

PARTICIPATING ADDENDUM



WALK-IN BUILDING SUPPLIES

Led by the State of Utah

Master Agreement #: MA087; Commonwealth of MA Statewide Contract FAC105

Contractor: **LOWE'S COMPANIES, INC DBA LOWE'S HOME CENTERS, LLC**

Participating Entity: **COMMONWEALTH OF MASSACHUSETTS**

The following products or services are included in this contract portfolio, categories to include descriptions as listed below:

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

Master Agreement Terms and Conditions:

1. Scope: This addendum, by and between the Commonwealth of Massachusetts Operational Services Division (OSD or Commonwealth) and Lowes Companies, Inc., d/b/a Lowe's Home Centers, LLC (Lowes or Contractor), covers the *Walk-in Building Supplies* led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the **Commonwealth of Massachusetts, as detailed in Section 4 and** as authorized by that state's statutes and regulations (MGL c. 7, § 22 and § 22A; MGL c. 30, § 51 and § 52; and 801 CMR 21.00) to utilize statewide contracts issued by the Operational Services Division of the **Commonwealth of Massachusetts**.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

WALK-IN BUILDING SUPPLIES
Led by the State of Utah

Contractor

Name:	Government Manager
Address:	Lowe's Home Centers, LLC., 1605 Curtis Bridge Road, N. Wilkesboro, NC 28697
Telephone:	888-310-7791
Fax:	877-793-8455
Email:	NASPO@Lowes.com

Participating Entity

Name:	Maureen Barends, Director of Strategic Sourcing Services
Address:	Operational Services Division, 1 Ashburton Place, RM 1017, Boston, MA 02108
Telephone:	617-720-3155
Fax:	617-720-4527
Email:	maureen.barends@state.ma.us

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

5. Purchase Order Instructions:

To issue a Purchase Order, payment must take place on a Lowe's Account Receivable ("LAR"). A LAR is a form of proprietary credit provided by a third party creditor ("Creditor"), currently Synchrony Bank. Creditor is responsible for the collection of fees and interest on LAR accounts.

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. Lowe's gives notice of objection to all Additional Terms and specifically rejects all Additional Terms as a material alteration to this Master Agreement and this Participating Addendum. Lowe's may accept Additional Terms in its sole discretion after receiving separate, advance written notice of the Additional Terms, provided that no Additional Terms are valid until

WALK-IN BUILDING SUPPLIES

Led by the State of Utah

the buyer receives a signed acknowledgement from Lowe's agreeing to the Additional Terms. Lowe's retains sole discretion to refuse any Purchase Order that 1) contains Additional Terms or 2) does not meet Lowe's payment or tender type requirements.

6. Installations: Any installation is limited to \$50,000 for labor per project and prevailing wages must be paid to the laborers. See Exhibit J

7. Additional Terms:

Order of Precedence

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;
 - Attachment C Supplier Diversity Program Plan Form #1
 - Attachment D Supplier Diversity Program Plan Form #2
 - Attachment E Contractor Authorized Signatory Listing
 - Attachment F Massachusetts W9
 - Attachment G Authorization for Electronic Funds Transfer
 - Attachment H Technical and Environmental Specifications
 - Attachment I Category Descriptions
- The executed Master Agreement;

Statewide Contract Administration Fee and Report:

This Statewide 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 Statewide Contracts with the Operational Services Division (OSD). The price stated in any Bidder's Quote price and any Contractor's Statewide 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 Statewide Contractor based on your statewide contract. All "Statewide Contracts" awarded and all purchase orders and purchases made pursuant to this RFR 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

PARTICIPATING ADDENDUM**WALK-IN BUILDING SUPPLIES**

Led by the State of Utah

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; h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth; i) Other states and territories with no prior approval by the State Purchasing Agent required; and j) Other entities when designated in writing by the State Purchasing Agent. For a list of other entities that are eligible to use your specific Statewide Contract see Section 1 of this RFR.

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.

Quarterly Fee Payment:

For each Payment Period, Statewide 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 Statewide Contractor pursuant to 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:

Quarter	Payment Period	Quarterly Payment Due Date
First Quarter	January 1st – March 31st	May 15th
Second Quarter	April 1st – June 30th	August 15th
Third Quarter	July 1st – September 30th	November 15th
Fourth Quarter	October 1 – December 31st	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 web-based secure payment center, which can be accessed through a link provided to Statewide Contractors by OSD. All Administration Fee payments are to be made directly through the secure payment center. The secure payment center allows payments to be made via Automatic Clearing House (ACH) or by using one of the following credit cards: American Express, Discover, MasterCard and/or Visa.

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 calculated at 2.30% 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

PARTICIPATING ADDENDUM**WALK-IN BUILDING SUPPLIES**Led by the State of Utah

an e-mail communication from OSD that includes all required information the Statewide Contractor must use to submit payments via the secure payment center. Electronically submitting your payment, which is comprised of the 1% administration fee of the total payments received by the Contractor from all Eligible Entities for the Quarter, will serve as the Statewide Contractor Administration Fee Report.

Quarterly Reporting:

Contractor shall submit one Statewide Contractor Administration Fee Report for each Statewide Contract for each Payment Period. Electronic submission of the payment shall serve as submission of the Statewide Contractor Administration Fee Report, as referenced in the Quarterly Fee Payment section above. If you are submitting this report, it must be completely filled out, signed by the Statewide Contractor via electronic signature under the pains and penalties of perjury and emailed to osdfeeadministrator@massmail.state.ma.us

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.

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.

Supplier Diversity Program (SDP) Plan:

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 certified Minority-Owned Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs), Minority Nonprofit Organizations (MNPOs), Women Nonprofit Organizations (WNPOs), Veteran-Owned Business Enterprises (VBEs), and Service-Disabled Veteran-Owned Business Enterprises (SDVBEs), Disability-Owned Business Enterprises (DOBEs), and Lesbian, Gay, Bisexual, and Transgender-Owned Business Enterprises (LGBTBEs).

Partnerships with MBEs, WBEs, MNPOs, WNPOs, VBEs, and SDVBEs:

All bidders are **required** to make a significant financial commitment to partner with MBEs, WBEs, MNPOs, WNPOs, VBEs, and/or SDVBEs certified or verified by the Supplier Diversity Office (SDO). Bidders must identify a commitment in the form of a specific percentage of sales made under the resulting contract that will be spent with an SDP

WALK-IN BUILDING SUPPLIES

Led by the State of Utah

Partner(s) on a Massachusetts fiscal year basis, using SDP Plan Form #1 – SDP Plan Commitment. This percentage commitment will extend for the life of any resulting contract.

This requirement extends to all bidders regardless of their certification status, and no bidder will be awarded a Contract unless and until the above requirement is met. Bidders may not list themselves or affiliates as SDP Partners. In order to ensure compliance with this section and encourage bidder participation, SDP Plans will be evaluated at 10% or more of the total evaluation score.

Once an SDP commitment is approved, the FAC105 Contract Manager, OSD, and/or the FAC105 SSST will monitor the Contractor's performance. The Commonwealth reserves the right to contact SDP Partners at any time to request that they attest to the amounts reported to have been paid to them by the Contractor.

Resources available to assist Bidders in finding potential MBE and WBE partners can be found at: www.mass.gov/sdp or <https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>.

Resources available to assist Bidders in finding potential VBE or SDVOBE partners can be found at: www.mass.gov/sdo or <https://www.vip.vetbiz.gov/>.

The Supplier Diversity Program offers training on the SDP Plan requirements. The dates of upcoming trainings can be found at: <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/sdp/supplier-diversity-program-services.html>. In addition, the SDP Webinar can be located on the SDP website at www.mass.gov/SDP or https://www.youtube.com/watch?v=WDmK_ibEpJo.

Contractor Activity Sales Report:

The Contractor must provide, to the Participating State Contract Manager, quarterly reports of all product and service purchases made under the Contract. The Contractor must provide the Participating State Contract Manager with information on purchases of environmentally preferable products made by Commonwealth Eligible Entities upon request. The reporting requirements outlined herein can be, if required by the Participating State Contract Manager, modified to facilitate the Commonwealth's needs.

Failure to meet the reporting requirements established herein may result in contract suspension or termination.

The following list represents information that must be included in the reports, and identified for each category awarded:

- Upon request, total dollars spent in each category of the Contract, separated by Commonwealth fiscal years (July 1 to June 30).
- Total equipment, supplies and service dollars spent in each category of the Contract by individual Agencies, Cities, Towns, Political Sub-divisions, and other Eligible Entities.
- Total detailed list of each item purchased during the reporting period.

WALK-IN BUILDING SUPPLIES

Led by the State of Utah

- A breakout of recycled and environmentally preferable product purchases by Commonwealth Eligible Entities within the individual categories (with information on current and/or potential savings if requested).

The Contractor Activity Sales Report will follow the same schedule and due dates as the 1% Contract Administration Fee Report, as indicated on page 3 of this Participating Addendum.

COMMBUYS Market Center. COMMBUYS is the official source of information for this contract 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 contract, as referenced in COMMBUYS, and are incorporated into the 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.

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

Contractor agrees that: (1) it will maintain an active seller account in COMMBUYS; (2) it will, when directed to do so by OSD, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) it will comply with all requests by the OSD and eligible entities 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; and (4) in the event the Commonwealth adopts an alternate market center system, successful Contractor will be required to utilize such system, as directed by OSD. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

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. Bidders 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. Bidders who already maintain or

WALK-IN BUILDING SUPPLIES

Led by the State of Utah

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 Statewide Contract.

Human Trafficking Clause: Contractor acknowledges the Commonwealth requires as a term of this Agreement that Contractor comply fully with all state and federal laws and regulations regarding human trafficking and forced labor.

8. Lease Agreements: *Lease and short-term rentals agreements will not be allowed under this statewide contract.*
9. Subcontractors: All contactors, dealers, and resellers authorized in the Commonwealth of Massachusetts, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales support and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
10. Orders: Any order placed by a Participating Entity or Purchasing Eligible Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

NASPO ValuePoint
PARTICIPATING ADDENDUM

WALK-IN BUILDING SUPPLIES
Led by the State of Utah



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

Participating Entity: Operational Services Division	Contractor: Lowe's Home Centers, LLC
Signature: 	Signature: 
Name: Kathleen K. Reilly	Name: Darrin G. Clark
Title: Assistant Deputy Secretary	Title: VP ProServices
Date: 8/1/17	Date: July 31, 2017

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]