



Project title: Award contract to Lowe’s Companies Inc. through Washington State Department of Enterprise Services Contract #02517/EVT #2012-095 and authorize approximately \$150,000 annually.

City Council Agenda Item Cover Sheet

Council Bill #

Consideration: Washington State Department of Enterprise Services#025174/EVT#2012-095

Agenda dates requested:
October 30, 2019

Project: Various

Partner/Supplier : Lowe’s Companies Inc

Briefing
Proposed action
Consent X
Action
Ordinance
Public hearing
Yes x No

Location: Citywide

Preceding action: None

Fund: Varies

Budget amendment:
Yes x No

Fiscal summary statement: Funds used to purchase items from Lowe’s Companies Inc are from various departments. City-wide spend is currently about \$75,000 year-to-date. Due to the unknown nature of spending, Purchasing anticipates that spend is likely to exceed 100K per year.

PowerPoint presentation:
Yes x No

Consideration summary statement:

City staff use Lowe’s to purchase building supplies and related materials for convenience. Staff uses their City p-card along with a Lowe’s government contract savings card which saves the City at a minimum 5% per transaction. Savings can be higher if staff orders on-line through Lowe’s Pros and picks up at the store.

Attachments:

A review of year-to-date transactions indicates that the city’s total spend may exceed 100K. While no single transaction exceeds \$100,000, the City Purchasing policy requires Council authorization of awards greater than \$100,000.00.

Department(s) involved:
Purchasing

The City has an Interlocal Agreement with Washington State Department of Enterprise Services that allows for purchases from its competitively awarded contracts in lieu of soliciting bids on our own.

Contact person:
Theresa Bauccio-Teschlog

Phone number:
(425) 257-8901

Email:
tbauccio@everettwa.gov

Initialed by:

Recommendation (exact action requested of Council):

Award contract to Lowe’s Companies Inc. through Washington State Department of Enterprise Services Contract #02517/EVT #2012-095 and authorize approximately \$150,000 annually.

Department head

Administration

Council President

**PARTICIPATING ADDENDUM
NASPO ValuePoint**

WALK-IN BUILDING SUPPLIES

Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: MA087

**Lowe's Companies, Inc
DBA: Lowe's Home Centers, LLC
(hereinafter "Contractor")**

and

**State of Washington
(hereinafter "Participating State")**

Washington Master Contract No.: 02517

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Lowe's Companies, Inc. dba: Lowe's Home Centers LLC, a North Carolina Limited Liability Company ("Contractor"), and is dated and effective as of August 1, 2017.

1. **SCOPE:** This Participating Addendum covers walk-in building supplies and related materials. The contract is for convenience purchases as a walk-in customer at any Lowe's retail outlet for those public entities that choose to obtain a Lowe's customer identifier/savings card. This contract covers all items in the retail store.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities"):
 - (a) **WASHINGTON STATE AGENCIES.** Washington state agencies, departments, offices, divisions, boards, and commission; and any the following institutions of higher education in Washington: state universities, regional universities, state college, community colleges, and technical colleges.
 - (b) **MCUA PARTIES.** The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts);
 - Federal governmental agencies or entities;

- Public-benefit nonprofit corporations (i.e., § 501(c) (3) nonprofit corporations that receive federal, state, or local funding); and
- Federally-recognized Indian Tribes located in the State of Washington.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at <https://fortress.wa.gov/ga/webcust/home.html>. Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

3.2. **WASHINGTON'S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).

3.3. **CONTRACT SALES REPORTING.** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

(a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services' [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.

(b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.

(c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax).

(a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total contract sales invoiced (not including sales tax) x .015.

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
 - (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:
 - This Washington Master Contract No.: **02517**
 - The NASPO Master Agreement No.: **MA087**
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
 - (d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.
 - (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
 - (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.
- 3.5. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with all applicable law. Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to purchasers in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

4. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor	Participating State
Lowe's Home Centers, LLC 1605 Curtis Bridge Road Wilkesboro, NC 28697	State of Washington Department of Enterprise Services Contracts, Procurement and Risk Mgmt. P.O. Box 41411 Olympia, WA 98504-1411
Attn: Government Manager Tel: (888) 310-7791 Email: naspo@lowes.com	Attn: Leslie Edwards Tel: (360) 407-8416 Email: leslie.edwards@des.wa.gov

5. **SUBCONTRACTORS:** All Contractor's Distributors authorized in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

6. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing 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 as conditioned by this Participating Addendum.

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 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.

7. **GENERAL:**

- (a) **INTEGRATED AGREEMENT; MODIFICATION.** This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- (b) **AUTHORITY.** Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority

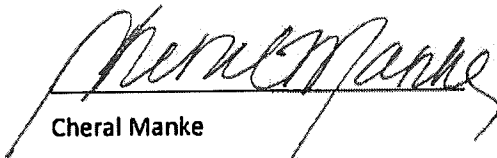
to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

- (c) **ELECTRONIC SIGNATURES.** A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- (d) **COUNTERPARTS.** This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By:




Cheral Manke

Its:

Purchasing Manager

LOWE'S COMPANIES, INC., DBA: LOWE'S HOME
CENTERS, LLC, A NORTH CAROLINA LIMITED LIABILITY
COMPANY

By:



Darrin G. Clark

Its:

VP ProServices

July 19, 2017