, and certifications under the Contract;
- 1.8.1.4** The negligence or fault of the contractor in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Contract;
- 1.8.1.5** Claims, demands, or lawsuits that, with respect to the goods or any parts thereof, allege product liability, strict product liability, or any variation thereof;
- 1.8.1.6** The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
- 1.8.1.7** Any failure by the Contractor to comply with the Compliance with the Law provision of the Contract;
- 1.8.1.8** Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa or United States;
- 1.8.1.9** Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- 1.8.1.10** Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.

**1.8.2 Survives Termination**

The indemnification obligation of the Contractor shall survive termination of the Contract.

**1.9 Insurance**

**1.9.1 Insurance Requirements**

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the purchasing agency shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

**1.9.2 Types and Amounts of Insurance Required**

Unless otherwise requested by the State in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

**1.9.3 Certificates of Coverage**

All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the State. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the State upon execution of this Contract. The certificates shall be subject to approval by the State. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the State. Approval of the insurance certificates by the State shall not relieve the Contractor of any obligation under this Contract.

**1.9.4 Waiver of Subrogation Rights**

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

**1.10 Performance Bond**

When applicable, the Contractor shall post a performance bond in an amount equal to the amount shown on the Contract and provide a copy of the bond to the State within (10) days of execution of this Contract. The Contractor shall pay the cost of the bond. In the event that the Contractor or any subcontractor or any officer, director, employee or agent of the Contractor or any subcontractor or any parent or subsidiary corporation of the Contractor or any subcontractor fails to fully and faithfully perform any material requirement of this Contract, including without limitation the Contractor's obligation to indemnify the State and pay damages to the State, the performance bond shall be forfeited to the State. The bond shall be in a form customarily used in the Contractor's industry and shall be written by a surety authorized to do business in Iowa and that is acceptable to the State. The bond shall be in effect at all times during the term of this Contract and any extensions or renewals thereof and for one (1) year following the conclusion of the Contract. The Contractor warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Contract and shall be considered cause for the State to declare the Contractor in default under this Contract.

**1.11 Warranties**

**1.11.1 Construction of Warranties Expressed in the Contract with Warranties Implied by Law**

All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Bid Proposal, whether or not the Contract specifically

denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials, goods to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods provided by the Contractor. The provisions of this Section apply during the term of the Contract and any extensions or renewals thereof.

**1.11.2 Warranty – Nonconforming Goods**

All goods delivered by Contractor to the State shall be free from any defects in design, material, or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the State shall have the option of returning, repairing, or replacing the defective goods at Contractor's expense. Payment for goods shall not constitute acceptance. Acceptance by the State shall not relieve the Contractor of its warranty or any other obligation under the Contract.

**1.11.3 Compliance with Federal Safety Acts**

Contractor warrants and guarantees to the State that the goods provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget 2 CFR part 200 and the Anti-Kickback Act of 1986.

**1.11.4 Concepts, Materials, and Goods Produced**

Contractor represents and warrants that all the concepts, materials, and goods produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, and goods. The Contractor represents and warrants that the concepts, materials, and goods and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods contemplated by the Contract.

**1.11.5 Conformity with Contractual Requirements**

The Contractor represents and warrants that the goods provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.

**1.11.6 Authority to Enter into Contract**

The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.

**1.11.7 Obligations Owed to Third Parties**

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.

**1.11.8 Title to Property**

The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

**1.11.9 Industry Standards**

The Contractor represents and expressly warrants that all aspects of the goods provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

**1.11.10 Data Processing Warranty**

Contractor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Contractor in connection with its performance of, this Contract, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the item's documentation provided by Contractor.

**1.11.10.1** If the items to be developed and delivered under this Contract are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this Contract. The remedies available to the State for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

**1.11.10.2** Nothing in this warranty shall be construed to limit any rights or remedies of the State under this Contract with respect to defects in the items other than the Data Processing Warranty.

### **1.12 Product Recall**

In the event that any of the goods are found by the Contractor, the State, or any governmental agency or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to the State and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the State from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and the State shall agree to the performance of such repairs by the State upon mutually acceptable terms.

### **1.13 Contract Administration**

#### **1.13.1 Incorporation of Documents**

The parties acknowledge that the Contract consists of these contract terms and conditions as well as the Competitive Bidding Document and the Bid Proposal. The Competitive Bidding Document and the Contractor's Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by a Contractor to the Competitive Bidding Document requirements shall be incorporated by reference into the Contract unless the State has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the Competitive Bidding Document and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the Competitive Bidding Document; (3) the Bid Proposal.

#### **1.13.2 Intent of References to Competitive Bidding Documents**

The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the Competitive Bidding Document and the Contractor's Bid Proposal. The failure of the parties to make reference to the terms of the Competitive Bidding Document or the Contractor's Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the Competitive Bidding Document and the Contractor's Bid Proposal. The contractual obligations of the State cannot be implied from the Contractor's Bid Proposal.

#### **1.13.3 Compliance with the Law; Nondiscrimination in Employment**

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.13.8, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

**1.13.4 Amendments**

The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.

**1.13.5 Third-Party Beneficiaries**

There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.

**1.13.6 Choice of Law and Forum**

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

**1.13.7 Assignment and Delegation**

The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.



**1.13.8 Use of Third Parties**

The State acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor obligations under the Contract. All subcontracts shall be subject to prior approval by the State. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all goods delivered under the Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the State. The State shall have the right to request the removal of a subcontractor from the Contract for good cause.

**1.13.9 Integration**

The Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

**1.13.10 Headings or Captions**

The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

**1.13.11 Not a Joint Venture**

Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

**1.13.12 Joint and Several Liability**

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.

**1.13.13 Supersedes Former Contracts or Agreements**

Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the State and the Contractor for the goods provided in connection with the Contract.

**1.13.14 Waiver**

Except as specifically provided for in a waiver signed by duly authorized representatives of the State and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**1.13.15 Notice**

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract at the address specified on the forms. Each such notice shall be deemed to have been provided:

**1.13.15.1** At the time it is actually received; or,

**1.13.15.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

**1.13.15.3** Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**1.13.16 Cumulative Rights**

The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**1.13.17 Severability**

If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

**1.13.18 Time is of the Essence**

Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing goods to the State are responsive to the State's requirements and requests in all respects.

**1.13.19 Authorization**

Contractor represents and warrants that:

**1.13.19.1** It has the right, power and authority to enter into and perform its obligations under the Contract.

**1.13.19.2** It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the

Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**1.13.20 Successors in Interest**

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**1.13.21 Record Retention and Access**

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

**1.13.22 Solicitation**

The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.

**1.13.23 Immunity from Liability**

Every person who is a party to the Contract is hereby notified and agrees that the State, and all of its employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

**1.13.24 Public Records**

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

**1.13.25 Clean Air and Water Certification**

Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the State of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities

**1.13.26 Debarred, Suspended, and Ineligible Status**

Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the State if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

**1.13.27 Use of Name or Intellectual Property**

Contractor agrees it will not use the name or any intellectual property, including but not limited to, any State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific State agency involved.

**1.13.28 Taxes**

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables. [State of Iowa Tax Exempt Letter](#)

**1.13.29 Certification Regarding Sales and Use Tax**

By executing the Contract the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the State or its representative filing for damages for breach of contract.

**1.13.30 Contractor Assignments of Rights -Antitrust Claims**

In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract.

**1.13.31 Delays or Impossibility of Performance**

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's

ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**1.13.32 Obligations Beyond Contract Term**

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

**1.13.33 Counterparts**

The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

**1.13.34 Further Assurances and Corrective Instruments**

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.



**Solicitation Number: 091323**

## **CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and The Sherwin-Williams Company, 101 W. Prospect Avenue, Cleveland, OH 44115 (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 Paint with Related Supplies, Equipment, and Services 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.

**EXPIRATION DATE AND EXTENSION.** This Contract expires November 8, 2027, unless it is cancelled sooner pursuant to Article 22. This Contract allows up to three additional one-year extensions upon the request of Sourcewell and written agreement by Supplier. Sourcewell retains the right to consider additional extensions beyond seven years as required under exceptional circumstances.

B. **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 Change 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 Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell 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 Sourcewell 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;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell 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 Sourcewell, the Supplier will pay an administrative fee to Sourcewell 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 Sourcewell 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. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Professional Liability*. During the term of this Contract, Supplier will maintain coverage for all claims the Supplier may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Supplier's professional services required under this Contract.

Minimum Limits:

\$2,000,000 per claim or event

\$2,000,000 – annual aggregate

6. *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 Sourcwell 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.

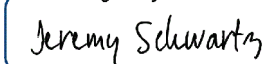
T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

## 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

The Sherwin-Williams Company

DocuSigned by:  
  
By: C0FD2A139D06489...  
Jeremy Schwartz  
Title: Chief Procurement Officer  
Date: 10/30/2023 | 3:45 PM CDT

DocuSigned by:  
  
By: 528A747F51444B0...  
Kevin McCoy  
Title: National Sales Manager-SLED  
Date: 11/1/2023 | 12:32 PM CDT

Approved:

DocuSigned by:  
  
By: 48BAF71B0894454...  
Chad Coauette  
Title: Executive Director/CEO  
Date: 11/1/2023 | 12:43 PM CDT



# RFP 091323 - Paint with Related Supplies, Equipment, and Services

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## Vendor Details

Company Name: The Sherwin-Williams Company  
Address: 101 Prospect Avenue NW  
1710 MIDLAND  
Cleveland, Ohio 44115  
Contact: Kevin McCoy  
Email: kevin.j.mccoy@sherwin.com  
Phone: 216-216-5422  
Fax: 216-566-1909  
HST#: 34-0526850

## Submission Details

Created On: Tuesday July 25, 2023 07:18:56  
Submitted On: Tuesday September 12, 2023 12:33:32  
Submitted By: Kevin McCoy  
Email: kevin.j.mccoy@sherwin.com  
Transaction #: 43adbefa-a8c5-4a64-948c-7b7671f028a2  
Submitter's IP Address: 136.226.50.102

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## 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")	The Sherwin-Williams Company	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	N/A	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	N/A - The Sherwin-Williams Company is not including any DBA's with this proposal, therefore Line 3 is not applicable	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	Cage Code: 54636	*
5	Proposer Physical Address:	101 W Prospect Avenue Cleveland, OH 44115	*
6	Proposer website address (or addresses):	<a href="https://www.sherwin-williams.com/">https://www.sherwin-williams.com/</a>	*
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):	Kevin McCoy National Sales Manager - SLED 101 W Prospect Ave. Cleveland, OH 44115 kevin.j.mccoy@sherwin.com 216-566-7422	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Kevin McCoy National Sales Manager - SLED 101 W Prospect Ave. Cleveland, OH 44115 kevin.j.mccoy@sherwin.com 216-566-7422	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Beniam Tirfe Strategic Account Manager - SLED 101 W Prospect Ave. Cleveland, OH 44115 beniam.tirfe@sherwin.com 240-350-7862	

**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>The Sherwin-Williams Company was founded in Cleveland, Ohio in June of 1865 by Henry Sherwin and Edward Williams, with incorporation taking place in 1866. Under their direction, The Sherwin-Williams Company was the first to develop ready-mixed paint in 1880. Before the invention of this type of paint, consumers would have to buy the ingredients of paint separately and mix the paint themselves. The demands for ready-mixed paint led to explosive company growth throughout the Northeast and Midwestern United States. The company also began to purchase smaller manufacturers and, by the early twentieth century was operating in all fifty states.</p> <p>The Sherwin-William Company is anchored by 7 core values:</p> <ol style="list-style-type: none"> <li>1. Integrity - shines through in our products, our business practices, and our relationships. We pride ourselves on keeping our promises to one another, to our customers and to our shareholders.</li> <li>2. People - are our foundation, which is why we are committed to providing safe and healthy work environments, and opportunities to learn, grow, and be recognized for our many achievements.</li> </ol>	

3. Service - that is exemplary, personal, and professional, accompanied by the strongest product knowledge and supply chain in our industry, provides our customers with confidence in our products and coatings solutions.
4. Quality - is a consistent element of our products and our work. With a strong commitment to continuous improvement, we challenge ourselves to set the industry standard for excellence in colors, products and coatings that preserve, protect, and beautify.
5. Growth - is essential to our business. "To grow in knowledge and character as well as in size" was an early guiding principle. We are committed to growth that is disciplined and sustainable, intended to benefit our shareholders, customers, and our employees.
6. Innovation - ensures that our customers will be the first to benefit from pioneering advancements in our products, coatings, and their applications. Innovation is encouraged through challenging assumptions and by leveraging our collective ingenuity and imagination for new ideas and inspiration.
7. Performance - that achieves desired results and that sets an example for others is encouraged, recognized, and rewarded. We set high expectations for – and take the time to measure and reward – our achievements.

The Sherwin-Williams Company has continued to expand both organically, by opening 30 to 50 new US stores a year, and by acquisition, with the purchases of DURON Paints and Wallcovering (2005), M A Bruder (2006), Columbia Paints (2007), the US and Canadian operations of COMEX (2014) and VALSPAR (2017) as well as various overseas companies in the past fifteen years. The Sherwin-Williams Company became the largest paint manufacturer in the world, after finalizing its acquisition of The Valspar Corporation dated June 1, 2017. These strategic expansions, both organically and through acquisitions, have allowed The Sherwin-Williams Company to strengthen their position in the coatings market with clients being able to access material quicker than our competitors.

The Sherwin-Williams Company operates through four divisions:

1. Performance Coatings Group - Coil Coating, Automotive Coatings, Protective and Marine Coatings, or any non-architectural coatings
2. The Consumer Brands Group - Makers and distributors of such brands as Minwax, Thompson's Water Seal, Krylon and Purdy Paint brushes
3. Global Supply Chain – Responsible for all manufacturing. Distribution, raw material sourcing, planning
4. \*The Paint Stores Group – Owns and operates the more than 5,000 store fronts in the United States as well as additional stores in Canada, the Caribbean and Latin America.

\*= division that will be utilized for this contract

Recent Top Honors and Prestigious Awards for The Sherwin-Williams Company:

- Newsweek®: America's Most Responsible Companies 2022 and 2021
- Fortune 500 Company Rankings
- LinkedIn: Top 25 Company in Cleveland-Akron-Canton
- Wall Street Journal: 250 Best Managed Companies of 2021
- ICIS: Company of the Year
- KPMG: U.S. Customer Experience Top 100
- Transport Topics: 100 Largest Private Carriers in North America – 2019 and 2020
- Steward
- Investor's Business Daily: Best ESG (Environmental, Social and Governance) Companies 2021
- Fast Company: Fast Company's World Changing Ideas – Corporate Social Responsibility 2020
- Fast Company: Fast Company's World Changing Ideas – Consumer Products 2020

Building our Future Project:

Over the course of our more than 157-year history, The Sherwin-Williams Company has grown from a small enterprise on the Cuyahoga River to a global leader of high-performance paints and coatings made of more than 60,000 dedicated employees providing innovative solutions to our customers. Driven by our continued need to serve our customers at the highest level and retain and attract top talent, The Sherwin-Williams Company is creating a next-generation workplace environment that ignites creativity, collaboration, and industry-leading innovation. The Building Our Future project consists of a new global headquarters located in downtown Cleveland and a Research and Development Center located in Brecksville, Ohio.

Sustainability -

The Sherwin-Williams Company believes in being good stewards of the environment requires a comprehensive approach and are continuing the theme of "Building on the Good" to achieve the company's sustainability goals. The attached sustainability report highlights The Sherwin-Williams Company's approach

11	What are your company's expectations in the event of an award?	The Sherwin-Williams Company's expectations for this contract, if awarded are simple. We want to GROW together and keep it COLLABORATIVE. The Sherwin-Williams Company owns and operates more than 5,000 stores nationwide, coupled with 2,500 sales representatives nationwide. With this reach, The Sherwin-Williams Company would expect engagement from Sourcewell either through trainings, seminars, or possibly a quarterly recap of the market with trends. The Sherwin-Williams Company understands this might not be possible all the time, but highlighting 10 target markets to aggressively go after, could be a great starting point and set some expectations. The Sherwin-Williams Company would also expect Sourcewell to go after States to utilize the Contract in lieu of building out their own RFP/Paint Supplies contract. A few states have adopted the Contract in the past and it has worked out tremendously well for all involved parties.	*
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.	<p>The Sherwin-Williams Company publicly traded on the New York Stock Exchange (ticker symbol: SHW).</p> <p>As of the end of 2022:</p> <ul style="list-style-type: none"> <li>- The Sherwin-Williams Company had total revenues of \$22.1B dollars</li> <li>- 60,000+ employees worldwide</li> <li>- Operate in 120+ countries</li> <li>- 5,000+ company owned and operated stores</li> <li>- 2,500+ dedicated sales representatives</li> <li>- 136 manufacturing and distribution facilities</li> </ul> <p>All additional information related to annual reports, 10-k, 6-k, etc. can be found at the below link:  <a href="https://investors.sherwin-williams.com/investor-home/default.aspx">https://investors.sherwin-williams.com/investor-home/default.aspx</a></p>	*
13	What is your US market share for the solutions that you are proposing?	The Sherwin-Williams Company is the largest paint manufacturer and distributor within the United States, owning and operating more than 5,000 stores (in all 50 states). Current SLED market share through direct contracts is approaching \$100mm in sales annually or roughly 50-60% market share.	*
14	What is your Canadian market share for the solutions that you are proposing?	The Sherwin-Williams Company currently operates more than 230 stores Canada-wide with expectations to open 10-20 in the next 5 years and sales within the SLED Market at around \$500,000.00. The Sherwin-Williams Company is one of three top paint manufacturers within Canada (not sure who holds each position). The Sherwin-Williams Company can't quantify actual market share.	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No	*
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>	<p>b.) The Sherwin-Williams Company is vertically integrated and owns and operates all its stores throughout the United States.</p> <p>The Sherwin-Williams Company manufactures, distributes, and sells all its branded products exclusively through more than 5,000+ stores in the United States, Canada, and the Caribbean.</p> <p>The Sherwin-Williams Company will not be utilizing any third party or dealer network to deliver any material to participating members. All Sourcewell members will be interacting with employees of The Sherwin-Williams Company, ONLY. This allows The Sherwin-Williams Company to maintain the highest level of customer satisfaction and owning the entire process from sale to application.</p>	*

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.	<p>The Sherwin-Williams Company does maintain all licenses and certifications pursuant to laws in all 50 states, however we cannot list them all on this RFP response, as I believe we are limited to 30,000 characters.</p> <p>Supplemental information is below:</p> <p>The Sherwin-Williams Company has over 200 GPS-2 designations offered by the Master Painter's Institute (MPI). GPS-2 is the most extreme green designation currently offered by the MPI and is an indication of the seriousness with which The Sherwin-Williams Company seeks to develop environmentally responsible products <a href="http://www.specifygreen.com/APL/searchGPS.asp?txtSearch=sherwin&amp;btnSearch.x=0&amp;btnSearch.y=0">http://www.specifygreen.com/APL/searchGPS.asp?txtSearch=sherwin&amp;btnSearch.x=0&amp;btnSearch.y=0</a></p> <p>Additionally, a search of GreenGuard approved products will show 83 product lines have been Gold certified <a href="https://www.sherwin-williams.com/painting-contractors/specifications/sustainability">https://www.sherwin-williams.com/painting-contractors/specifications/sustainability</a></p> <p>All factories operated by The Sherwin-Williams Company are ISO 9001:2015 certified for the following scope of certification: The Design, Manufacture, Packaging and Distribution of Paints, Coatings, Powder, Dispersions, Applicators, Polymers, and Chemicals, and the Distribution of Allied Products. ISO 9001 document is attached</p>	*
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	There has not been any history of suspension or debarment for The Sherwin-Williams Company	*

**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>Product Blueprint:</p> <ul style="list-style-type: none"> <li>- EcoVadis™: Silver Sustainability Rating – European division</li> <li>- Fill it Forward: Top 25 Changemakers of 2022</li> <li>- Global Good Awards: Best Product of the Year, Joint Silver – valPure® V70</li> <li>- Pipeline &amp; Gas Journal® Awards: Finalist, Best Corrosion Technology – PipeClad® 2060</li> <li>- SEAL Awards®: Sustainable Innovation Award – valPure® V70</li> </ul> <p>Governance and Ethics:</p> <p>British Coatings Federation: Customer Service Award, Consumer Brands Group</p> <p>MSCI®: ESG Rating 'A'</p> <p>Newsweek®: America's Most Responsible Companies 2022</p> <p>The Wall Street Journal®: Best Managed Companies 2022</p> <p>Transport Topics®: 100 Largest Private Carriers in North America</p> <p>Social Imprint</p> <p>Forbes®: America's Best Employers for Women</p> <p>Forbes®: America's Best Employers for New Graduates</p> <p>Forbes®: America's Best-In-State Employers</p> <p>Forbes®: America's Best Large Employers</p> <p>Forbes®: Global 2000</p> <p>Forbes®: World's Best Employers</p> <p>Forbes®: World's Top Female-Friendly Companies</p> <p>Human Rights Campaign®: Best Places to Work for LGBTQ+ Equality 2022</p> <p>The American Opportunity Index: Top 50 Overall</p> <p>The Cleveland Plain Dealer®: Northeast Ohio Top Workplaces</p>	*
20	What percentage of your sales are to the governmental sector in the past three years	Approximate percentage = 4%	*
21	What percentage of your sales are to the education sector in the past three years	Approximate percentage = 5%	*

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?	AGENCY 3 YR SALES SNAPSHOT STATE OF WEST VIRGINIA \$4,263,857.00 STATE OF VIRGINIA \$225,284.00 STATE OF VERMONT \$671,790.00 STATE OF UTAH \$164,861.00 STATE OF TEXAS \$21,833,054.00 STATE OF TENNESSEE \$1,032,170.00 STATE OF SOUTH DAKOTA \$732,313.00 STATE OF RHODE ISLAND \$1,404,369.00 STATE OF PENNSYLVANIA \$3,015,698.00 STATE OF OKLAHOMA \$478,809.00 STATE OF OHIO \$6,730,978.00 STATE OF NEW MEXICO \$733,649.00 STATE OF MISSOURI \$1,045,052.00 STATE OF MARYLAND \$1,261,164.00 STATE OF MAINE \$1,100,739.00 STATE OF KENTUCKY \$866,210.00 STATE OF IOWA-SOURCEWELL \$935,372.00 STATE OF INDIANA \$987,448.00 STATE OF ILLINOIS \$1,041,123.00 STATE OF IDAHO \$1,248,811.00 STATE OF GEORGIA \$7,103,303.00 STATE OF DELAWARE \$1,746,237.00 STATE OF ARKANSAS \$2,612,465.00 SOURCEWELL-USA \$3,309,665.00 PENNSYLVANIA COSTARS MRO 8 \$1,587,908.00 NATIONAL PURCHASING PARTNERS \$1,887,242.00 NORTH CAROLINA STATE CONTRACT \$11,836,380.00 NATL COOP PURCH ALLIANCE-NCPA \$1,905,504.00 MHEC MA HIGHER EDU CONSORTIUM \$201,086.00 IPHEC SOURCEWELL \$492,960.00 1GPA-ARIZONA \$77,416.00 TOTAL \$82,532,916.00	*
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?	The Sherwin-Williams Company currently holds a GSA Contract under: 47QSHA18D000U Approximate sales through the GSA Contract over the last 3 years is over \$25,000,000.00	*

**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 *	
The State of Georgia	Donnie Treadway	404-463-0824	*
The State of North Carolina	Melinda Tomlinson	984-236-0238	*
The State of Ohio	Terry Spiropoulos	614-644-6764	*

**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 *	
The State of Ohio	Government	Ohio - OH	Statewide Paint Contract	Average transaction is around \$100.00 Ranges varies from \$5.00 to \$5,000.00	\$6,800,000.00	*
The State of Georgia	Government	Georgia - GA	Statewide Paint Contract	Average transaction is around \$200.00 Ranges varies from \$10.00 to \$5,000.00	\$7,100,000.00	*
The State of Texas	Government	Texas - TX	Statewide Paint Contract through TXMAS	Average transaction is around \$300.00 Ranges varies from \$20.00 to \$5,000.00	\$18,000,000.00	*
Hillsborough County Public Schools	Education	Florida - FL	Formal contract for Paint/Paint Supplies	Average transaction is around \$500.00	\$5,995,610.00	*
The State of Louisiana	Government	Louisiana - LA	Statewide Paint contract (until last year) - Competitor currently holds	Average transaction is around \$100.00 Ranges varies from \$5.00 to \$5,000.00	\$6,986,678.00	*

**Table 6: Ability to Sell and Deliver Service**

Describe your company's capability to meet the needs of Sourcwell 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.	<p>The Sherwin-Williams Company has over 5,000 stores and 2,500 sales representatives in the United States. Each account is assigned a sales representative based on geography and serviced from the correlating store location (usually the closest). Both the sales representative assigned to the account and store personnel are available for, but not necessarily limited to, product recommendations, site visits, price negotiation, price quotes, planning, training, and updating on new rules and regulations.</p> <p>The Sherwin-Williams Company firmly believes that no individual shall be placed in a position within the company without being fully trained in the responsibilities and duties of the job. All store personnel and sales representatives are required to complete a series of 20 START tests in their first 90 days of employment. These tests range from exams on paint chemistry and business management to complaint resolution and customer service. Upon successful completion of the START program, individuals are sent to training at one of four "Sherwin-Williams University" sites. Continuous education courses are also available for store personnel and sales representatives to ensure they are up to speed with the newest products and technologies. The Sherwin-Williams Company internal retention rate is at 95%, which is why these exams/classes are so important for overall career growth. These exams and classes are mandatory for future employment, and one must pass prior to the end of their 90 day probation period</p>	*



27	Dealer network or other distribution methods.	<p>The Sherwin-Williams Company will utilize its owned and operated stores to fulfill all orders.</p> <p>The Sherwin-Williams Company owns and operates a fleet of delivery vehicles, including vans, box trucks and tractor trailers within the State of Indiana. These vehicles, under The Sherwin-Williams Company's HUB system, have the ability to deliver paint/paint related material within 48 hours of the purchase order being received.</p>	*
28	Service force.	<p>In addition to our 2,500 sales representatives and over 5,000 store managers and assistant managers, the company has additional staff and service personnel dedicated to managing our sales and distribution force. Our paint stores are divided into division across the country. Each division is comprised of a combination of District Managers, City Managers and District Sales Managers. These individuals are tasked with managing our sales representatives, store managers, assistant managers, full and part time employees.</p> <p>The Sherwin-Williams Company offers site visits by NACE certified representatives for most jobs. NACE certification is among the most respected in the paint industry. The NACE (National Association of Corrosion Engineers) Institute administers certifications on a variety of disciplines, including the industry-leading Coatings Inspector Program or CIP, which is the program followed by Painters USA. While NACE certification includes different levels and specialties, the main focus is the performance and documentation of liquid coatings applied by brush, roller, or spray to steel and other substrates. Primarily for industrial environments, CIP covers cathodic protection; coatings for industries, inspection requirements, and corrosion resistance; and material selection for specific chemical resistance. Painters USA's employees in estimating, field operations, and field applications go through intensive training in order to achieve their coatings inspection certifications.</p> <p>The Sherwin-Williams Company also offers training on areas of importance to government agencies. For example, the company has conducted trainings on coatings for fire hydrants, light posts, water tanks and road striping. These trainings can be arranged through your local Sherwin-Williams representative or through the contract manager.</p> <p>The company also offers training on areas of importance to government agencies. For example, the company has conducted trainings on coatings for manhole covers, water tanks and road striping. Such classes can be arranged through your local Sherwin-Williams representative.</p>	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	<p>All orders that associated with the Contract will be handled by one of the 5,000+ stores that The Sherwin-Williams Company owns and operates. Store location and hours can be found at the below link:  <a href="https://www.sherwin-williams.com/store-locator">https://www.sherwin-williams.com/store-locator</a></p> <p>In addition to the stores, dedicated sales representatives will be available during working hours and in certain situations, extended hours. The Contract Manager (Kevin McCoy) can be reached at any time.</p>	*

30	<p>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>	<p>As mentioned previously, The Sherwin-Williams Company has over 2,500 sales representatives and more than 5,000 stores in the United States. Each account is assigned a representative based on geography. This individual is available for, but not necessarily limited to, product recommendations, site visits, price negotiation, price quotes, planning, training and updating on new rules and regulations.</p> <p>Each representative has completed a career path that had included stints as a customer service specialist, store assistant manager, and store manager. Once having mastered these skills, the individual is then put through the following training regiment:</p> <p>Overview and Training Materials</p> <p>The Sales Rep Development (SRD) program was designed to provide employees who possess an interest in a possible Sales Rep career path to understand the roles and responsibilities of a career salesman. The program is also designed to provide the district with a pool of qualified candidates to support future sales rep opportunities within the district.</p> <p>The program is divided into three phases:</p> <p>-Phase I - Communicating the program to the field:</p> <p>&gt;During this phase you will send out a communication to the field management level field employees (Store and Assistant Managers) that are possibly interested in a career in outside selling to attend a one-day Sales Rep Development session at the District Office. Also, to support completion of the program, an SRD-Leader's Guide has been developed.</p> <p>-Phase II - One Day training session:</p> <p>&gt;District Leadership will conduct a one-day training session for the employees that expressed an interest in the program. The session focuses on an overview of the roles and responsibilities for a sales rep as well as an in-depth selling skills session. This session should take approximately 6.5 hours to complete.</p> <p>-Phase III - 90 Day Workbook:</p> <p>&gt;The 90 Day Workbook* is designed to provide employees that have expressed an interest in a possible sales rep career path at the end of the training session with additional rep specific opportunities. During this phase District Leadership will work closely with the employee to support their development and understand their ability to complete the functions of the rep role, in addition to their existing duties.</p> <p>Those completing this pre-promotion program then competitively compete for a promotion as positions become available. Once promoted, they are sent to weeklong training at one of The Sherwin-Williams Company's SHW University training centers located at:</p> <p>11350 Alameda Drive Strongsville, OH 44149</p> <p>2810 W. Miller Road, Garland, TX 75041</p> <p>2800 Century Parkway NE, Suite 950 Atlanta, GA 30345</p> <p>1140 McDermott Drive, Suite 107 West Chester, PA 19380</p> <p>There, the customer service training continues, paint chemistry and the Sherwin-Williams resources available to aid customers.</p> <p>The sales representative depends heavily on the local store manager and vice versa.</p> <p>It is important to note, each representative and store manager is required to complete an annual new product certification at the beginning of the year. This insures they are not only familiar with new Sherwin-Williams products, but the reasons for the products development, which may be better performance, less environmental impact, or compliance with new regulations.</p> <p>These representatives report to a local sales manager who is available in the event of the representative's absence. This individual has also completed both the store manager and sales representative training as well as additional training in store, human resources, and business management.</p>
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31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	<p>The Sherwin-Williams Company has the ability to service all participating members within the United States through the 5,000+ locations.</p> <p>The Sherwin-Williams Company as mentioned above has the depth of knowledge and network to service any/all multi-state/agency contracts. Additionally, The Sherwin-Williams Company has strict protocols that have been developed over the past 150+ years to successfully service any contract or member need.</p>	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	<p>The Sherwin-Williams Company currently operates in Canada and is excited about the growth of cooperative purchasing through agencies countrywide. The Sherwin-Williams Company operates close to 230+ stores nationwide and will only continue to growth.</p> <p>The introduction to Canoe last year was great and has been advantageous for all parties.</p>	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	The Sherwin-Williams Company is a nationwide entity with the agility to react to all needs of agencies nationwide/including Canada, especially in times of need. Therefore, no geographic areas can currently be identified that The Sherwin-Williams Company can't service.	*
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?	The Sherwin-Williams Company is a nationwide entity with the agility to react to all needs of agencies nationwide/including Canada. Therefore, The Sherwin-Williams Company will be able to service all participating entities.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	The Sherwin-Williams Company is a nationwide entity, able to service all participating entity locations as long as their is a store location present (which there is).	*

**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>The Sherwin-Williams Company would approach promotion from two sides:</p> <p>External Promotion - Email blast, industry conferences, public sector conferences, as well as trade shows.</p> <p>Internal Promotions - Notify all employees in a target market that the Contract is available, coupled with agency lead list, as well as selling tools. Also, The Sherwin-Williams Company provides training seminars to all sales representatives/stores nationwide.</p>
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>The Sherwin-Williams Company utilizes various outside Data Analytics agencies to help with mining information. This information is then used to help determine key metrics within an area we can access/approach.</p> <p>The Sherwin-Williams Company would promote this contract through the professional social media setting up LinkedIn, with a formal announcement and a "ask us how to use" section. The Sherwin-Williams Company's LinkedIn profile has just surpassed 500,000 followers.</p> <p>The Sherwin-Williams Company is very aware of the sensitivity of information shared online, as well as gathered information. The below link outlines corporate policies as they relate to privacy.  <a href="https://privacy.sherwin-williams.com/privacy-policy">https://privacy.sherwin-williams.com/privacy-policy</a></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>The Sherwin-Williams Company considers Sourcewell as a strategic and important partner in the SLED market. We encourage representatives of Sourcewell to provide training opportunities for The Sherwin-Williams Company in person or virtually. These opportunities will provide The Sherwin-Williams Company team with the knowledge and confidence to speak to participating members about the benefits of the contract.</p> <p>In addition, The Sherwin-Williams Company attends events such NIGP and other statewide conferences which enables promotion of the contract and penetration into markets where Sourcewell does not have a strong presence.</p> <p>Internally, The Sherwin-Williams Company provides comprehensive training and education to District Management and the entire sales teams. This is done in person and virtually across the United States and Canada.</p> <p>The Sherwin-Williams Company also works with its dedicated marketing team(s) to create customized sell sheets (approved by Sourcewell) to distribute to The Sherwin-Williams Company sales team and participating Sourcewell members.</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>The Sherwin-Williams Company offers both an Integrated Punch-out System and a Direct Punch-out System. Orders placed by internet, unless specified for a particular store, are geocoded by delivery location and sent to the nearest store for processing. These orders are sent to the store immediately and the store begins fulfilling the order as soon as it is received from central processing.</p> <p>The e-Catalogs developed by The Sherwin-Williams Company have the following features</p> <ol style="list-style-type: none"> <li>1) The ability to search using multiple methods to narrow options to specific needs</li> <li>2) Sherwin-Williams Pro+ Program allows end-user to view pricing, pay account balances, order online through their account.</li> <li>3) E-catalogs display contract pricing</li> <li>4) E-Catalog workflow management controls are under development for The Sherwin-Williams Company catalogs.</li> <li>5) On-line ordering capabilities are available on "punch-out catalogs"</li> <li>6) Order status and order tracking capabilities are available</li> <li>7) Order/account history is available</li> <li>8) Online help is available during normal business hours</li> <li>9) Technical Data Sheets, Product Data Sheets and Safety Data Sheets are available on the e-catalog</li> <li>10) The Sherwin-Williams Company accepts Master Card, Discover, American Express and Visa</li> <li>11) Web-based catalogs are available.</li> <li>12) Contract pricing is available on line.</li> <li>13) Order status tracking is available</li> <li>14) Order history is available</li> <li>15) Environmentally preferred products are noted and noted with the certification and third party agency detailing them as EPP.</li> <li>16) Notations are made as to greener alternatives</li> </ol>

**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>The Sherwin-Williams Company offers free training on new products and technologies nationwide.</p> <p>The Sherwin-Williams Company also conducts public training on application techniques at many of its annual district pro shows. These events are open to the public and various experts on concrete and masonry, wood finishes, stains, HVLP and airless spraying are available for questions and hands on training.</p>
41	Describe any technological advances that your proposed products or services offer.	<p>The Sherwin-Williams Company recently introduced Superpaint Sanitizing that kills six different pathogens on contact. This helps prevent infections not only in hospitals and clinics but in areas where various abrasion may be present such as locker rooms and gymnasiums</p> <p>Thanks to innovative technology and a zero VOC formula, SuperPaint® with Air Purifying Technology* contributes to better indoor air quality by reducing VOC levels from potential sources like carpet, cabinets and fabrics. It also helps rooms stay fresher, longer, with odor eliminating technology that breaks down unwanted household odors</p> <p>Scuff Tuff™ Interior Waterbased Enamel. Its advanced scuff resistance maintains an attractive finish in high-traffic areas and resists burnishing, even after frequent washing. Scuff Tuff™ is the easy choice for areas exposed to hard treatment.</p> <p>The below link outlines a comprehensive and categorized view of the technologies that The Sherwin-Williams Company will offer through this contract:  <a href="https://www.sherwin-williams.com/painting-contractors/business-builders/paint-technology-and-application">https://www.sherwin-williams.com/painting-contractors/business-builders/paint-technology-and-application</a></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>The Sherwin-Williams Company has sought to limit its environmental impact. Expanded details can be found at:</p> <p><a href="https://corporate.sherwin-williams.com/sustainability/focus-areas/environmental-footprint.html">https://corporate.sherwin-williams.com/sustainability/focus-areas/environmental-footprint.html</a></p> <p>Also, see attached Sustainability Report.</p> <p>The Sherwin-Williams ambitious and meaningful goals address global issues of critical importance, including doing our part to address climate change by reducing our greenhouse gas emissions, increasing energy efficiency and use of renewable energy, minimizing our waste, and accelerating development of "sustainably advantaged products."</p> <p>2030 Environmental Footprint Reduction Goals</p> <ul style="list-style-type: none"> <li>-Reduce absolute Scope 1 and Scope 2 greenhouse gas emissions by 30%</li> <li>-Increase renewable energy to 50% of total electricity usage</li> <li>-Increase operational energy efficiency by 20%</li> <li>-Reduce waste disposal intensity by 25%</li> </ul> <p>Product Blueprint Philosophy</p> <ul style="list-style-type: none"> <li>- Implemented Sustainability by Design program across the enterprise, serving as our proactive, foundational process to aid the growth of our "sustainably advantaged products" portfolio</li> <li>- Established a baseline for "sustainably advantaged products" and developed a plan for expanding this product portfolio in the future</li> <li>- Developed a structured process for measuring and assessing Scope 3 emissions</li> </ul>

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>Many of The Sherwin-Williams Company's architectural products fit the criteria for "sustainably advantaged products" because they meet or exceed sustainability-related conditions set by leading third-party organizations, programs, standards and codes such as:</p> <ul style="list-style-type: none"> <li>-American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)</li> <li>-Collaborative for High Performance Schools® (CHPS)</li> <li>-Cradle to Cradle Products Innovation Institute</li> <li>-EU Ecolabel</li> <li>-Forest Stewardship Council® (FSC®)</li> <li>-Green Globes®</li> <li>-GREENGUARD Environmental Institute (GEI) and UL GREENGUARD</li> <li>-International Green Construction Code®</li> <li>-Leadership in Energy and Environmental Design™ (LEED®)</li> <li>-Nordic Swan Ecolabel</li> <li>-The Master Painters Institute®</li> <li>-USDA BioPreferred® Program</li> <li>-WELL Building Standard®</li> </ul> <p>For more information related to certifications and regulatory obligations for architectural products, see the specification resources at:  <a href="https://www.sherwin-williams.com/architects-specifiers-designers/specifications">https://www.sherwin-williams.com/architects-specifiers-designers/specifications</a>.</p>
44	Describe how your products contribute to or promote the health, quality of life and wellbeing of our members and others.	<p>The Sherwin-Williams Company three ESG pillars – Environmental Footprint, Product Blueprint and Social Imprint – encompass the commitments, areas of focus, and goals and metrics that are most important to The Sherwin-Williams Company. These pillars are centered on a foundation of Governance and Ethics, designed to ensure broad engagement and appropriate oversight for sustainability and ESG initiatives throughout the Company.</p> <ul style="list-style-type: none"> <li>-Environmental Footprint Doing Our Part for the Planet We apply a continuous improvement approach to reducing our carbon emissions, energy consumption and waste generation while expanding our renewable energy use and decreasing the amount of waste generated by our operations</li> <li>-Product Blueprint Driving Sustainability Through Innovation We remain focused on enriching our Product Blueprint. Our Sustainability by Design program is a signature effort to intentionally consider sustainability attributes and life cycle thinking in our product innovation and development processes. This program enables us to evolve our products and processes to deliver and grow our "sustainably advantaged products" offering</li> <li>-Social Imprint Elevating a Culture of Safety, Inclusion and Community We are committed to advancing a culture of excellence that values people, inclusion and community. Our commitment is reflected in our unwavering efforts to promote the safety, health and well-being of our people; foster a culture of inclusion, diversity and equity where individual differences are celebrated; and support those in the communities where we live and work</li> </ul>
45	Describe how your organization incorporates sustainability into the manufacture, installation and recycling of your products.	<p>The Sherwin-Williams Company's approach to corporate social responsibility and other Environmental, Social, and Governance (ESG) risks and opportunities is grounded in the commitment to creating and maximizing long-term value for shareholders, employees, customers, communities in which we live and work, and other stakeholders. This commitment is also reflected in The Sherwin-Williams Company Corporate Purpose and is deeply embedded in the company culture and business practices. From manufacturing plants to our company-operated stores and other places where products are sold, The Sherwin-Williams Company invests in sustainability and other ESG initiatives to help grow business with care, differentiate us in the marketplace, and make a positive impact on the world around us.</p> <p>The Sherwin-Williams Company previously conducted a robust materiality assessment and identified the following top-tier focus areas that have been incorporated into our ESG framework – Climate and Carbon; Product Stewardship; Life Cycle Assessment; Occupational Health and Safety; and Talent Acquisition and Employee Engagement. The Sherwin-Williams Company refreshes the materiality assessment on a periodic basis as part of an ongoing work to drive alignment between sustainability efforts and the expectations of both internal and external stakeholders. Learn more at <a href="https://corporate.sherwin-williams.com/content/sherwin/corp/corp-aem-sherwin/us/en/sustainability.html">https://corporate.sherwin-williams.com/content/sherwin/corp/corp-aem-sherwin/us/en/sustainability.html</a>.</p>
46	Describe the extent to which your products contain recycled content or are recyclable.	Please see attached LEED® v4.1 MR Credit: Recycled Content

47	<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>The Sherwin-Williams Company is a global leader in the manufacture, development, distribution and sale of paint, coatings, and related products to professional, industrial, commercial, and retail customers. Additionally, majority of the products used by agencies on a day-to-day basis, such as paint and related products, are manufactured, distributed, and sold by one of our local Sherwin-Williams retail locations, distribution centers, and plants.</p> <p>Due to this scale, we partner with MBE, WBE, and other businesses on a national level. The Sherwin-Williams Company is committed to advancing a culture of inclusion where differences are welcomed, appreciated, and celebrated to positively impact our people and our business. This commitment extends to all parts of business – especially the suppliers. A brief review of the ID&amp;E program is included..</p> <p>Recently, The Sherwin-Williams Company announced five firms that have been selected for the minority construction management role for the Building Our Future project, which includes the new global headquarters in downtown Cleveland and the new R&amp;D center in Brecksville. Additional firms are expected to be added for multiple roles as the project progresses, including design and landscape architects. Sherwin-Williams plans to invest a minimum of \$600 million to build both the headquarters and R&amp;D facilities. The new global headquarters will be approximately 1,000,000-square-feet in size. The new R&amp;D center in Brecksville will be approximately 600,000-square-feet in size. You may click <a href="#">here</a> to learn more.</p> <p>While the opportunity does not exist to partner on the distribution or manufacturing of our products, The Sherwin-Williams Company is focused on advancing inclusion, diversity and equity within our workforce, culture, and supply chain. You may click <a href="#">here</a> to view a recent workshop hosted in partnership with the Urban League of Greater Cleveland focused on How to Do Business with Sherwin-Williams targeted to increase diversity within our supplier chain.</p> <p>To attract underrepresented racial/ethnic groups to Sherwin-Williams, we have been very intentional about developing a diverse pipeline by working with 44 colleges in the Hispanic Association of Colleges and Universities, partnering with 16 Historically Black Colleges and Universities, and over 100 events with student organizations and professional associations specifically targeted for underrepresented groups. Our goal for talent progression is to increase women and underrepresented racial/ethnic groups in leadership roles. In 2020, 58% of newly appointed Vice Presidents were women and 21% were underrepresented racial/ethnic groups.</p> <p>The Sherwin-Williams Company is also focused on engaging underrepresented groups while educating our leaders and workforce. We are proud of the 100+ chapters of our 6 employee resource groups including the African American Network, Global Women's Networks and our efforts focused on LGBTQ+, Military/Veterans, Hispanic/Latinx, Multicultural networks. These ERGs are crucial to developing our talent and increasing feelings of belonging for our workforce while contributing to the communities we serve.</p> <p>For example, one of our African American Network chapters organized a "Supply Drive for the Homeless," gathering toiletries donations at each of the region's 109 local stores. The Sherwin-Williams Women's Club raised \$70,000 through a virtual run, which had 800 global participants. Funds from the event were donated to Youth Challenge, an organization dedicated to helping young people with physical disabilities. We also drive ID&amp;E through the communities we serve through donations to PCs for People and support of minority-owned businesses.</p> <p>Although The Sherwin-Williams Company has more to do, we have been recognized for our efforts by taking meaningful steps to attract, progress, engage diverse talent while fostering a culture of inclusion.</p> <p>Since 2018, we have been recognized by Forbes' as a Best Employer for Diversity, Best Employer for Women, and Best Employer for New Grads.</p>
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48	<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>In addition to many of the previously mentioned value-added products and services, The Sherwin-Williams Company would like to highlight the following:</p> <ul style="list-style-type: none"><li>- Trademark Service: The Sherwin-Williams Company's award-winning customer service, including a staff required to pass 20 different customer services-based exams in their first six months of employment, and store customer service appraisals reviewed annual of more if necessary.</li><li>-Custodian: a Sherwin-Williams maintained history of the sheen and color based on customer provided identification information. Customers can review their product history to remove guess work from repaints.</li><li>-Free Delivery: The Sherwin-Williams Company maintains the largest fleet of delivery vans and trucks in the paint industry. These vehicles are available for fast free delivery to all customers throughout the country.</li><li>-Color Consultants: The Company maintains a staff of color and design experts who can help with designer and decorating questions.</li><li>-Architectural Account Executives: The Company maintains a staff of Architectural Account executives whose job it is to work with architects and specifiers to make sure the correct products are used in each job.</li><li>-Industrial Maintenance Specialists: The Sherwin-Williams Company has a battery of NACE-certified representatives who can review and advise on the toughest jobs. With NACE training and The Sherwin-Williams Company's line of high-performance products, an agency's paint needs will be covered.</li></ul> <p>The Sherwin-Williams Company offers all these services free of charge to their customers, which have been utilized by participating Sourcewell members.</p>
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**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 *
49	Do your warranties cover all products, parts, and labor?	<p>The Sherwin-Williams Company will warrant products outlined with the below Terms and Conditions, however labor is not included as this is for supplies only.</p> <p><a href="https://www.sherwin-williams.com/terms-and-conditions#standard-tc">https://www.sherwin-williams.com/terms-and-conditions#standard-tc</a></p> <p>Seller warrants to Buyer that as of the date of shipment: (a) the goods manufactured by Seller shall conform to Seller's then-current quality control specifications for manufacturing such goods; (b) the goods shall be subject to any label warranty affixed to the container or packaging of such goods; (c) Seller has good title to such goods; and (d) such goods are free and clear of all liens and encumbrances created by Seller. The above warranties extend only to Buyer. Except for an express written limited warranty signed by an authorized representative of Seller, no other statement or warranty, written or oral, including statements in any marketing brochure or promotional literature, shall be binding upon Seller. SELLER SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.</p>
50	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Products will not be warranted if used outside of its originally intended use.
51	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Yes
52	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?	No
53	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?	<p>The Sherwin-Williams Company requests all original manufacturers to offer a comprehensive warranty plan.</p> <p>All vendors doing business The Sherwin-Williams Company must go through a strict approval process and accept all Terms and Conditions of The Sherwin-Williams Company. This allows the very best vendor products offered to customers nationwide. These manufacturers regularly go through line reviews with leadership to ensure the best prices are offered and the core business values align with The Sherwin-Williams Company.</p>
54	What are your proposed exchange and return programs and policies?	<p>In no case are goods to be returned to Seller for credit without prior written authorization by Seller in accordance with Seller's standard return policy.</p> <p>Policy - The Sherwin-Williams Company accepts all returns, as long as product is in resalable condition, meaning not tinted or opened. Special orders are subject to the manufacturers return policy, which will be disclosed if requested.</p>
55	Describe any service contract options for the items included in your proposal.	The Sherwin-Williams Company extends all warranties and services offered by its various vendors.



**Table 10: Payment Terms and Financing Options**

Line Item	Question	Response *	
56	Describe your payment terms and accepted payment methods.	net 30  We accept EFT, P-Card, all major credit cards, cash	*
57	Describe any leasing or financing options available for use by educational or governmental entities.	The Sherwin-Williams Company does offer financing options for power equipment sold through the store location(s).	*
58	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.	When requested, The Sherwin-Williams Company sales representative will produce a quote for the participating agency with the Sourcewell contract number notated at the top.  All participating members can request this document at any time during the sale process.	*
59	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?	The Sherwin-Williams Company accepts P-Cards at no additional cost to the participating member. P-Cards will be used at the discretion of the participating member.	*



**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 *	
60	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.	<p>The Sherwin-Williams Company is offering:</p> <ul style="list-style-type: none"> <li>- Minimum of 30% off list price for paint/paint supplies</li> <li>- Minimum of 12% off list price for equipment</li> </ul> <p>The Sherwin-Williams Company sales representatives and stores have the ability to generate greater discounts as they see fit within their market(s).</p>	*
61	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.	<p>The Sherwin-Williams Company is offering:</p> <ul style="list-style-type: none"> <li>- Minimum of 30% off list price for paint/paint supplies</li> <li>- Minimum of 12% off list price for equipment</li> </ul>	*
62	Describe any quantity or volume discounts or rebate programs that you offer.	The Sherwin-Williams Company offers the minimum discounts to all participating members, nationwide. However, if local sales representatives wants to offer a greater discount, they have the autonomy to do so, which allows for more flexibility at the local level and in certain situations (such as: disaster relief, competitive edge, etc.)	*
63	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.	The Sherwin-Williams Company maintains satisfactory inventory levels on majority of its core items (offered through this contract) to service participating member needs. If a participating member requests a specialty product, the local store or sales representative will provide a formal quote, outlining cost, timeline, and all contact information.	*
64	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.	<p>Recycling collection fees exist in various states throughout the United States and require a separate line item when invoicing. If a participating member is utilizing the contract within one of these States, then that fee will be identified as an additional charge.</p> <p>Additionally, special order products tend to carry a delivery charge, which would be passed onto the participating member, notated as a separate invoice line.</p>	*
65	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	All products are FOB destination, other than special order products at which time freight charges would apply per the manufactures terms and conditions.	*
66	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	<p>The Sherwin-Williams Company includes freight charges for all standard items within Alaska, Hawaii, and Canada, unless a special order product.</p> <p>Offshore deliveries would be subject to freight charges.</p>	*
67	Describe any unique distribution and/or delivery methods or options offered in your proposal.	<p>The Sherwin-Williams Company owns and operates a fleet of delivery vehicles, including vans, box trucks and tractor trailers.</p> <p>These vehicles, under The Sherwin-Williams Company's HUB system, have the ability to deliver paint/paint related material within 48 hours of the purchase order being received</p> <p>HUB System Highlights:</p> <ul style="list-style-type: none"> <li>-Integrated reservation based system</li> <li>-Automated dispatching with continue dispatcher oversight</li> <li>-Text and/ or email customer when deliver is approximately 30 minutes away</li> <li>-Drivers routed by handheld 4G devices</li> <li>-Device has google maps with real time traffic for navigation</li> <li>-The devices ties into eCommerce delivery orders</li> <li>-Accurate assigning of vehicles based on order requirements</li> </ul>	*

**Table 12: Pricing Offered**

Line Item	The Pricing Offered in this Proposal is: *	Comments
68	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

**Table 13: Audit and Administrative Fee**

Line Item	Question	Response *
69	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>The Sherwin-Williams Company has a mechanism in place, which ensures contract pricing is administered at the retail level to approved participating members. Agencies who wish to utilize the contract will be vetted through agency look up tool or signing them up with the Sourcewell program. Only approved participating members can utilize the Sourcewell Contract. Approved participating members will be reported on quarterly to ensure compliance.</p> <p>The Sherwin-Williams Company sets up a centrally controlled parent account and attaches any current or future participating members accounts to the parent, which drives agreed upon contract pricing. Only the Contract Manager or the National Sales Manager can adjust discounts/pricing.</p> <p>All new participating members, will have to be approved by the Contract Manager or National Sales Manager to ensure contract compliance.</p> <p>AdHoc reports are regularly ran at the National and Local level to review contract compliance and governing correctly. The parent mechanism allows The Sherwin-Williams Company to hyper focus on each individual master agreement.</p>
70	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>As mentioned above in item 69, The Sherwin-Williams Company would create a parent (overarching) account mechanism. for the Contract This mechanism allows The Sherwin-Williams Company to track all sales and activity down to the micro level. Micro level would be store location, date, time, employee, product, amount, price, agency name, agency authorized representative, payment method, etc.</p> <p>The Sherwin-Williams Company strongly believes this parent tracking maintains compliance during the full term of the contract.</p> <p>All 5,000+ stores and 2,500+ sales representatives have access to account information via The Sherwin-Williams Company Client Management System. This system warehouses all account information, specifically contractual information, such as terms, roll out instructions, sell sheets, payment terms, etc. The system can be accessed through computer, mobile, or tablet 24/7 365. All of the information in the Client Management System is maintained by the Contract Manager or Account Manager.</p>
71	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.)	<p>The Sherwin-Williams Company would like to propose a 1.75% administrative fee.</p> <p>This fee will be calculated quarterly by our commissions and reporting team on the total sales flowing through the contract at the parent level. Meaning all sales under the parent during the quarter will be reported on and sent in the Sourcewell approved template.</p>

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

Line Item	Question	Response *
72	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>The Sherwin-Williams Company offers the latest coating innovations and the broadest offering of tools and supplies that deliver professional results and save time and money.</p> <p>Interior and Exterior Paint &amp; Coatings</p> <ul style="list-style-type: none"> <li>- Interior Paint</li> <li>- Exterior Paint</li> <li>- Primers</li> <li>- Wood Stains, Sealers, and Clear Topcoats</li> <li>- Commercial High Performance Coatings</li> <li>- Concrete and Masonry Coatings</li> <li>- Aerosols</li> <li>- Floor Coatings</li> <li>- Deck Stains</li> <li>- Siding Stains</li> <li>- Roof Coatings</li> <li>- Pavement and Turf Coatings</li> <li>- Safety Equipment</li> <li>- Painters Wear</li> <li>- Spray Equipment</li> <li>- Wallpaper Tools and Paste</li> <li>- Brushes</li> <li>- Roller Covers, Frames, and Accessories</li> <li>- Ladders, Scaffolds, and Climbing Equipment</li> <li>- Tape and Masking</li> <li>- Sandpaper and Abrasives</li> <li>- Drop Cloths and Plastic</li> <li>- Caulks, Sealants, and Caulking Tools</li> <li>- Patching and Repair</li> <li>- Painters Tools</li> <li>- Drywall Compounds and Tools</li> <li>- Solvents and Removers</li> <li>- Cleaning Supplies</li> </ul>
73	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	<p>Subcategories:</p> <ul style="list-style-type: none"> <li>- Masonry coatings</li> <li>- Roof coatings</li> <li>- Janitorial supplies</li> <li>- Cleaning Supplies</li> <li>- Paint applicators</li> </ul>

**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
74	Interior and exterior paint, coatings, primers, stains, sealers, and faux finishes for any structural surfaces	<input checked="" type="radio"/> Yes <input type="radio"/> No	The Sherwin-Williams Company is prepared to offer its full catalog of products sold through its 5,000+ locations
75	Related supplies and equipment complementary to 74 above, such as brushes, roller frames, roller covers, tape, sandpaper, and abrasives, plastic sheeting, caulks, caulking tools, sealants, etc.	<input checked="" type="radio"/> Yes <input type="radio"/> No	The Sherwin-Williams Company is prepared to offer its full catalog of products sold through its 5,000+ locations

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

**Line Item 76. NOTICE:** To identify any exception, or to request any modification, to Sourcewell standard Contract terms, conditions, or specifications, a Proposer must submit the proposed exception(s) or requested modification(s) via redline in the Contract Template provided in the “Bid Documents” section. Proposer must upload the redline in the “Requested Exceptions” upload field. All exceptions and/or proposed modifications are subject to review and approval by Sourcewell and will not automatically be included in the Contract.

Do you have exceptions or modifications to propose?	Acknowledgement *
	<input type="radio"/> Yes <input checked="" type="radio"/> No

**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](#) - The Sherwin-Williams Company Price List - 2023.xlsx - Tuesday September 12, 2023 10:49:37
  - [Financial Strength and Stability](#) - Financial Strength and Stability.zip - Monday September 11, 2023 14:12:25
  - [Marketing Plan/Samples](#) - 2023 - Sherwin-Williams Marketing Plan.pptx - Tuesday September 12, 2023 11:37:57
  - [WMBE/MBE/SBE or Related Certificates](#) - MBE-WBE Information.zip - Monday September 11, 2023 14:13:09
  - [Warranty Information](#) - Terms and Conditions of Sale - Sherwin-Williams.pdf - Tuesday September 12, 2023 10:54:36
  - Standard Transaction Document Samples (optional)
  - [Upload Additional Document](#) - Sustainability and Certifications.zip - Monday September 11, 2023 14:13:29
  - Requested Exceptions (optional)

## 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. - Kevin McCoy, National Sales Manager - SLED, The Sherwin-Williams Company

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_4_Paint_RFP 091323 Thu August 31 2023 04:12 PM	<input checked="" type="checkbox"/>	1
Addendum_3_Paint_RFP 091323 Fri August 25 2023 01:47 PM	<input checked="" type="checkbox"/>	2
Addendum_2_Paint_RFP 091323 Tue August 1 2023 10:43 AM	<input checked="" type="checkbox"/>	1
Addendum_1_Paint_RFP 091323 Thu July 27 2023 09:30 AM	<input checked="" type="checkbox"/>	1