CITY CLERK
ORIGINAL

C-10115
06/23/15

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA AND
**Home Depot U.S.A.,** INC.

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 23 day of June, 2015 between the City of Glendale, an Arizona municipal corporation (the "City"), and Home Depot U.S.A., Inc., a Delaware corporation authorized to do business in Arizona ("Contractor" or "Home Depot"), collectively, the "Parties."

RECITALS

A. On March 28, 2006, the Glendale City Council authorized entering into a purchasing cooperative agreement with the U.S. Communities Government Purchasing Alliance, Contract No. 6418, which permits the purchase of materials and services from nationally awarded contracts at the prices and terms that were negotiated by a lead government agency. Maricopa County, as a lead agency for US Communities, entered into Contract No. 11019-RFP on July 6, 2011, which was subsequently amended and extended (the amendments, extensions and original contract are collectively referred to as the "Home Depot Contract") a copy of which is incorporated in this Agreement.

B. The City is permitted to purchase the goods and services described in the Home Depot Contract without further public bidding, and the Home Depot Contract permits its cooperative use by other governmental agencies, including the City.

C. Section 2-149 of the City's Procurement Code permits the Materials Manager to authorize procurement through the use of a contract initiated by another governmental entity when that government entity's procurement actions complied with the intent of the City's purchasing procedures in City Code Sections 2-145 and 2-146 and such purchase is in the best interest of the City. The City believes these conditions are met for purposes of the Home Depot Contract.

D. The City desires to contract with Contractor for supplies, goods or services identical, or nearly identical, to the supplies, goods or services Contractor is providing the State of Arizona under the Home Depot Contract, Contractor consents to the City's utilization of the Home Depot Contract as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the goods and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Agreement, the parties agree as follows:

1. Term of Agreement. This Agreement is effective as of the date first set forth above and expires upon thirty days' written notice by either party, or when the Home Depot Contract expires, including any contract extensions, whichever occurs first.

2. Scope of Work; Terms, Conditions, and Specifications

    a) Contractor will provide City the identical (or nearly identical) supplies, goods or services Contractor provided the Maricopa County under the Home Depot Contract, as requested by the City in the proposal attached as Exhibit "A."

    b) Contractor agrees to comply with all the terms, conditions and specifications of the Home Depot Contract for the purposes of this Agreement, and the terms, conditions, and specifications are incorporated in this Linking Agreement by this reference. The "City of Glendale" shall be substituted for "Maricopa County" or similar references throughout the Home Depot Contract.

3. Compensation.

    a) City shall pay Contractor the same compensation per unit that Maricopa County pays Contractor under the Home Depot Contract.

    b) The City may from time to time elect to purchase additional goods and services from Contractor pursuant to the Contract, and the City will comply with all applicable laws regarding procurement and approval of such purchases.

4. Cancelation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Subcontractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

**"City"**

City of Glendale, an Arizona municipal corporation

By: _____
Richard A. Bowers,
Acting City Manager

**"Contractor"**

Home Depot U.S.A., Inc.

By: _____ 4/14/15
Name: Richard Nyberg
Title: Sr. Manager of Pro Compliance

**ATTEST:**

_____
Pamela Hanna, (SEAL)
City Clerk

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

# 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 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 (1st) day of August, 2011 and ending the thirty-first (31st) 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).

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 Contactor'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. Contactor 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 on 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 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.

6.23.3 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 posses 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 statues 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 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;

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

**CONTRACTOR**

AUTHORIZED SIGNATURE

J.T. Rieves, 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 — DATE: JUL 19 2011

**ATTESTED:**

CLERK OF THE BOARD 070611 — DATE: JUL 19 2011

**APPROVED AS TO FORM:**

LEGAL COUNSEL — DATE: July 15 2011

# 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 |

| | YES | NO | REBATE |
|---|---|---|---|
| WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT | [X] | [ ] | |
| WILL ACCEPT PROCUREMENT CARD FOR PAYMENT: | [X] | [ ] | |

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

# EXHIBIT B

# SCOPE OF WORK

Maricopa County (herein "Lead Public Agency" on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein "Participating Public Agencies") has entered into a Master Agreement for a complete line of "Maintenance, Repair and Operating(MRO) Supplies and Industrial Supplies in a Retail and Wholesale (internet) environment; and Related Products and Services (installation, repair and renovation) (herein "Products and Services")

## Foreword

Home Depot U.S.A., Inc. ("Home Depot") understands Maricopa County's ("Lead Public Agency") continued need to reduce its overall costs and intent to enter into a new Master Agreement for a complete line of "Maintenance, Repair and Operating (MRO) Supplies and Industrial Supplies in a Retail and Wholesale environment; and Related Products and Services (installation, repair and renovation). Home Depot, through our strong national presence providing access to a vast array of supplies and equipment necessary for maintenance and repair in residential, commercial and industrial environments for use by various government agencies nationwide, is proposing through this submittal support for the retail environment aspect of the solicitation; consistent with the six years of successful performance under the prior MRO retail agreement between the parties.

## Executive Summary

Home Depot, building on successes associated with the cost savings to Participating Public Agencies under our previous MRO agreement with the Lead Public Agency and our nationwide retail presence, is pleased to propose a plan herein to supply maintenance, repair, and operations (MRO) supplies to all Participating Public Agencies. Our plan, consistent with the previously awarded MRO Agreement 05091 provides all Participating Public Agencies access to an un-paralleled inventory of MRO, building materials and hardware items – including associated installation, repair and renovation services. Professional building and maintenance people will be able to conveniently meet their needs for building hardware from a local Home Depot retail store, and plan procurements from the www.homedepot.com web site which displays and distributes many of the products found in our stores. In addition, our nationwide outside sales team can help facilitate supporting the needs of the Professional building and maintenance people by working as a team to provide solutions to those product needs and any services needed by those agencies.

If our proposal is accepted, we will continue to promote this contract as the primary instrument under which Home Depot does business with any potential Participating Public Agencies. In conjunction, our sales force is continually updated regarding the mechanics of a US Communities based partnership with agencies and directed to identify with its terms at all opportunities.

Consistent with our previous six years of implementation of the US Communities MRO contract 05091, Home Depot emphasizes our everyday low price guarantee: the price charged any public agency will be the lowest available in that market at that time for the identical item or we will match the price and refund 10% of the difference in accordance with standard Home Depot return policies. In addition, our offer provides for enhanced rebate incentives back to the Participating Public Agency based upon purchase volume.

## Executive Summary (continued)

Home Depot offers a robust selection of products in all MRO, hardware, and building product categories - and associated services - at each of our locations. Some of the categories are notable strengths of ours, and almost define our business (e.g., building materials and paint).

It is important to note that not all categories of merchandise are equally well represented in each of our store locations. This difference reflects practical issues regarding material handling and the distribution of certain classes of

products. If a category is better represented in one location than another, it is driven by historical needs of the local population.

In summary, our proposal offering is based upon the following business elements that have proven successful in support public agency procurement needs:

- Immediate same-day access to over 30,000 products at each store location
- Enhanced access to hundreds of thousands more products through special orders
- Bulk ordering incentives through our Volume Pricing Program
- Rebate incentives to Participating Public Agencies based upon spend volume
- Dedicated Government Sales team and Outside Sales Representatives across the nation

## About the Home Depot

Home Depot and its family of subsidiaries are among the most well-known and widely-respected corporations in America. We have been a public company since 1981, and our common stock trades on the New York Stock Exchange under the ticker symbol "HD". The company is included in the Dow Jones Industrial Average of thirty stocks, and in the Standard & Poor's index of 500 industrial stocks.

Home Depot is the world's largest home improvement specialty retailer with stores in all 50 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, 10 Canadian provinces, Mexico and China.

We are one of the nation's largest advertisers, and we utilize a broad range of mass media and targeted media. We also incorporate major sponsorships into our marketing plan, such as NASCAR®, the U.S. Olympic® team, The Home Depot Center, ESPN Game Day®, CBS® College Football and a number of home and garden television shows.

***Home Depot Information:*** *Home Depot's offer is based upon the traditional walk-in/walk-out transactional activity for Retail MRO products with orders processed through our individual stores; consistent with existing US Communities MRO agreement and our other government agreements. This provides the customers immediate access to a complete and comprehensive offering of appliances, building materials, hardware, HVAC, irrigation equipment and supplies, janitorial, landscaping equipment and supplies, motors, pumps, paints and coatings, plumbing, pool chemicals and supplies, hand-held general purpose tools, power tools, window coverings, and any other miscellaneous MRO supplies.*

*Each store stocks typically 30,000 to 40,000 products, including both national brand name and proprietary items. If an item is out of stock our sales associates can provide information to the government buyer regarding estimated fill time. Typically, our stores are serviced by the distribution centers multiple times during any week; so out of stock issues are minimized.*

*In addition, as the largest building supplies retailer/distributor in the country, Home Depot maintains billions in inventory with the majority on the shelves of our retail stores ready for immediate purchase.*

*Home Depot and its subsidiaries hold for resale more than $10 billion in inventory. Approximately ninety percent is on the shelves of our retail stores ready for immediate purchase; the rest are "in the pipeline", housed in the distribution centers ready to replenish the merchandise sold at our stores.*

*Home Depot operates primarily as a cash and carry retailer, and therefore relies on our hundreds of thousands of sales associates who staff our many retail stores to meet customers face-to-face and address their needs. We also have an Outside Sales team of approximately 200 associates, consisting of Government Sales Managers and Pro Account Representatives, who are the primary interfaces for Participating Public Agencies regarding US Communities contract inquiries.*

*We buy our store merchandise from suppliers located throughout the world. We are not dependent on any single supplier. Most of our merchandise is purchased directly from manufacturers, which eliminates "middleman" costs. Competitive sources of supply are readily available for substantially all of the products we sell in Home Depot stores.*

*We are committed to being the supplier of choice to a variety of professional customers, including government customers, building maintenance professionals, carpenters, plumbers, painters, electricians, remodelers, and designers. We continue to expand our "Pro" initiative, which adds programs to our stores that are designed to*

*increase sales to professional customers and government customers. Stores participating in the program have added associates at a sales desk dedicated to providing more personalized service to professional customers, including managing accounts and taking and filling orders for pick-up or delivery. Additionally, during the hours when professionals typically shop, these stores have assigned sales associates in certain departments to better assist these customers. We have also increased the available quantities of products typically purchased by professionals in bulk, and we offer certain items in each department packaged in bulk to provide additional savings. This initiative continues to be introduced to the stores that have a significant volume of professional customers.*
*Home Depot offers a variety of installation services and renovations services. Our Installation Services and Renovations Services programs use only qualified independent contractors nationwide. The Installation Services programs include the installation of products that are sold in our stores, such as carpeting, flooring, cabinets, water heaters and countertops, as well as other products such as generators and furnace and central air systems. The Renovations Services Program is a nationwide repair service offering a full line of renovation products and services designed to return property to a livable condition and increase marketability. These Services capabilities are further addressed in the information associated with Section 2.4 herein.*
*As part of our efforts to satisfy a broad range of the needs of our professional customers, we offer a tool rental center in many stores. Home Depot rents approximately 300+ commercial-quality tools and equipment, including saws, floor sanders, generators, gas powered lawn equipment and plumbing tools. Customers can rent the tools on an hourly, daily, weekly or monthly basis. Our associates who work in the tool rental center receive special training in the use and maintenance of tools. We have tool rental centers in over 1000 stores.*

***Home Depot Information:*** *As part of our proposal value proposition, we work only with installers and home service professionals who meet the highest standards for experience, know-how and customer service. At The Home Depot, we screen and perform background checks on all of our installers before we send them out on any job, to ensure they have all applicable licenses and insurance. When you hire us for your project, you'll know we will get the job done right.*
*Home Depot offers superior warranties on our installation service labor and products, to give you peace of mind on the quality of your installation project. All of our installation services are backed by our one-year warranty on labor as well as manufacturer warranties on all of our products.*
*When you work with The Home Depot, you won't have to go to the trouble of finding multiple installers and home service professionals for different parts of your project. From your initial consultation all the way through to the installation and cleanup, we'll make sure the project is done right.*
*Our nationwide Installation Services programs include the installation of products that are sold in our stores, such as carpeting, flooring, cabinets, water heaters and countertops, as well as other products such as generators and furnace and central air systems.*
*The Home Depot Renovations Services Program is a nationwide repair service offering a full line of renovation products and services designed to return property to a livable condition and increase marketability*

- *Dedicated Home Depot Renovations Services team acts as the single point of contact for all properties*
- *Simplifies business by offering the same process and procedure across the nation*
- *Davis- Bacon wage requirements compliance*
- *Capacity to handle multiple projects in several markets simultaneously*
- *Full scope of renovation services**
- *Nationwide network of contractors that are Licensed, background checked and badged consisting of (at a minimum):*
    - *National Employee Database*
    - *SSN Verification*
    - *National Criminal Database Check*
    - *Two County Search*
    - *Sex Offender Search*
    - *Annual Review (National Criminal Database)*
    - *Two (2) Year Complete Re-Screen and Renewal*
    - *Financial Background*
- *Service Provider's are issued picture identification badges to wear at all times while on site*
- *One-year warranty on workmanship backed by Home Depot*
- *Locally Sourced Renovations Service Providers – we retain local service providers nationwide*
- *Fast repair turnaround – typical job completion within 10-15 days*

*This program facilitates rehabilitation and/or improvements that are non-structural in nature, such as:*

- *Repair/Replacement/Upgrade of:*
  - *Roofs, gutters and downspouts*
  - *Existing HVAC systems*
  - *Plumbing/Septic & electrical systems*
  - *Floor Coverings*
  - *Exterior decks, patios, porches*
  - *Windows, doors, exterior wall siding*
- *Minor remodeling, such as kitchens (nonstructural repairs)*
- *Painting, both exterior and interior*
- *Weatherization, including storm windows/doors, insulation, weather stripping*
- *Purchase and installation of appliances, including free-standing ranges, refrigerators, washers/dryers, dishwashers, and microwaves*
- *Accessibility improvements for persons with disabilities*
- *Basement finishing, waterproofing & remodeling (non-structural repairs)*
- *ADA renovations*

***Home Depot Information:*** *In addition, Home Depot has the capability to provide customers R.S. Means Bare Cost Data pertaining to all written quotations upon request by that Participating Public Agency.*

**The Home Renovations Service program does not include:*

- *New construction*
- *Major structural work*
- *Evictions*
- *Routine maintenance services (lawn cutting)*
- *Mold, asbestos, or lead paint (MALP) remediation (in most cases)*

*Our Retail value proposition for products and services does not include the following industrial environment efforts*

- *Hose Fabrication*
- *Hydraulic Repairs*
- *Gearbox Repairs*
- *Conveyor System Repairs*
- *Vulcanizing*
- *Rubber Fabrication*

*Home Depot maintains for all services customers a single point contact for each Participating Public agency regarding each individual effort. Our services capacity is managed through a highly qualified & compliant contractor network (with controls for every step of the process) and on-the-ground support for each services effort. The Home Depot's Quality Control program consists of dedicated personnel monitoring:*

- *Internal Q&A process*
- *Scope of work review per job*
- *Job-site walk by license contractors to create punch list items (if applicable)*
- *Customer acceptance and sign off upon completion of the work*
- *Random job site audits*
- *Compliance tracking of Service Provider (Sub-contractor) licenses, insurance, etc.*
- *Permits as required*

***Home Depot Information:*** *Home Depot's offer is based upon the expeditious purchasing capabilities through our local The Home Depot stores. Each store stocks typically 30,000 to 40,000 products across all the product categories identified above. The Home Depot stores are organized by the following departments:*

- *Building Materials*
- *Lumber*
- *Flooring/Organization*
- *Paint*
- *Hardware*
- *Plumbing*

- *Electrical/Lighting*
- *Seasonal/Garden*
- *Kitchen/Bath*
- *Millwork*
- *Décor*
- *Appliances*

*This list does not include additional access to Special Order products, which provide customers access to thousands of additional products. As identified in previous sections we also have installation services that are available across all these product categories.*

PRODUCT ORDERING:

***Home Depot Information:*** *Home Depot's offer is based upon the expeditious purchasing capabilities through our local The Home Depot stores and the extended capability to procure products 24/7 at www.homedepot.com.*
*The typical The Home Depot stores is open from 7 am to 10pm weekly we also have continued to expand our focused support to professional and government customers by ensuring additional associates are available during those times these customers shop.*
*Transactions, typically completed at the point-of-sale, are also supported by will calls through the local Home Depot store.*
*Throughwww.homedepot.com we offer thousands of products that are suitable for on-line sales---they can easily be delivered by an overnight delivery service. In addition to products, the site offers information about our products and projects, calculators to estimate the amount and kinds of materials needed to complete a project, as well as information about our company (including store locations and hours of operation) and links to our other on-line businesses. As with our stores, the focus of our web site is on providing information and customer service.*
*The Home Depot maintains a robust customer service support capability through our Customer Care specialists available 24 hours a day through 1-800-466-3337.*
*In addition for emergency procurements we have government sales personnel who can help with organizing purchases at the times our stores are not open.*
*We also are focused on supporting our customers during the times of natural disasters. Home Depot is often considered a first responder supporting those government entities that need products to stabilize the affected communities. We maintain a command center during these emergencies.*

PRODUCT PRICING:
REBATE ON SALES:

***Home Depot Information:*** *Our retail locations will be the primary locations for purchases by Participating Public Agency customers with our everyday low retail prices, and the price-matching promise available to all purchasers.*
*Our pricing is based upon our everyday low retail price and the vendor relationships we maintain across the country.*
*The Pro Sales desk is the preferred location for the Participating Public Agency customers to process transactions, due to the highly trained staff available for government procurements.*

***Regarding the Volume Pricing Program****, for large individual planned purchases, Home Depot has the ability to provide more aggressive savings to purchasers through our Volume Pricing Discounts. For any planned order over $2,500, call in the request for quote to the ProDesk of your local The Home Depot store and ask for it to be submitted for volume pricing consideration. This is a volume discount program that can give various discounts depending on dollar value, quantity and type of material. When the quote is submitted, Home Depot will send to our corporate office and then an analysis will be completed regarding any potential additional savings. The desk will then will be able to inform you of the savings. This process in the majority of cases can be completed within a few minutes. The quote must be paid for at one time and the desk will coordinate as to when the material will be ready for either delivery or pick up. Currently, the average savings exceeds 10% nationwide (depending on dollar value, quantity and type of material)*
*It is expected that the majority of the transactions will be processed as credit card sales; as they currently are under our existing US Communities MRO contract 05091. Home Depot can accept Purchase Orders (POs) provided that at*

*the time of transaction a payment vehicle is provided – such as a Home Depot (Net 30) Account or credit card number. These transactions will be processed as a credit card sale.*
*Participating Public Agency customers will be required to provide tax exemption information, from their tax exempt registration under www.homedepot.com, at the time of transaction to ensure no tax is incurred on the sale.*

*In addition, to ensure the procurement is tracked as a US Communities contract sale it is important that the buyers register their credit cards and/or Home Depot Accounts on the secure and restricted web site.*

***Additionally, Home Depot's offer is based upon tiered annual rebates to Participating Public Agencies provided within sixty (60) days of the end of the calendar year.*** *These tiered rebates, enhanced over the current US Communities contract 05091 offering, are as follows:*

- *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*

*Eligibility for rebate incentives to Participating Public Agencies requires completion of the web-based enrollment requirements through https://cpr.homedepot.com. Eligible sales will commence upon completion of the enrollment based upon sales that occurred on those accounts from that date through the calendar year. The web enrollment process accommodates the secure inclusion of credit card accounts, and the capability to add/remove accounts during the performance of the contract. Tracking of cards will begin once the cards are successfully enrolled via the website. An operating premise for retail outlets is that most customers will take their purchases with them; delivery from retail outlets, while offered, should be viewed as a convenience above and beyond usually expectations. This premise is consistent with all our similar agreements. Delivery ARO will depend on a number of reasonable variables, and should be discussed with an in-store associate at the time of purchase.*
*The almost 200 Home Depot Government Sales Managers and Pro Account Representatives are the local conduit for supporting Participating Public Agencies registration efforts and associated inquiries.*

SALES REPORTING:

***Home Depot Information:*** *Home Depot has consistently provided quarterly sales reporting under our existing US Communities MRO cooperative contract 05091for over five years. Our sales report is provided in the required contractual format consistent with the Exhibit B format included in the solicitation. The success of the process has always depended on the accurate registration of the procuring entities credit cards, Home Depot Accounts, or checks through enrollment form tool identified on our homepage at www.homedepot.com >>uscommunities which provides for access to our PCI compliant registration tool https://cpr.homedepot.com, to track those sales. By requiring Participating Public agencies to complete this registration on a secure and restricted web site, we can assure the customers, US Communities, and ourselves that when we extract data from our sales journals we will find all the activity of bona fide users of the contract.*
*This result in reporting on a customer basis on the required summary level and access to the product level for each individual transaction including:*

*A summary of the net sales for the quarter*
*Purchasing Agency Name*
*Purchasing Agency Address*
*Individual Transaction Totals*

*Periodically, when requested, additional information can be provided on a sample basis regarding the specific products purchased during each transaction. Most reports can be transmitted via email to the requesting agency. Other information, such as NIGP codes, manner of payment, delivery on-time or backordered, is also some of the data recorded and archived about every transaction, and is available, on special request*
*The sales reporting is, and will continue to be, completed for the customer through the Store Support Center*
*Where we currently have potential participating agencies not procuring under our US Communities agreement we will continue to provide the value of participating under the US Communities contract as our primary offering to those eligible agencies.*

BRAND NAMES:

***Home Depot Information:*** *Participating Public Agencies has immediate access to thousands of products available through our Home Depot stores prior to completing a transaction, to help aid in the purchasing decision.*

*A typical Home Depot store stocks 30,000 to 40,000 products during the year, including both national brand name and proprietary items. We buy our store merchandise from suppliers located throughout the world. We are not dependent on any single supplier. Most of our merchandise is purchased directly from manufacturers, which eliminates "middleman" costs. We believe that competitive sources of supply are readily available for substantially all of the products we sell in Home Depot stores.*

*In addition, through in-store Special Orders and products available exclusively on www.homedepot.com our customers have access to hundreds of thousand s additional products*
*To complement and enhance our product selection, we continued to form strategic alliances and exclusive relationships with selected suppliers to market products under a variety of well-recognized brand names. During fiscal 2010, we offered a number of proprietary and exclusive brands across a wide range of departments including, but not limited to, Behr Premium Plus® paint, Hampton Bay® lighting, Vigoro® lawn care products, Husky® hand tools, RIDGID® and Ryobi® power tools and Glacier Bay® bath fixtures. We also continued our partnership with Martha Stewart Living Omnimedia to offer an exclusive Martha Stewart Living brand of home improvement products in select categories including outdoor living, paint, cabinetry, flooring, and shelving and storage. We may consider additional strategic alliances and relationships with other suppliers and will continue to assess opportunities to expand the range of products available under brand names that are exclusive to The Home Depot.*
*From our Store Support Center, we maintain a global sourcing merchandise program to source high-quality products directly from manufacturers around the world. Our merchant team identifies and purchases market leading innovative products directly for our stores. These initiatives enable us to improve product features and quality, to import products not currently available to our customers and to offer products at a lower price than would otherwise be available if purchased from third-party importers.*

WARRANTY:

***Home Depot Information:*** *All repair and renovation services performed by Home Depot carries a one (1) year workmanship warranty and all manufacturers' product warranties shall be passed on to the end customer.*
*Home Depot also offers a robust return policy on product purchases, whereas (most) returns within 90 days of purchase are accommodated with a valid sales receipt for exchange, refund, credited to an associated Home Depot Account, or refunded via The Home Depot store credit.*

INVOICES AND PAYMENTS (PURCHASE ORDER):

***Home Depot Information:*** *Consistent with the success of our current US Communities cooperative purchasing contract 050091, it is expected that the majority of the transactions will be processed as credit card sales. Home Depot does accept Purchase Orders (POs) provided that at the time of transaction a payment vehicle is provided – such as a Home Depot (Net 30) Account or credit card number. These transactions will be processed as a credit card sale.*
*Electronic Fund Transfers (EFT) can be completed to remit payment on a Home Depot Account upon receipt of an invoice.*
*Home Depot has also, on occasion, accepted wire transfer payments at the time of transaction.*

TAX:

***Home Depot Information:*** *For tax exempt procurements through our local stores, Participating Public Agencies will be required (if not already completed) to register with Home Depot for tax exemption under www.homedepot.com. This is a one-time registration that provides for a unique Home Depot tax exempt number that needs to be identified , at the time of transaction to ensure no tax is incurred on the sale. In addition, our installation and Renovations Services quotes can accommodate tax –free procurements by authorized government agencies.*
*Internet ordering through www.homedepot.com is available to Participating Public Agency purchasers but tax exemption is a credit back after the transaction.*

DELIVERY, FREIGHT REQUIREMENTS:

***Home Depot Information:*** *An operating premise for retail outlets is that most customers will take their purchases with them; delivery from retail outlets, while offered, should be viewed as a convenience above and beyond usually expectations. This premise is consistent with all our similar agreements. Delivery ARO will depend on a number of reasonable variables, and should be discussed with an in-store associate at the time of purchase. Our delivery documentation does provide for standard commercial packing list information as requested in the solicitation.*

2.1 STRATEGIC ALLIANCE for VOLUME EXPENDITURES ($AVE):

***Home Depot Information:*** *We currently support $AVE Cooperative Purchasing Agreement participant sunder our existing US Communities cooperative purchasing contract 05091 and will continue that support if awarded this contract.*

***Home Depot Information:*** *Home Depot is the world's largest home improvement retailer, operating almost 2,000 stores across the nation and employing more than 300,000 skilled associates. We rely on our hundreds of thousands of in-store sales associates to meet customers face-to-face and address their needs.*
*In addition, we have a nationwide outside sales team of over 200 associates who support the needs of the Professional building and maintenance people and government customers by working as a team to provide solutions to those product needs and any services needed by those agencies*
*We have successfully relied on the outside sales team, consisting of Government Sales Managers, Regional Professional Sales Managers, Pro Account Representatives, and associated teams to support government customers under our existing US Communities contract; and will continue that support.*
*Our associates live in the communities where they work, as the typical store employees 100 to 150 associates who generally live within 5-10 miles of that store location.*

***Home Depot Information:*** *Home Depot operates almost 2,000 stores across the nation – See Attachment E for the complete list.*

***Home Depot Information:*** *Home Depot maintains our main Store Support Center in Atlanta, Georgia. Regionally we maintain 19 additional store support centers throughout the country based upon our geographical alignment that bests support the customers in those areas.*

**Distribution**

***Home Depot Information:*** *Home Depot's offer is based upon the traditional walk-in/walk-out transactional activity for Retail MRO products with orders processed through our almost 2000 individual stores; consistent with existing US Communities MRO agreement and our other government agreements. This provides the customers immediate access to a complete and comprehensive offering of appliances, building materials, hardware, HVAC, irrigation equipment and supplies, janitorial, landscaping equipment and supplies, motors, pumps, paints and coatings, plumbing, pool chemicals and supplies, hand-held general purpose tools, power tools, window coverings, and any other miscellaneous MRO supplies.*
*Each store stocks typically 30,000 to 40,000 products, including both national brand name and proprietary items. If an item is out of stock our sales associates can provide information to the government buyer regarding estimated fill time. Typically, our stores are serviced by the distribution centers multiple times during any week; so out of stock issues are minimized.*
*In addition, as the largest building supplies retailer/distributor in the country, Home Depot maintains billions in inventory with the majority on the shelves of our retail stores ready for immediate purchase.*
*Home Depot and its subsidiaries hold for resale more than $10 billion in inventory. Approximately ninety percent is on the shelves of our retail stores ready for immediate purchase; the rest are "in the pipeline", housed in the distribution centers ready to replenish the merchandise sold at our stores.*
*Home Depot offers a variety of installation services and renovations services. Our Installation Services and Renovations Services programs use only qualified independent contractors nationwide. The Installation Services programs include the installation of products that are sold in our stores, such as carpeting, flooring, cabinets, water heaters and countertops, as well as other products such as generators and furnace and central air systems. The Renovations Services Program is a nationwide repair service offering a full line of renovation products and services*

*designed to return property to a livable condition and increase marketability. These Services capabilities are further addressed in the information associated with Section 2.4 herein.*
*As part of our efforts to satisfy a broad range of the needs of our professional customers, we offer a tool rental center in many stores. Home Depot rents approximately 300+ commercial-quality tools and equipment, including saws, floor sanders, generators, gas powered lawn equipment and plumbing tools. Customers can rent the tools on an hourly, daily, weekly or monthly basis. Our associates who work in the tool rental center receive special training in the use and maintenance of tools. We had tool rental centers in over 1000 stores.*

***Home Depot Information:*** *We buy our store merchandise from suppliers located throughout the world. We are not dependent on any single supplier. Most of our merchandise is purchased directly from manufacturers, which eliminates "middleman" costs. Competitive sources of supply are readily available for substantially all of the products we sell in Home Depot stores.*

*This supply logistics model focuses on removing cost in the system and provides for the best possible prices to our customers.*

***Home Depot Information:*** *The almost 2000 The Home Depot stores are included in Tab 10 – Attachment E herein. Our stores range in size from approximately 50,000 square feet to over 160,000 square feet based upon the area's population and needs; as well as other factors.*
*Home Depot also maintains 19 Rapid Deployment Centers (RDCs) that are on average over 600,000 square feet, and are strategically placed throughout the country. RDCs allow for aggregation of store product needs to a single purchase order, and then rapid allocation and deployment of inventory to individual stores upon arrival at the center. This process allows improved transportation, simplified order processing at suppliers and last minute reallocation from the time that product needs at stores are determined to actual replenishment. At the end of fiscal 2010, we operated 30 bulk distribution centers and 34 conventional distribution centers*

***Home Depot Information:*** *Home Depot's offer is based upon the traditional walk-in/walk-out transactional procurements at our local stores. Delivery is available on a request basis, for which those deliveries are sent through third party carriers we have a business relationship (i.e. UPS, private carriers, etc...). Therefore, the cost of delivery is not "built into" our product selling prices keeping our prices at their everyday low retail price for our customers.*

*The Home Depot business model is predicated on the assumption that most customers will take their purchases with them. Delivery, if requested, is treated as an extra service, and may have delivery charges apply. Therefore, the cost of delivery is not "built into" our product selling prices. The Home Depot typically provides for delivery (for a fee) for those customers who request it on a case by case basis*

*Home Depot also offers a robust return policy on product purchases, whereas (most) returns within 90 days of purchase are accommodated with a valid sales receipt for exchange, refund, credited to an associated Home Depot Account, or refunded via The Home Depot store credit.*
*For on-line purchases at homedepot.com, there are a variety of ways to return your products:*

- *Return the item(s) to a The Home Depot Store location nearest you*
- *Return the item(s) via the shipment method of your choice*
- *Return the item(s) using the returns label that came with your order (charges will be billed to your credit card)*

*Home Depot offers a robust return policy on product purchases, whereas (most) returns within 90 days of purchase are accommodated. Some exceptions are:*

- *Gasoline-powered equipment may be returned within 30 days of purchase with a valid sales receipt. After 30 days, item may be sent out for repair at the customer's expense, unless covered under warranty*
- *Special order returns are subject to 15% restocking fee. Cancellations may be subject to 15% restocking fee*
- *Returns Not Available on the Following Products: Custom made products and custom tinted paint, utility trailers, Gift Cards, Gift Certificates and Store Credits*

**US COMM STORE SUMMARY BY STATE**

*Home Depot U.S.A. Inc.*
*Proposal in Response to*
*Serial 11019 – RFP Maintenance, Repair, Operating Supplies*
*Industrial Supplies, and Related Services*
*Tab 10- Attachment E (Retail Stores Locations)*

Vendor Name: Home Depot U.S.A., Inc.

| | | QUANTITY OF RETAIL STORES IN THIS STATE | QUANTITY OF WHOLESALE WAREHOUSE(S) IN THIS STATE | WAREHOUSE LOCATIONS (CITY) |
|---|---|---|---|---|
| ALABAMA | | 28 | N/A | |
| ALASKA | | 7 | N/A | |
| ARIZONA | | 14 | N/A | |
| ARKANSAS | | 56 | N/A | |
| CALIFORNIA | | 231 | N/A | |
| COLORADO | | 46 | N/A | |
| CONNECTICUT | | 28 | N/A | |
| DELAWARE | | 9 | N/A | |
| FLORIDA | | 153 | N/A | |
| GEORGIA | | 90 | N/A | |
| HAWAII | | 7 | N/A | |
| IDAHO | | 11 | N/A | |
| ILLINOIS | | 76 | N/A | |
| INDIANA | | 24 | N/A | |
| IOWA | | 10 | N/A | |
| KANSAS | | 16 | N/A | |
| KENTUCKY | | 14 | N/A | |
| LOUISIANA | | 28 | N/A | |
| MAINE | | 11 | N/A | |
| MARYLAND | | 41 | N/A | |
| MASSACHUSETTS | | 45 | N/A | |
| MICHIGAN | | 71 | N/A | |
| MINNESOTA | | 33 | N/A | |
| MISSISSIPPI | | 14 | N/A | |
| MISSOURI | | 34 | N/A | |
| MONTANA | | 6 | N/A | |

| | | QUANTITY OF RETAIL STORES IN THIS STATE | QUANTITY OF WHOLESALE WAREHOUSE(S) IN THIS STATE | WAREHOUSE LOCATIONS (CITY) |
|---|---|---|---|---|
| NEBRASKA | | 8 | N/A | |
| NEVADA | | 21 | N/A | |
| NEW HAMPSHIRE | | 20 | N/A | |
| NEW JERSEY | | 67 | N/A | |
| NEW MEXICO | | 13 | N/A | |
| NEW YORK | | 100 | N/A | |
| NORTH CAROLINA | | 42 | N/A | |
| NORTH DAKOTA | | 1 | N/A | |
| OHIO | | 70 | N/A | |
| OKLAHOMA | | 16 | N/A | |
| OREGON | | 26 | N/A | |
| PENNSYLVANIA | | 70 | N/A | |
| RHODE ISLAND | | 8 | N/A | |
| SOUTH CAROLINA | | 25 | N/A | |
| SOUTH DAKOTA | | 1 | N/A | |
| TENNESSEE | | 39 | N/A | |
| TEXAS | | 178 | N/A | |
| UTAH | | 22 | N/A | |
| VERMONT | | 3 | N/A | |
| VIRGINIA | | 49 | N/A | |
| WASHINGTON | | 45 | N/A | |
| WEST VIRGINIA | | 6 | N/A | |
| WISCONSIN | | 27 | N/A | |
| WYOMING | | 5 | N/A | |

# Maricopa County
## Office of Procurement Services

www.maricopa.gov

**Chief Procurement Officer**
320 W. Lincoln St.
Phoenix, AZ 85003
Phone: (602) 506-3967
Fax: (602) 258-1573

**December 19, 2013**

**Home Depot U.S.A., INC**
**2455 Paces Ferry Rd, Floor C-11**
**Atlanta, GA 30339**

We are pleased to notify you that Maricopa County has renewed your contract to supply **MRO SUPPLIES AND RELATED SERVICES** as indicated on the attached award sheet with an effective date of **August 01, 2014.**

In accordance with the bid specifications, purchasing documents will be forwarded to you covering the specific items of this award, which will include deliveries and terms.

If you have any questions regarding Serial **11019-RFP** please contact **Derron Wasp** at **(602) 506-3823.**

Sincerely,

Derron Wasp, Procurement Officer
Office of Procurement Services

DW/ua
Attach.

cc: Office of Procurement Services
**re: Serial 11019-RFP**

**PLEASE SUBSTITUTE ATTACHED REVISED PAGES TO SUBJECT CONTRACT.**

DEC 1 9 2013

**SERIAL 11019-RFP MRO SUPPLIES AND RELATED SERVICES**
**Contract - Home Depot U.S.A., INC**

**DATE OF LAST REVISION: December 19, 2013 CONTRACT END DATE: July 31, 2017**

**CONTRACT PERIOD THROUGH JULY 31, ~~2014~~ 2017**

TO: All Departments

FROM: Office of Procurement Services

SUBJECT: Contract for **MRO SUPPLIES AND RELATED SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **July 06, 2011 (Eff. 08/01/11).**

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Chief Procurement Officer
Office of Procurement Services

**DW/ua**
Attach

Copy to: Office of Procurement Services
**Don Jeffery,** Facilities Management
**Valerie Chavez,** MCDOT

(Please remove Serial 05091-RFP from your contract notebooks)

# 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 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 (1st) day of August, 2011 and ending the thirty-first (31st) day of July, ~~2014~~ **2017**.

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 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

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 B++. 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 $2,000,000 for each occurrence, $2,000,000 Products/Completed Operations Aggregate, and $4,000,000 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 $2,000,000 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 $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 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.

6.2.12.1.1 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.

6.2.12.1.2 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.

For Contractor:

Home Depot U.S.A., INC
Contract Manager
2455 Paces Ferry Road C-11
Atlanta, GA 30339

6.8 **LANGUAGE FOR REQUIREMENTS CONTRACTS:**

**Contractors signify their understanding and agreement by signing a bid submittal, that the Contract resulting from the bid will be a requirements contract. However, the Contract does not guarantee any purchases will be made. It only indicates that if purchases are made for the materials contained in the Contract, they will be purchased from the Contractor awarded that item. Orders will only be placed when the County identifies a need and proper authorization and documentation have been approved.**

**County reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc.**

**Contractors agree to accept verbal notification of cancellation from the County Procurement Officer with written notification to follow. By submitting a bid in response to this Invitation for Bids, the Contractor specifically acknowledges to be bound by this cancellation policy.**

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 **TERMINATION BY THE COUNTY:**

**If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of a substantial violation of any**

**provision of this Contract, then the County may terminate the Contract. Prior to termination of the Contract, the County shall give the Contractor fifteen- (15) calendar day's written notice. Upon receipt of such termination notice, the Contractor shall be allowed fifteen (15) calendar days to cure such deficiencies.**

6.12 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.

6.13 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.

6.14 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.

6.15 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.

6.16 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.

6.17 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County **Office of Procurement Services** shall be responsible for approving all amendments for Maricopa County.

6.18 **ACCESS TO AND RETENTION OF RECORDS FOR THE PURPOSE OF AUDIT AND/OR OTHER REVIEW:**

**In accordance with section MCI 367 of the Maricopa County Procurement Code the Contractor agrees to retain all books, records, accounts, statements, reports, files, and other records and back-up documentation 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 latest. 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.**

**If the Contractor's books, records , accounts, statements, reports, files, and other records and back-up documentation 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.**

**If at any time it is determined by the County that a cost for which payment has been made is a disallowed cost, the County shall notify the Contractor in writing of the disallowance. The course of action to address the disallowance shall be at sole discretion of the County, and may include either an adjustment to future claim submitted by the Contractor by the amount of the disallowance, or to require reimbursement forthwith of the disallowed amount by the Contractor by issuing a check payable to Maricopa County.**

6.19 AUDIT DISALLOWANCES:

6.19.1 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.

6.20 ALTERNATIVE DISPUTE RESOLUTION:

6.20.1 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).

6.20.2 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.

6.20.3 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.

6.21 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.

6.22 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.

6.23 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.

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

6.24.1 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.

6.24.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 6.23.1 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.

6.24.3 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.

~~6.25 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:~~

~~6.25.1 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.~~

~~6.25.2 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.~~

6.26 CONTRACTOR LICENSE REQUIREMENT:

6.26.1 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 the **Office of Procurement Services** and the using agency of any and all changes concerning permits, insurance or licenses.

6.26.2 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 posses 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.

6.27 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

6.27.1 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 statues 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.

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

6.27.3 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.

6.28 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.

6.29 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

6.30 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.

6.31 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.

6.32 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.

6.33 INCORPORATION OF DOCUMENTS:

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

6.33.1 Exhibit A, Pricing;
6.33.2 Exhibit B, Scope of Work;

6.34 **INFLUENCE**

**As prescribed in MC1-1202 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for Disbarment or Suspension under MC1-902.**
**An attempt to influence includes, but is not limited to:**

6.34.1 **A Person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type valuable contribution or subsidy,**

6.34.2 **That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.**

**If a Person attempts to influence any employee or agent of Maricopa County, the Chief Procurement Officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.**