

LOCAL GOVERNMENT COOPERATIVE, RFP 23-003
WINTER MAINTENANCE EQUIPMENT AND PRODUCTS



Solicitation: RFP 23-003

CONTRACT

EQUIPMENT / GOODS: **Winter Maintenance Equipment and Products**
VENDOR: **VariTech Industries, Inc.**
OWNER: **Local Government Cooperative**

Contract Agreement

This agreement is between the Local Government Cooperative (LGC), a purchasing program duly organized in Idaho (enabled by I.C. § 67-2807), hereinafter referred to as “Owner”, and VariTech Industries, Inc., hereinafter referred to as “Vendor”, duly authorized to do business in the state of Idaho with Participating Entities (political subdivisions, government entities, or associations as defined in I.C. § 9-902).

1 SCOPE OF PRODUCTS AND SERVICES

Product and Services Description:

Vendor shall provide the following goods at the discounted group rate as listed in the Vendor’s Proposal provided in the submission for RFP 23-003: *Winter Maintenance Equipment and Products*. The Vendor’s proposal and pricing is attached and incorporated into this Contract, following Section 4, Contract Agreement.

2 TERMS AND CONDITIONS

3.1 Contract Term

This Contract is effective upon the date of the final signatures in Section 4, Contract Agreement, and will remain active for 365 calendar days.

3.2 Renewal

Up to 3 one-year extensions may be offered based on the best interests of the Local Government Cooperative and Participating Entities. In the event that both parties exercise such rights, all terms, conditions and provisions of the original Contract shall remain with the possible exception of price and minor scope additions and/or deletions.

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3.3 Delivery

Vendor is expected to coordinate delivery with Participating Entities. Vendor is responsible for the safe and complete delivery of equipment and goods to Participating Entities. In the event of issues causing a late delivery that is out of the Vendor's control, Vendor must notify Participating Entities immediately, provide proof/explanation of delay, and an updated delivery date.

3.4 Proposal and Price Guarantee

The pricing must remain in effect for a minimum of 120 days.

3.5 Administrative Fee

Vendor is expected to pay the Local Government Cooperative an administrative fee in exchange for LGC facilitating the resulting contract. The administrative fee is 1.25% of the total sales to Participating Entities for all contracted equipment, products, or services made. Vendor may not charge Participating Entities more than the contracted price to offset the administrative fee.

Vendor is expected to provide a Contract Sales Report (Report) to Owner that details each sale made throughout the calendar quarter. Reports are due to admin@LGCprocurement.org no later than 45 days after the end of each quarter, regardless of the number of sales (i.e., if no sales were made, Vendor must submit a report indicating so).

The following information must be included in the Contract Sales Report:

- Participating Entity Name (e.g., Boise County Road and Bridge)
- Participating Entity Physical Street Address, City, State, Zip
- Participating Entity Contact Name
- Participating Entity Contact Email Address
- Participating Entity Contact Telephone Number
- Item Purchased Description
- Item Purchased Price
- Local Government Cooperative Administrative Fee Applied
- Date Purchase was Invoiced/Sale was Organized by Vendor
- Vendor Invoicing Email Address

Upon receiving the quarterly report, the Local Government Cooperative's accounting department will email an electronic invoice to Vendor. Vendor may pay via check, bank transfer, ACH, or with a credit card. Please remit payment to the Local Government Cooperative at 3100 S. Vista Ave., Ste. 202, Boise, ID 83705. All credit card payments will include a 3% processing fee.

Invoices must be paid within 45 days. Invoices that remain unpaid after 45 days will accrue a 3% late fee of the outstanding balance. If Vendor is delinquent in any undisputed administrative fees, LGC reserves the right to cancel the awarded contract and reject any subsequent proposal submitted by Vendor.

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3.6 Taxes

Participating Entities are exempt from Federal and State taxes and will execute the required exemption certificates for items purchased and used by Idaho government entities. Items purchased by and used by Vendor are subject to Use Tax. All other taxes are the responsibility of Vendor.

3.7 Marketing Plan

Vendor is expected to provide LGC with marketing material that details available products and/or equipment to Participating Entities. Marketing material may include printed and digital logos, flyers, brochures, posters, social media posts, product photographs, etc.

Marketing material may be emailed to admin@LGCprocurement.org or mailed to:

Local Government Cooperative
3100 S. Vista Ave., Ste. 202
Boise, ID 83705

3.8 Services, Warranties, and Training

Vendor is required to adhere to the services, warranties, and training opportunities outlined in the proposal documents.

Vendor guarantees that all provided equipment, products, and services are devoid of any liens, encumbrances, and flaws in design, materials, and workmanship. Moreover, Vendor assures that the equipment, products, and services are appropriate for their intended ordinary use and will perform accordingly. The Vendor's dealers and distributors are obliged to collaborate with the Participating Entity in resolving any warranty-related disputes with the manufacturer. Any manufacturer's warranty that exceeds the Vendor's warranty period will be transferred to the Participating Entity.

3.9 Public Records

The Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a State or local agency regardless of the physical form or character. All, or most, of the information contained in the Proposal and this Contract will be a public record subject to disclosure under the Public Records Act and will be available for inspection and copying by any person. The Public Records Act contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.

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3.10 Publication, Reproduction, and Use of Material

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The Owner shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

3.11 Price Adjustment Clause

Vendor may propose a price increase, solely for the base cost of the equipment/product, with each new model year offered. It is the responsibility of Vendor to notify Owner, in writing, of any manufacturer price increases. Price increases will be a “pass-through,” Vendor must not receive a higher profit margin than established in the original contract pricing. Owner must receive a receipt of written notice of the manufacturer’s increase, along with supporting documentation from the manufacturer before the price increase may be effective.

Vendor will have fourteen (14) business days to provide current price information, to be verified by Owner, prior to any price increase. If Vendor cannot meet the deadline, the current contract prices will govern and remain in effect until verification of pricing.

If price decreases become effective for Vendor, Owner and Participating Entities will be given immediate benefit of the price decrease, beginning the date the price decrease was available to Vendor.

Owner reserves the right to request supporting documentation from Vendor for price verification of equipment/products. The manufacturer must provide the requested documentation to Owner. This requirement helps to ensure that Participating Entities are receiving the most current pricing offered.

Any contract pricing adjustments will be made and finalized via an amendment to the Contract.

3.12 Attorney’s Fees

Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

3.13 Discrimination Prohibited

In performing the services required herein, Vendor, sub-recipient, or subVendor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, age or disability. It is the Vendor’s responsibility to ensure that the sub-Vendor is in compliance with this section.

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3.14 Termination

Termination for Cause:

If, through any cause, Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Vendor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving written notice to Vendor of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs, and reports prepared by Vendor under this Agreement shall, at the option of Owner, become its property, and Vendor shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.

Notwithstanding the above, Vendor shall not be relieved of liability to Owner for damages sustained by Owner by virtue of any breach of this Agreement by Vendor, and Owner may withhold any payments to Vendor for the purposes of set-off until such time as the exact amount of damages due Owner from Vendor is determined. This provision shall survive the termination of this agreement and shall not relieve Vendor of its liability to Owner for damages.

Termination for Convenience of Owner:

Owner may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to Vendor. If the Agreement is terminated by Owner as provided herein, Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of Vendor covered by this Agreement, less payments of compensation previously made.

3.15 Compliance with Laws

In performing the scope of services required hereunder, Vendor shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments. Any action brought pursuant to this Agreement to be in the Fourth Judicial District, State of Idaho.

3.16 Personally Identifiable Information (PII):

Vendor shall not collect or use Personally Identifiable Information (PII) for any purpose beyond that which is necessary to carry out its obligations under this Agreement. If Vendor believes the collection or use of PII is necessary, then Vendor shall notify Owner of the type of PII to be collected, the purpose of such collection, and of the processes and procedures Vendor will employ to safeguard the confidentiality of such information.

For any PII collected and maintained by Vendor in connection with this Agreement, Vendor shall comply with all applicable privacy laws and:

- i. Not provide or permit disclosure of PII to any third party except as may be required by court order or other legal requirement;

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- ii. Restrict internal access to PII to those members of Vendor's staff that have an actual need to access such information in order to perform Vendor's obligations under this Agreement;
- iii. Maintain physical and technical security in accordance with commercially reasonable standards to protect PII unauthorized access, use, modification, disclosure or other misuse;
- iv. Adopt, maintain and properly administer PII policies, regulations and procedures that will facilitate compliance with the requirements of this Section. Further, such policies, regulations and procedures must include requirements that (a) staff who will have access to PII must, prior to provision of access, be subject to reference or background checks, be provided training about PII requirements, and review and acknowledge PII policies, regulations and procedures; and (b) upon separation of staff members from employment, their passwords will be promptly terminated and their facility keys and identification cards will be promptly collected or otherwise rendered useless; and
- v. Destroy or render inaccessible all PII collected or maintained in connection with this Agreement within ninety (90) days of the expiration or early termination of this Agreement.

PII is any representation of information in any format that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. PII is also any information permitting the physical or online contacting of a specific individual. PII includes a person's first name or first initial and last name in combination with or more of the following data elements that relate to the person when either the name or the data elements are not encrypted: (1) social security number; (2) driver's license number or government issued identification card number; or (3) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account. Personally Identifiable Information does not include publicly available information that is lawfully made available to the general public from federal, state or local government records or widely distributed media.

If Vendor's systems are breached and the confidentiality of PII is compromised then, upon becoming aware of the breach, Vendor must immediately act to prevent further unauthorized access and, as soon as practicable, notify Owner of the breach. In addition, Vendor shall conduct in good faith a reasonable and prompt investigation into the scope of the breach and the likelihood of misuse of PII. Vendor must provide notification of the breach to affected individuals as required by law and/or as requested by Owner.

In the event Vendor utilizes a subVendor to aid in the performance of Vendor's obligations under this Agreement and the subVendor may have access to PII as a result, Vendor shall require that the subVendor agree to be bound by the requirements in this Section prior to use. In addition, Vendor acknowledges and agrees to be responsible for ensuring that the subVendor complies with the requirements of this Section and for any compliance failure of subVendor that may occur.

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This Section shall survive expiration or early termination of this Agreement. Failure to comply with any obligation or requirement of this Section shall constitute a material breach of the Agreement.

3.17 Indemnification and Insurance:

Vendor shall indemnify and save and hold harmless Owner from and for any and all losses, claims, actions, judgements for damages, or injury to persons or property and losses and expenses cause or incurred by Vendor, its servants, agents, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of Owner or its employees. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of the Agreement.

In addition, Vendor shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, the below mentioned insurance, in which Owner shall be named an additional insured in the minimum amount as specified. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Owner; and if Owner becomes liable for an amount in excess of the insurance limits, herein provided, the Vendor covenants and agrees to indemnify and save and hold harmless Owner from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. The Vendor shall provide Owner with a Certificate of Insurance, or other proof of insurance evidencing compliance with the requirements of this paragraph and file such proof of insurance with the Owner. In the event the insurance minimums are changed, Vendor shall immediately submit proof of compliance with the changed limits.

Vendor will, during the performance of the contract and for at least one (1) year following acceptance of the product, in force at least the following minimum limits of insurance:

Commercial General Liability Insurance coverage with minimum coverage of Two Million dollars (\$2,000,000.00) on occurrence basis (rather than a claims-made bases). Additional coverage required: Owner listed as an Additional Insured.

Personal & Ad Injury	\$1,000,000.00
Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00
Products-Comp/Op Agg	\$1,000,000.00

Product Liability Insurance: Vendor will, during the performance of the contract coverage with minimum coverage:

Products/Completed Operations	\$1,000,000.00
Personal and Advertising injury	\$1,000,000.00

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Coverage will be written on either a Commercial or Comprehensive General Liability form. The policy will be written on an occurrence form and will include Contractual Liability coverage. The policy will include the LGC as an Additional Insured.

3.18 Time is of the Essence

The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.

3.19 Force Majeure

Any delays in or failure of performance by Vendor shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Vendor, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of Vendor. In the event that any event of force majeure as herein defined occurs, Vendor shall be entitled to a reasonable extension of time for performance of its Services under this Agreement.

3.20 Assignment

It is expressly agreed and understood by the parties hereto, that Vendor shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of Owner.

3.21 Reports and Information

At such times and in such forms as Owner may require, there shall be furnished to Owner such statements, records, reports, data and information as Owner may request pertaining to matters covered by this Agreement.

3.22 Audits and Inspections

At any time during normal business hours and as often as Owner may deem necessary, there shall be made available to Owner for examination all of Vendor's records with respect to all matters covered by this Agreement. Vendor shall permit Owner to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

3.23 Anti-Boycott

If this Agreement has a total potential value of \$100,000 or more and if Vendor is a company with ten (10) or more employees, then pursuant to Idaho Code § 67-2346, Vendor affirmatively states that it does not boycott Israel and will not boycott Israel during the term of this

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Agreement. In this paragraph, the terms “company” and “boycott Israel” shall have the meanings described in Idaho Code § 67-2346.

3.24 Severability

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

3.25 Entire Agreement

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

3.26 Non-Appropriation

Should funding become not available, due to lack of appropriation, the Owner may terminate this agreement upon 30 (thirty) days' notice.

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4 CONTRACT AGREEMENT

This agreement between the Local Government Cooperative (LGC), a purchasing program duly organized in Idaho (enabled by I.C. § 67-2807) and VariTech Industries, Inc., duly authorized to do business in the state of Idaho with Participating Entities (political subdivisions, government entities, or associations as defined in I.C. § 9-902.

The undersigned representatives of the Parties hereby acknowledge and agree to the terms and conditions of this Contract Agreement:

Local Government Cooperative


Signature: 

Printed Name: Nick Veldhouse

Title/Position: Director

Date/Time: 09/29/23 12:47 p.m. (MT)

VariTech Industries, Inc.

Signature: 

Printed Name: Matthew Loeffler

Title/Position: VP of Products & Engineering

Date/Time: 9/29/2023 1:00PM CST