



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 2/28/2012

**Report Type:** Consent

**Title:** Cooperative Purchase Agreements: Hardware & Office Supplies

**Report ID:** 2012-00129

**Location:** Citywide

**Recommendation:** Pass a Motion: 1) approving the use of US Communities cooperative purchase agreement (Contract No. 11019) with: a) Applied Industrial Technologies, Inc. in an amount not to exceed \$600,000 through July 31, 2017, or until the contract is no longer available for use; and b) Home Depot in an amount not to exceed \$600,000 through July 31, 2017, or until the contract is no longer available for use; 2) approving the use of Western States Contracting Alliance (WSCA) cooperative purchase agreement (Contract No. 7-11-51-03) with: a) Fastenal in an amount not to exceed \$1.25 million through February 28, 2017, or until the contract is no longer available for use; and b) MSC Industrial Supply in an amount not to exceed \$1.25 million through February 28, 2017, or until the contract is no longer available for use; 3) approving the use of The Cooperative Purchasing Network (TCPN) cooperative purchase agreement (Contract No. R4954) with Lowe's in an amount not to exceed \$500,000 through March 31, 2015, or until the contract is no longer available for use; 4) approving the use of National Joint Powers Alliance (NJPA) cooperative purchase agreement (Contract No. 031210) with Staples Advantage in an amount not to exceed \$4 million through March 31, 2015, or until the contract is no longer available for use; and 5) authorizing the City Manager or the City Manager's designee to execute purchases in the amounts specified above provided that sufficient funds are available in the budget adopted for the applicable fiscal year(s).

**Contact:** Marc Robles, Program Analyst, (916) 808-6343; Craig Lymus, Interim Procurement Manager, (916) 808-5524, General Services Department

**Presenter:** None

**Department:** General Services Dept

**Division:** Fleet Management Admin

**Dept ID:** 13001311

**Attachments:**

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- 1-Description/Analysis
- 2-Attachment 1-Estimated Expenditure
- 3-Applied Technologys Agreement
- 4-Home Depot Agreement
- 5-WSCA Agreement
- 6-Fastenal Agreement
- 7-CA PA Agreement
- 8-Lowes Agreement
- 9-Staples Agreement

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**City Attorney Review**

Approved as to Form  
Lan Wang  
2/15/2012 2:53:34 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
2/9/2012 3:35:43 PM

**Approvals/Acknowledgements**

Department Director or Designee: Reina Schwartz - 2/15/2012 12:46:59 PM

## Description/Analysis

**Issue:** The City has ongoing requirements for office supplies, hardware, and industrial supplies and related services. The Department of General Services, Procurement Services Division is responsible for managing citywide contracts. Using the recommended cooperative purchase agreements is advantageous to the City as the agreements are competitively bid and made available to government agencies nationwide and will result in cost and time savings.

**Policy Considerations:** The recommendations in this report are in accordance with: 1) City Code Section 3.56.240, which states that the City Manager may, by cooperative purchasing agreements approved by City Council, purchase supplies or nonprofessional services through contracts of other governmental jurisdictions without separate competitive bidding, where it is advantageous to the City; and 2) Resolution No. 2010-346 prohibiting the City from entering into any contract to purchase goods or services from any business or entity headquartered in Arizona.

## Environmental Considerations:

**California Environmental Quality Act (CEQA):** The recommendations in this report have been determined to be exempt from the requirements of CEQA, under Section 15061(b)(3) which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This report involves the purchase of goods and services in support of City departments. Therefore, as determined by the City's Environmental Services Planning Manager, no environmental review is necessary.

**Sustainability:** Not applicable

**Commission/Committee Action:** Not applicable

**Rationale for Recommendation:** The Department of General Services, Procurement Services Division has ongoing requirements to purchase office supplies, hardware, and industrial supplies and related services to support the daily operations of the City. Examples of industrial supplies include heavy industrial items such as pumps, bearings, and impellers for water treatment plants, and light industrial items such as construction materials and commercial grade tools and equipment. Using the recommended cooperative purchase agreements is advantageous to the City as the agreements are competitively bid and made available to government agencies nationwide and will result in cost and time savings.

In an ongoing effort to maximize cost savings and staff resources, many government agencies share contracting efforts through cooperative purchasing. This procurement approach increases pricing competitiveness and lowers operating costs through volume buying. When comparing the administrative costs of procurement, staff considers product research, source selection, specifications, advertising, staff reports, awarding, protest, and administration of the contract. It is often more cost-effective to eliminate the cost and time spent on these administrative processes and purchase items and services through a cooperative purchasing program.

The City has used both regional and national cooperative purchase agreements to complement its own contracting initiatives. Cooperative purchasing enables City departments and the Procurement Services Division to evaluate a broader range of contracting opportunities and to share resources with other jurisdictions. Cooperative purchasing also leverages internal and external resources to maximize cost savings opportunities for the City.

**Financial Considerations:** Funding for the purchases made under the recommended cooperative purchase agreements will be provided by the operating budgets of the departments utilizing the agreements. Sufficient funding is available in the FY2011/12 budget for purchases made through June 30, 2012. Purchases made after June 30, 2012, are subject to funding availability in the adopted budget of the applicable fiscal year.

In determining the recommended spending authorities for the ongoing supplies and related services, Procurement Services staff reviewed the expenditure history by vendor and considered future needs. Expenditure estimates are listed in Attachment 1.

**Emerging Small Business Development (ESBD):** None of the recommended vendors are certified with the City as emerging/small businesses. Cooperative purchase agreements are created, evaluated, and awarded by other government agencies that may or may not have similar emerging and small business programs. However, the Department of General Services, Procurement Services Division will consider other alternatives if it is determined that using cooperative contracts may have a negative impact on small businesses.



**Estimated Expenditures**

<b>US Communities</b>				
<b>Company</b>	<b>Contract No.</b>	<b>Commodity</b>	<b>Estimated Expenditure Amounts (thousands)</b>	
			<b>Annual</b>	<b>Total</b>
Applied Industrial Technologies	11019	Industrial electronics and hardware, and related services	\$120	\$600
Home Depot	11019	Hardware and light industrial supplies	\$120	\$600
			<b>\$200</b>	<b>\$1,200</b>

<b>Western States Contracting Alliance</b>				
<b>Company</b>	<b>Contract No.</b>	<b>Commodity</b>	<b>Estimated Expenditure Amounts (thousands)</b>	
			<b>Annual</b>	<b>Total</b>
Fastenal	7-11-51-03	Hardware, fasteners and light industrial supplies	\$250	\$1,250
MSC Industrial	7-11-51-03	Heavy Industrial supplies	\$250	\$1,250
			<b>\$416</b>	<b>\$2,500</b>

<b>The Cooperative Purchasing Network</b>				
<b>Company</b>	<b>Contract No.</b>	<b>Commodity</b>	<b>Estimated Expenditure Amounts (thousands)</b>	
			<b>Annual</b>	<b>Total</b>
Lowe's	R4954	Hardware and light industrial supplies	\$167	\$500
			<b>\$167</b>	<b>\$500</b>

<b>National Joint Powers Alliance</b>				
<b>Company</b>	<b>Contract No.</b>	<b>Commodity</b>	<b>Estimated Expenditure Amounts (thousands)</b>	
			<b>Annual</b>	<b>Total</b>
Staples Advantage	031210	Office supplies, furniture and promotional items	\$1,333	\$4,000
			<b>\$1,333</b>	<b>\$4,000</b>



## CONTRACT PURSUANT TO RFP

SERIAL 11019-RFP

This Contract is entered into this sixth (6th) day of July, 2011 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Applied Industrial Technologies, an Ohio corporation ("Contractor") for the purchase of Industrial Maintenance, Repair and Operating (MRO) commodities and related services.

### 1.0 CONTRACT TERM:

- 1.1 This Contract is for a term of three (3) years, beginning on the first (1<sup>ST</sup>) day of August, 2011 and ending the thirty-first (31st) day of July, 20 14.
- 1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of three (3) years, (or at the County's sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least thirty (30) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

### 2.0 PRICE ADJUSTMENTS:

Catalog prices or pricing discounts based off the Contractor's current published catalog pricing are permitted to be adjusted once per calendar year after the initial award, in conjunction with the Contractor's annual catalog publication date.

Any requests for other reasonable pricing adjustments shall be submitted sixty (60) days prior to the catalog publication date. If County agrees to the adjusted discounts, County shall issue written approval of the changes.

### 3.0 PAYMENTS:

- 3.1 As consideration for performance of the duties described herein, County shall pay Contractor the sums stated in Exhibit "A."
- 3.2 For non-procurement card transactions, payment shall be made upon the County's receipt of a properly completed invoice.

#### 3.3 INVOICES (NON-PROCUREMENT CARD TRANSACTIONS):

- 3.3.1 The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:

- Company name, address and contact
- County bill-to name and contact information
- Contract serial number
- County purchase order number
- Invoice number and date

- Payment terms
- Date of service or delivery
- Quantity
- Description of service provided
- Pricing per unit of service
- Freight (if applicable)
- Extended price
- Total Amount Due

3.4 Problems regarding billing or invoicing shall be directed to the County as listed on the Purchase Order.

3.4.1 Payment shall be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site ([www.maricopa.gov/finance/vendors](http://www.maricopa.gov/finance/vendors)).

3.4.2 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

4.0 AVAILABILITY OF FUNDS:

4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.

4.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

5.0 DUTIES:

5.1 The Contractor shall perform all duties stated in Exhibit "B", or as otherwise directed in writing by the Procurement Officer.

6.0 TERMS and CONDITIONS:

6.1 INDEMNIFICATION:

6.1.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, mistakes or malfeasance relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract by the Contractor, as well as any person

or entity for whose acts, errors, omissions, mistakes or malfeasance Contractor may be legally liable.

6.1.2 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

6.1.3 The scope of this indemnification does not extend to the sole negligence of County.

6.2 INSURANCE REQUIREMENTS:

6.2.1 Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of A-, VII or higher. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

6.2.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

6.2.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

6.2.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

6.2.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6.2.6 County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance certificates. County shall not be obligated to review policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

6.2.7 The insurance policies required by this Contract, except Workers' Compensation shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

6.2.8 The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

6.2.9 Commercial General Liability.

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage,

personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

6.2.10 Automobile Liability.

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

6.2.11 Workers' Compensation.

6.2.11.1 Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

6.2.11.2 Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

6.2.12 Certificates of Insurance

6.2.12.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

6.2.12.2 In the event any insurance policy (ies) required by this Contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

6.2.12.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

6.2.13 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

6.3 WARRANTY OF SERVICES:

6.3.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.

6.3.2 Applied further warrants that services rendered will be performed in accordance with applicable industry standards prevailing at the time of performance. If any of the services do not comply with the foregoing warranty and Customer notifies Applied within the

warranty period, Applied's sole responsibility shall be to re-perform the nonconforming service or refund the price allocable to the nonconforming service, at Applied's option.

- 6.3.3 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

6.4 INSPECTION OF SERVICES:

- 6.4.1 The Contractor shall provide and maintain an inspection system acceptable to County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to County during contract performance and for as long afterwards as the Contract requires.
- 6.4.2 County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. County shall perform inspections and tests in a manner that will not unduly delay the work.
- 6.4.3 If any of the services do not conform with Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at an increase in Contract amount. When the defects in services cannot be corrected by re-performance, County may:
  - 6.4.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
  - 6.4.3.2 Reduce the Contract price to reflect the reduced value of the services performed.
- 6.4.4 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:
  - 6.4.4.1 By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by County that is directly related to the performance of such service; or
  - 6.4.4.2 Terminate the Contract for default.

6.5 PROCUREMENT CARD ORDERING CAPABILITY:

The County may determine to use a MasterCard Procurement Card, to place and make payment for orders under the Contract.

6.6 INTERNET ORDERING CAPABILITY:

The County intends, at its option, to use the Internet to communicate and to place orders under this Contract.

6.7 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County  
Department of Materials Management  
Attn: Chief Procurement Officer  
320 West Lincoln Street  
Phoenix, Arizona 85003-2494

For Contractor:

Applied Industrial Technologies  
Market Segment Manager – Government  
301 North Fancher  
Spokane, WA 99212

6.8 REQUIREMENTS CONTRACT:

- 6.8.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.
- 6.8.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.
- 6.8.3 Purchase orders will be cancelled in writing.

6.9 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

6.10 TERMINATION FOR DEFAULT:

- 6.10.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 6.10.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

6.10.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

6.10.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

6.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

6.12 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

6.13 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

6.14 RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the District and the Contractor.

6.15 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

6.16 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

6.17 RETENTION OF RECORDS:

6.17.1 The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer. The County,

Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

- 6.17.2 If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

6.18 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

6.19 ALTERNATIVE DISPUTE RESOLUTION:

- 6.19.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:
  - 6.19.1.1 Render a decision;
  - 6.19.1.2 Notify the parties that the exhibits are available for retrieval; and
  - 6.19.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

- 6.19.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

- 6.19.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

6.20 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

6.21 RIGHTS IN DATA:

The County shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

6.22 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

6.23 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

6.23.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. I-9 forms are available for download at USCIS.GOV.

6.23.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 3.18.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract and may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.24 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

6.24.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

6.24.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.25 CONTRACTOR LICENSE REQUIREMENT:

6.25.1 The Respondent shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary

complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Respondent shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Materials Management and the using agency of any and all changes concerning permits, insurance or licenses.

- 6.25.2 Respondents furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. A Respondent is not relieved of its obligation to possess the required licenses by subcontracting of the labor portion of the Contract. Respondents are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, at (602) 542-1525 to ascertain licensing requirements for a particular contract. Respondents shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

6.26 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

- 6.26.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- 6.26.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

- 6.26.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- 6.26.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

- 6.26.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

- 6.26.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contact.

- 6.26.3 The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

6.27 PRICES:

Contractor warrants that prices extended to County under this Contract are no higher than those paid by any other customer for these or similar services.

6.28 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

6.29 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, if applicable, the terms of this Contract shall prevail.

6.30 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE)

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County. If you **do not** want to grant such access to a member of \$AVE, **please so state** in your proposal. In the absence of a statement to the contrary, the County will assume that you do wish to grant access to any contract that may result from this Request for Proposal.

6.31 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's)

County currently holds ICPA's with numerous governmental entities throughout the State of Arizona. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. Please indicate on Attachment A, your acceptance or rejection regarding such participation of other governmental entities. Your response will not be considered as an evaluation factor in awarding a contract.

6.32 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract:

6.32.1 Exhibit A, Pricing;

6.32.2 Exhibit B, Scope of Work;

6.32.3 Exhibit C, FEMA and ARRA Terms and Condition

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

*Tom Arnold*  
AUTHORIZED SIGNATURE

Tom Arnold VP Strategic Accounts  
PRINTED NAME AND TITLE

1 Applied Plaza, Cleveland, Ohio 44115  
ADDRESS

7/11/11  
DATE

MARICOPA COUNTY

*[Signature]* JUL 19 2011  
CHAIRMAN, BOARD OF SUPERVISORS DATE

ATTESTED:

*[Signature]* JUL 19 2011  
CLERK OF THE BOARD 070611 DATE

APPROVED AS TO FORM:

*[Signature]* July 15 2011  
LEGAL COUNSEL DATE

**EXHIBIT A**

**PRICING**

SERIAL	11019-RFP
NIGP CODE:	45041
RESPONDENT'S NAME:	Applied Industrial Technologies
COUNTY VENDOR NUMBER :	2011000858 0
ADDRESS:	1 Applied Plaza Cleveland, Ohio 44115
P.O. ADDRESS:	PO Box 6925, Cleveland, Ohio 44115-2193
TELEPHONE NUMBER:	216-426-4440 or 509-954-6154
FACSIMILE NUMBER:	216-373-5567
WEB SITE:	www.applied.com
CONTACT (REPRESENTATIVE):	Bill Rozier
REPRESENTATIVE'S E-MAIL ADDRESS:	brozier@applied.com

WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT	YES	NO
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PAYMENT TERMS: NET 30 DAYS

**PRODUCT PRICING**

Applied is offering our most competitive pricing structure available to public agencies. Our offer will allow access to one of the most robust product offerings representing over 2000 world class manufactures and over 2.5 million specific line items. We will be offering Maricopa County and US Communities an Applied Cost plus pricing structure for the bulk of the items currently purchased by potential contract users. Applied Cost is the procurement cost to the local service center or distribution center.

The offering contains a list of Tier 1 suppliers. The products that are offered by these manufactures through Applied will be priced based on current Applied Cost plus the gross profit percentage (GP%) listed for the major categories. Applied Cost may fluctuate with market conditions; however, the markup will remain the same. With the exception of training, described below, we are also offering our services based on this structure. The formula for calculating the sell price is  $\text{Applied Cost}/(1-\text{GP\%/}100) = \text{Sell Price}$ . We have included examples in the table below for your review.

Applied Cost	Sell Price	GP %	Applied Cost(1-GP%/100 = Sell Price)
\$10.00	11.63	14	$\$10/(1-14/100) = \$11.63$
\$10.00	11.76	15	$\$10/(1-15/100) = \$11.76$
\$10.00	11.90	16	$\$10/(1-16/100) = \$11.90$

Applied is offering a cost plus pricing structure for over 1.6 million Tier 1 products currently loaded on Applied.com. All made-to-order products from the Tier 1 suppliers will also be priced according to the cost plus structure. The remainder of Applied's offering for the market baskets Maricopa is requesting will be priced based on our current Applied Price (Applied's List) minus a 10% discount. The remaining standard products loaded on Applied.com will receive a 10% discount off of Applied Price (Applied's List price). Additional price on request items are also available on Applied.com.

The Tier 1 pricing structure is shown on the following pages.



## CONTRACT PURSUANT TO RFP

SERIAL 11019-RFP

This Contract is entered into this sixth (6<sup>th</sup>) day of July, 2011 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Home Depot U.S.A. Inc, a Delaware corporation ("Contractor") for the purchase of Retail Maintenance, Repair and Operating (MRO) commodities and related services.

### 1.0 CONTRACT TERM:

- 1.1 This Contract is for a term of three (3) years, beginning on the first (1<sup>st</sup>) day of August, 2011 and ending the thirty-first (31<sup>st</sup>) day of July, 2014.
- 1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of three (3) years, (or at the County's sole discretion, extend the contract on a month-to-month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least thirty (30) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

### 2.0 FEE ADJUSTMENTS:

Retail prices or discounts off marked prices at point-of-sale (POS) are permitted to be adjusted once per calendar year after the initial award, in conjunction with the Contractor's annual catalog publication date.

Any requests for other reasonable pricing adjustments shall be submitted sixty (60) days prior to the catalog publication date. If County agrees to the adjusted discounts, County shall issue written approval of the changes.

### 3.0 PAYMENTS:

- 3.1 As consideration for performance of the duties described herein, County shall pay Contractor the sums stated in Exhibit "A."
- 3.2 For non-procurement card transactions, payment shall be made upon the County's receipt of a properly completed invoice.

#### 3.3 INVOICES (NON-PROCUREMENT CARD TRANSACTIONS):

3.3.1 The Contractor shall submit detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:

- Company name, address and contact
- County bill-to name and contact information
- Contract serial number
- County purchase order number

- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity
- Description of service provided
- Pricing per unit of service
- Freight (if applicable)
- Extended price
- Total Amount Due

- 3.3.2 Problems regarding billing or invoicing shall be directed to the County as listed on the Purchase Order.
- 3.3.3 Payment shall be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site ([www.maricopa.gov/finance/vendors](http://www.maricopa.gov/finance/vendors)).
- 3.3.4 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

4.0 AVAILABILITY OF FUNDS:

- 4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.
- 4.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

5.0 DUTIES:

- 5.1 The Contractor shall perform all duties stated in Exhibit "B", or as otherwise directed in writing by the Procurement Officer.

6.0 TERMS and CONDITIONS:

6.1 INDEMNIFICATION:

- 6.1.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, mistakes or malfeasance relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is caused by any negligent acts, errors, omissions

or mistakes in the performance of this Contract by the Contractor, as well as any person or entity for whose acts, errors, omissions, mistakes or malfeasance Contractor may be legally liable.

6.1.2 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

6.1.3 The scope of this indemnification does not extend to the sole negligence of County.

6.2 INSURANCE REQUIREMENTS:

6.2.1 Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of A-, VII or higher. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

6.2.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

6.2.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

6.2.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

6.2.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6.2.6 County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance certificates. County shall not be obligated to review policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

6.2.7 Notwithstanding anything to the contrary contained herein, **CONTRACTOR** shall have the right to self-insure part or all of any of the insurance it is required to maintain hereunder in its sole discretion so long as **CONTRACTOR** maintains a net worth of not less than One Hundred Million (\$100,000,000) Dollars. Such net worth shall be documented to **COUNTY** and **COUNTY** shall be advised in writing in the event such net worth requirement is not met. In the event that **CONTRACTOR** elects to self-insure all or any part of any risk that would be insured under the policies and limits described herein, and an event occurs where insurance proceeds would have been available but for the election to self-insure, **CONTRACTOR** shall make funds available to the same extent that they would have been available had such insurance policy been carried, unless specifically provided to the contrary herein.

- 6.2.8 The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.
- 6.2.9 Commercial General Liability.
- Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
- 6.2.10 Automobile Liability.
- Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.
- 6.2.11 Workers' Compensation.
- 6.2.11.1 Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.
- 6.2.11.2 Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.
- 6.2.12 Certificates of Insurance.
- 6.2.11.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.
- 6.2.11.1.1 In the event any insurance policy (ies) required by this Contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.
- 6.2.11.1.2 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.
- 6.2.13 Cancellation and Expiration Notice.
- Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

6.3 WARRANTY OF SERVICES:

- 6.3.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.
- 6.3.2 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

6.4 INSPECTION OF SERVICES:

- 6.4.1 The Contractor shall provide and maintain an inspection system acceptable to County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to County during contract performance and for as long afterwards as the Contract requires.
- 6.4.2 County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. County shall perform inspections and tests in a manner that will not unduly delay the work.
- 6.4.3 If any of the services do not conform with Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at an increase in Contract amount. When the defects in services cannot be corrected by re-performance, County may:
  - 6.4.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
  - 6.4.3.2 Reduce the Contract price to reflect the reduced value of the services performed.
- 6.4.4 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:
  - 6.4.4.1 By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by County that is directly related to the performance of such service; or
  - 6.4.4.2 Terminate the Contract for default.

6.5 PROCUREMENT CARD ORDERING CAPABILITY:

The County may determine to use a MasterCard Procurement Card, to place and make payment for orders under the Contract.

6.6 INTERNET ORDERING CAPABILITY:

The County intends, at its option, to use the Internet to communicate and to place orders under this Contract.

6.7 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County  
 Department of Materials Management  
 Attn: Director of Purchasing  
 320 West Lincoln Street  
 Phoenix, Arizona 85003-2494

For Contractor:

Government and National Accounts  
 Contract Manager  
 2455 Paces Ferry Road  
 Atlanta, GA 30339

6.8 REQUIREMENTS CONTRACT:

6.8.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.

6.8.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

6.8.3 Purchase orders will be cancelled in writing.

6.9 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

6.10 TERMINATION FOR DEFAULT:

6.10.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

6.10.2 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract.

6.10.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

6.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

6.12 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

6.13 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

6.14 RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the District and the Contractor.

6.15 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

6.16 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

6.17 RETENTION OF RECORDS:

6.17.1 The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

6.17.2 If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor

shall reimburse Maricopa County for the services not so adequately supported and documented.

6.18 AUDIT DISALLOWANCES:

6.18.1 If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

6.19 ALTERNATIVE DISPUTE RESOLUTION:

6.19.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

6.19.1.1 Render a decision;

6.19.1.2 Notify the parties that the exhibits are available for retrieval; and

6.19.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

6.19.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

6.19.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

6.20 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

## 6.21 RIGHTS IN DATA:

The County shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

## 6.22 INTÉGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

## 6.23 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

6.23.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. I-9 forms are available for download at USCIS.GOV.

6.23.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 3.18.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract and may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.23.3 This section is applicable to services provided in the state of Arizona only. The Contractor shall comply with similar statutes that may have been enacted in other states.

## 6.24 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

6.24.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

6.24.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

## 6.25 CONTRACTOR LICENSE REQUIREMENT:

- 6.25.1 The Respondent shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Respondent shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Materials Management and the using agency of any and all changes concerning permits, insurance or licenses.
- 6.25.2 Respondents furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. A Respondent is not relieved of its obligation to possess the required licenses by subcontracting of the labor portion of the Contract. Respondents are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, at (602) 542-1525 to ascertain licensing requirements for a particular contract. Respondents shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

## 6.26 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

- 6.26.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:
- 6.26.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
  - 6.26.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 6.26.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
  - 6.26.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.
- 6.26.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contract.
- 6.26.3 The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

## 6.27 PRICES:

Contractor warrants that prices extended to County under this Contract are no higher than those paid by any other non-federal government customer for these or similar services.

6.28 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

6.29 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, if applicable, the terms of this Contract shall prevail.

6.30 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE)

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County. If you **do not** want to grant such access to a member of \$AVE, **please so state** in your proposal. In the absence of a statement to the contrary, the County will assume that you do wish to grant access to any contract that may result from this Request for Proposal.

6.31 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's)

County currently holds ICPA's with numerous governmental entities throughout the State of Arizona. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. Please indicate on Attachment A, your acceptance or rejection regarding such participation of other governmental entities. Your response will not be considered as an evaluation factor in awarding a contract.

6.32 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract:

- 6.32.1 Exhibit A, Pricing;
- 6.32.2 Exhibit B, Scope of Work;
- 6.32.3 Exhibit C, FEMA and ARRA Terms and Conditions

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

J.T. Reeves, Vice President Pro Business  
\_\_\_\_\_  
PRINTED NAME AND TITLE

2455 Paces Ferry Road Atlanta, GA 30339  
\_\_\_\_\_  
ADDRESS

7-8-11  
\_\_\_\_\_  
DATE

MARICOPA COUNTY

  
\_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

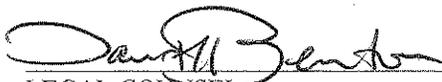
JUL 19 2011  
\_\_\_\_\_  
DATE

ATTESTED:

\_\_\_\_\_  
CLERK OF THE BOARD 070611

JUL 19 2011  
\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LEGAL COUNSEL

July 15 2011  
\_\_\_\_\_  
DATE

EXHIBIT A

PRICING

SERIAL 11019-RFP  
 NIGP CODE: 45041  
 RESPONDENT'S NAME: Home Depot U.S.A., Inc.  
 COUNTY VENDOR NUMBER : 2011000855 0  
 ADDRESS: 2455 Paces Ferry Road  
Atlanta, GA 30339  
 P.O. ADDRESS: Each local The Home Depot stores  
 TELEPHONE NUMBER: 866-589-0690  
 FACSIMILE NUMBER: 866-589-0691  
 WEB SITE: www.homedepot.com  
 CONTACT (REPRESENTATIVE): Richard Nyberg  
 REPRESENTATIVE'S E-MAIL ADDRESS: richard\_nyberg@homedepot.com

	<u>YES</u>	<u>NO</u>	<u>REBATE</u>
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

PAYMENT TERMS: NET 30 DAYS (See Note)

**Note: Net 30 is for Home Depot Account transactions only. Payment is required at the time of each transaction, for all transactions**

1.0 PRICING:

- 1.1 Discount off marked price at POS N/A %
- 1.2 Annual Issue Date of Catalog N/A
- 1.3 Do you offer a Rebate in lieu of a discount? Yes (Y/N)
  - At least \$10,000 to \$25,000 Annual Net Sales (Pretax) = 1% Rebate
  - At least \$25,000 to \$100,000 Annual Net Sales (Pretax) = 2% Rebate
  - Over \$100,000 Annual Net Sales (Pretax) = 3% Rebate



**STATEWIDE MASTER SERVICE AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR**

**A Contract between the Western States Contracting Alliance  
Acting by and through the State of Nevada  
Department of Administration, Purchasing Division  
515 E Musser Street, Room 300  
Carson City Nevada 89701  
Contact: Gail Burchett, Purchasing Officer  
Telephone: (775) 684- 0172 ● Facsimile: (775) 684-0188  
And  
MSC Industrial Supply Company  
75 Maxess Road  
Melville, New York 11747  
Contact: David Ottenstein, State Government Team Manager  
Telephone: (904) 519-6002 ● Facsimile: (904) 519-9003**

Pursuant to Nevada Revised Statute (NRS) 277.100, NRS 277.110, NRS 333.162(1) (d), and NRS 333.480 the Chief of the Purchasing Division of Nevada is authorized to enter into cooperative group-contracting consortium.

The Western States Contracting Alliance is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

In consideration of the above premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This contract shall not become effective until and unless approved by the Western States Contracting Alliance Board of Directors.
2. **DEFINITIONS.** "WSCA" means the Western States Contracting Alliance. "State" and/or "Lead State" means the State of Nevada and its state agencies, officers, employees and immune contractors as defined in NRS 41.0307. "Participating State(s)" means state(s) that have signed (and not revoked) an Intent to Contract at the time of the award of this contract, or who have executed a Participating Addendum. "Buyer" means any WSCA agency or political subdivision participating under this contract. "Contractor" and/or Contracting Agency" means a person or entity that performs services and/or provides goods for WSCA under the terms and conditions set forth in this contract. "Solicitation" means RFP # 1862 incorporated herein as Attachment BB. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This contract shall be effective from March 1, 2011 subject to WSCA Board of Directors' approval to February 28, 2014, unless sooner terminated by either party as specified in paragraph (21).

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4. CANCELLATION OF CONTRACT; NOTICE. Unless otherwise stated in the special terms and conditions, any contract entered into as a result of the Solicitation may be canceled by either party upon written notice sixty (60) days prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the special terms and conditions of the Solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Participating State to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described; this contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: STATE OF NEVADA SOLICITATION # 1862 and all AMENDMENTS.

ATTACHMENT BB: CONTRACTOR'S ORIGINAL RESPONSE

A Contractor's attachment shall not contradict or supersede any WSCA specifications, terms or conditions without written evidence of mutual assent to such change appearing in this contract.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this contract are also specifically a part of this contract and are limited only by their respective order of precedence and any limitations specified.

8. BID SPECIFICATIONS. Contractor certifies that any deviation from the specifications in the scope of work, incorporated herein as part of Attachment BB, have been clearly indicated by Contractor in its response, incorporated herein as Attachment CC; otherwise, it will be considered that the bid is in strict compliance. Any BRAND NAMES or manufacturers' numbers are stated in the specifications are intended to establish a standard only and are not restrictive unless the Solicitation states "no substitute," and unless so stated, bids have been considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance have not been considered.

9. ACCEPTANCE OR REJECTION OF BIDS, AND AWARD. WSCA has the right to accept or reject any or all bids or parts of bids, and to waive informalities therein. This contract is based the lowest responsive and responsible bid and meets the specifications of the Solicitation and terms and conditions thereof. Unless stated otherwise in the Solicitation, WSCA has the right to award items separately or by grouping items in a total lot.

10. BID SAMPLES. Any required samples have been specifically requested in the Solicitation. Samples, when required, have been furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at a bidder's request, transportation collect.

11. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a cost as listed in the Pricing Section of Contractors Proposal known as Attachment CC Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance

with the Solicitation must be good and firm for a period of ninety (90) days from the date of bid opening.

Contracted prices represent ceiling prices for the supplies and services offered. The Contractor shall report to the Lead State any price reduction or discount, or other more favorable terms offered to any Purchasing Entity and the Contractor agrees to negotiate in good faith to re-establish ceiling prices or other more favorable terms and conditions applicable to future orders. Bid prices must remain firm for the full term of the contract. In the case of error in the extension of prices in the bid, the unit prices will govern. WSCA does not guarantee to purchase any amount under this contract. Estimated quantities in the Solicitation are for bidding purposes only and are not to be construed as a guarantee to purchase any amount. Unless otherwise stated in the special terms and conditions offers made in accordance with the Solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Bid prices must remain firm for the full term of the contract. In the case of error in the extension of prices in the bid, the unit prices will govern. If Contractor has quoted a cash discount based upon early payment; discounts offered for less than thirty (30) days have not been considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise. WSCA is not liable for any costs incurred by the bidder in proposal preparation.

12. PAYMENT. Payment for completion of a contract is normally made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Participating State's "Purchasing Card."

13. TAXES. Prices shall be exclusive of state sales and federal excise taxes. Where a Participating State is not exempt from sales taxes on sales within its state, the Contractor shall add the sales taxes on the billing invoice as a separate entry. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. The Lead State's real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this contract. Nevada may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

14. FINANCIAL OBLIGATIONS OF PARTICIPATING STATES. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the Solicitation, the resulting award(s) will be permissive.

15. ORDER NUMBERS. Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

16. REPORTS. The Contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each Participating State.

17. DELIVERY. The prices bid shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the

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special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back-ordered shall be shipped without charge.

18. HAZARDOUS CHEMICAL INFORMATION. The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to any Buyer. All safety data sheets and labels will be in accordance with each Participating State's requirements.

19. INSPECTIONS. Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in non-compliance with bid specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

20. INSPECTION & AUDIT.

a. Books and Records. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to WSCA, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by WSCA; the United States Government; the State Auditor or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this contract must be retained a minimum four (4) years after the contract terminates or until all audits initiated within the four (4) years have been completed, whichever is later, and for five (5) years if any federal funds are used in the contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

21. CONTRACT TERMINATION. Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: (1) nonperformance of contractual requirements; and/or (2) a material breach of any term or condition of this contract. WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: (1) exercise any remedy provided by law; (2) terminate this contract and any related contracts or portions thereof; (3) impose liquidated damages; and/or (4) suspend Contractor from receiving future bid solicitations.

Winding Up Affairs upon Termination. In the event of termination of this contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by WSCA;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this contract if so requested by WSCA;
- iv. Contractor shall preserve, protect and promptly deliver into WSCA's possession all proprietary information in accordance with paragraph (31).

22. REMEDIES. Except as otherwise provided for by law or this contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for attorneys employed by the Lead State. Nevada may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

23. LIMITED LIABILITY. Nevada will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any breach by the Lead State shall never exceed the amount of funds appropriated for payment under this contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

24. FORCE MAJEURE. Neither party to this contract shall be deemed to be in violation of this contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the contract after the intervening cause ceases. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

25. **INDEMNIFICATION**. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, Nevada from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. The Contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

26. **INSURANCE SCHEDULE**. Unless expressly waived in writing by the Lead State or Participating States, Contractor, as an independent contractor and not an employee of the Lead State or Participating States, must carry policies of insurance in amounts specified in this Insurance Schedule and/or any Insurance Schedule agreed by Contractor and a Participating State via a participating addendum, and pay all taxes and fees incident hereunto. The Lead State and Participating States shall have no liability except as specifically provided in the contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Lead State.

The Lead State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this contract. Any failure of the Lead State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the contract the following insurance conforming to the minimum requirements specified below. Unless specifically stated herein or otherwise agreed to by the Lead State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the Lead State of the completion of this contract; or
2. Such time as the insurance is no longer required by the Lead State under the terms of this contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the Lead State, Contractor shall provide the Lead State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**Workers' Compensation and Employer's Liability Insurance**

- 1) Contractor shall provide proof of worker's compensation insurance.
- 2) Employer's Liability insurance with a minimum limits of \$500,000 each employee per accident for bodily injury by accident or disease.

**Commercial General Liability Insurance**

- 1) Minimum Limits required:
  - \$2,000,000.00** General Aggregate
  - \$1,000,000.00** Products & Completed Operations Aggregate

Effective 04/07

\$0.00 Personal and Advertising Injury  
\$1,000,000.00 Each Occurrence

- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**Business Automobile Liability Insurance**

- 1) Minimum Limit required: \$500,000.00 Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles). The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

**Professional Liability Insurance** – This section shall be addressed in each State's Participating Addendum.

- 1) Minimum Limit required: \$\_\_\_\_\_ Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

**Umbrella or Excess Liability Insurance**

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

**General Requirements:**

- b. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Lead State or Participating States. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed five thousand dollars (\$5,000.00) per occurrence, unless otherwise approved.
- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the Lead State, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address identified on page 1 of the contract.
- f. Approved Insurer: Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the Lead State and Participating States or eligible surplus lines insurers acceptable to the Lead State and Participating States and having agents upon whom service of process may be made, and

2) Currently rated by A.M. Best as "A- VII" or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the Lead State:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the Lead State prior to the commencement of work by Contractor. Neither approval by the Lead State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this contract. Compliance with the insurance requirements of this contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the Lead State or others, and shall be in addition to and not in lieu of any other remedy available to the Lead State or Participating States under this contract or otherwise. The Lead State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

**Mail all required insurance documents to the Lead State identified on page one of the contract.**

27. COMPLIANCE WITH LEGAL OBLIGATIONS. Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations. Contractor shall procure and maintain for the duration of this contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this contract. The Lead State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

28. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

29. SEVERABILITY. If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

30. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this contract. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

31. OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this contract shall be the exclusive property of WSCA and all such materials shall be delivered into WSCA possession by Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this contract without the prior written consent of WSCA. Notwithstanding the foregoing, WSCA shall have no proprietary interest in any materials licensed for use that are subject to patent, trademark or copyright protection.

32. PATENTS, COPYRIGHTS, ETC. The Contractor shall release, indemnify and hold WSCA, the State, and Participating States and their officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

33. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

34. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this contract.

35. NONDISCRIMINATION. Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Contractor further agrees to furnish information and reports to requesting Participating Entities, upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual Participating State's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. Contractor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

36. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this contract:

a. Contractor certifies, by signing this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

37. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

38. NON-COLLUSION. Contractor certifies that this contract and the underlying bid, have been arrived at independently and have been without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

39. WARRANTIES.

a. Uniform Commercial Code. The Contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any special purposes that the Buyer has relied on the Contractor's skill or judgment to consider.

b. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

c. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century

recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century.

40. CONFLICT OF INTEREST. Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

41. INDEPENDENT CONTRACTOR. Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

42. POLITICAL SUBDIVISION PARTICIPATION. Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA Participating States shall be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

43. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this contract on behalf of each party has full power and authority to enter into this contract. Contractor acknowledges that as required by statute or regulation this contract is effective only after approval by the WSCA Board of Directors and only for the period of time specified in the contract. Any services performed by Contractor before this contract is effective or after it ceases to be effective are performed at the sole risk of Contractor. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

44. GOVERNING LAW; JURISDICTION. This contract and the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of the state of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this contract. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum or shall be in the Purchasing State.

45. SIGNATURES IN COUNTERPART. Contract may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one in the same instrument.

46. ENTIRE CONTRACT AND MODIFICATION. This contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this contract specifically displays a mutual intent to amend a particular part of this contract, general conflicts in language between any such attachment and this contract shall be construed consistent with the terms of this contract. The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.



**Peter E. Biagioli**  
**Vice President**  
**National Accounts & Government**

2/10/11

Independent Contractor's Signature

Date

Independent's Contractor's Title

Signature

Date

Title

  
Greg Smith, Administrator, State of Nevada

APPROVED BY WSCA BOARD OF DIRECTORS

On 2-24-11  
(Date)

Approved as to form by:

  
Deputy Attorney General for Attorney General

On 25 Feb 11  
(Date)

**CALIFORNIA PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE (WSCA)  
FACILITIES MAINTENANCE, LIGHTING PRODUCTS, INDUSTRIAL SUPPLIES AND TOOLS  
FASTENAL COMPANY  
MASTER PRICE AGREEMENT  
7-11-51-01**

**1. Scope:**

This Participating Addendum covers the purchase of Facilities Maintenance, Lighting Products, Industrial Supplies and Tools for all State Agencies and will include all California political subdivisions/local governments. A subdivision/local government is defined as any city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges empowered to expend public funds. Each political subdivision/local government should make its own determination whether the WSCA program is consistent with its procurement policies and regulations.

State Agencies are prohibited from using this contract in accordance with Management Memo 05-11, except for those categories not offered under the Statewide Mandatory Contract (formerly Strategically Sourced Contract) for Maintenance and Operating Supplies (MRO).

**THE SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS APPLY TO THE ORDERING AGENCY. IF OR WHEN FASTENAL COMPANY, AS A VENDOR, IS NOTIFIED BY ORDERING AGENCY THAT A SPECIFIC PURCHASE OR PURCHASES ARE BEING MADE WITH ARRA FUNDS, FASTENAL COMPANY AGREES TO COMPLY WITH THE DATA ELEMENT AND REPORTING REQUIREMENTS THAT ARE LEGALLY REQUIRED OF PROVIDERS OF GOODS AND RELATED SERVICES. FASTENAL COMPANY, AS IT RELATES TO PURCHASES UNDER THIS CONTRACT IS NOT A SUBCONTRACTOR OR SUBGRANTEE, BUT SIMPLY A PROVIDER OF GOODS AND RELATED SERVICES**

**2. TECHNICAL SPECIFICATIONS**

Technical specifications, which apply to both State and local government, include recently implemented State Regulations. In addition, the specifications include product requirements when purchased by state agencies. Suppliers shall comply with all laws, regulations and technical specifications provided herein.

- a. Only thermostat products where the manufacturer is in compliance with The Mercury Thermostat Collection Act of 2008 shall be offered for sale in the State of California. Mercury-added thermostats and thermostats offered by a non-compliant manufacturer are prohibited for sale within the State of California. [California Health and Safety Code Sections 25214.8.10-25214.8.20 (HSC §25214.8.10- §25214.8.20)]
- b. Consumer products containing volatile organic compounds (VOC) shall be compliant with the laws and regulations for reducing the emissions of consumer products. Contractor is required to report sales in accordance with this regulation. [Title 17 California Code of Regulations Sections 94507-94517. (17CCR§ 94507-94517)] See Regulations for Reducing Emissions in Consumer Products for further information. VOC containing products shall identify the percent VOC by weight in the catalog product description and where available, the Global Warming Potential (GWP) for multipurpose solvents and paint thinners.
- c. Indoor air cleaning devices not in compliance with the regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices] are prohibited for sale in the State of California. Prohibited products shall be identified as "Does not meet California Requirements, Cannot be shipped to California." Exempted products shall state the reason the exemption applies i.e. "Solely for industrial use. Potential health hazard: emits ozone." [17CCR§94800- §94810]. Further manufacturer and distributor information can be found at:  
<http://www.arb.ca.gov/research/indoor/aircleaners/manufacturers.htm>.
- d. Aerosol Adhesives for consumer, industrial and commercial uses shall comply with the aerosol adhesive standards as specified in HSC§41712(h)(2). Only adhesives and sealants that are

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South Coast Air Quality Management District (SCAQMD), Rule #1168 and Bay Area Air Quality Management District (BAAQMD), Rule #51 compliant shall be sold to state agencies. Aerosol Adhesives SCAQMD and BAAQMD compliant shall be identified and the VOC (weight per volume/grams per liter) provided within the catalog product description.

- e. The State of California regulates exhaust emissions of off-road powered equipment. Engines and equipment offered for sale in the State of California shall be California Air Resource Board (CARB) certified and reference the CARB Executive Order (EO) number. (13CCR Chapter 9 Article 1). Examples include: lawnmowers, chainsaws, line trimmers, backpack blowers, edger, brushcutter, generators, pumps, compressors, tractors, forklifts, leaf blowers, vacuums, snow blowers, floor polishing equipment, concrete polishers, pressure washer, tiller, etc. See California Air Resources Board Off-Road Certification Database for a list of compliant products. Off-road power equipment must be identified as "CARB Certified" and include within the catalog product description its EO number.
- f. High-Global Warming Potential (High-GWP) refrigerants for Stationary Sources are restricted for sale in the State of California. Compliance with these regulations requires the supplier to track and sell High-GWP refrigerants only to authorized purchasers. (17CCR Subarticle 5.1, §95380-§95398.) See California Air Resources Board Refrigerant Management Program – for Regulated Refrigerants. Refrigerants must include their GWP<sub>100yr</sub> value within the catalog product description.
- g. Appliance products not in compliance with California 2010 Appliance Efficiency Standards are prohibited for sale within the State of California (20CCR §1601-§1608.). Only large appliances that are EnergyStar® qualified shall be sold to state agencies. Large appliances must meet most recent EnergyStar® standards. Examples of appliances covered under the California 2010 Appliance Efficiency Standards Include: Central Air Conditioners (CAC), Refrigeration Products, Cooking and Washing Products, Transformer Products, Electronics, Water Heater Products, Fans and Dehumidifiers, Heat Pumps, Heating Products, Lighting Products, Motor Products, Non-Central AC and HP Products and Plumbing Products. See The California Energy Commission Appliance Efficiency Database for list of compliant products.
- h. Plastic Trash Bags (thickness of 0.7 mil or greater) when sold in California shall contain at least 10 percent by weight PCRC material. Manufacturers and suppliers of plastic trash bags must be compliant with California Plastic Trash Bag laws (PRC§ 42290 et seq and 14CCR Article 5.) See CalRecycle Recycle Content Plastic Trash Bag Program for a list of compliant manufacturers and suppliers. All plastic trash bags offered for sale must identify in the catalog product description the thickness (mil) and manufacturer.
- i. Packages, packaging components, and packaged retail-ready products offered to the State of California shall be in full compliance with all requirements of California Toxics in Packaging Prevention Act (TPPA), HSC §25214.11- §25214.26.
- j. At the request of the purchaser, contractor shall provide the minimum percentage by weight, if not the exact percentage, of recycle content in each of the products and associated shipping/packaging materials sold. The recycle content shall include both post consumer recycle content (PCRC) and Pre-Consumer (Post-Industrial) recycle content percentages. All products sold to State Agencies shall include the recycle content, both RC and PCRC for each item purchased. Products compliant with State Agency Buy Recycle Campaign (SABRC) PCRC minimums shall be identified in the catalog product description as "SABRC Compliant". SABRC eligibility is dependent on products meeting the minimum PCRC per product category as defined in PCC§12209. See CalRecycle SABRC Program requirements for suppliers.

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- k. Environmental benefit claims concerning products or services must be consistent with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms. Product environmental claims are to include the industry standard the product meets and certifier. A copy of the certification must be supplied upon request if it is not publically available for verification. Products claiming environmental benefits must include the industry standard it meets within the catalog product description.
- l. All custodial equipment sold to state agencies shall operate at a sound level less than 70dBA. Vacuum cleaners and deep cleaning extraction equipment shall be Carpet & Rug Institute (CRI) certified. Custodial equipment not meeting these requirements is prohibited for sale to state agencies.
- m. Janitorial Paper Products (bathroom tissue, paper towels, paper napkins, facial tissue and general-purpose industrial wipes) offered on the State of California MRO mandatory contracts are prohibited for sale under the WSCA contract. All other paper products sold to state agencies shall meet the minimum PCRC and/or minimum RC percentages by weight listed in the Janitorial Paper Product Recycle Content Table. Janitorial paper products must identify and include in the catalog product description the percent PCRC and percent RC.

**Janitorial Paper Product Recycle Content Table**

Commodity	PCRC % Fiber (min)	RC % Fiber (min)	Total RC % (min) by weight
Bathroom Tissue	20	20	40
Paper Towels	40	40	80
Paper Napkins	30	30	60
Facial Tissue	10	10	20
General-purpose Industrial Wipes	40	40	80

- n. Chemical cleaners (soaps, cleaners, disinfectants, fresheners, sanitizers and polishes) offered on the State of California MRO contracts are prohibited for sale. All chemical cleaners sold to state agencies shall not contain any terpenes and glycol ethers, phosphorus content not to exceed 0.5% total phosphorus by weight and when labeled as "Concentrated" the contraction shall not be less than 99 percent (%) or the pH not less than 2 or greater than 11. Toxicity levels must be: for LD<sub>50</sub> shall be greater than 5,000 mg/kg or the LC<sub>50</sub> greater than or equal to 20mg/L at one hour. Volatile Organic Content (VOC) limits may not exceed the maximum VOC limits listed in the VOC table. "VOC Content" means the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging). Chemical cleaners must identify and include in the catalog product description the percent VOC, percent total phosphorus, terpene and glycol ether free, percent concentration, pH and LD<sub>50</sub> (mg/kg) or LC<sub>50</sub> (mg/L).

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VOC TABLE

Cleaner Type	VOC % by weight (maximum permissible)
Dual Purpose Air Fresheners/Disinfectant Aerosols	60
Bathroom and Tile Cleaners: Non-aerosol	1
Carpet and Upholstery Cleaner: (dilutables)	0.1
Disinfectant Aerosols	<u>70</u>
	Non-aerosol 1
Floor Polishes or Waxes: Resilient Flooring Materials	1
	Non-resilient Flooring Materials 1
General Purpose Cleaners Aerosols	<u>8</u>
	Non-aerosol 4
General Purpose Degreasers	10
Glass Cleaners Aerosols	<u>12</u>
	Non-aerosol 4
Heavy-duty Hand Cleaners or Soap	8
Laundry Prewash Aerosols/solids	<u>22</u>
	all other forms 5
Metal Polish/Cleanser	30
Sanitizer Aerosols	<u>70</u>
	Non-aerosol 1
Wood Cleaner: Aerosols	<u>17</u>
	Non-aerosol 4

**3. Terms and Conditions:**

For changes under this Participating Addendum by any Eligible Entity listed in Section 1, Scope, the following Changes apply:

- a. The California General Provisions (CAGP) (**GSPD-401 Non IT Commodities based on June 8, 2010 standard**) for Western States Contracting Alliance (WSCA) Facilities Maintenance, Lighting Products, Industrial Supplies and Tools as attached become a part of this Participating Addendum.
- b. State Departments' use of this master price agreement is prohibited when there is a mandatory statewide contract for similar products. The current mandatory statewide contracts with products that conflict with this WSCA agreement are listed in the table below. The two exceptions to this prohibition are when 1) the quantity being ordered is less than the minimum order quantity required in the mandatory statewide contract individual user instructions, or 2) when a department obtains a DGS/PD exemption approval. The State departments are responsible for verifying product availability.

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Mandatory Statewide Contract		Product Description
1-10-62-31	California Lamp Contract	Lamps/Lighting
1S-06-51-02	Maintenance/Repair/Operations	Industrial Supplies, Tools & HVAC
1S-06-79-55	Maintenance/Repair/Operations	Janitorial & Electrical Supplies
1S-06-84-01	Maintenance/Repair/Operations	Safety Supplies
1S-06-85-34	Maintenance/Repair/Operations	Toilet Tissue

The State Contracts Index Listing provides a centralized contract list of most leveraged procurement agreements (Statewides, Masters, WSCA) and can be accessed at: <http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm>  
Department users and WSCA contractors shall not encourage either parties to split orders to circumvent the use of a mandatory statewide contract.

- c. The California General Provisions (CAGP) shall prevail if there is a conflict between the terms and conditions of the contractor's WSCA State of Nevada, Master Price Agreement, packaging, invoices, catalogs, brochures and technical data sheets.
- d. State of Nevada, Master Price Agreement number 1862 is changed for California to Contract Number 7-11-51-01.
- e. Delivery:  
FOB Destination and included in the purchase order, or as otherwise stipulated in the contract.
- f. DGS Termination of Contract:

The State may terminate this contract at any time upon 30 days prior written notice to the contractor. Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

- g. Monthly Usage Reports & Administrative Fee:

Contractor must submit a monthly usage report to the California Contract Administrator for all California purchases in the format outlined in the Monthly Usage Report Template. The Monthly Usage Report Template is not to be changed or modified in any way without the prior consent of the California Contract Administrator. Report must be submitted in attached DGS report template.

The Contractor shall submit a check, in addition to the report, payable to the State of California, Contract Administrator for the calculated administrative fee for an amount equal to one percent (0.01) of the sales for the monthly period. This fee shall be included as an adjustment to contractors WSCA pricing and not invoiced or charged to the purchasing entity.

**Payment of the administrative fee by Contractor is due regardless of status of payments on orders from users to Contractor. Although reports are due on a monthly basis, administrative fees shall be submitted on a quarterly basis.**

A **monthly** usage report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Failure to submit reports and fees on a timely basis shall constitute grounds for suspension of this

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agreement. Report(s) and delivery will be in accordance with the following **monthly** schedule.

Jan--Due Feb 15	May--Due Jun 15	Sept--Due Oct 15
Feb--Due Mar 15	Jun--Due Jul 15	Oct--Due Nov 15
Mar--Due Apr 15	Jul--Due Aug 15	Nov--Due Dec 15
Apr--Due May 15	Aug--Due Sept 15	Dec--Due Jan 15

**Quarterly Schedule for administrative fee check payment**

Jan - Mar	Apr -Jun	July - Sept	Oct - Dec
Check Due April 30	Check Due July 31	Check Due Oct 31	Check Due Jan 31

The administrative fee check and report should be submitted to the following address:

Cynthia Okoroike  
Department of General Services  
Procurement Division  
Multiple Award Program - WSCA  
707 Third Street, 2nd Floor, MS # 202, West Sacramento, CA 95605-2811

- h. The primary state government contact for this Participating Addendum is as follows:

Department of General Services, Procurement Division  
Multiple Award Program - WSCA  
707 Third Street, 2nd Floor, MS # 202  
West Sacramento, CA 95605

Contact: Cynthia Okoroike  
E-mail: [cynthia.okoroike@dgs.ca.gov](mailto:cynthia.okoroike@dgs.ca.gov)  
Phone: (916) 375-4389  
Fax: (916) 375-4663

- i. The primary Fastenal Company CUSTOMER contact for this Participating Addendum is as follows:

FASTENAL COMPANY

Address: 2001 Theurer Blvd  
Winona, MN 55987

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Contact: John Soderberg

E-Mail: jsoderbe@fastenal.com

Phone: 507/313-7313

Fax: 507/494-7669

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j. Price Agreement Number:

The Master Price Agreement number for the Participating State is 7-11-51-01. The Master Price Agreement Number MUST be shown on all Purchase Orders issued against this Master Price Agreement.

This Addendum and the Price Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.

k. Effective Dates:

This Participating Addendum shall be effective upon approval by the Department of General Services and will continue until the End Date of the Master Price Agreement. Lead State amendments to extend the term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and conditions of the Master Price Agreement or this Participating Addendum.

l. Servicing Subcontractors:

The Contractor, at this time, will be using subcontractors to provide products under this contract.

**SMALL BUSINESS/DVBE-REQUIREMENT**

Each Contractor must provide DGS with their subcontracting plan committing to 25% Small Business and 3% DVBE subcontracting under this contract.

**SMALL BUSINESS/DVBE - TRACKING**

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal. State departments are required to identify sub-contractors on individual purchase documents executed against this master price agreement.

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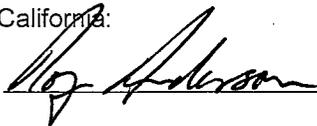
**SMALL BUSINESS/DVBE - SUBCONTRACTING**

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
  - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
  - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
    - List the name of each company that is certified by the Office of Small Business and DVBE Services to which that it intends to subcontract a commercially useful function; and
    - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
    - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
    - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

By Signing below FASTENAL COMPANY agrees to offer the same Facility Maintenance, Lighting Products, Industrial Supplies and Tools as on the State of Nevada contract #1862 at prices equal to or lower than the prices on that contract. .

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

State of California:

By: 

Name: Jim Butler

Title: Deputy Director

Date: 7/29/2011

FASTENAL COMPANY

By: 

Name: Lee Hein

Title: Executive Vice President

Date: 6-9-2011

Contractor:

Contract Number:

Reporting Month:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	Column 16	Column 17
Ordering Agency Name	Purchase Order Number	Purchase Order Date	UNSPSC Code (Version 71)	Manufacturer Part Number (GEM #)	Manufacturer (GEM)	SKU # / Item #	Item Description	Unit of Measure	Quantity in Unit of Measure	Quantity	List Price/MSRP	Contract Unit Price	Contract Discount	Extended Contract Price Paid	Core/NonCore (Off-Spec Product Indicator)	Segment ID /Product Category/rou p ID

## GENERAL PROVISIONS

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
  - a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
  - b) **"Buyer"** means the State's authorized contracting official.
  - c) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
  - d) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
  - e) **"Goods"** (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
  - f) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
  
2. **CONTRACT FORMATION:**
  - a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
  - b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
  - c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractor's.
  
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
  
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
  
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
  
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
  
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
  - a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
  - b) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
  
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
  - a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
  
9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
  
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
  
11. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
  - a) these General Provisions – Non-IT Commodities;
  - b) Contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
  - c) Statement of Work, including any specifications incorporated by reference herein;
  - d) special terms and conditions; and
  - e) all other attachments incorporated in the Contract by reference.

## GENERAL PROVISIONS

### 12. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i) show the number of the container and the total number of containers in the shipment; and
  - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

### 13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

### 14. TIME IS OF THE ESSENCE:

Time is of the essence in this Contract.

15. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Goods, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

16. **SUBSTITUTIONS:** Substitution of Goods may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

### 17. INSPECTION, ACCEPTANCE AND REJECTION:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Goods and services under this Contract and will tender to

the State only those Goods that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the Contract.

- b) All Goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Goods delivered or services performed hereunder within a reasonable time after receipt of such Goods or performance of such services. Such notice of rejection will state the respects in which the Goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such Goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

### 18. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

### 19. WARRANTY:

Unless otherwise specified, the warranties contained in this Contract begin after acceptance has occurred.

- a) Contractor warrants that Goods and services furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part hereof), and such Goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the Goods or services.

20. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

## GENERAL PROVISIONS

- 21. INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.
- 22. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Goods furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
  - b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- 23. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the Contract, the Contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Contract shall not be void.
  - b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
    - i) Stop work as specified in the Notice of Termination.
    - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
    - iii) Terminate all subcontracts to the extent they relate to the work terminated.
    - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
- 24. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
    - i) Deliver the Goods or to perform the services within the time specified in the Contract or any amendment thereto;
    - ii) Make progress, so as to endanger performance of this Contract (but see subparagraph (b) below); or
    - iii) Perform any of the other provisions of this Contract (but see subparagraph (b), below).
  - b) The State's right to terminate this Contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the Contractor does not cure such failure within the time frame stated in the cure notice issued by the Buyer.
  - c) If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the Buyer considers appropriate, Goods or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Goods or services. However, the Contractor shall continue the work not terminated.
  - d) If the Contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Buyer, any:
    - i) Completed Goods, and
    - ii) Partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
  - e) The State shall pay Contract price for completed Goods delivered and accepted. The Contractor and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
  - f) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
  - g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- 25. FORCE MAJEURE:**
- Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
  - b) Acts of the federal or state government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
- 26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any Goods furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.

**GENERAL PROVISIONS**

- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Goods either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Goods provided by the Contractor during the Contract.
- 28. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all Contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by Contractor in the performance of this Contract.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the outside the scope of this Contract, or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Goods or software supplied by the Contractor or the operation of such Goods pursuant to a current version of Contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
- i) That the Contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
  - ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the Goods or software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Goods or software by the State shall be prevented by injunction, the Contractor agrees to

## GENERAL PROVISIONS

take back such Goods or software and make every reasonable effort to assist the State in procuring substitute Goods or software. If, in the sole opinion of the State, the return of such infringing Goods or software makes the retention of other Goods or software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Goods or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- e) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i) The combination or utilization of Goods furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
  - ii) The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or
  - iii) The modification by the State of the equipment furnished hereunder or of the software; or
  - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights or trade secrets.
- 37. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
- 38. DISPUTES:**
- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
  - b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to

diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.

- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

### 39. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
  - i) Cancel the Stop Work Order; or
  - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
  - ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

### 40. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

## GENERAL PROVISIONS

- 41. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 42. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
  - b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 43. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 44. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
  - b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- 45. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
  - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
    - i) the dangers of drug abuse in the workplace;
    - ii) the person's or organization's policy of maintaining a drug-free workplace;
    - iii) any available counseling, rehabilitation and employee assistance programs; and,
    - iv) penalties that may be imposed upon employees for drug abuse violations.
  - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
    - i) will receive a copy of the company's drug-free policy statement; and,
    - ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 46. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 47. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

## GENERAL PROVISIONS

- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
- 48. RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, Goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
- 49. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 50. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
- 51. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 52. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
- 53. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to Contract with the State.
- 54. DOMESTIC PARTNERS:** For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.
- 55. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
- a) If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
- 56. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10302(b).)

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SID TOOL CO., INC. DBA MSC INDUSTRIAL SUPPLY COMPANY  
MASTER PRICE AGREEMENT  
7-11-51-03**

**1. Scope:**

This Participating Addendum covers the purchase of Facilities Maintenance, Lighting Products, Industrial Supplies and Tools for all State Agencies and will include all California political subdivisions/local governments. A subdivision/local government is defined as any city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges empowered to expend public funds. Each political subdivision/local government should make its own determination whether the WSCA program is consistent with its procurement policies and regulations.

State Agencies are prohibited from using this contract in accordance with Management Memo 05-11, except for those categories not offered under the Statewide Mandatory Contract (formerly Strategically Sourced Contract) for Maintenance and Operating Supplies (MRO).

**THE SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS APPLY TO THE ORDERING AGENCY. IF OR WHEN MSC INDUSTRIAL SUPPLY COMPANY, AS A VENDOR, IS NOTIFIED BY ORDERING AGENCY THAT A SPECIFIC PURCHASE OR PURCHASES ARE BEING MADE WITH ARRA FUNDS, MSC INDUSTRIAL SUPPLY COMPANY AGREES TO COMPLY WITH THE DATA ELEMENT AND REPORTING REQUIREMENTS THAT ARE LEGALLY REQUIRED OF PROVIDERS OF GOODS AND RELATED SERVICES. MSC INDUSTRIAL SUPPLY COMPANY, AS IT RELATES TO PURCHASES UNDER THIS CONTRACT IS NOT A SUBCONTRACTOR OR SUBGRANTEE, BUT SIMPLY A PROVIDER OF GOODS AND RELATED SERVICES**

**2. TECHNICAL SPECIFICATIONS**

Technical specifications, which apply to both State and local government, include recently implemented State Regulations. In addition, the specifications include product requirements when purchased by state agencies. Suppliers shall comply with all laws, regulations and technical specifications provided herein.

- a. Only thermostat products where the manufacturer is in compliance with The Mercury Thermostat Collection Act of 2008 shall be offered for sale in the State of California. Mercury-added thermostats and thermostats offered by a non-compliant manufacturer are prohibited for sale within the State of California. [California Health and Safety Code Sections 25214.8.10-25214.8.20 (HSC §25214.8.10- §25214.8.20)]
- b. Consumer products containing volatile organic compounds (VOC) shall be compliant with the laws and regulations for reducing the emissions of consumer products. Contractor is required to report sales in accordance with this regulation. [Title 17 California Code of Regulations Sections 94507-94517. (17CCR§ 94507-94517)] See Regulations for Reducing Emissions in Consumer Products for further information. VOC containing products shall identify the percent VOC by weight in the catalog product description and where available, the Global Warming Potential (GWP) for multipurpose solvents and paint thinners.
- c. Indoor air cleaning devices not in compliance with the regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices] are prohibited for sale in the State of California. Prohibited products shall be identified as "Does not meet California Requirements, Cannot be shipped to California." Exempted products shall state the reason the exemption applies i.e. "Solely for industrial use. Potential health hazard: emits ozone." [17CCR§94800- §94810]. Further manufacturer and distributor information can be found at:  
<http://www.arb.ca.gov/research/indoor/aircleaners/manufacturers.htm>.

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- d. Aerosol Adhesives for consumer, industrial and commercial uses shall comply with the aerosol adhesive standards as specified in HSC§41712(h)(2). Only adhesives and sealants that are South Coast Air Quality Management District (SCAQMD), Rule #1168 and Bay Area Air Quality Management District (BAAQMD), Rule #51 compliant shall be sold to state agencies. Aerosol Adhesives SCAQMD and BAAQMD compliant shall be identified and the VOC (weight per volume/grams per liter) provided within the catalog product description.
- e. The State of California regulates exhaust emissions of off-road powered equipment. Engines and equipment offered for sale in the State of California shall be California Air Resource Board (CARB) certified and reference the CARB Executive Order (EO) number. (13CCR Chapter 9 Article 1). Examples include: lawnmowers, chainsaws, line trimmers, backpack blowers, edger, brushcutter, generators, pumps, compressors, tractors, forklifts, leaf blowers, vacuums, snow blowers, floor polishing equipment, concrete polishers, pressure washer, tiller, etc. See California Air Resources Board Off-Road Certification Database for a list of compliant products. Off-road power equipment must be identified as "CARB Certified" and include within the catalog product description its EO number.
- f. High-Global Warming Potential (High-GWP) refrigerants for Stationary Sources are restricted for sale in the State of California. Compliance with these regulations requires the supplier to track and sell High-GWP refrigerants only to authorized purchasers. (17CCR Subarticle 5.1, §95380-§95398.) See California Air Resources Board Refrigerant Management Program – for Regulated Refrigerants. Refrigerants must include their GWP<sub>100yr</sub> value within the catalog product description.
- g. Appliance products not in compliance with California 2010 Appliance Efficiency Standards are prohibited for sale within the State of California (20CCR §1601-§1608.). Only large appliances that are EnergyStar® qualified shall be sold to state agencies. Large appliances must meet most recent EnergyStar® standards. Examples of appliances covered under the California 2010 Appliance Efficiency Standards Include: Central Air Conditioners (CAC), Refrigeration Products, Cooking and Washing Products, Transformer Products, Electronics, Water Heater Products, Fans and Dehumidifiers, Heat Pumps, Heating Products, Lighting Products, Motor Products, Non-Central AC and HP Products and Plumbing Products. See The California Energy Commission Appliance Efficiency Database for list of compliant products.
- h. Plastic Trash Bags (thickness of 0.7 mil or greater) when sold in California shall contain at least 10 percent by weight PCRC material. Manufacturers and suppliers of plastic trash bags must be compliant with California Plastic Trash Bag laws (PRC§ 42290 et seq and 14CCR Article 5.) See CalRecycle Recycle Content Plastic Trash Bag Program for a list of compliant manufacturers and suppliers. All plastic trash bags offered for sale must identify in the catalog product description the thickness (mil) and manufacturer.
- i. Packages, packaging components, and packaged retail-ready products offered to the State of California shall be in full compliance with all requirements of California Toxics in Packaging Prevention Act (TPPA), HSC §25214.11- §25214.26.
- j. At the request of the purchaser, contractor shall provide the minimum percentage by weight, if not the exact percentage, of recycle content in each of the products and associated shipping/packaging materials sold. The recycle content shall include both post consumer recycle content (PCRC) and Pre-Consumer (Post-Industrial) recycle content percentages. All products sold to State Agencies shall include the recycle content, both RC and PCRC for each item purchased. Products compliant with State Agency Buy Recycle Campaign (SABRC) PCRC minimums shall be identified in the catalog product description as "SABRC Compliant". SABRC

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eligibility is dependent on products meeting the minimum PCRC per product category as defined in PCC§12209. See CalRecycle SABRC Program requirements for suppliers.

- k. Environmental benefit claims concerning products or services must be consistent with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms. Product environmental claims are to include the industry standard the product meets and certifier. A copy of the certification must be supplied upon request if it is not publically available for verification. Products claiming environmental benefits must include the industry standard it meets within the catalog product description.
- l. All custodial equipment sold to state agencies shall operate at a sound level less than 70dBA. Vacuum cleaners and deep cleaning extraction equipment shall be Carpet & Rug Institute (CRI) certified. Custodial equipment not meeting these requirements is prohibited for sale to state agencies.
- m. Janitorial Paper Products (bathroom tissue, paper towels, paper napkins, facial tissue and general-purpose industrial wipes) offered on the State of California MRO mandatory contracts are prohibited for sale under the WSCA contract. All other paper products sold to state agencies shall meet the minimum PCRC and/or minimum RC percentages by weight listed in the Janitorial Paper Product Recycle Content Table. Janitorial paper products must identify and include in the catalog product description the percent PCRC and percent RC.

**Janitorial Paper Product Recycle Content Table**

Commodity	PCRC % Fiber (min)	RC % Fiber (min)	Total RC % (min) by weight
Bathroom Tissue	20	20	40
Paper Towels	40	40	80
Paper Napkins	30	30	60
Facial Tissue	10	10	20
General-purpose Industrial Wipes	40	40	80

- n. Chemical cleaners (soaps, cleaners, disinfectants, fresheners, sanitizers and polishes) offered on the State of California MRO contracts are prohibited for sale. All chemical cleaners sold to state agencies shall not contain any terpenes and glycol ethers, phosphorus content not to exceed 0.5% total phosphorus by weight and when labeled as "Concentrated" the contraction shall not be less than 99 percent (%) or the pH not less than 2 or greater than 11. Toxicity levels must be: for LD<sub>50</sub> shall be greater than 5,000 mg/kg or the LC<sub>50</sub> greater than or equal to 20mg/L at one hour. Volatile Organic Content (VOC) limits may not exceed the maximum VOC limits listed in the VOC table. "VOC Content" means the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging). Chemical cleaners must identify and include in the catalog product description the percent VOC, percent total phosphorus, terpene and glycol ether free, percent concentration, pH and LD<sub>50</sub> (mg/kg) or LC<sub>50</sub> (mg/L).

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VOC TABLE

Cleaner Type	VOC % by weight (maximum permissible)
Dual Purpose Air Fresheners/Disinfectant Aerosols	60
Bathroom and Tile Cleaners: Non-aerosol	1
Carpet and Upholstery Cleaner: (dilutables)	0.1
Disinfectant Aerosols	<u>70</u>
Non-aerosol	1
Floor Polishes or Waxes: Resilient Flooring Materials	1
Non-resilient Flooring Materials	1
General Purpose Cleaners Aerosols	<u>8</u>
Non-aerosol	4
General Purpose Degreasers	10
Glass Cleaners Aerosols	<u>12</u>
Non-aerosol	4
Heavy-duty Hand Cleaners or Soap	8
Laundry Prewash Aerosols/solids	<u>22</u>
all other forms	5
Metal Polish/Cleanser	30
Sanitizer Aerosols	<u>70</u>
Non-aerosol	1
Wood Cleaner: Aerosols	<u>17</u>
Non-aerosol	4

**3. Terms and Conditions:**

For changes under this Participating Addendum by any Eligible Entity listed in Section 1, Scope, the following Changes apply:

- a. The California General Provisions (CAGP) (**GSPD-401 Non IT Commodities based on June 8, 2010 standard**) for Western States Contracting Alliance (WSCA) Facilities Maintenance, Lighting Products, Industrial Supplies and Tools as attached become a part of this Participating Addendum.
- b. State Departments' use of this master price agreement is prohibited when there is a mandatory statewide contract for similar products. The current mandatory statewide contracts with products that conflict with this WSCA agreement are listed in the table below. The two exceptions to this prohibition are when 1) the quantity being ordered is less than the minimum order quantity required in the mandatory statewide contract individual user instructions, or 2) when a department obtains a DGS/PD exemption approval. The State departments are responsible for verifying product availability.

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Mandatory Statewide Contract		Product Description
1-10-62-31	California Lamp Contract	Lamps/Lighting
1S-06-51-02	Maintenance/Repair/Operations	Industrial Supplies, Tools & HVAC
1S-06-79-55	Maintenance/Repair/Operations	Janitorial & Electrical Supplies
1S-06-84-01	Maintenance/Repair/Operations	Safety Supplies
1S-06-85-34	Maintenance/Repair/Operations	Toilet Tissue

The State Contracts Index Listing provides a centralized contract list of most leveraged procurement agreements (Statewides, Masters, WSCA) and can be accessed at: <http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm>  
Department users and WSCA contractors shall not encourage either parties to split orders to circumvent the use of a mandatory statewide contract.

- c. The California General Provisions (CAGP) shall prevail if there is a conflict between the terms and conditions of the contractor's WSCA State of Nevada, Master Price Agreement, packaging, invoices, catalogs, brochures and technical data sheets.
- d. State of Nevada, Master Price Agreement number 1862 is changed for California to Contract Number 7-11-51-03.
- e. Delivery:  
FOB Destination and included in the purchase order, or as otherwise stipulated in the contract.
- f. DGS Termination of Contract:

The State may terminate this contract at any time upon 30 days prior written notice. Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

- g. Monthly Usage Reports & Administrative Fee:

Contractor must submit a monthly usage report to the California Contract Administrator for all California purchases in the format outlined in the Monthly Usage Report Template. The Monthly Usage Report Template is not to be changed or modified in any way without the prior consent of the California Contract Administrator. Report must be submitted in attached DGS report template.

The Contractor shall submit a check, in addition to the report, payable to the State of California, Contract Administrator for the calculated administrative fee for an amount equal to one percent (0.01) of the sales for the monthly period. This fee shall be included as an adjustment to contractors WSCA pricing and not invoiced or charged to the purchasing entity.

**Payment of the administrative fee by Contractor is due regardless of status of payments on orders from users to Contractor. Although reports are due on a monthly basis, administrative fees shall be submitted on a quarterly basis.**

A **monthly** usage report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Failure to submit

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reports and fees on a timely basis shall constitute grounds for suspension of this agreement. Report(s) and delivery will be in accordance with the following **monthly** schedule.

Jan--Due Feb 15	May--Due Jun 15	Sept--Due Oct 15
Feb--Due Mar 15	Jun--Due Jul 15	Oct--Due Nov 15
Mar--Due Apr 15	Jul--Due Aug 15	Nov--Due Dec 15
Apr--Due May 15	Aug--Due Sept 15	Dec--Due Jan 15

**Quarterly Schedule for administrative fee check payment**

Jan - Mar	Apr - Jun	July - Sept	Oct - Dec
Check Due April 30	Check Due July 31	Check Due Oct 31	Check Due Jan 31

The administrative fee check and report should be submitted to the following address:

Cynthia Okoroike  
Department of General Services  
Procurement Division  
Multiple Award Program - WSCA  
707 Third Street, 2nd Floor, MS # 202, West Sacramento, CA 95605-2811

- h. The primary state government contact for this Participating Addendum is as follows:

Department of General Services, Procurement Division  
Multiple Award Program - WSCA  
707 Third Street, 2nd Floor, MS # 202  
West Sacramento, CA 95605

Contact: Cynthia Okoroike  
E-mail: [cynthia.okoroike@dgs.ca.gov](mailto:cynthia.okoroike@dgs.ca.gov)  
Phone: (916) 375-4389  
Fax: (916) 375-4663

- i. The primary MSC Industrial Supply Company CUSTOMER contact for this Participating Addendum is as follows:

MSC Industrial Supply Company

Address: 75 Maxess Rd.  
Melville, NY 11747

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Contact: Damon Perez

E-Mail: perezD@mscdirect.com

Phone: 916/276-9397

WSCA Team 888/672-9722 (for customer services question)

Fax: 800/753-7937

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j. Price Agreement Number:

The Master Price Agreement number for the Participating State is 7-11-51-03. The Master Price Agreement Number MUST be shown on all Purchase Orders issued against this Master Price Agreement.

This Addendum and the Price Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.

k. Effective Dates:

This Participating Addendum shall be effective upon approval by the Department of General Services and will continue until the End Date of the Master Price Agreement. Lead State amendments to extend the term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and conditions of the Master Price Agreement or this Participating Addendum.

l. Servicing Subcontractors:

The Contractor, at this time, will be using subcontractors to provide products under this contract.

**SMALL BUSINESS/DVBE-REQUIREMENT**

Each Contractor must provide DGS with their subcontracting plan committing to 25% Small Business and 3% DVBE subcontracting under this contract.

**SMALL BUSINESS/DVBE - TRACKING**

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal. State departments are required to identify sub-contractors on individual purchase documents executed against this master price agreement.

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**SMALL BUSINESS/DVBE - SUBCONTRACTING**

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
  - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
  - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
    - List the name of each company that is certified by the Office of Small Business and DVBE Services to which that it intends to subcontract a commercially useful function; and
    - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
    - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
    - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

By Signing below MSC Industrial Supply Company agrees to offer the same Facility Maintenance, Lighting Products, Industrial Supplies and Tools as on the State of Nevada contract #1862 at prices equal to or lower than the prices on that contract.

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

State of California:

By: \_\_\_\_\_

Name: Jim Butler

Title: Deputy Director

Date: 7/29/2011

MSC Industrial Supply Company

By: \_\_\_\_\_

Name: Peter Biagioli

Title: VP-National and Government Account

Date: 6/20/11

*Kyralles  
7/25/11*



**TAB 1 – VENDOR CONTRACT AND SIGNATURE FORM**

**VENDOR CONTRACT**

**Between** Lowe's Home Centers, Inc. **and**

**THE COOPERATIVE PURCHASING NETWORK (TCPN)**

**For**

**MRO Equipment, Supplies and Related Items & Services**

The following pages will constitute the contract between the successful vendor(s) and The Cooperative Purchasing Network (hereinafter referred to as "TCPN"), having its principal place of business at 7145 West Tidwell, Houston, TX 77092. Respondent shall include in writing any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TCPN, they will be incorporated into the final contract

This contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

**GENERAL TERMS AND CONDITIONS**

**1. Customer Support**

The vendor shall provide timely and accurate technical advice and sales support to TCPN staff and TCPN participants. The vendor shall respond to such requests within one (1) working day after receipt of the request.

**2. Assignment of Contract**

No assignment of contract may be made without the prior written approval of TCPN. Purchase orders and payment can only made to awarded vendor unless otherwise approved by TCPN.

Awarded vendor is required to notify TCPN when any material change in operations is made that may adversely affect TCPN's members, (i.e. bankruptcy, change of ownership, merger, etc.)

**3. Disclosures**

Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

Include a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.

The respondent affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

#### **4. Renewal of Contract**

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by TCPN and the vendor. TCPN shall review the contract prior to the renewal date and notify the current awarded vendor each year of the contract renewal. Awarded vendor shall honor the administrative fee for any sales occurred beyond 30 days on any sales made based on a TCPN contract whether awarded a renewal or not.

#### **5. Funding Out Clause.**

Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.

#### **6. Ordering Procedures**

Purchase orders are issued by participating entities to the awarded vendor stating "*Per TCPN Contract*".

#### **7. Shipments (if applicable)**

The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.

#### **8. Invoices**

The awarded vendor shall submit invoices to the participating entity clearly stating "*Per TCPN Contract*". The shipment tracking number or pertinent information for verification shall be made available upon request.

#### **9. Tax Exempt Status**

Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

#### **10. Reporting**

The awarded vendor shall electronically provide TCPN with a detailed monthly or quarterly report showing the dollar volume of all sales under the contract for the previous month or quarter. Reports shall be sent via e-mail to TCPN offices at [reporting@tcpn.org](mailto:reporting@tcpn.org). Reports are due on the **fifteenth (15<sup>th</sup>)** day after the close of the previous month or quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. Contracts are reviewed monthly; failure to report as

stipulated may result in suspension of contract. The report shall include at least the following information as listed in the example below:

**Vendor Name**  
**TCPN Report**  
**Month or Quarter**

Entity Name	Zip Code	State	PO or Job#	Sale Amount

**Total** \_\_\_\_\_

**11. Payments**

The entity using the contract will make payments directly to the awarded vendor.

**12. Pricing**

The awarded vendor agrees to provide pricing to TCPN and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The awarded vendor agrees to promptly lower the cost of any product purchased through TCPN following a reduction in the manufacturer or publisher's direct cost. Price increases must be approved by TCPN. However, the awarded vendor must honor previous prices for thirty (30) days after approval and written notification from TCPN if requested.

All pricing submitted to TCPN shall include the two percent (2%) administrative fee to be remitted to TCPN by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with TCPN. All price changes shall be presented to TCPN for acceptance, using the same format as was accepted in the original contract.

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

**13. Warranty conditions**

All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.

**14. Indemnity**

The awarded vendor shall protect, indemnify, and hold harmless TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract. Any litigation involving TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN's members shall be in the jurisdiction of the participating agency.

#### **15. Franchise Tax**

The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

#### **16. Marketing**

Awarded vendor agrees to allow TCPN to use their name and logo within website, marketing materials and advertisement. Any use of TCPN name and logo by awarded vendor must be approved.

#### **17. Supplemental Agreements**

The entity participating in the TCPN contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. TCPN, its agents, members and employees shall not be made party to any claim for breach of such agreement.

#### **18. Certificates of Insurance**

Certificates of insurance shall be delivered to the TCPN participant prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

#### **19. Miscellaneous**

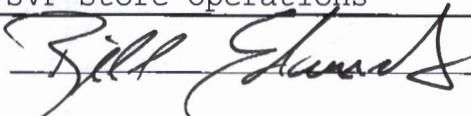
Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

TCPN reserves the right to request additional items not already on contract at any time.

**SIGNATURE FORM**

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below.

Prices are guaranteed: 120 days

Company name Lowe's Home Centers, Inc.  
Address 1605 Curtis Bridge Road  
City/State/Zip Wilkesboro, NC 28697  
Telephone No. (704) 757-4141 Option 1  
Fax No. (336) 651-3300  
Email address GovMilAccounts@lowes.com  
Printed name Bill Edwards  
Position with company SVP Store Operations  
Authorized signature 

**Accepted by The Cooperative Purchasing Network:**

Term of contract 4.13.10 to 3.31.11

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by TCPN and the awarded vendor. Awarded vendor shall honor all administrative fees for any sales made based on a TCPN contract whether renewed or not.

  
Director of TCPN

4/15/10  
Date

JASON WICKEL  
Print Name

  
Authorized Signature

4/15/10  
Date

ROBERT A. PECHAROK  
Print Name

TCPN Contract Number R4954

Approved by Legal Dept:   
VP Approval: 

## TAB 2 – QUESTIONNAIRE

Please provide responses to the following questions that address your company's operations, organization, structure and processes for providing products and services.

### 1. States Covered

Bidder must indicate any and all states where products and services can be offered. **Please indicate the price co-efficient for each state if it varies.**

**All States** (Selecting this box is equal to checking all boxes below)

- |  |   |
|--|---|
| <input type="checkbox"/> Alabama       | <input type="checkbox"/> Montana        |
| <input type="checkbox"/> Alaska        | <input type="checkbox"/> Nebraska       |
| <input type="checkbox"/> Arizona       | <input type="checkbox"/> Nevada         |
| <input type="checkbox"/> Arkansas      | <input type="checkbox"/> New Hampshire  |
| <input type="checkbox"/> California    | <input type="checkbox"/> New Jersey     |
| <input type="checkbox"/> Colorado      | <input type="checkbox"/> New Mexico     |
| <input type="checkbox"/> Connecticut   | <input type="checkbox"/> New York       |
| <input type="checkbox"/> Delaware      | <input type="checkbox"/> North Carolina |
| <input type="checkbox"/> Florida       | <input type="checkbox"/> North Dakota   |
| <input type="checkbox"/> Georgia       | <input type="checkbox"/> Ohio           |
| <input type="checkbox"/> Hawaii        | <input type="checkbox"/> Oklahoma       |
| <input type="checkbox"/> Idaho         | <input type="checkbox"/> Oregon         |
| <input type="checkbox"/> Illinois      | <input type="checkbox"/> Pennsylvania   |
| <input type="checkbox"/> Indiana       | <input type="checkbox"/> Rhode Island   |
| <input type="checkbox"/> Iowa          | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Kansas        | <input type="checkbox"/> South Dakota   |
| <input type="checkbox"/> Kentucky      | <input type="checkbox"/> Tennessee      |
| <input type="checkbox"/> Louisiana     | <input type="checkbox"/> Texas          |
| <input type="checkbox"/> Maine         | <input type="checkbox"/> Utah           |
| <input type="checkbox"/> Maryland      | <input type="checkbox"/> Vermont        |
| <input type="checkbox"/> Massachusetts | <input type="checkbox"/> Virginia       |
| <input type="checkbox"/> Michigan      | <input type="checkbox"/> Washington     |
| <input type="checkbox"/> Minnesota     | <input type="checkbox"/> West Virginia  |
| <input type="checkbox"/> Mississippi   | <input type="checkbox"/> Wisconsin      |
| <input type="checkbox"/> Missouri      | <input type="checkbox"/> Wyoming        |

### 2. Minority and Women Business Enterprise (MWBE) and (HUB) Participation

It is the policy of some entities participating in TCPN to involve minority and women business enterprises and historically utilized businesses (HUB) in the purchase of goods and services. Respondents shall indicate below whether or not they are an M/WBE or HUB certified.

#### a. Minority/Women Business Enterprise

Respondent certifies that this firm is an M/WBE

Yes  No

#### b. Historically Underutilized Businesses

Respondent certifies that this firm is a HUB

Yes  No

**3. Residency**

Responding Company's principal place of business is in the city of Wilkesboro State of NC.

**4. Felony Conviction Notice**

Please check applicable box:

- A publicly held corporation; therefore, this reporting requirement is not applicable.
- Is not owned or operated by anyone who has been convicted of a felony.
- Is owned or operated by the following individual(s) who has/have been convicted of a felony.
  - If the 3<sup>rd</sup> box is checked, a detailed explanation of the names and convictions must be attached.

**5. Processing Information**

Company contact for:

Billing

Contact Person: Account Manager at GE  
Title: Account Manager  
Company: Lowe's/GE  
Address: P.O. Box 530954  
City: Atlanta State: GA Zip: 30353-0954  
Phone: (866) 232-7443 Fax: NA  
Email: NA

Purchase Orders

Contact Person: Gary Cook  
Title: Government Sales Manager  
Company: Lowe's Companies  
Address: 1000 Lowes Blvd  
City: Mooresville State: NC Zip: 28117  
Phone: (704) 757-4141 Option 1 Fax: (336) 651-3300  
Email: GovMilAccounts@lowes.com

Sales and Marketing

Contact Person: Stephanie Russell  
 Title: Government Sales Manager  
 Company: Lowe's Companies  
 Address: 1000 Lowes Blvd  
 City:  Mooresville State: NC Zip: 28117  
 Phone: (704) 757-4141 Option 1 Fax: (336) 651-3300  
 Email: GovMilAccounts@lowes.com

**6. Distribution Channel:** Which best describes your company's position in the distribution channel:

- Manufacturer direct       Certified education/government reseller  
 Authorized distributor       Manufacturer marketing through reseller  
 Value-added reseller       Other Retailer

**7. Pricing Information**

- In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing.  Yes  No

If answer is no, attach a statement detailing how pricing for TCPN participants would be calculated.

- Pricing submitted includes the required TCPN administrative fee.  Yes  No
- Vendor agrees to remit to TCPN the required administrative fee.  Yes  No
- Additional discounts for purchase of a guaranteed quantity?  Yes  No

**8. Cooperatives**

List any other cooperative or state contracts currently held or in the process of securing

Cooperative/State Agency	Discount Offered	Expires	Annual Sales Volume
University of Minnesota	Proprietary Information	Proprietary Information	Proprietary Information
Tualatin River National Wildlife Refuge	Proprietary Information	Proprietary Information	Proprietary Information
Jacksonville State University	Proprietary Information	Proprietary Information	Proprietary Information
Illinois Dept of Natural Resources	Proprietary Information	Proprietary Information	Proprietary Information
Jacksonville Housing Authority	Proprietary Information	Proprietary Information	Proprietary Information
Chambersburg Area School District	Proprietary Information	Proprietary Information	Proprietary Information

## TAB 3 – COMPANY PROFILE

### **Information About Your Company**

Please provide the following:

1. Company's official registered name.
2. Brief history of your company, including the year it was established.
3. Company's Dun & Bradstreet (D&B) number.
4. Company's organizational chart of those individuals that would be involved in the contract.
5. Corporate office location.
  - a. List the number of sales and service offices for states being bid in solicitation.
  - b. List the names of key contacts at each with title, address, phone and e-mail address.
6. Define your standard terms of payment.
7. Who is your competition in the marketplace?
8. What is your market share?
9. Are you gaining market share, losing market share, or maintaining market share?
10. What is your strategy to increase market share?
11. What differentiates your company from competitors?
12. Describe how your company will market this contract if awarded.
13. Describe how you intend on introducing TCPN to your company.
14. Describe your firm's capabilities and functionality of your on-line catalog/ordering website.
15. Describe your company's Customer Service Department (hours of operation, number of service centers, etc.)

## Green Initiatives

- We're committed to helping to build a cleaner future!

According to the U.S. Census Bureau, the world population is expanding at a mind-boggling rate. The world reached 1 billion people in 1800; 2 billion by 1922; and over 6 billion by 2000. It is estimated that the population will swell to over 9 billion by 2050. That means that if the world's natural resources were evenly distributed, people in 2050 will only have 25% of the resources per capita that people in 1950 had.

The world has a fixed amount of natural resources - some of which are already depleted. So as population growth greatly strains our finite resources, there are fewer resources available. If we intend to leave our children and grandchildren with the same standard of living we have enjoyed, we must preserve the foundation of that standard of living. We save for college educations, orthodontia, and weddings, but what about saving clean air, water, fuel sources and soil for future generations?

As our business grows, we want to make sure we minimize our impact on the Earth's climate. So we're taking every step we can to implement innovative and responsible environmental practices throughout TCPN to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort, we ask respondents to provide their companies environmental policy and/or green initiative.

## Vendor Certifications (if applicable)

- Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing respondent to perform the covered services including, but not limited to licenses, registrations or certifications. Certifications can include applicable M/WBE, HUB, and manufacturer certifications for sales and service.



### **TAB 3 – COMPANY PROFILE**

#### **Questions 1 – 15 / Green Initiatives / Vendor Certifications**

**1. Company's official registered name:**

Lowe's Companies Inc.

**2. Brief history of your company, including the year it was established:**

Founded in 1946, Lowe's has grown from a small hardware store in North Carolina to the second largest home improvement retailer worldwide and the 7th largest retailer in the U.S.

The company went public in 1961, and began trading on the New York Stock Exchange in 1979 (NYSE: LOW). The modern Lowe's began in 1994, when our new store expansion consisted of only large stores, which we define as stores with greater than 85,000 square feet of selling space. Expansion continues as Lowe's opens a new store on average every week with our 117,000-square-foot (117K) stores in the nation's larger metro markets and our newer 94,000-square-foot (94K) stores in the nation's small to mid-sized markets. Lowe's opened its first stores in Canada in December 2007 and opened its first stores in Mexico in February 2010.

Lowe's stores stock 40,000 products and have hundreds of thousands more available by special order-- offering practically everything customers need to build, beautify, maintain, and enjoy their homes and businesses.

Although times have changed since Lowe's first opened its doors in 1946, Lowe's values have not – the company remains committed to offering quality products for homeowners and businesses at the lowest prices, while delivering superior customer service.

**3. Company's Dun & Bradstreet (D&B) number:**

018810275

**4. Company's organizational chart of those individuals that would be involved in the contract:**

*An explanation of how our groups would work together to support TCPN is provided in the answers to Questions 12 and 13 on page 17.*



**5. Corporate Office Location:**

Lowe's Companies Inc.  
1000 Lowe's Blvd.  
Mooresville NC 28117



**Lowe's has ~125 District Commercial Account Specialists (DCAS) to serve TCPN members at the local level – they are listed below:**

**Jimmie McCarter - South Central Field Director Office: (704) 758-3148**

District	DCAS	Market	Mobile	Email
850	Michael Anderson	Dallas D850, TX	(817) 301-6290	<a href="mailto:Michael.T.Anderson@lowes.com">Michael.T.Anderson@lowes.com</a>
1219	Joe Perry	Ft Worth D1219, TX	(972) 670-0253	<a href="mailto:Joe.J.Perry@lowes.com">Joe.J.Perry@lowes.com</a>
854	Judy "Dixie" Still	Dallas D854, TX	(214) 605-9708	<a href="mailto:Judy.D.Still@lowes.com">Judy.D.Still@lowes.com</a>
1231	Bryan Jenkins	Okalahoma City D1231, OK	(405) 205-7931	<a href="mailto:Bryan.Jenkins@lowes.com">Bryan.Jenkins@lowes.com</a>
861	Jeff Thomas	Tulsa D861, OK	(918) 803-2536	<a href="mailto:Jeffery.Thomas@lowes.com">Jeffery.Thomas@lowes.com</a>
860	Elizabeth Linville	Nashville- Columbia D860, TN	(615) 829-4488	<a href="mailto:Beth.A.Linville@lowes.com">Beth.A.Linville@lowes.com</a>
862	Mike Breen	Nashville D862, TN	(615) 693-1029	<a href="mailto:Mike.D.Breen@lowes.com">Mike.D.Breen@lowes.com</a>
1248	David Culpepper	Memphis D1248, TN	(901) 302-8691	<a href="mailto:David.A.Culpepper@lowes.com">David.A.Culpepper@lowes.com</a>
886	Stephanie LaVallee	St. Louis D886, MO	(636) 221-0442	<a href="mailto:Stephanie.M.LaVallee@lowes.com">Stephanie.M.LaVallee@lowes.com</a>
888	Phil Pucket	Kansas City D888, MO-KS	(913) 209-3584	<a href="mailto:Phil.R.Puckett@lowes.com">Phil.R.Puckett@lowes.com</a>
1244	Mike Clark	St. Louis D1244, MO	(573) 212-0133	<a href="mailto:Mike.S.Clark@lowes.com">Mike.S.Clark@lowes.com</a>
857	Jennifer Simon	Houston D857, TX	(832) 317-0795	<a href="mailto:Jennifer.D.Gomez@lowes.com">Jennifer.D.Gomez@lowes.com</a>
1220	Klair Nagy	Houston D1220, TX	(281) 381-9224	<a href="mailto:Klaira.n.Nagy-1@lowes.com">Klaira.n.Nagy-1@lowes.com</a>
852	Jon Crosby	Houston D852, TX	(281) 520-2064	<a href="mailto:Jon.A.Crosby@lowes.com">Jon.A.Crosby@lowes.com</a>
856	Ian LaRocque	Austin D856, TX	(512) 365-4222	<a href="mailto:Ian.J.LaRocque@lowes.com">Ian.J.LaRocque@lowes.com</a>
1227	Steve Echavarria	San Antonia D1227, TX	(210) 870-8819	<a href="mailto:Steve.Echavarria@lowes.com">Steve.Echavarria@lowes.com</a>
1257	Charles Van Cleave	Austin - Round Rock D1257, TX	(254) 652-4409	<a href="mailto:Charles.T.Vandeaave@lowes.com">Charles.T.Vandeaave@lowes.com</a>
876	Robert Benenate	New Orleans D876, LA	(504) 717-5973	<a href="mailto:Robert.J.Benenate@lowes.com">Robert.J.Benenate@lowes.com</a>
864	Jim Miller	Pensacola D864, FL	(850)232-7609	<a href="mailto:Jim.E.Miller@lowes.com">Jim.E.Miller@lowes.com</a>
1302	Jody Coker	Mobile D1302, AL	(251) 348-2401	<a href="mailto:Jody.A.Coker@lowes.com">Jody.A.Coker@lowes.com</a>
1306	Todd Sibley	Baton Rouge D1306, LA	(225) 726-5507	<a href="mailto:Todd.L.Sibley@lowes.com">Todd.L.Sibley@lowes.com</a>



**Lowe's has ~125 District Commercial Account Specialists (DCAS) to serve TCPN members at the local level – they are listed below (continued):**

**Allan Rhew - Northeast Field Director Office: (704) 758-3408**

District	DCAS	Market	Mobile	Email
811	Thomas Spinner	Virginia Beach D811, VA	(757) 848-8350	<a href="mailto:Thomas.M.Spinner@lowes.com">Thomas.M.Spinner@lowes.com</a>
813	Marty Utz	Baltimore-Catonsville D813, MD	(410) 591-6993	<a href="mailto:Marty.R.Utz-1@lowes.com">Marty.R.Utz-1@lowes.com</a>
899	Rick Hixon	Richmond D899, VA	(434) 390-3034	<a href="mailto:Richard.R.Hixon@lowes.com">Richard.R.Hixon@lowes.com</a>
1212	Craig Everett	Manassas D1212, VA	(540) 331-1571	<a href="mailto:Craig.A.Everett@lowes.com">Craig.A.Everett@lowes.com</a>
1242	Brandon Rice	St. Charles D1242, MD	(301) 789-8929	<a href="mailto:Brandon.A.Rice@lowes.com">Brandon.A.Rice@lowes.com</a>
1255	Roger Borden	Fredericksburg-Dale City D1255, VA	(540) 308-1384	<a href="mailto:Roger.C.Borden@lowes.com">Roger.C.Borden@lowes.com</a>
1351	Pam Lucas	E. Richmond D1351, VA	(804) 516-9549	<a href="mailto:Pam.L.Lucas@lowes.com">Pam.L.Lucas@lowes.com</a>
815	Demetrae DeShields	Dover D815, DE	(302) 387-9381	<a href="mailto:Demetrae.L.Deshields@lowes.com">Demetrae.L.Deshields@lowes.com</a>
875	Mike Taylor	Reading-Morgantown D875, PA	(484) 388-0267	<a href="mailto:Mike.Taylor@lowes.com">Mike.Taylor@lowes.com</a>
1271	Chris Adomat	Philadelphia D1271, PA	(610)633-0387	<a href="mailto:Christopher.E.Adomat@lowes.com">Christopher.E.Adomat@lowes.com</a>
1229	Scott Scheyer	Turnersville D1229, NJ	(856) 340-5292	<a href="mailto:Scott.L.Scheyer@lowes.com">Scott.L.Scheyer@lowes.com</a>
1230	Anthony Ruiz	New York City D1230, NY	(516) 491-0338	<a href="mailto:Anthony.Ruiz@lowes.com">Anthony.Ruiz@lowes.com</a>
1217	Mohendra Puran	New York D1217, NY	(201) 401-7441	<a href="mailto:Mohendra.Puran@lowes.com">Mohendra.Puran@lowes.com</a>
1243	Corey Lombardo	New York D1243, NY	(732) 691-9710	<a href="mailto:Corey.A.Lombardo@lowes.com">Corey.A.Lombardo@lowes.com</a>
1281	Ben Mueller	New York D1281, NY	(973) 362-6091	<a href="mailto:Ben.W.Mueller@lowes.com">Ben.W.Mueller@lowes.com</a>
1305	Guy Sacco	Trenton D1305, NJ	(609) 306-7469	<a href="mailto:Guy.Sacco@lowes.com">Guy.Sacco@lowes.com</a>
1346	Phillip Dacheux	Plymouth Meeting D1346, PA	(215) 872-3305	<a href="mailto:phillip.dacheux@lowes.com">phillip.dacheux@lowes.com</a>
1215	Justin Greenia	Boston D1215, MA	(413) 207-1815	<a href="mailto:Justin.Greenia@lowes.com">Justin.Greenia@lowes.com</a>
871	Guy Paradise	Hartford D871, CT	(203) 605-6518	<a href="mailto:guy.i.paradise-1@lowes.com">guy.i.paradise-1@lowes.com</a>
1228	Mark Valla	Boston D1228, MA	(774) 222-3416	<a href="mailto:mark.valla@lowes.com">mark.valla@lowes.com</a>
1287	Steve Radzikowski	Boston D1287, MA	(781) 315-3020	<a href="mailto:Steve.Radzikowski@lowes.com">Steve.Radzikowski@lowes.com</a>
1291	Rich O'Donnelle	Boston D1291, MA	(603) 521-5993	<a href="mailto:Richard.Odonnell@lowes.com">Richard.Odonnell@lowes.com</a>
1272	Kevin "KC" Thomson	Providence D1272, RI	(860) 377-6774	<a href="mailto:Kevin.Thomson@lowes.com">Kevin.Thomson@lowes.com</a>
872	John Helmick	Easton D872, PA	(717) 585-5658	<a href="mailto:John.D.Helmick@lowes.com">John.D.Helmick@lowes.com</a>
873	Ben Barnhart	Hanover D873, PA	(717) 360-9255	<a href="mailto:Benjamin.Barnhart@lowes.com">Benjamin.Barnhart@lowes.com</a>
874	Rick Bell	Morgantown D874, WV	(724) 321-2335	<a href="mailto:Richard.T.Bell@lowes.com">Richard.T.Bell@lowes.com</a>
1234	Brian Zoelle	Pittsburgh D1234, PA	(724) 355-0014	<a href="mailto:Brian.R.Zoelle@lowes.com">Brian.R.Zoelle@lowes.com</a>
1251	Kyle Kruesch	Newburgh D1251, NY	(845) 418-1963	<a href="mailto:Kyle.Kreuscher@lowes.com">Kyle.Kreuscher@lowes.com</a>
870	Mark Cassada	Syracuse D870, NY	(315)723-8870	<a href="mailto:Mark.E.Cassada@lowes.com">Mark.E.Cassada@lowes.com</a>



**Lowe's has ~125 District Commercial Account Specialists (DCAS) to serve TCPN members at the local level – they are listed below (continued):**

**Tom Morrow - Southeast Field Director Office: (704) 758-2627**

District	DCAS	Market	Mobile	Email
823	Larry Routh	Greensboro - Highpoint D823, NC	(336) 698-5046	<a href="mailto:Larry.M.Routh@lowes.com">Larry.M.Routh@lowes.com</a>
824	Scott Stewart	Charlotte D824, NC	(704) 682-9022	<a href="mailto:Scott.S.Stewart@lowes.com">Scott.S.Stewart@lowes.com</a>
825	Greg Wilson	Hickory - Morganton D825, NC	(828) 514-5446	<a href="mailto:Gregory.M.Wilson-1@lowes.com">Gregory.M.Wilson-1@lowes.com</a>
826	Luke Tatum	Asheville D826, NC	(828) 702-4434	<a href="mailto:Luke.J.Tatum@lowes.com">Luke.J.Tatum@lowes.com</a>
828	Steven Murdock	Charlotte D828, NC	(704) 506-7710	<a href="mailto:Steve.B.Murdock@lowes.com">Steve.B.Murdock@lowes.com</a>
833	Tabatha Sudduth	Greenville D833, SC	(864) 398-3056	<a href="mailto:Tabatha.C.Sudduth@lowes.com">Tabatha.C.Sudduth@lowes.com</a>
834	Steve Lethco	Columbia D834, SC	(803) 457-0824	<a href="mailto:Stephen.M.Lethco@lowes.com">Stephen.M.Lethco@lowes.com</a>
1241	Jeff Harrell	Winston Salem-Concord D1241, NC	(704) 456-8466	TBD
1247	Brian Aguirre	Atlanta D1247, GA	(770) 639-4581	<a href="mailto:Brian.Aguirre@lowes.com">Brian.Aguirre@lowes.com</a>
830	Randal Webb	Hoover D830, AL	(205) 641-2123	<a href="mailto:Randal.E.Webb@lowes.com">Randal.E.Webb@lowes.com</a>
831	Chad Nails	Atlanta D831, GA	(770) 286-4409	<a href="mailto:Chad.R.Nails@lowes.com">Chad.R.Nails@lowes.com</a>
832	Stacy Tolbert	Atlanta D832, GA	(770) 238-9838	<a href="mailto:Stacy.S.Tolbert@lowes.com">Stacy.S.Tolbert@lowes.com</a>
836	Floyd Coffman	Birmingham - Hoover D836, AL	(256) 497-7288	<a href="mailto:Floyd.M.Coffman@lowes.com">Floyd.M.Coffman@lowes.com</a>
892	Dana Farmer	Atlanta D892, GA	(404) 617-0502	<a href="mailto:Dana.Farmer@lowes.com">Dana.Farmer@lowes.com</a>
1296	Tom Bentley	Augusta, GA - Augusta D1296, SC	(706) 945-9314	<a href="mailto:Thomas.W.Bentley@lowes.com">Thomas.W.Bentley@lowes.com</a>
858	Jack Lait	Orlando D858, FL	(407) 312-5302	<a href="mailto:Jack.M.Lait@lowes.com">Jack.M.Lait@lowes.com</a>
869	Michael Kiper	Melbourne - Palm Bay D869, FL	(772) 380-2823	<a href="mailto:Michael.J.Kiper@lowes.com">Michael.J.Kiper@lowes.com</a>
1221	Mike Saparito	Miami D1221, FL	(786) 447-7554	<a href="mailto:Michael.J.Saparito@lowes.com">Michael.J.Saparito@lowes.com</a>
1249	Zach Kelley	Jacksonville D1249, FL	(904) 271-0578	<a href="mailto:Zachery.A.kelley@lowes.com">Zachery.A.kelley@lowes.com</a>
1278	Matt Fratus	Port Orange D1278, FL	(386) 847-2630	<a href="mailto:Matt.Fratus@lowes.com">Matt.Fratus@lowes.com</a>
1348	Bill Webb	Orlando D1348, FL	(407) 312-7135	<a href="mailto:William.H.Webb@lowes.com">William.H.Webb@lowes.com</a>
1350	Jeffery Baker	Miami D1350, FL	(561) 284-9169	<a href="mailto:Jeff.F.Baker@lowes.com">Jeff.F.Baker@lowes.com</a>
820	Allan Smith	Jacksonville - Greenville D820, NC	(252) 702-2051	<a href="mailto:Allen.A.Smith@lowes.com">Allen.A.Smith@lowes.com</a>
822	Dwight Jones	Raleigh D822, NC	(919) 406-4454	<a href="mailto:Bobby.D.Jones@lowes.com">Bobby.D.Jones@lowes.com</a>
827	Robert Jones	Raleigh D827, NC	(919) 200-3121	<a href="mailto:Robert.L.Jones@lowes.com">Robert.L.Jones@lowes.com</a>
1240	Lori Plessner	Fayetteville D1240, NC	(910) 709-5226	<a href="mailto:Lori.R.Plessner@lowes.com">Lori.R.Plessner@lowes.com</a>
837	Mike McLain	Savannah, GA	(843) 518-3696	<a href="mailto:Mike.N.mclain@lowes.com">Mike.N.mclain@lowes.com</a>
865	Sandy Parlett	Tampa D865, FL	(813) 373-8188	<a href="mailto:Sandy.K.Parlett@lowes.com">Sandy.K.Parlett@lowes.com</a>
868	Dave Chaffman	Gainesville D868, FL	(352) 672-4744	<a href="mailto:Dave.M.Chaffman@lowes.com">Dave.M.Chaffman@lowes.com</a>
1270	Raul Cordova	Tampa D1270, FL	(813) 712-9243	<a href="mailto:Raul.Cordova@lowes.com">Raul.Cordova@lowes.com</a>
1297	Thomas Reinhard	Lakeland D1297, FL	(863) 272-8087	<a href="mailto:Thomas.A.Reinhard@lowes.com">Thomas.A.Reinhard@lowes.com</a>
1355	Bob Solgot	Tampa D1355, FL	(941) 465-0517	<a href="mailto:Robert.Solgot@lowes.com">Robert.Solgot@lowes.com</a>



**Lowe's has ~125 District Commercial Account Specialists (DCAS) to serve TCPN members at the local level – they are listed below (continued):**

**Jeff Armstrong - West Field Director Office: (704) 758-4159**

District	DCAS	Market	Mobile	Email
880	Amanda Dickey	Burbank D880, CA	(562) 237-6388	<a href="mailto:Mandy.A.Dickey@lowes.com">Mandy.A.Dickey@lowes.com</a>
882	Paul Finch	Los Angeles D882, CA	(714) 421-3209	<a href="mailto:Paul.J.Finch@lowes.com">Paul.J.Finch@lowes.com</a>
1102	Sophia McDonnell	Fontana D1102, CA	(909) 278-2549	<a href="mailto:Sophia.M.Mcdonnell@lowes.com">Sophia.M.Mcdonnell@lowes.com</a>
1236	Reuben Pacheco	Los Angeles D1236, CA	(213) 435-9176	<a href="mailto:Reuben.b.Pacheco@lowes.com">Reuben.b.Pacheco@lowes.com</a>
1253	Jason Blacklock	Vista - Oceanside D1253, CA	(760) 814-0524	<a href="mailto:Jason.T.Blacklock@lowes.com">Jason.T.Blacklock@lowes.com</a>
1262	Taush Petralia	Los Angeles D1262, CA	(951) 203-8970	<a href="mailto:Taush.A.Petralia@lowes.com">Taush.A.Petralia@lowes.com</a>
1263	Vanita Jones	Los Angeles D1263, CA	(213) 435-7388	<a href="mailto:Vanita.M.Jones@lowes.com">Vanita.M.Jones@lowes.com</a>
893	Greg Birchman	Seattle D893, WA	(425) 238-5686	<a href="mailto:Greg.J.Birchman@lowes.com">Greg.J.Birchman@lowes.com</a>
894	Chuck Orr	Seattle D894, WA	(360) 485-3342	<a href="mailto:Charles.J.Orr@lowes.com">Charles.J.Orr@lowes.com</a>
898	Frank Wellman	Seattle D898, WA	(206) 402-7105	<a href="mailto:Frank.D.Wellman@lowes.com">Frank.D.Wellman@lowes.com</a>
1100	Sarah Hill	Portland D1100, OR	(503) 307-4384	<a href="mailto:Sarah.E.Hill@lowes.com">Sarah.E.Hill@lowes.com</a>
1264	Alton Culverhouse	Anchorage D1264, AK	TBD	<a href="mailto:alton.l.culverhouse-1@lowes.com">alton.l.culverhouse-1@lowes.com</a>
896	Mike Carter	Denver D896, CO	(303) 868-2587	<a href="mailto:Mike.Carter@lowes.com">Mike.Carter@lowes.com</a>
1101	Bryan Houser	Phoenix 1101, AZ	(623) 414-0920	<a href="mailto:Bryan.Houser@lowes.com">Bryan.Houser@lowes.com</a>
1223	Jean Dowling	Albuquerque D1223, NM	(505) 967-8862	<a href="mailto:Jean.M.Dowling@lowes.com">Jean.M.Dowling@lowes.com</a>
1238	Mark Hafley	Westminster D1238, CO	(720) 545-6604	<a href="mailto:Mark.E.Hafley@lowes.com">Mark.E.Hafley@lowes.com</a>
1284	James Dohnalek	Denver D1284, CO	(720) 670-9548	<a href="mailto:James.C.Dohnalek@lowes.com">James.C.Dohnalek@lowes.com</a>
1313	Nicholas Miller	Phoenix - Chandler D1313, AZ	(602) 828-9580	<a href="mailto:Nicholas.J.Miller@lowes.com">Nicholas.J.Miller@lowes.com</a>
885	Ed Marshall	Las Vegas D885, NV	(702) 236-8608	<a href="mailto:Edward.J.Marshall@lowes.com">Edward.J.Marshall@lowes.com</a>
897	Steve Thurgood	Salt Lake City D897, UT	(801) 602-1096	<a href="mailto:Steve.K.Thurgood@lowes.com">Steve.K.Thurgood@lowes.com</a>
1103	Todd Borchardt	Sacramento D1103, CA	(916) 201-4546	<a href="mailto:Todd.M.Borchardt@lowes.com">Todd.M.Borchardt@lowes.com</a>
1104	Angela Bennish	San Jose D1104, CA	(408) 497-2001	<a href="mailto:Angela.C.Bennish@lowes.com">Angela.C.Bennish@lowes.com</a>
1357	Chris Ganne	Fresno D1357, CA	(559) 967-0683	<a href="mailto:Chris.M.Ganne@lowes.com">Chris.M.Ganne@lowes.com</a>
1267	Chris Nygren	Antioch - San Francisco D1267, CA	(925) 784-6141	<a href="mailto:Chris.E.Nygren@lowes.com">Chris.E.Nygren@lowes.com</a>
1314	Sean Doonan	Salt Lake City D1314, UT	(801) 597-7233	<a href="mailto:Sean.P.Doonan@lowes.com">Sean.P.Doonan@lowes.com</a>

**Tom Yeatts - North Central Field Director Office: (704) 758-3439**

District	DCAS	Market	Mobile	Email
1293	Michael Ostrander	Flint D1293, MI	(248) 881-7023	<a href="mailto:Michael.J.Ostrander@lowes.com">Michael.J.Ostrander@lowes.com</a>
1250	Ralph Page	Detroit D1250, MI	(734) 478-5346	<a href="mailto:Ralph.H.Page@lowes.com">Ralph.H.Page@lowes.com</a>
842	Ryan Savage	Clinton Township D842, MI	(586) 907-7768	<a href="mailto:Ryan.A.Savage@lowes.com">Ryan.A.Savage@lowes.com</a>
843	Tim Bresnahan	Indianapolis D843, IN	(317) 471-7790	<a href="mailto:Tim.C.Bresnahan@lowes.com">Tim.C.Bresnahan@lowes.com</a>
1276	Harland Schroeder	Indianapolis D1276, IN	(317) 376-2245	<a href="mailto:Harland.Schroeder@lowes.com">Harland.Schroeder@lowes.com</a>
819	Derk Walker	Toledo D819, OH	(419) 386-9461	<a href="mailto:Derk.C.walker@lowes.com">Derk.C.walker@lowes.com</a>
839	Chuck Kilkenny	Columbus D839, OH	(614) 827-5199	<a href="mailto:Chuck.A.Kilkenny@lowes.com">Chuck.A.Kilkenny@lowes.com</a>
840	Troy Smith	Columbus D840, OH	(614) 301-0461	<a href="mailto:Troy.E.Smith@lowes.com">Troy.E.Smith@lowes.com</a>
848	Jeff Luczywo	Canton D848, OH	(330) 696-2295	<a href="mailto:Jeff.A.Luczywo@lowes.com">Jeff.A.Luczywo@lowes.com</a>
829	Ed Thornhill	Dayton D829, OH	(937) 416-2967	<a href="mailto:Edward.L.Thornhill@lowes.com">Edward.L.Thornhill@lowes.com</a>
1356	Scott Coverdale	Fremont D1356, OH	(440) 865-4590	<a href="mailto:Scott.W.Coverdale@lowes.com">Scott.W.Coverdale@lowes.com</a>
838	Mike Klieber	Cincinnati D838, OH	(937) 481-1990	<a href="mailto:Michael.L.Klieber@lowes.com">Michael.L.Klieber@lowes.com</a>
1311	Brandon Hosler	Cincinnati D1311, OH	(513) 255-0471	<a href="mailto:Brandon.T.Hosler@lowes.com">Brandon.T.Hosler@lowes.com</a>
1303	Debbie Mossburg	Chicago D1303, IL	(630) 995-5395	<a href="mailto:Debbie.L.Mossburg@lowes.com">Debbie.L.Mossburg@lowes.com</a>
1233	Renee Patrick	Chicago D1233, IL	(773) 318-9606	<a href="mailto:Renee.C.Patrick@lowes.com">Renee.C.Patrick@lowes.com</a>
1245	Michael Surina	Rockford-Elgin D1245, IL	(224) 523-6213	<a href="mailto:Michael.R.Surina@lowes.com">Michael.R.Surina@lowes.com</a>
1286	TBD	Milwaukee D1286, WI	(414) 331-8049	TBD

**6. Define your standard terms of payment:**

Lowe's is committed to offering TCPN members the easiest, most convenient business credit program anywhere. Our business credit offers easy-to read itemized billing, secure online account management, customized account setup and employee spending control.

Lowe's offers 3 types of business credit programs for our commercial customers: Lowe's Accounts Receivable (LAR), Lowe's Business Accounts (LBA), and Lowe's Business Rewards Card by American Express. These programs are private label credit programs for Lowe's. The terms and conditions are pre-established and will be between the TCPN member who chooses to open an account and either GE Money or American Express.

Below are key features and benefits of each of the three business account options outlined above:

 **Lowe's Account Receivable (LAR):**

- Easy to understand itemized statements with product level detail at invoice / agency level
  - Billing can be broken out by departments within the agency (ground maintenance, building / facilities maintenance, etc.)
- Purchasing control with a list of authorized buyers and optional identification cards
- No annual fee
- Ability to pay by invoice
- Pay in full each month
- Online account management at [Lowe'sForPros.com](http://Lowe'sForPros.com)
  - Allows for additional flexibility such as downloading invoice details into an Excel spreadsheet, allowing for more timely and greater reporting capabilities.
- Additional security with special purchasing instructions
  - Ability to limit dollar amount of a single purchase
  - Can also limit what employees can purchase.  
*Example: Do not allow tool purchases*
- Choose the account structure that is right for the customers need
  - Regular – purchases are billed on one account number
  - Primary/Secondary – if your member has multiple locations that need to be linked to a centralized primary account, or has job accounting requirements, this is the right account for them. Billing may be centralized or mailed to various job accounts.

**Define your standard terms of payment (continued):**

**➔ Lowe's Business Account (LBA):**

- Easy to understand itemized statements with product level detail
- Purchasing control with the ability to issue multiple cards
- No annual fee
- Flexibility to make minimum monthly payment or pay in full each month
- Online account management at [LoweForPros.com](http://LoweForPros.com)

**➔ Lowe's Business Rewards card by American Express:**

- No annual fee
- Revolving account – Pay in full, or over time with a revolving credit line
- Employee spending limits and tracking – Track and assign a spending limit for each additional cardholder
- OPEN Savings – Card members receive a 3% - 25% discount on Rental Cars, Hotels, Overnight Shipping, and other common business expenses. Savings appear automatically on statements
- Purchase Protections Guarantee – Purchases are protected from theft and accidental damage for up to 90 days from date of purchase (terms and conditions apply)
- Online Account management – set up account alerts, monitor and analyze spending and set electronic bill payment.
- Reward Benefits / Reward Points earned:
  - 3 points per \$1 spent at restaurants, office supply retailers, and for wireless phone bills
  - 2 points per \$1 spent at Lowe's
  - 1 point per \$1 spent everywhere else

**Questions 7, 8, 9 and 10 with regard to market share and competition:**

Information is proprietary to Lowe's.

## **11. What differentiates your company from competitors?**



### **Dedicated, Service-Driven Commercial Sales Specialists**

In addition to a dedicated Commercial Sales Team at Lowe's corporate headquarters, there are approximately 125 outside, market-based District Commercial Account Specialists throughout the country dedicated to assisting TCPN members in acquiring the products and services they need at Lowe's while adhering to TCPN contract guidelines. In addition, we have over 5000 dedicated, in-store Commercial Sales Specialists dedicated to delivering great customer service to TCPN members.



### **Lowe'sForPros.com**

TCPN members can visit [Lowe'sForPros.com](http://Lowe'sForPros.com) and login as a TCPN member to obtain special offers (e.g., 15% off paint, \$10 off next \$50 order, etc.) as well as gain access to industry articles, construction calculators, business credit account management, and much more. They can also access Lowe's Property Management System and Lowe's Quotation Center for additional business tools and services.



### **Maintenance Supply Rack Program:**

Lowe's Maintenance Supply Rack Program is a great program to help keep TCPN members in stock with their most common consumable items needed to maintain and beautify their business. Think of it as Lowe's helping to manage a TCPN member's inventory needs saving them both time and money. With an initial supply purchase of just \$100 or more, we will provide a 5 shelf metal rack to stock a TCPN's products for only a penny! We will also provide labels for TCPN members to place on their racking to track inventory and make reordering simple and hassle-free. Our Team will even contact TCPN members who choose to take advantage of the Maintenance Supply Rack Program on a regular basis to inquire about their replenishment needs. This program will save TCPN members significant time and money by keeping TCPN member personnel on-the-job to focus on their most important business needs while minimizing any business risk associated with having personnel go off-site.



### **Special Values for TCPN Members**

We will send direct mailers periodically to TCPN members with great values and special promotions to help TCPN members take advantage of additional values Lowe's has to offer.



### **Delivery**

Lowe's has one of the largest fleets of supply and construction delivery vehicles in the business to provide TCPN members with what they need when they need it. And just like our extended business hours, our delivery fleet runs 7 days per week to ensure we meet the needs of our valuable business customers.

For TCPN members, a significantly reduced fee of \$20 for deliveries will also be made available. This is a significant savings compared to normal \$65 – \$90 delivery fees depending on local market conditions.



### **Volume Pricing with Quote Support Program (QSP):**

Lowe's Quote Support Program is designed to ensure all TCPN member orders are priced according to the pricing schedule in Tab 6 of this proposal. Please allow a minimum of 24 hours to process each order. More lead time may be required depending on the materials being requested and size of the order.



### **Additional Every Day Savings with Contractor Pack Pricing**

Lowe's offers additional savings on over 800 in-stock "buy in bulk" store products. Look for the yellow "Contractor Pack" label to save, or stop by the Commercial Sales Desk to review a complete list of Contractor Pack items. Savings can range from 10% to 40%!

 **Easy Ordering**

Lowe's is committed to making ordering easy and painless for TCPN members. TCPN members will have the following order options:

- Faxing order to closest or preferred Lowe's store. For fax orders, we will develop a customized "Worksheet/Cover Page" for each TCPN member that will have their closest Lowe's stores information pre-populated to making fax ordering easier.
- Calling in an order to the Commercial Sales Desk at their local Lowe's store – Lowe's stores can be easily located by using [Lowe.com](http://Lowe.com) or calling 1-800-44-LOWES.
- Placing an order online via [www.Lowesforpros.com](http://www.Lowesforpros.com)
- Submitting an order electronically to [TCPN@Lowe.com](mailto:TCPN@Lowe.com) – a dedicated TCPN accounts person will receive the email and ensure the appropriate Lowe's store executes the order and has the products pulled for fast and easy pick-up or delivery based on the TCPN member's preference.
- Placing a phone order by calling a dedicated TCPN accounts person assigned to the TCPN contract using a dedicated 800# for TCPN members. This person will facilitate all the order details and ensure the appropriate Lowe's store executes the order and has the products pulled for fast and easy pick-up or delivery based on the TCPN member's preference.

 **Environmentally Responsible, Energy Efficient "Green" Products**

Lowe's is proud of our past performance in promoting products offering the highest standards in energy efficiency. EPA & U.S. Department of Energy ENERGY STAR® Award has been given to Lowe's seven consecutive years for promoting products that meet the highest energy and water efficiency standards. Most recently, the U.S. Environmental Protection Agency named Lowe's Companies, Inc. the first winner of the ENERGY STAR Sustained Excellence Award in Retail. The award recognizes Lowe's long-standing leadership as a retailer of energy-efficient products.



**12. Describe how your company will market this contract if awarded.**

Lowe's team of ~125 District Commercial Account Specialists (as listed in the answer to Question 5) will be the local points of contact marketing to all TCPN members – both current and prospective. The District Commercial Account Specialists are responsible for meeting with Government agencies such as colleges & universities, school boards, housing authorities, hospitals, etc.

In addition, Lowe's is over 1,717 stores strong in the U.S. alone with dedicated Commercial Sales Specialists who are also responsible for marketing to and working with Government agencies in their local markets. With the list of members provided by TCPN upon award, Lowe's will provide that information to our in-store Commercial Sales Specialists so they can contact members in their area and offer up our enthusiasm and commitment to service their needs by providing excellent customer service and quality building material and maintenance products.

Corporately, Lowe's will send a letter of introduction to all TCPN members informing them of our contract. It will also include a quick reference guide outlining Lowe's programs and services under the TCPN contract. We will also include an easy reference aid listing out Lowe's stores, points of contact for assistance / help, and other helpful tips designed to make it easy to do business with Lowe's.

**13. Describe how you intend on introducing TCPN to your company.**

A Lowe's/TCPN Contract would be managed by the Commercial / Government Sales Division of Lowe's Companies Inc. All contract compliance, negotiation, order processing, reporting and administrative payments will be handled by corporate personnel (as described in the answer to Question 5) out of the Mooresville, NC location.

Our Corporate team, responsible for commercial and government sales as well as comprehensive customer and store support, is closely linked to our team in the Field to manage the sales process. Upon award, a corporate communication through multiple channels would be distributed to all Regional Sales Directors, District Managers, Field Directors, District Commercial Account Specialists, and in-store Commercial Sales Specialists that would include:

- Contract terms and conditions
- Procedure to process incoming orders and execute pre-negotiated pricing for TCPN Members
- A list of all current TCPN Members to support proactive marketing of the contract throughout all local markets across the country.

In addition, Lowe's personnel will be advised to offer the TCPN contract to eligible state and local government agencies that are not currently members of TCPN but that may benefit from this type of acquisition vehicle. It is understood that TCPN personnel will be available to Lowe's representatives to help explain the membership process to prospective members.

**14. Describe your firm's capabilities and functionality of your on-line catalog / ordering website**

Lowe's.com ([www.lowes.com](http://www.lowes.com)) is our primary public website and on-line product resource. It can be used by Government agencies, businesses and retail customers as a valuable resource for researching products, services, and how-to projects. For businesses such as government agencies that are members of TCPN, it can assist with purchasing decisions for products and services Lowe's offers.



**14. Describe your firm's capabilities and functionality of your on-line catalog / ordering website (cont.):**

Lowe'sForPros.com is an affiliated website and an additional resource for businesses and business professionals that can be accessed directly at [www.lowesforpros.com](http://www.lowesforpros.com) or from [www.lowes.com](http://www.lowes.com).

- a. Access to Lowe's Quotation Center for TCPN members to submit electronic requests for quotes
- b. Exclusive special product offers for TCPN members – examples may include 15% off paint, \$10 off next \$50 purchase, etc.
- c. Convenient and easy access to Lowe's business credit center for online account management
- d. Online dimensional lumber and plywood pricing
- e. Convenient and easy access to Material Safety and Data Sheets (MSDS) for Paint & Cleaning Products
- f. Informative business tips and articles
- g. Construction calculators for estimating materials and labor-hours for jobs

**Online Ordering**

- 1) Lowe's online ordering is accessible to TCPN members via [www.Lowe'sForPros.com](http://www.Lowe'sForPros.com).

Steps to ordering from Lowe's Online are as follows:

- a) TCPN members login to [Lowe's Quotation Center](#)
- b) Place a quote request or order online
- c) TCPN members can route their quote request or order to their preferred Lowe's store or select an option to route it to a dedicated TCPN accounts person assigned to the TCPN contract at Lowe's corporate headquarters
- d) A Lowe's Commercial Sales Specialist will deliver a quote & pull your order for pickup or delivery
- e) Track and view detailed information on your previous orders & quotes

Our Commercial Sales Specialists will work directly with members to provide a quote quickly and confirm your order so that the materials are ready when you need them. Our Commercial Sales Specialists are available 7 days a week to help you identify and order the materials you need to get the job done right, and right on time.

All orders placed before 3 p.m. can be picked up in 2 hours. All orders placed by 6 p.m. will be ready for 7 a.m. pickup the next day.



**14. Describe your firm's capabilities and functionality of your on-line catalog / ordering website (cont.):**

- 2) Order related problems can be resolved by directly contacting one of our local District Commercial Account Specialists (DCASs), the local store, or by email [TCPN@Lowe.com](mailto:TCPN@Lowe.com). Corporate points of contact as described in Question 5 will also serve as an additional layer of account management and serve as central points of contact to deliver on our commitment of excellent customer service to both TCPN and TCPN members.
- 3) Lowe's has the capability to offer EDI, online ordering, acceptance of P-cards and purchase orders, as well as shipment tracking.
- 4) Lowe's does not require customers to re-submit orders in backorder status. They will be kept in our "Due" files and once the order is received the member will be notified of delivery or pick-up by the nearest Lowe's store.
- 5) TCPN members can track shipment of online orders via their own account on [www.LoweForPros.com](http://www.LoweForPros.com).
- 6) The steps to place an order on-line are as follows:
  - a) Place a quote request or order online using the [Lowe's Quotation Center](#) on [www.LoweForPros.com](http://www.LoweForPros.com)
  - b) A Lowe's Commercial Sales Specialist will pull your order for pickup or delivery
  - c) Track and view detailed information on your previous orders & quotes
- Our Commercial Sales Specialists work with you to provide a quote quickly and confirm your order so the materials are ready when you need them. Our Commercial Sales Specialists are readily available a week to help TCPN members identify and order the materials they need to get the job done right, and right on time.
- All orders placed before 3 p.m. can be picked up in 2 hours. All orders placed by 6 p.m. will be ready for 7 a.m. pickup the next day
- A 'Call-Ahead Worksheet' can be accessed by using the following link: <http://www.lowesforpros.com/EasyOrderFulfillment>

**15. Describe your company's Customer Service Department (hours of operation, number of service centers, etc.)**

Lowe's will serve TCPN members via our vast store network. We are open seven days a week with extended business hours. At Lowe's, we understand that members may have needs outside of normal business hours, which is why we are open extended hours during the week and open on the weekend to meet your member's needs.

Typical store hours are as follows:

Sunday: 8am – 6pm

Monday – Thursday: 7am – 9pm

Friday & Saturday: 7am – 10pm

*Local stores may vary. Please call ahead to avoid any inconvenience.*

Customer Service Department: (800) 725-6714

Customer Care Line for the closest Lowe's Store: (800) 44-LOWES – (800-445-6937)

Dedicated Email Support: [TCPN@Lowe.com](mailto:TCPN@Lowe.com)

Dedicated TCPN Support 800# Staffed 7AM – 6PM EST Monday - Friday

### Green Initiatives

Lowe's continues to build on a history of environmental leadership by helping consumers reduce their energy and water use while saving money through a growing number of product solutions.

- Lowe's has more natural/organic gardening items than any national retailer. We carry Hot Shot® Natural insect killers (uses lemongrass oil extracts, which is a natural insecticide). We carry Bayer Advanced™: Bayer Advanced Natria™ as another step in our continuing effort to help consumers by providing choices for their home or business, lawn and garden pest, weed and disease management needs.
- We offer a wide selection of environmentally responsible and energy-efficient products for the home, from ENERGY STAR appliances to low VOC paint.
- We reached a multi-year agreement to make insulation manufacturer Johns Manville an exclusive supplier to Lowe's. As a result, our customers gain increased access to the most advanced insulation technology for energy efficiency and improved indoor air quality from the only company to offer a full line of Formaldehyde-free™ fiber glass building insulation.
- Lowe's helps customers handle the challenge of rising energy costs by introducing innovative energy-saving products by launching the Lowe's Energy Center. Piloted in 21 California stores, with plans to expand to other locations across the U.S. in 2010, the Energy Center is retail's first comprehensive, easy-to-shop destination for products that help customers measure, reduce and generate energy. The Center makes simple and affordable solar technology more accessible. For the first time, homeowners can purchase grid-connected solar panels off the shelves of a major retailer.
- Providing customers products that make their lives better while saving them money and reducing their environmental footprint has resulted in industry-leading recognition for Lowe's.
- The U.S. Environmental Protection Agency awarded Lowe's the 2010 ENERGY STAR® Sustained Excellence Award in Retail. The award recognizes Lowe's long-standing leadership as a retailer of energy-efficient products.
- Lowe's was honored for outstanding achievements year after year in customer outreach, employee training and product selection, and for reducing greenhouse gas emissions through its industry-leading commitment to energy efficiency.
- Lowe's has won eight consecutive ENERGY STAR awards (2003-2010), including four ENERGY STAR Partner of the Year awards for educating consumers about the benefits of energy efficiency.
- In 2009, Lowe's sold enough ENERGY STAR products to save consumers more than \$265 million off their energy bills compared with non-ENERGY STAR products
- Lowe's achievements in delivering energy-efficiency savings to customers also include: Increasing the quantity and variety of ENERGY STAR products available in stores, including raising the number of ENERGY STAR dishwashers in stock to 90 percent of all dishwashers. Lowe's carries retail's largest in-stock selection of ENERGY STAR-qualified major appliances. Promoting ENERGY STAR as a way to save energy and money to an estimated 15 million customers per week through in-store efforts that included increased employee training and enhanced signage.
- Lowe's is also the 2009 WaterSense® Partner of the Year, offering retail's largest in-stock selection of WaterSense products.

**Green Initiatives (continued):**

- The WaterSense award honored our efforts to increase awareness of the WaterSense label and to educate consumers about water-efficient practices. Explaining the benefits of water conservation in stores and online through the “Build Your Savings” program, Lowe's is helping to protect the future of our water supply and helping families reduce utility bills at a time when every dollar counts.
- The number of WaterSense-labeled toilets and bathroom faucets Lowe's sold in 2009 can save enough water in a year to: fill more than 3,600 Olympic-sized swimming pools (or save more than 2.4 billion gallons of water annually) and save consumers \$13 million each year on water bills.
- Most recently, the U.S. Environmental Protection Agency named Lowe's Companies, Inc. the first winner of the ENERGY STAR Sustained Excellence Award in Retail. The award recognizes Lowe's long-standing leadership as a retailer of energy-efficient products.



**Vendor Certifications:** Not applicable

## **TAB 4 – PRODUCT / SERVICES**

TCPN is soliciting proposals from qualified respondents for MRO Equipment, Supplies and Related Items and Services for its member agencies. The Services shall include, but not be limited to:

1. Pricing will be per a Distributor / Reseller Catalog less discount basis.
2. A full line offering of MRO equipment, supplies and related items and services.
3. Items shall be either delivered to the customer's jobsite or available for pickup as locally available.
4. The successful bidder shall have a fully operational website that enables on-line ordering by the individual member agencies.
5. The successful bidder shall have Government Sales, sales staff representatives in the TCPN member agency states.
6. Hourly services schedules, as applicable shall be included in the proposal.

### **Product Categories - Included but not limited to:**

1. Appliances
2. Building Materials
3. Electrical Supplies
4. Fasteners
5. General Maintenance Supplies
6. HVAC Supplies
7. Irrigation Equipment & Supplies
8. Janitorial Supplies
9. Landscaping Supplies
10. Motors, Pumps
11. Paint Supplies
12. Plumbing Supplies
13. Swimming Pool
14. Tools (general purpose & machine)
15. Window Treatments
16. Services (installation, glass cutting, rental, etc)

**Products & Services Summary Matrix** – Provide a matrix that will allow TCPN to readily appraise your company's products and service offering versus other respondents.

**Value Add Services Description** – Please include any value add services information you think TCPN should have when making their decision to select your company.



## TAB 4 – PRODUCT / SERVICES

### Lowe's Services for Commercial Customers

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Get What You Need. When You Need It. At Lowe's we've learned a lot about commercial business customers since we began in 1946. You're no do-it-yourselfer. You're a professional. Working longer hours, on bigger jobs, so you need professional-grade brands you can trust. Our services are made to help save TCPN members time, money and make your agency run smoother. And get you out of the store and back on the job faster. Everything you need to make Lowe's Commercial Services work harder for you is right here.

#### Lowe's Business Credit

The Lowe's business credit program gives you the flexibility, convenience and financial power to get the job done. See Tab 3 for more details.

#### Easy Order / Fulfillment

Lowe's offers you three ways to get what you want, when you need it. We make contractor ordering easy, no matter what size job. See Tab 3 for more details.

#### Blueprint Estimates

Every successful project begins with a Blueprint Estimate from Lowe's. Bring in your blueprints to Lowe's today and get the industry's most comprehensive list of materials available. Your Commercial Sales Specialist has all the information you need to get started.

#### Supply Rack

Earn a Supply rack just by buying the things you already buy. See Tab 3 for more details.

#### Contractor Packs

Contractor Packs allow you and your company to gain a bulk discount on certain items.

#### Gift Cards

A Lowe's Gift Card is great for thanking employees for a job well done, for service awards and safety incentives, and for showing appreciation to customers. We offer competitive volume discounts and free shipping within 48 hours.

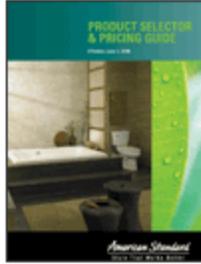
#### Delivery

Lowe's appreciates you as a valued customer. As a result, delivery is available to you seven days a week. And for Major Appliance purchases, you have the option to choose next-day delivery! (Fees may apply.)

Sample of Commercial Products Offered by Lowe's:



AdvanTech® Flooring



American Standard Bath Solutions



American Standard Water Efficient Bath Solutions



Armstrong



Benchmark Doors by Therma-Tru



Bosch



BR 111



Carry-On Cargo and Equipment Trailers



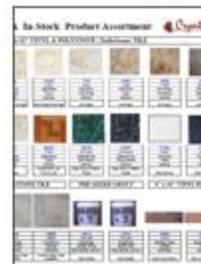
CarveWright Educational Program



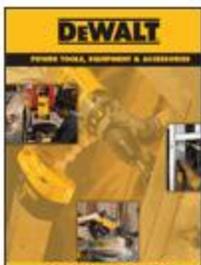
CarveWright Woodworking System



Closet Maid



Cryntel



Dewalt



DEWALT: New Power Tools



Door Jamb



View Demo



Dremel Multi-Max demo

Sample of Commercial Products Offered by Lowe's:



FLOR



Fluidmaster



Gametime: Outdoor Play Equipment



Generators At Lowe's



GreenFiber Natural Insulation



Greenlee



Harvia Saunas



Henkel



Hitachi



Irwin



IRWIN MARATHON



Kobalt

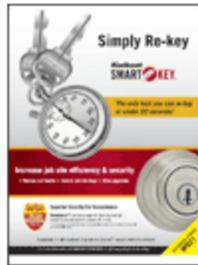
Sample of Commercial Products Offered by Lowe's:



**KOBALT SpeedFit Catalog**



**Korky**



**Kwikset**



**Leadco Lighting**



**Levolor**



**Levolor Blinds**



**Liquid Nails**



**Lowe's Laminate English**

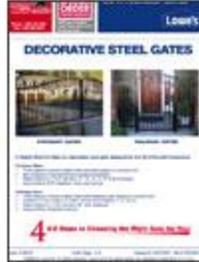
Sample of Commercial Products Offered by Lowe's:



Lowes Laminate  
Español



Mighty Mule Automatic  
Gate Openers



Mighty Mule DIY Driveway  
Gates



Oldcastle



Ondura



Ondura



Oreck



Oreck



Pella



Phillips II



PL Adhesives



PORTER CABLE

Sample of Commercial Products Offered by Lowe's:



RMax Insulation



Rotozip



Sakrete



Shop Vac - Air Mover



SHUR-LINE Painting Tools



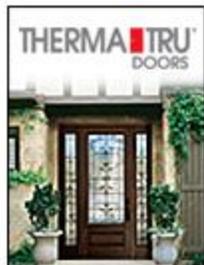
SKIL Wormdrive Saws



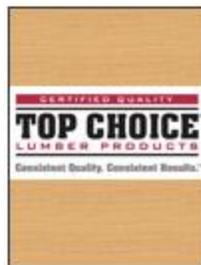
Tappan



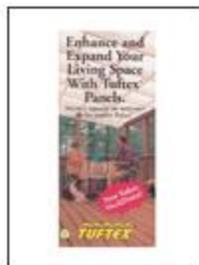
Tavy Tiling Tools



Therma-Tru Door Systems



Top Choice



Tuffex Panels



Ultra Play: Park & Site Amenities

Sample of Commercial Products Offered by Lowe's:



USG



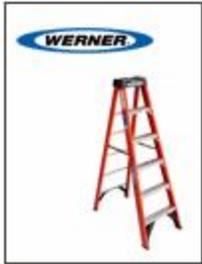
Valspar



Valspar



Wayne-Dalton



Werner Ladders



Whirlpool



### Delivery Schedule

1. Lowe's offers delivery 7 days a week from our Retail locations.
2. Monday - Sunday. TCPN members must give a minimum of 24 hrs notice of all deliveries.

### Manage the award discount schedule

1. The Store will submit each order to our Quote Support Program (QSP) to pull the % discount for each product.
2. The DCASs in each market will be on point for coordination of the sales efforts.
3. Training will be coordinated by the Lowe's corporate office utilizing our advanced customer relationship management system to communicate the TCPN program to the stores.
4. Upon request, each DCAS will coordinate getting new members set up on a Lowe's LAR account when Lowe's is given notice of new members.

### Online Ordering

- 1) Lowe's online ordering is accessible to TCPN members via [www.LowesForPros.com](http://www.LowesForPros.com).

Steps to ordering from Lowe's Online are as follows:

- a) Place a quote request or order online at the [Lowe's Quotation Center](#)
- b) A Lowe's Commercial Sales Specialist will deliver a quote & pull your order for pickup or delivery
- c) Track and view detailed information on your previous orders & quotes

Our Commercial Sales Specialists work with you to provide a quote quickly and confirm your order so that the materials are ready when you need them. Our Commercial Sales Specialists are available 7 days a week to help you identify and order the materials you need to get the job done right, and right on time.

All orders placed before 3 p.m. can be picked up in 2 hours. All orders placed by 6 p.m. will be ready for 7 a.m. pickup the next day

- Our Commercial Sales Specialists work with you to provide a quote quickly and confirm your order so that the materials are ready when you need them. Our Commercial Sales Specialists are available 7 days a week to help you identify and order the materials you need to get the job done right, and right on time.
- All orders placed before 3 p.m. can be picked up in 2 hours. All orders placed by 6 p.m. will be ready for 7 a.m. pickup the next day
- A 'Call-Ahead Worksheet' can be accessed by using the following link:  
<http://www.lowesforpros.com/EasyOrderFulfillment>



TCPN members should report to the 'Commercial Sales Desk', clearly marked by a red banner sign, in each store. A minimum of 24 hours notice is required to ensure all contract compliance requirements are met for each TCPN order.

- a) Lowe's will not assign a special account number to TCPN members. TCPN members will be responsible for identifying themselves as members to Lowe's store personnel in order to receive TCPN pricing.
- b) Currently there are no limitations that will prevent Lowe's from offering the pricing that we've outlined in this bid response.
- c) TCPN member purchase orders can be accepted and will be processed through Lowe's Corporate Headquarters in North Carolina.

### **Manage Contract Pricing at multiple locations**

When orders are placed with 24 hrs notice, stores will submit items through QSP to pull the % discount for the products on the order. QSP will send the store pricing according to the Contract Price

### **Business Account**

- 1) In lieu of a Government agency submitting an LAR application, Lowe's will accept "company letterhead" requests for credit.
- 2) When an agency submits, the request must come on the requestors "company letterhead" with a signature and the following text must be included:
  - "We are requesting an LAR account."
  - "We understand the terms of repayment are net 20<sup>th</sup> prox."
  - "We agree to the terms and conditions that govern the LAR account program."

It is Lowe's responsibility to furnish a copy of the credit Terms & Conditions in advance of an account being established. See Attachment #3 in Tab 8 for Terms & Conditions of the LAR business account.

### **Credit Hold**

- 1) Lowe's Credit Center will communicate directly with TCPN Members should it be necessary for the account to be placed on credit hold.

## **TAB 5 – REFERENCES**

Provide a minimum of ten (10) customer references for product and/or services of similar scope dating within the past 3 years. Please try to provide an equal number of references for K12, Higher Education and City/County entities. Provide the following information for each reference:

- Entity Name
- Contact Name and Title
- City and State
- Phone Number
- Years Serviced
- Description of Services
- Annual Volume



**TAB 5 – REFERENCES**

Entity Name	Iredell Statesville Schools
Contact Name and Title	Kenny Miller, Exec. Dir. Facilities & Planning
City and State	Statesville, North Carolina
Phone Number	704-873-3755
Years Serviced	Almost 2
Description of Services	Provide MRO, specialty items, playground equipment, etc.
Annual Volume	Proprietary

Entity Name	York Housing Authority
Contact Name and Title	Kyle Hall, Maintenance Supervisor
City and State	York, South Carolina
Phone Number	803-684-7359 ext. 25
Years Serviced	1 year
Description of Services	Construction materials and MRO
Annual Volume	Proprietary

Entity Name	UNCC
Contact Name and Title	Wanda Kay, Purchasing Agent
City and State	Charlotte, North Carolina
Phone Number	704-687-7324
Years Serviced	1 year
Description of Services	Provide MRO, specialty items, playground equipment, etc.
Annual Volume	Proprietary

Entity Name	York School District One
Contact Name and Title	Stan Quinn, Director of Operations
City and State	York, South Carolina
Phone Number	803-684-1924 ext. 251
Years Serviced	1 year
Description of Services	Every maintenance items, specialty items and bulk orders
Annual Volume	Proprietary

Entity Name	Waxahachie Independent School District
Contact Name and Title	Mike J. Craig, Building Trades
City and State	Waxahachie, Texas
Phone Number	972-923-4600
Years Serviced	5 years
Description of Services	Provide MRO, specialty items, playground equipment, etc.
Annual Volume	Proprietary



**TAB 5 – REFERENCES**

<b>Entity Name</b>	Dallas Housing Authority
<b>Contact Name and Title</b>	Martin Hendren, Purchasing Agent
<b>City and State</b>	Dallas, Texas
<b>Phone Number</b>	214-951-8450
<b>Years Serviced</b>	10 years
<b>Description of Services</b>	Every maintenance items, specialty items and bulk orders
<b>Annual Volume</b>	Proprietary

<b>Entity Name</b>	Rutgers University
<b>Contact Name and Title</b>	Stephanie Culpepper, Senior Buyer
<b>City and State</b>	New Brunswick, New Jersey
<b>Phone Number</b>	732-445-4636
<b>Years Serviced</b>	1 year
<b>Description of Services</b>	Every maintenance items, specialty items and bulk orders
<b>Annual Volume</b>	Proprietary

<b>Entity Name</b>	Housing Authority of Maricopa County
<b>Contact Name and Title</b>	Ben Chao, NSP Program Director
<b>City and State</b>	Phoenix, Arizona
<b>Phone Number</b>	602-300-5310
<b>Years Serviced</b>	1 year
<b>Description of Services</b>	Every maintenance items, specialty items and bulk orders
<b>Annual Volume</b>	Proprietary

<b>Entity Name</b>	Tempe Union High School District
<b>Contact Name and Title</b>	Bob Anderson, Director
<b>City and State</b>	Tempe, Arizona
<b>Phone Number</b>	480-839-0292
<b>Years Serviced</b>	1 year
<b>Description of Services</b>	Maintenance of their school campuses
<b>Annual Volume</b>	Proprietary

<b>Entity Name</b>	Prescott Unified School District No. 1
<b>Contact Name and Title</b>	Jay Collier, Director of Facilities
<b>City and State</b>	Prescott, Arizona
<b>Phone Number</b>	928-445-2515
<b>Years Serviced</b>	2 years
<b>Description of Services</b>	Maintenance of their school campuses
<b>Annual Volume</b>	Proprietary

## TAB 6 – PRICING

### **Paper and/or Electronic Price Lists**

- Respondents must submit products, services, warranties, etc. in price list.
- Prices listed will be used to establish the extent of a manufacturer's product lines, services, warranties, etc. that are available from a particular bidder and the pricing per item.
- Paper and electronic price lists must contain the following:
  - Manufacturer part #
  - Vendor part # (if different from manufacturer part #)
  - Description
  - Manufacturers Suggested List Price and Net Price
  - Net price to TCPN (including freight)
- Media submitted for price list must include the respondents' company name, name of the solicitation, and date on CD, DVD or Flash Drive (i.e. Pin or Jump Drives).

### **Not to Exceed Pricing**

- TCPN requests pricing be submitted as not to exceed for any participating entity.
- Unlike fixed pricing the awarded vendor can adjust submitted pricing lower if needed but, cannot exceed original pricing submitted for solicitation.
- Vendor must allow for lower pricing to be available for similar product and service purchases.

**Lowe's Home Centers – TCPN pricing files are available upon request. Please email requests in writing to [tcpn@tcpn.org](mailto:tcpn@tcpn.org).**

## TAB 7 – MISCELLANEOUS

Please include any additional products and/or services not included in the scope of the solicitation you think will enhance and add value to this contract for TCPN participating agencies.

**Addendum A**

Lowe's Home Centers, Inc.

The Cooperative Purchasing Network

Request for Proposal (RFP) for MRO Equipment, Supplies and Related Items & Services

Solicitation Number: 09-25

**CHANGES TO VENDOR CONTRACT:**

**10. Reporting**

The awarded vendor shall electronically provide TCPN with a detailed monthly or quarterly report showing the dollar volume of all sales made through trackable tender (e.g. a Purchasing Card, a Lowe's Accounts Receivable ("LAR") Account, purchase order or some other means that identifies the sale as made by a TCPN member) under the contract for the previous month or quarter. Purchases made through non-trackable tender cannot be included in the report. Reports shall be sent via e-mail to TCPN offices at [reporting@tcpn.org](mailto:reporting@tcpn.org). Reports are due on the fifteenth (15<sup>th</sup>) day after the close of the previous month or quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. Contracts are reviewed monthly; failure to report as stipulated may result in suspension of contract. The report shall include at least the following information as listed in the example below:

**Vendor Name**  
**TCPN Report**  
**Month or Quarter**

Entity Name	Zip Code	State	PO or Job#	Sale Amount

Total \_\_\_\_\_

**11. Payments**

The entity using the contract will make payments directly to the awarded vendor. Payments shall be made using a Purchasing Card, a purchase order, a LAR account, or some other trackable tender.

**13. Warranty conditions**

All supplies and ~~equipment and services~~ shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless agreed to in writing.

**10. Reporting**

The awarded vendor shall electronically provide TCPN with a detailed monthly or quarterly report showing the dollar volume of all sales made through trackable tender (e.g. a Purchasing Card, a Lowe's Accounts Receivable ("LAR") Account, purchase order or some other means that identifies the sale as made by a TCPN member) under the contract for the previous month or quarter. Purchases made through non-trackable tender cannot be included in the report. Reports shall be sent via e-mail to TCPN offices at [reporting@tcpn.org](mailto:reporting@tcpn.org). Reports are due on the fifteenth (15<sup>th</sup>) day after the close of the previous month or quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. Contracts are reviewed monthly; failure to report as stipulated may result in suspension of contract. The report shall include at least the following information as listed in the example below:

**Vendor Name**  
**TCPN Report**  
**Month or Quarter**

<b>Entity Name</b>	<b>Zip Code</b>	<b>State</b>	<b>PO or Job#</b>	<b>Sale Amount</b>

**Total** \_\_\_\_\_

**11. Payments**

The entity using the contract will make payments directly to the awarded vendor. Payments shall be made using a Purchasing Card, a purchase order, a LAR account, or some other trackable tender.

**13. Warranty conditions**

All supplies and equipment shall include manufacturer's minimum standard warranty.

**NJPA Contract #031210****Office & Classroom Related Supplies & Accessories**

**Contract Owner** - National Joint Powers Alliance (NJPA) Website: [www.njpacoop.org](http://www.njpacoop.org) In order to access the pricing and terms of this contract an agency must be a registered member of NJPA. Membership is free and the simple enrollment application can be completed online at the NJPA website.

**Contract Term** - August 1, 2010 – July 31, 2014 (plus a 1 year optional extension)

**Single Award** - Staples Contract & Commercial, Inc, operating as Staples Advantage (other unsuccessful bidder was Independent Stationers Inc.)

**Products Included** - Office, Classroom, Toner, Paper, Facilities, and Transactional Furniture. Additionally Print, Promo, Digital Copy, and specials available as Sourced Goods.

**Pricing:**

To provide NJPA and its members with a stable and auditable pricing structure, Staples proposed a line item offering consisting of fixed prices and set terms for price adjustments. The proposed line item method avoids the potential pricing and audit shortfalls inherent in a formulary discount method which could include cost plus or discounts from list price with margin floors.

- Hot List
  - Net Priced: 800+ SKU's: Majority Toner & Paper related products
    - Ink/toner, cut sheet paper, toilet tissue, paper towels, etc.
  - Staples may request a price change adjustment for Hot List Pricing items by submitting to NJPA, no more than once a calendar quarter, a request for price adjustment(s). Although change does not have to take effect on the start of the calendar quarter.
  - Price changes require NJPA approval.
- Core List
  - Net Priced: Over 15,000 (as of May 2011) in stock Staples SKU's & Classroom Supplies.
  - Prices fixed for a year (Jan 1 – Dec 31).
  - Staples can submit a request for price changes annually, 30 days prior to Dec 31.
  - Requires NJPA approval.
  - If approved, Jan. 1st is the effective date of any changes.
- Sourced Goods
  - Wholesalers/Printing/Promo/DCS/Specials/etc.
  - Prices for Sourced Goods including Custom Print and Digital Copy & Print shall be those prices that appear on [www.stapleslink.com](http://www.stapleslink.com) when ordered or as otherwise established between Staples and each member at the time the order is placed
  - Sourced Goods only applies to items/orders processed through Sunrise or ISIS/InVision.

**Ceiling Prices** - Pricing is to be established as a ceiling price. **At no time may the proposed products/services be offered pursuant to this Contract at prices above this ceiling price without approval by NJPA.**

“This document is intended as a reference only and is not an official contract document. Please contact your **Vertical Market Team** with any questions pertaining to this contract.”

**Volume Price Discounts** - Proposers are free to offer volume discounts from the quantity-of-one pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

**New/Discontinued Items:** Each calendar quarter, Staples will provide NJPA with an updated report, which shall identify the SKU numbers and prices for the new items that Staples added to the Core List or Hot List after the date of the prior quarter’s report received by NJPA, as well as remove those items that were discontinued after the date of the prior quarter’s report.

**Rebates** - Staples will pay each member a volume rebate of such member’s Net Sales annually, to be paid within thirty (30) Calendar Days of each annual anniversary of the member’s first order date, calculated as follows or as otherwise agreed to in writing by Staples and the member (“Volume Rebate”):

<u>Net Sales</u>	<u>Customer Volume Rebate</u>
\$ 0.00 - \$ 75,000	0%
\$ 75,000.01 - \$150,000	1%
\$150,000.01 - \$300,000	2%
\$300,000.01 - \$500,000	3%
\$500,000.01 - \$750,000	4%
\$750,000.01 or more	5%

Payment of all Volume Rebates paid hereunder is (i) contingent upon the member paying all invoices within the payment terms specified in the contract; and (ii) based on the individual member’s aggregate annual Net Sales and is payable back to dollar one.

**“Net Sales”** - The gross sales price of the Core Items, Hot List Items, and Sourced Goods (collectively, the “Products”) less shipping costs (including freight charges and insurance), taxes, duties, any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid, excluding Product purchases made at Staples’ retail store locations.

**Baked-in Rebate Option** – We can apply the estimated rebate percentage to net item pricing in lieu of the annual rebate for customers who cannot accept an annual rebate check for various reasons. (Contact your Vertical Market Team before offering this solution as we will need to discuss the details)

**Rebates for Line of Business Purchases** – Line of business purchases qualify for the annual rebate only if billed through Sunrise or ISIS/InVision. Example: Purchases made solely through STS/Sequoia would not be calculated in the rebate totals.

**Delivery** - Staples offers Free next-business-day shipping under the NJPA contract

**Minimum Order Size** - \$35.00 Minimum order size

**Payment Terms** – Net 30 Days unless otherwise agreed upon by Staples and a specific buyer

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**Auditing** - During the Term, Vendor will, upon not less than fourteen (14) business days' prior written request, make available to NJPA no more than once per calendar year, at Vendor's corporate offices, during normal business hours, the reports and/or documents from Vendor pertaining to all invoices sent by Vendor and payments made by NJPA members for all products/services purchased under this Contract. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Vendor shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties.

**Retail Stores** - Contract pricing is available at Staples retail stores on NJPA contract items (Sunrise Accounts Only)

**Copy & Print items** - Since many of our customers also turn to Staples for their print needs, we have the following options for NJPA and its members to make such purchases:

**Custom Print**

From business cards and stationery to greeting cards, stamps and nameplates, we offer a wide selection of high-quality print products that can be ordered on the same award-winning Web site as your office supplies. NJPA and members can upload its pre-approved organization templates to ensure brand consistency while giving users the ability to personalize their print products and proof them online before submitting their orders. We'll deliver exactly the way you approved it.

**Digital Copy & Print**

We operate a national network of closed door, non-retail digital-print-on-demand production facilities to produce your sales and marketing collateral, signage, presentations and other mission-critical documents. These facilities are managed by industry experts who use a rigorous control process and leading-edge technology to ensure the highest quality. Our Web-to-print ordering system enables you to upload, save and reconfigure documents and place orders for nationwide delivery.

Our capabilities include, but are not limited to:

- Digital color and high-speed black & white copying
- Wide-format, color printing and finishing
- Complete binding and finishing services
- CD/DVD duplication

The prices for Custom Print and Digital Copy & Print shall be those prices that appear on [www.stapleslink.com](http://www.stapleslink.com) when ordered or as otherwise established between Staples and each member at the time the order is placed.

**Staples Retail Copy & Print Centers** - We have created a program where contract customers can make in-store copy and print purchases at a **minimum of a 10% discount**. This program offers the additional benefits of a billing system utilizing a Convenience Card or registered company Procurement Card and usage reporting. For members using Staples Convenience Cards, copy purchases will appear on your organization's regular Staples invoice.

**Contract Documents** - The cumulative documentation consists of the RFP, the entire Proposer's response, and a fully executed "Acceptance and Award. There is no single contract document. The applicable contract documents can be found at the following link: [NJPA Contract # 031210](#)

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**NJPA Admin Fee** – Staples pays NJPA an admin fee of **2%** on all sales run through the NJPA contracts. This fee is typical of cooperative contracts as it covers the costs of facilitating and marketing the contract along with other contract management expenses. This fee does not impact the customer in any way.

**NJPA Price Overrides** – At no time should any NJPA customer pricing be overridden higher than active NJPA Ceiling pricing

**State Contract Awards under NJPA** – Numerous states have awarded Staples by adopting our NJPA Office Supplies and/or Janitorial Contract as their state-approved contract. Although NJPA is the basis for the award, these states have unique limitations and requirements regarding the pricing, product offering, and/or services offered under their state-awarded NJPA contract. These restrictions only apply to State agencies and the cities, counties, schools, etc. (“Locals”) in each respective state that piggyback off the NJPA/State-specific contract. These piggybacking agencies are therefore governed by the pricing terms, product restrictions, & rebates of the applicable state contract. For example, piggybacking agencies of these state-specific contracts are not able to add an additional customer-specific core list to their program. Also, deviated pricing on Janitorial items is **not** allowed on the state-specific contracts. Finally, the NJPA volume rebate may go directly to the state, not to the participating agency using the state-specific contract. See state chart below for details.

Please note, since most local agencies (cities counties, schools, etc) are not required to use the state-awarded versions of the NJPA contract, you may use the standard NJPA contract, which includes the ability to apply customer-specific pricing, even in most of the states below. Simply ask the customer if they are required to use the State contract award. **An exception to this is NJ where the standard NJPA contract is not allowed, only the State-awarded NJPA contract.**

Contact Don Hasch or Jeremy Landis for specific situations regarding affected customers in the states below.

- GA
- MD
- NJ
- DE
- OH
- MS

**NO PRICE OVERRIDES ALLOWED ON THE STATE-SPECIFIC AWARDS**

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