

**SERIAL 170009-RFP PAINT AND PAINT SUPPLIES  
(Contract- Home Depot USA, Inc.)**

**DATE OF LAST REVISION: March 9, 2017**

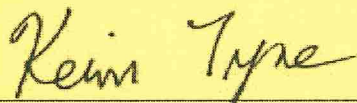
**CONTRACT END DATE: February 28, 2020**

**CONTRACT PERIOD THROUGH FEBRUARY 28, 2020**

**TO: All Departments**  
**FROM: Office of Procurement Services**  
**SUBJECT: Contract for PAINT AND PAINT SUPPLIES**

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 **March 9, 2017**.

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.



---

Kevin Tyne, Chief Procurement Officer  
Office of Procurement Services

SA/ab  
Attach

Copy to: Office of Procurement Services  
Christian Jonson, FMD  
Sami Birchard, MCDOT  
Barry Thiem, MCSO

(Please remove Serial 10045-C from your contract notebooks)



## CONTRACT PURSUANT TO RFP

SERIAL 170009-RFP

This Contract is entered into this 9<sup>th</sup> day of March, 2017 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 Paint and Paint Supplies.

### 1.0 CONTRACT TERM:

- 1.1 This Contract is for a term of three (3) years, beginning on the 9<sup>th</sup> day of March, 2017 and ending the 28<sup>th</sup> day of February, 2020.
- 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 seven (7) additional 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 sixty (60) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

### 2.0 FEE ADJUSTMENTS:

- 2.1 Any request for a fee or rebate adjustment must be submitted sixty (60) days prior to the current Contract expiration or annual anniversary. Requests for adjustment in cost of labor and/or materials not identified in the awarded proposal must be supported by appropriate documentation. If County agrees to the adjusted fee or rebate offering, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey if the offering was awarded on a fixed price basis.

### 3.0 PAYMENTS:

- 3.1 As consideration for performance of the duties described herein, County shall pay Contractor the prices based on the information stated in Exhibit A and the clarifications herein.
- 3.2 For non-procurement cards 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 one (1) legible copy of their detailed invoice before payment(s) can be made. Incomplete invoices will not be processed.

- 3.3.2 At a minimum, the invoice must provide access to the following information:
- Company name, address and contact
  - County bill-to name and contact information
  - Contract Serial Number or
  - County purchase order number
  - Invoice number and date
  - Payment terms
  - Date of service or delivery
  - Quantity
  - Contract Item number(s)
  - Description of Purchase (product or services)
  - Pricing per unit of purchase
  - Freight (if applicable)
  - Extended price
  - Total Amount Due
- 3.3.3 Discounts offered in the contract shall be calculated based on the date a properly completed invoice is received by the County (ROI).
- 3.3.4 Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.
- 3.3.5 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 (<https://azdom-vss.hostams.com/webapp/PRDVSS1X1/AltSelfService>).
- 3.3.6 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.
- 3.4 APPLICABLE TAXES:
- 3.4.1 **Payment of Taxes:** The Contractor shall pay all applicable taxes. With respect to any installation labor on items that are not attached to real property performed by Contractor under the terms of this Contract, the installation labor cost and the gross receipts for materials provided shall be listed separately on the Contractor's invoices.
- 3.4.2 **State and Local Transaction Privilege Taxes:** Maricopa County is subject to all applicable state and local transaction privilege taxes. To the extent any state and local transaction privilege taxes apply to sales made under the terms of this contract, it is the responsibility of the seller to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.
- 3.4.3 **Tax Indemnification:** Contractor and all subcontractors shall pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold Maricopa County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 3.5 TAX (COMMODITIES):
- Tax shall not be levied against labor. Sales/use tax will be determined by County. Tax will not be used in determining low price.

3.6 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE):

3.6.1 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.

3.7 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's):

3.7.1 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

3.8 VOLUNTARY EMPLOYEE DISCOUNTS:

3.8.1 Vendors may voluntarily offer discounts to County employees for products or services provided under this contract. Whether a vendor offers or does not offer an employee discount is not a factor in nor considered in the evaluation of responses to this solicitation.

3.8.2 Any discount offered is part of a commercial transaction between the vendor and individual County employees and the County is not a party to the transaction. Any disputes or issues arising from an individual commercial transaction between the vendor and an individual County employee are a matter between the vendor and the employee. If a discount is offered, the terms will be announced to County employees.

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 AND LIMITATION OF LIABILITY:

To the fullest extent permitted by law, and to the extent that claims, damages, losses or expenses are not covered and paid by insurance purchased by the Contractor, the Contractor shall defend indemnify and hold harmless the County (as Owner), its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including, but not limited to attorneys' fees, court costs, expert witness fees, and the costs and attorneys' fees for appellate proceedings) arising out of, or alleged to have resulted from the negligence or willful misconduct relating to the performance of this Contract.

Contractor's duty to defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment of, or destruction of tangible property, including loss of use resulting there from, caused by gross negligence or willful misconduct in the performance of this Contract, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, any one directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

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.

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

CONTRACTOR WILL NOT BE LIABLE TO COUNTY FOR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, EXEMPLARY, MORAL, OR CONSEQUENTIAL DAMAGES, EXPENSES, COST, PROFITS, LOST SAVINGS OR EARNINGS, LOST OR CORRUPTED DATA, OR OTHER LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT.

6.2 INSURANCE:

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 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.

6.2.7 The policies required hereunder, except Workers' Compensation and Errors and Omissions, 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.

6.2.8 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, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

6.2.9 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 or use or maintenance of the Premises under this Contract.

6.2.10 Workers' Compensation:

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.

Contractor, its contractors and its subcontractors waive all rights against Contract 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, its contractors and its subcontractors pursuant to this Contract.

6.2.11 Certificates of Insurance:

6.2.11.1 Prior to Contract **AWARD**, Contractor shall furnish the County with valid and complete 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. Alternatively, the County will accept an insurance industry recognized Memorandum of Insurance.

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

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

6.2.12 Cancellation and Expiration Notice:

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to Maricopa County. Contractor must provide to Maricopa County, within 2 business days of receipt, if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Maricopa County Office of Procurement Services and shall be mailed or hand delivered to 320 West Lincoln Street, Phoenix, AZ 85003, or emailed to Procurement Officer noted in solicitation.

6.3 FORCE MAJEURE:

6.3.1 Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Contract if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

6.3.2 Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

6.3.3 The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

6.3.4 The County shall reserve the right to terminate this Contract and/or any applicable order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the Contract and time for performance at its discretion.

6.4 WARRANTY OF SERVICES:

6.4.1 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.

6.4.2 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 for one (1) year following the performance of those services. 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.

6.4.3 DISCLAIMER OF WARRANTIES FOR PRODUCTS. COUNTY'S SOLE AND EXCLUSIVE WARRANTY FOR PRODUCTS, IF ANY, IS THAT PROVIDED BY THE PRODUCT MANUFACTURER. CONTRACTOR DISCLAIMS ALL EXPRESSED, IMPLIED OR STATUTORY WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LANGUAGE OF THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

6.5 INSPECTION OF SERVICES:

6.5.1 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.

6.5.2 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.

6.5.3 If prior to completion of an Order, any of the services required by that Order do not conform to Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at no cost to the County. When the defects in services cannot be corrected by re-performance, County may:

6.5.3.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and

6.5.3.2 Reduce the Contract price to reflect the reduced value of the services performed.

6.5.4 If the Contractor fails to promptly perform the services again as provided in Section 6.5.3 or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:

6.5.4.1 By Contract or otherwise, perform the services and charge to the Contractor, through direct billing or through payment reduction, any cost incurred by County that is directly related to the performance of such service; or

6.5.4.2 Terminate the Contract for default.

6.6 REQUIREMENTS CONTRACT:

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



6.6.2 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 for actual and documentable costs incurred by the Contractor in response to 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.

6.6.3 Contractors agree to accept verbal notification of cancellation of Purchase Orders 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.

6.7 BACKGROUND CHECK:

Contractors need to be aware that there may be multiple background checks (Sheriff's Office, County Attorney's Office, Courts as well as Maricopa County general government) to determine if the respondents employees are acceptable for the contractor to do business with the County. This applies to (but is not limited to) the company and sub-contractors. Employees or others who fail to pass these checks shall not be allowed to work on County projects. Failure to meet these requirements may lead to termination of the contract.

6.8 SUSPENSION OF WORK:

The Procurement Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Procurement Officer determines appropriate for the convenience of the County. No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor. No request for adjustment under this clause shall be granted unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

6.9 STOP WORK ORDER:

The Procurement Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Procurement Officer shall either—

6.9.1 Cancel the stop-work order; or

6.9.2 Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the County, clause of this contract.

6.9.3 The Procurement Officer may make an equitable adjustment in the delivery schedule and/or contract price, or otherwise, and the contract shall be modified, in writing, accordingly, if the Contractor demonstrates that the stop work order resulted in an increase in costs to the Contractor.

6.10 TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

6.11 TERMINATION FOR DEFAULT:

The County may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- 6.11.1 Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- 6.11.2 Make progress, so as to endanger performance of this contract; or
- 6.11.3 Perform any of the other provisions of this contract.
- 6.11.4 The County's right to terminate this contract under these subparagraphs may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the County) after receipt of the notice from the Procurement Officer specifying the failure.

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 any 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 CONTRACTOR LICENSE REQUIREMENT:

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

6.14 SUBCONTRACTING:

- 6.14.1 The Contractor may not assign to another Contractor or Subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Bid Serial Number.

6.15 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.

6.16 ADDITIONS/DELETIONS OF SERVICE:

- 6.16.1 The County reserves the right to add and/or delete materials and services to a Contract. If a service requirement is deleted, payment to the Contractor will be reduced proportionately, to the amount of service reduced in accordance with the bid price. If

additional materials or services are required from a Contract, prices for such additions will be negotiated between the Contractor and the County.

6.17 VALIDITY:

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 the Contract.

6.18 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from a Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to a Contract and to the performance thereunder.

6.19 NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website <http://azmemory.azlibrary.gov/cdm/singleitem/collection/execorders/id/680/rec/1> which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

6.20 ISRAEL BOYCOTT:

By signing this Contract, the Contractor certifies that they are in compliance with Article 9, Arizona Revised Statutes Section 35-393 *et seq.*

6.21 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

6.21.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor

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

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

6.21.1.3 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

6.21.1.4 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.

6.21.2 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.

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

6.22.1 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.

6.22.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 6.22.1 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 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:

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

6.23.2 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.

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

6.24.1 In accordance with section MCI 371 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.

6.24.2 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.

6.24.3 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 invoices, request for credit, request for a check or deduction from current billings 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.

6.25 AUDIT DISALLOWANCES:

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

6.26 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 of the contract.

6.27 PUBLIC RECORDS:

Under Arizona law, all Contracts are public records and must be retained by the Records Manager at the Office of Procurement Services. Contracts shall be open to public inspection and copying after Contract award and execution, except for such Contracts or sections thereof determined to contain proprietary or confidential information by the Office of Procurement Services. If an Offeror believes that information in its Offer or any resulting Contract should not be released in response to a public record request under Arizona law, the Offeror shall indicate the specific information deemed confidential or proprietary and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise from disclosure. The Records Manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code

6.28 PRICES:

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

6.29 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.

6.30 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, co-employee, partnership, principal and agent, or joint venture between the County and the Contractor.

6.31 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

6.32 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.

6.33 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, Intent/Scope of Work

NOTICES:

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

For County:

Maricopa County  
Office of Procurement Services  
ATTN: Contract Administration  
320 West Lincoln Street  
Phoenix, Arizona 85003-2494

For Contractor:

Home Depot U.S.A., Inc.  
ATTN: Contracts Manager  
2455 Paces Ferry Road, D-11  
Atlanta, GA 30339

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

3-1-17

\_\_\_\_\_  
DATE

**MARICOPA COUNTY**

  
\_\_\_\_\_  
CHIEF PROCUREMENT OFFICER,  
OFFICE OF PROCUREMENT SERVICES

3/16/17  
\_\_\_\_\_  
DATE

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY COUNTY ATTORNEY

March 13, 2017  
\_\_\_\_\_  
DATE

**EXHIBIT B**  
**INTENT/SCOPE OF WORK**

**CONTRACT FOR PAINT AND PAINT SUPPLIES (U.S. COMMUNITIES)**

**1.0 INTRODUCTION, BACKGROUND AND INTENT:**

**1.1 MASTER AGREEMENT:**

Maricopa County, AZ (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") is soliciting proposals from qualified suppliers to enter into a Master Agreement for a complete line of Paint and Paint Supplies (herein "Products and Services").

**1.2 GENERAL DEFINITION OF PRODUCTS AND/OR SERVICES:**

Contractor(s) are to have the broadest possible selection of PAINT AND PAINT SUPPLIES they offer. The intent of this contract is to provide Participating Public Agencies with a comprehensive offering of products and services to meet their various needs. Therefore, the Contractor should have demonstrated experience in providing the Products as defined in this contract, including but not limited to:

1.2.1 **Paint** – A complete and comprehensive offering of interior paint and coatings and exterior paint and coatings, including paint and coatings, primers, wood stains, wood sealers, clear topcoats, commercial high performance coatings, concrete and masonry products, aerosols, faux finishes deck stains, athletic field paint, traffic paint, airport runway paint, siding stains, floor coatings, and other related products.

1.2.2 **Paint Supplies** – A complete and comprehensive offering of painting equipment and supplies, including brushes, roller covers, roller frames, ladders, scaffolds, climbing equipment, tape and masking, sandpaper and abrasives, drop cloths and plastic sheeting, caulks, sealants, caulking tools, patching and repair, painter's tools, drywall compound and tools, solvents and removers, paint scents, insecticide additives, cleaning supplies, safety equipment, painter's wear, spray equipment, wallpaper tools and paste and other related products.

**1.3 INTENT:**

This contract is to establish a nationwide purchasing agreement with one or more paint and paint supplies contractors to provide all products in Section 2.0 Scope of Work.

The Contractor shall have a complete product line so that Participating Public Agencies may utilize a wide array of products as is appropriate for their needs. The awarded Contractor(s) shall have a strong national presence for a vast array of supplies and equipment necessary for painting and coatings for use by various public entities nationwide.

Other governmental entities under agreement with the County may have access to services provided hereunder.

The County reserves the right to award in whole or in part, by item or group of items, by section or geographic area, or make multiple awards, where such action serves the County's best interest.

The County reserves the right to makes an award at a local level and/or an award at a national level, where such action serves in the County's best interest.

The County reserves the right to add additional contractors, at the County's sole discretion, in cases where the currently listed contractors are of an insufficient number or skill-set to satisfy the County's needs or to ensure adequate competition on any project or task order work.



**2.0 SCOPE OF WORK:**

2.1 This contract consists of five product groups. Each group contains a listing of various paints and/or supplies.

2.1.1	Group I	Paint, Interior and Exterior, Economy Grade
2.1.2	Group II	Paint, Interior and Exterior, Medium Grade
2.1.3	Group III	Paint, Interior and Exterior, Premium Grade
2.1.4	Group IV	Specialty Paints & Sealers
2.1.5	Group V	Painting Supplies

2.2 For Purposes of Evaluation: Maricopa County representatives may visit Contractors' sites to see, inspect and order paint.

2.3 Contractor must have one line of paint that meets or exceeds the following technical requirements.

- 2.3.1 VOC content of 50g/L or less
- 2.3.2 Dry to touch of time of 2 hours or less
- 2.3.3 Dry to recoat time of 4 hours or less
- 2.3.4 Cure time of 7 days or less
- 2.3.5 Composition shall be 100% acrylic resin
- 2.3.6 Opacity rate of 97% or greater based upon 3 mills wet drawdown
- 2.3.7 Coverage per gallon at recommended dry film thickness of 350 sq ft per gallon or greater
- 2.3.8 Viscosity rated at 95 Krieb Units or greater
- 2.3.9 Shall have a shelf life of 2 years or longer on unopened paint
- 2.3.10 Shall be capable of clean-up with water and mild detergent

2.4 ATTACHMENT D – COMPOSITION CRITERIA shall be completed by each Contractor to reflect the chemical contents, by weight and volume and other pertinent data of Groups I, II, III and IV along with submittal of manufacturer's Product Information Sheet of same.

2.5 CUSTOM COLOR FORMULA MATCHING:

Contractor MUST utilize a computer driven paint match system for all requests for color matching during the term of the contract. On occasion and when needed, the County shall supply the Contractor a sample large enough to accurately have the computer create a formula for the mix. This will enable the County to accurately and expeditiously have color-matched paints mixed and ready when ordered.

The use of a computer driven paint matching system shall be the responsibility of the Contractor and a requirement of the County unless a specific formula is supplied.

The standard of color the County shall receive must be provided on an 8½ x 11 inch brush-out sample for the County's approval and be guaranteed to duplicate the color and match the standard. Liability for labor and materials to rematch and subsequent re-mixing of paint shall fall on the Contractor.

2.6 Contractor must have an adequate supply of paints/supplies to fulfill the County's requirements. All paint orders, whether standard colors, custom colors (color formula already known), or special color-matched, shall be made ready within twenty-four (24) hours of receipt of order for County pick up. All paints, coatings and supplies shall be F.O.B. Destination; however, the County does have the option of picking up the paint products at the Contractor's retail outlet.

Consistent documented delays in paint orders shall cause the County to source paint from another Contractor.

2.7 All paint purchased by the County must be fully mixed by the Contractor and have no clumps, globs of unmixed paint. Such paint will be replaced or returned for credit issued to the County. Documented reoccurrence of unacceptable paints will be made formal by the intervention of the

County's Office of Procurement Services, and a determination made as to the Contractor's performance with this contract.

- 2.8 The Contractor(s) shall replace any paint, without additional cost to the County, which is found unfit for use for any reason other than handling by the user and in accordance with the Contractor's return policy. No exceptions. It is recognized that product returns on custom tinted paint is not available.
- 2.9 Paint shall be packaged in one-gallon and/or five-gallon steel or plastic containers (exception: aerosol paints) and shall be well sealed. There may be occasions for larger containers (50/55 gallon). The lining of the containers shall be of such property as to resist the solvent of the body of paint.
- 2.10 All paints and coatings supplied under this contract shall be labeled with the following information:
  - 2.10.1 Manufacturer's name and address
  - 2.10.2 Distributor's name and address
  - 2.10.3 Type, finish, and trade name
  - 2.10.4 Batch control number that allows paint to be traced to a specific production run and test
  - 2.10.5 Hazardous handling instructions
  - 2.10.6 Proper application procedures
  - 2.10.7 Expected coverage by square footage per gallon
  - 2.10.8 Project number if applicable
  - 2.10.9 If requested by the County, the Contractor must provide SDS sheets for all paints/coatings purchased at no additional cost.

2.11 VOLUME DISCOUNT PRICING:

If this pricing option is offered, the Contractor shall describe their ability to provide this service.

**Home Depot Information:** Home Depot offers 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 \$1,500, call in the request for quote to the ProDesk of your local 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, an analysis will be completed regarding any potential additional savings. The desk will then 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.

Home Depot also has a ProPaint Rewards program for potential discounts on liquid paint up to 20% based upon annual sales volume. The annual discounts are available to individual participating agencies provided the following minimum spending thresholds are achieved in the previous calendar year:

Levels	Save	Minimum Annual Spend
Gold	20%	\$7,500
Silver	15%	\$4,000
Bronze	10%	\$2,000

*Both of these programs are in addition to the potential annual rebates participating public agencies can achieve based upon their spend volume.*

**3.0 PROCUREMENT REQUIREMENTS:**

**3.1 DELIVERY:**

For orders that are requested to be delivered, delivery shall be F.O.B. Destination within six (6) days of receipt of Using Agency purchase order, to any delivery location within Maricopa County.

**3.2 EXPEDITED DELIVERY:**

3.2.1 If the Using Agency determines that expedited delivery or other alternate shipping is required, it shall notify the Contractor. The Contractor shall determine any additional costs associated with such delivery terms and communicate that cost to the Using Agency.

3.2.2 The Using Agency shall not advise the Contractor to proceed with an expedited shipment until acceptable terms are agreed upon and a purchase order is issued. Upon agreeing to the additional costs, the Using Agency shall advise the Contractor to proceed.

3.2.3 Upon receipt of material(s) and invoicing, the Using Agency shall ensure that any additional charges are in compliance with and do not exceed agreed to costs. The Using Agency shall retain all documents related to these costs within the agency purchase file.

**3.3 SHIPPING DOCUMENTS:**

A packing list or other suitable shipping document shall accompany each shipment and shall include access to the following:

3.3.1 Contract Serial number.

3.3.2 Contractor's name and address.

3.3.3 Using Agency name and address.

3.3.4 Using Agency purchase order number.

3.3.5 A description of product(s) shipped, including item number(s), quantity (ies), number of containers and package number(s), as applicable.

**3.4 SHIPPING TERMS:**

For orders that are requested to be delivered, order prices shall be F.O.B. Destination at any delivery location within Maricopa County.

**3.5 OPERATING MANUALS (if required):**

Upon delivery, Contractor shall provide comprehensive operational manuals, service manuals and schematic diagrams, if required by the Using Agency.

**3.6 SAMPLES (if required):**

The Contractor may be requested to furnish samples of material(s) bid for examination by the County. Any materials so requested shall be furnished within five (5) working days from the date of request and furnished at no cost to the County and sent to the address designated in the requesting correspondence.

3.7 TESTING:

Unless otherwise specified, materials purchased will be inspected by the Using Agency to ensure the materials meet the quality and quantity requirements of the Specifications. When deemed necessary by the County, samples of the materials may be taken at random from stock received for submission to a commercial laboratory or other appropriate agency for analysis and tests as to whether the materials conform in all respects to the Specifications. In cases where commercial laboratory reports determine that the materials do not meet the Specifications, the expense of such analysis shall be borne by the Contractor.

3.8 ACCEPTANCE:

Upon delivery and successful inspection, the material(s) shall be deemed accepted and the warranty period shall begin. All documentation shall be completed prior to final acceptance.

3.9 STOCK:

The Contractor shall be expected to stock locally, sufficient quantities as may be necessary to meet the County's needs.

3.10 WAREHOUSE/DISTRIBUTION CENTER:

The Contractor shall have access to a local warehouse/distribution center(s) within the Phoenix, Arizona metropolitan area capable of providing the material(s) listed herein at the time of proposal submission.

3.11 MAINTENANCE (if required):

The Contractor shall provide for maintenance under this Contract upon acceptance of materials by the Using Agency.

3.12 BRAND NAME:

The County reserves the right to request samples to determine quality and acceptability of materials bid by Contractor. In some cases, brand names have been listed in order to define the desired quality and are not intended to be restrictive or to limit competition. Materials substantially equivalent to those designated shall qualify for consideration.

**HOME DEPOT U.S.A., INC., 2455 PACES FERRY ROAD, ATLANTA, GA 30339**

PRICING SHEET: NIGP CODE 63056, 63064, 63066, 63543

Terms: NET 30 Days

Vendor Number: VC0000005735

Certificates of Insurance Required

Contract Period: To cover the period ending **February 28, 2020.**