

PARTICIPATING ADDENDUM

Walk-in Building Supplies

Led by the State of Utah

MASTER PRICE AGREEMENT# MA3875

**Administered by the Commonwealth of Massachusetts, between
Lowe's Companies, Inc., dba Lowe's Home Centers, LLC (hereinafter Lowe's or
"Contractor") and the Commonwealth of Massachusetts (hereinafter "Participating
State") for Statewide Contract FAC119 MRO Retail Products and Supplies**

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1. Scope

This addendum by and between the Commonwealth of Massachusetts Operational Services Division and Lowe's is based upon the Walk-In Building Supplies Master Price Agreement with Lowe's. This addendum hereby establishes Massachusetts Statewide Contract FAC119 for MRO Retail Products and Supplies.

The contractor has been awarded to provide walk-in building supplies under the following categories:

1. Appliances
2. Electrical Tools/ Supplies
3. Exterior Finish Materials
4. Fasteners
5. Hand Tools
6. Interior Finish Materials
7. Lighting, Ballast/ Fixtures
8. Material Handling
9. Outdoor Garden Supplies and Equipment
10. Paint and Accessories
11. Plumbing Tools/ Supplies
12. Power Sources/Accessories
13. Power Tools (corded and cordless)
14. Miscellaneous

2. Contract Pricing

Contractor will offer the following:

The pricing will be a minimum 7% discount off the current retail price at the time of purchase at a store location with a key fob for all items available. If the item purchased is on sale or under another promotional term NASPO ValuePoint will expect to receive the lower of the two prices at the time of purchase.

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3. Participation

The following are the Commonwealth entities ("Eligible Entities") that are designated by the State Purchasing Agent as eligible to use this Addendum known as Statewide Contract FAC119:

1. Cities, towns, districts, counties and other political subdivisions;
2. Executive, Legislative and Judicial Branches, including all Departments and elected offices therein;
3. Independent public authorities, commissions and quasi-public agencies;
4. Local public libraries, public school districts and charter schools;
5. Public hospitals owned by the Commonwealth;
6. Public institutions of higher education;
7. Public purchasing cooperatives;
8. Non-profit, UFR-certified organizations that are doing business with the Commonwealth
9. Other states and territories with no prior approval by the State Purchasing Agent, and;
10. Other entities when designated in writing by the State Purchasing Agent.

4. Commonwealth Modifications or Additions to Master Price Agreement

The following documents are incorporated into the resulting Contract as though fully set forth herein. In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- The Commonwealth of Massachusetts Terms and Conditions (**Attachment A**);
- The Commonwealth of Massachusetts Standard Contract Form (**Attachment B**);
- This Participating Addendum and its attachments;
- The executed Master Agreement;
- The Purchase Order;
- The Quote

The Contractor is prohibited from requiring Customers to sign any documents not referenced herein without the prior written approval of the Operational Services Division, which approval will be evidenced by the publication of the approved document on the Commonwealth's eProcurement portal COMMBUYS, www.commbuys.com

The Commonwealth of Massachusetts requires Contractors to submit original ink-signature versions or accepted digital signature versions of the following forms:

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- The Commonwealth of Massachusetts Standard Contract Form – (signing the Standard Contract Form signifies acceptance of the Commonwealth Terms and Conditions) (**Attachment B**)
- The Commonwealth of Massachusetts Substitute W-9 (**Attachment C**)
- Prompt Payment Discount Form (**Attachment D**)
- Supplier Diversity Plan Forms (**Attachment E**)
- Contractor Authorized Signatory Listing (**Attachment F**)
- Electronic Funds Transfer Sign Up Form (**Attachment G**)
- Statewide Contractor Logo Memorandum of Understanding (**Attachment H**)

4.1. Statewide Contract Administration Fee and Quarterly Report

This Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and the Transaction Fee section in this Bid and/or incorporated by reference into Contracts with the Operational Services Division (OSD). The price stated in any Bidder's Quote price and any Contractor's Contract shall be inclusive of this fee and Contractors shall not reflect this fee as a separate line item on customer invoices.

This fee will be based on 1% of the total dollar amounts, adjusted for credits or refunds, paid by Eligible Entities to the Contractor based on your statewide contract. All "Statewide Contracts" awarded and all purchase orders and purchases made pursuant to this Agreement are subject to this fee regardless of whether the contract was awarded for statewide or regional coverage. Eligible entities include, but are not limited to: a) Cities, towns, districts, counties and other political subdivisions; b) Executive, Legislative and Judicial Branches, including all departments and elected offices therein; c) Independent public authorities, commissions, and quasi-public agencies; d) Local public libraries, public school districts, and charter schools; e) Public hospitals owned by the Commonwealth; f) Public institutions of higher education; g) Public purchasing cooperatives; and h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth; For a list of other entities that are eligible to use your specific Statewide Contract see Section 1 of this Agreement.

Note that if the 1% Administration Fee is deductible as a business expense for federal income tax purposes, it is also deductible as an expense for Massachusetts tax purposes.

4.1.1. Quarterly Administration Fee Payment

For each Payment Period, Contractor shall pay to OSD a fee equal to one percent (1%) of the total payments (adjusted for credits or refunds) received from all Eligible Entities that have purchased from the Contractor pursuant to

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this Agreement. All payments will be based on full calendar quarters (Payment Periods) and must be received by OSD on or before 45 days after the last day of the Payment Period (as specified below) or a Contractor will be considered in breach of contract:

Quarterly Administration Fee Payment Schedule

Reporting/Payment Period	Quarterly Report Due Date	Payment Due Date
January 1st – March 31st	April 30th	May 15th
April 1st – June 30th	July 30th	August 15th
July 1st – September 30th	October 30th	November 15th
October 1 – December 31st	January 30th	February 15th

Quarterly payments will include any periods less than a full calendar quarter if a contract does not start at the first day of a quarter or end on the last day of the quarter.

Payments are to be made through a secure, web-based payment center, <http://www.osdadminfee.com>. All Administration Fee payments are to be made directly through the secure payment website. The website allows payments to be made via Automatic Clearing House (ACH) or by using one of the following credit cards: American Express, Discover, MasterCard or Visa. Payment of the Administration Fee by check is not permitted unless a Contractor makes a written request for an exception and demonstrates, to the satisfaction of the OSD Contract Manager, that compliance poses a hardship.

Please note that there is no charge to vendors to use ACH as OSD covers the nominal fee charged by the secure payment center for using the ACH payment method. OSD will NOT cover the convenience fee for selecting to pay by credit card. This is a fee the contractor is responsible for paying and is non-refundable; the fee is over and above the 1% Administration Fee and it is currently calculated at 2.35% of the 1% Administration Fee to be paid. The convenience fee is established by Statewide Contract PRF59A and therefore is subject to change during the term of the contract resulting from this bid. Prior to the due date for the Statewide Contractor's Administration Fee payment, the Statewide Contractor will receive an e-mail communication from OSD that includes all required information the Statewide Contractor must use to submit payments via <http://www.osdadminfee.com>. Vendors receiving no payments

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must still complete a payment of \$0.00. In the event OSD adopts an alternative administration fee reporting system, Contractor will be required to utilize such system, as directed by OSD.

4.1.2. Audit

During the term of this Agreement and for a period of six years thereafter, the Operational Services Division, its auditors, the Office of the Inspector General or other authorized representatives shall be afforded access at reasonable times to Contractor's accounting records, including sales information on any system, reports or files, in order to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Contractor has materially underpaid OSD, then the Contractor shall remit the underpayment and be responsible for payment of any costs associated with the audit.

4.1.3. Other Terms

Contractors are responsible for compliance with all other contract reporting requirements including, but not limited to, contract detailed spend, Supplier Diversity Program (SDP) and other contract reports, as required by this contract.

All amounts payable by the Contractor to OSD under this Agreement that are not received by the due date specified shall bear simple interest from the date due until paid. The Late Payment Interest Rate is set by the Office of the State Comptroller on an annual basis and can be found by selecting the fiscal year in question on the Comptroller's Fiscal Year Updates webpage.

In the event of the Contractor's breach of this policy including, but not limited to, non-reporting, non-payment, late reporting/payment, under-reporting/payment, the Commonwealth reserves the right to pursue any and all recourse and penalties available including, but not limited to, contract suspension and contract termination. The Commonwealth is allowed to suspend, terminate or debar pursuant to Massachusetts General Laws Chapter 29, Section 29F, as amended, and pursuant to Section 4 of the Commonwealth Terms and Conditions. In addition, in the event the Contractor fails to make any payment when due, the Contractor shall be liable to the Commonwealth for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

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4.2. Quarterly Sales and SDP Report

OSD has developed a centralized reporting process for collecting sales and SDP data. This data is used by OSD to measure contract progress and compliance from year-to-year. The data also assists with the development of new contracts and/or new categories of services under existing contracts. An Awarded Contractor must submit a Quarterly Sales and SDP Report to OSD each quarter. A report is due each quarter regardless of whether or not sales occurred during the quarter. Contractors are required to submit reports through the Commonwealth's Vendor Report Management System which is accessed online at <https://massosd.gob2g.com>. In the event the Commonwealth adopts an alternate reporting system Contractors will be required to utilize such system as directed by the ITC71 Contract Manager.

4.2.1. Reporting Sales

Contractors may report manually in the Vendor Report Management System website or may upload their report using a spreadsheet. It is advised to use the upload process for convenience. When reporting by spreadsheet Contractors must utilize the downloadable report template from the website. Contractors must fill in all requested columns in the report template. When a sales report is ready to submit the Contractor uploads their report using the "View/Add Sales Details" button and then select "Upload Sales Data." This will prompt the website to review and validate the report at which time you may receive "errors" or "alerts" on your report. An error will generally mean that there is an error in the report itself, such as missing information or a line total not matching the unit price and quantity, and these will require correcting before the website will accept the report. An alert will generally mean that a customer name is not recognized and you will have the option of changing it or submitting it to the system with a request for a name exception. In most cases for an alert the Contractor should submit their customer names as-is and request an exception and OSD will reply to the Contractor if more information is needed. All reports require the following information:

- A. Purchasing Entity Name (must be specific and not a generic name i.e. "Commonwealth")
- B. Invoice Number
- C. Invoice Date (use "Short Date" format)
- D. Product/Service Description (be as descriptive as possible)
- E. Unit of Measure (i.e. "each" or "hour")
- F. Unit Price
- G. Quantity
- H. Line Total Purchase Amount (must equal Unit Price X Quantity)

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4.2.2. Reporting SDP

Contractors report their SDP spend by selecting the "View/Add Diverse Expenditures" button and searching for their partner/partners. Once you have added an SDP partner you will be able to add the amount spent with them in that quarter.

4.2.3. Submitting the Report

Once sales and SDP have been completed you must return to the "This Sales Report" page and click to "Submit Report" in order to finish.

4.2.4. Report Schedule

Quarterly Sales and SDP Reporting must be received by OSD on or before 30 days after the last day of the quarter (as specified below) or the Contractor will be in breach of contract. The Quarterly Sales and SDP Reporting periods are based on the Massachusetts fiscal year calendar.

Quarterly Sales and SDP Reporting Schedule

Quarter	Period	Due Date
1	Jul 1 – Sep 30	October 30 th
2	Oct 1 – Dec 31	January 30 th
3	Jan 1 – Mar 31	April 30 th
4	Apr 1 – Jun 30	July 30 th

4.3. Supplier Diversity Program Plan Forms and Instructions (Attachment E)

Massachusetts [Executive Order 565](#) reaffirmed and expanded the Commonwealth's policy to promote the award of state contracts in a manner that develops and strengthens diverse businesses. The Commonwealth's [Supplier Diversity Program](#) (SDP) promotes the partnering of Awarded Statewide Contractors with [Supplier Diversity Office](#) (SDO) certified or recognized diverse business partners. All Bidders are required to make a meaningful financial commitment by partnering with one or more SDO certified or recognized business enterprises or non-profits. Bidders must identify their commitment in the form of a specific percentage of sales under the resulting contract which will be spent with an SDP partner/partners on a Massachusetts fiscal year basis. The percentage commitment will extend for the life of any resulting contract. Bidders will not be awarded unless they submit an acceptable SDP plan.

4.3.1. Eligible SDP Partner Certifications

The list below identifies the types of SDO certified business enterprises and non-profits that are eligible to be SDP partners. The Commonwealth reserves the right to amend this list at any time.

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- Minority-Owned Business Enterprise (MBE)
- Minority Non-Profit Organizations (MNPO)
- Women-Owned Business Enterprise (WBE)
- Women Non-Profit Organization (WNPO)
- Veteran-Owned Business Enterprise (VBE)
- Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)
- Disability-Owned Business Enterprise (DOBE)
- Lesbian, Gay, Bisexual, and Transgender Business Enterprise (LBGTBE)

4.4. COMMBUYS Market Center

COMMBUYS is the official source of information for this Bid and is publicly accessible at no charge at www.commbuys.com. Information contained in this document and in COMMBUYS, including file attachments, and information contained in the related Bid Questions and Answers (Q&A), are all components of the Bid, as referenced in COMMBUYS, and are incorporated into the Bid and any resulting contract.

Vendors are solely responsible for obtaining all information distributed for this Contract via COMMBUYS.

It is Contractor's responsibility to check COMMBUYS for any amendments, addenda or modifications to this Contract.

4.4.1. COMMBUYS Subscription

A free COMMBUYS Seller subscription provides value-added features, including automated email notification associated with posting and modifications to COMMBUYS records.

Contractor agrees that: (1) they will maintain an active seller account in COMMBUYS; (2) they will, when directed to do so by the procuring entity, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) they will comply with all requests by the procuring entity to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; (4) they understand and acknowledge that all references to the Comm-PASS website or related requirements, shall be superseded by comparable requirements pertaining to the COMMBUYS website; and (6) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

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The COMMBUYS system introduces new terminology, which bidders and contractors must be familiar with in order to conduct business with the Commonwealth. To view this terminology and to learn more about the COMMBUYS system, please visit the COMMBUYS Resource Center.

Contractor is required to maintain a valid email address in COMMBUYS in order to receive notifications.

COMMBUYS supports a supplier's Web-based catalog from which purchases can be made by any eligible COMMBUYS buyer. Contractors who already maintain or are developing a Website for product ordering are advised that links to their sites will only be enabled within COMMBUYS if the system is limited to or can distinguish between Statewide Contract customers and retail or commercial customers. Contractors who already maintain or are developing a Website for product information are advised that links to their site will only be enabled within COMMBUYS if content is restricted to terms authorized under their Statewide Contract.

The parties anticipate that the COMMBUYS subscription will not apply to the transactions executed under the NASPO Agreement. If the parties decide to execute transactions under the NASPO Agreement to which the COMMBUYS subscription does apply, then the parties shall cooperate in good faith to implement the COMMBUYS subscription with respect to those transactions.

5. Performance and Payment Timeframes

All term leases, rentals, maintenance or other agreements for services entered into during the duration of this Contract and whose performance and payment time frames extend beyond the duration of this Contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No written agreement shall extend the duration beyond the final termination date of this Statewide Contract. No new leases, rentals, maintenance or other agreements for services may be executed after the Contract has expired.

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6. Primary Contacts

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

Lead State

Name	Ann Schliep
Address	Walk-In Building Supplies, MA# 3875
Telephone	801-957-7132
Fax	
E-mail	aschliep@utah.gov

Contract – Contract Terms and Conditions

Name	Walk-In Building Supplies MA#3875
Address	Led by the State of Utah
Telephone	801-957-7132
Fax	
E-mail	aschliep@utah.gov

Contractor – Local Government Account Manager

Name	Ron Manning
Address	1000 Lowe's Blvd, Mooresville, NC 28117
Telephone	774-613-1973
Fax	
E-mail	Ronald.manning@lowes.com

Participating Entity

Name	Sorraia Tavares, Senior Strategic Sourcing Manager (SSSM)
Address	Operational Services Division, One Ashburton Place, 10 th floor, Boston, MA
Telephone	617-720-3304
Fax	617-720-4527
E-mail	Sorraia.Tavares@mass.gov

7. Purchase Order Instructions

All orders should contain the following (1) Mandatory Language "PO is subject to
Massachusetts Statewide Contract FAC119 and Walk-in Building Supplies Contract #
MA3875" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order

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amount. Purchase Orders and payments may be made only to the Contractor identified above and on COMMBUYS.

A Participating Entity or Purchasing Entity must present a form of tender such as their P-Card or Lowe's Commercial Accounts (LCA) when presenting Lowe's with a Purchase Order. Aside from product, delivery, or shipping information, any terms, conditions, representations or certifications included on a Purchase Order or similar document ("Additional Terms") are void and superseded by the terms and conditions of this Master Agreement and this Participating Addendum

8. Price Agreement Number

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Massachusetts Statewide Contract number: FAC119 and Walk-in Building Supplies Contract # MA3875.

9. Required Attachments

- Attachment A – Commonwealth of Massachusetts Terms and Conditions
- Attachment B – Commonwealth of Massachusetts Standard Contract Form
- Attachment C – Massachusetts Substitute W-9 Form
- Attachment D – Commonwealth of Massachusetts Prompt Payment Discount Form
- Attachment E – Commonwealth of Massachusetts Supplier Diversity Program Forms
- Attachment F – Contractor Authorized Signatory Form
- Attachment G – Authorization for Electronic Funds Transfer
- Attachment H – Statewide Contractor Logo Memorandum of Understanding

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10. Individual Customer

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Walk-in Building Supplies Master Price Agreement Contract # MA 3875 (administered by NASPO) together with its exhibits, 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 to or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, 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 shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

11. Subcontractors

Lowe's, is a fully owned subsidiary of Lowe's Companies, Inc. ("LCI"), a publicly traded company. LCI's operating entities (together or individually "Lowe's"), including Lowe's, operate over 1,700 stores, perform installation services nationwide, maintain relationships with thousands of suppliers, employ over 200,000 people, and serve millions of customers. Lowe's uses third party independent contractors to perform ancillary services for Lowe's during the normal course of business on a daily basis.

These ancillary services may include, but are not limited to, appliance decommissioning, product delivery, and janitorial services for Lowe's stores, and are provided to Lowe's on an ongoing basis through pre-existing and established business relationships.

Lowe's does not consider the use of any of these ancillary services to trigger any subcontractor-specific or subcontractor approval requirements for this Contract.

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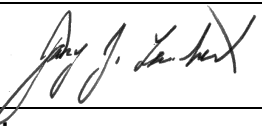
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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of
execution by both parties below.

Participating State: Commonwealth of Massachusetts	Contractor: Lowe's Home Centers LLC
By: 	By: 
Name: Gary J. Lambert	Name: Scott Matthews
Title: Assistant Secretary, OSD	Title: VP Pro Sales
Date: 01/30/2023	Date: 1-24-2023