

PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
FACILITIES MRO CONTRACTS
Administered by the State of Nevada (hereinafter "Lead State")
MASTER PRICE AGREEMENT
MSC Industrial Supply Co.
Nevada Contract Number: w5-2011
(Hereinafter "Contractor")
And
The State of New Jersey (hereinafter "Participating State")

This Participating Addendum is made as of the 8th day of September, 2011, by and between MSC Industrial Supply Co. ("MSC"), whose principal address is 75 Maxess Road, Melville, NY 11747, and the State of New Jersey, Department of Treasury, Division of Purchase and Property ("Division") whose address is 33 West State Street, 8th Floor, PO Box 230, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all eligible public entities and cooperative purchasing members with the State of New Jersey, collectively referred to as the "State".

WHEREAS, pursuant to N.J.S.A. 52:34-6.2 the Director, Division of Purchase and Property ("Director") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services"; and

WHEREAS, the State of Nevada Contract WSCA w5-2011 for facilities maintenance repair and operation (MRO), lighting products, industrial supplies and tools was established by the State of Nevada to establish the means by which participating states may join together in cooperative multi-state contracting in order to achieve cost-effective and efficient acquisition of quality goods and services; and

WHEREAS, the State of Nevada permits other states to participate in its contract, State of Nevada Contract WSCA w5-2011 for facilities maintenance repair and operation (MRO), lighting products, industrial supplies and tools, and the Director has determined that it is in the State's best interest to participate in the State of Nevada Contract WSCA w5-2011 for facilities maintenance repair and operation (MRO), lighting products, industrial supplies and tools; and which contract is incorporated herein by reference.

WHEREAS, MSC is a vendor awarded a contract (WSCA w5-2011 by the State of Nevada, after a comprehensive bid process, under the State of Nevada WSCA 1862 for facilities maintenance repair and operation (MRO), lighting products, industrial supplies and tools; and

WHEREAS, MSC has agreed to the State's Standard Terms and Conditions, with modifications identified in Section 3, Changes of this agreement, an executed copy of which is attached hereto as Exhibit A; and

WHEREAS, the Director has determined that it is in best interest of the State to enter into a Participating Addendum with MSC to provide facilities maintenance repair and operation (MRO), lighting products, industrial supplies and tools, to the State under the State of Nevada Contract WSCA w5-2011; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, the parties to this Participating Addendum hereby agree as follows:

1. **Term:** This Participating Addendum shall be effective from the date first written above (contract commencement date) through February 28, 2014, unless earlier terminated. The State reserves the right, in its sole discretion, to extend this contract pursuant to any extension of the State of Nevada Contract WSCA w5-2011 for facilities maintenance repair and operation (MRO), lighting products, industrial supplies and tools under the same terms and conditions as this Participating Addendum.

2. **Scope:** All governmental entities within the State of New Jersey, including all state agencies and local public bodies, counties, cities, municipalities, public schools and institutions of higher education, are authorized to purchase products under the terms and conditions of this agreement. The contract will be valid from date executed by both parties, through the current renewal term of February 28, 2014. MSC shall provide to the State and its Cooperative Purchasing Partners the services and products set forth in the MSC Contract WSCA w5-2011 at the pricing, terms and conditions therein set forth and the terms and conditions specifically set forth in this Participating Addendum.

Items to be covered under MSC Industrial Supply Co. (MSC) contract:

a. **Non-Contract Items:**

MSC's contract may be utilized for all non-State contract items.

Unless directed by an amendment to this contract, a non-State contract item purchase is defined as a purchase transaction that cannot be procured through one of the following four primary contracting methods; i.e., a State contract, the State Distribution and Support Services Center (DSS), the Bureau of State Use Industries (DEPTCOR) or the Central Non-Profit Agency CNA/ACCSES NJ (CNA).

For the purpose of this contract, "state agency" or "agency" refers to the organization within a department as defined by the organizational code in the account number as delineated in the annual Appropriations Handbook. For departments or other units of government, (i.e. "in but not of" commissions, etc.) for which there is only one organizational code, or the organizational code does not accurately reflect the managerial span of control as it relates to procurement, an exemption to this definition of "state agency" or "agency" can be requested from the Director, DPP, to permit the administration of the purchase function at more than one level.

Agencies may not circumvent any one of the four primary contracting methods identified above. If there is a similar item or service under State contract or available from DSS, DEPTCOR or CNA that addresses the primary performance and/or functionality requirements of the desired item or service, this contract should not be utilized. Minor differences in functionality and/or performance between the desired item or service and a similar item or service under State contract available from DSS, DEPTCOR or CNA are not valid reasons for purchasing such item or services under this contract.

Cooperative Purchasing members may utilize this contract in accordance with the existing Local Public Contracts Law or Public School Contracts Law.

3. **Primary Agreement Contact :**

The primary participating entity contact for this participating addendum is as follows:

Name: George Jones

Title: Procurement Specialist

Participating Entity Name: New Jersey Division of Purchase and Property,
Department of the Treasury

Address: 33 W. State Street, P.O. Box 230, Trenton, NJ 08625-0230

Telephone: (609) 943-4660

Fax: (609) 292-1114

E-mail: george.jones@treas.state.nj.us

The primary Contractor contact for this participating addendum is as follows:

Name: Mike O'Connor
Title: State Account Manager
Address: MSC Industrial Supply
105 Newfield Avenue
Edison, NJ 08837
Telephone: 732-512-9595
Fax: 732-512-9595
E-Mail: oconnorm@mscdirect.com

Agreement Implementation Contact:

State of New Jersey:

Name: George Jones
Title: Procurement Specialist
Address: Department of the Treasury, Division of Purchase & Property, 33 West State Street,
P.O. Box 230, Trenton, New Jersey 08625-0230
Telephone: (609) 943-4660
Fax: (609) 292-1114
E-Mail: george.jones@treas.state.nj.us

Contractor:

Name: Mike O'Connor
Title: State Account Manager
Address: MSC Industrial Supply
105 Newfield Avenue
Edison, NJ 08837
Telephone: 732-512-9595
Fax: 732-512-9595
E-Mail: oconnorm@mscdirect.com

4. **Rebate:** Acceptance? [X] Yes [] No

MSC agrees to offer a 1% rebate as described below or another comparable arrangement to any Participating State requesting one in an executed Participating Addendum as part of WSCA Agreement WSCA w5-2011. The rebate will not be added to the pricing for items ordered under the contract. MSC will negotiate in good faith to include these costs in subsequent discount and pricing levels during future contract negotiations.

- Rebate will be paid within 45 days after a calendar quarter based on total gross sales, less freight, taxes, returned products, and credits ("Net Sales").
- MSC will provide backup documentation to the Participating State to substantiate the rebate amount.
- Rebate will be made payable to the "Treasurer, State of New Jersey."

5. **Reports:**

- a. **Rebate Report:** The State will receive the standard WSCA rebate report as agreed upon between contractor and WSCA. Reports will be in the format of the two reports in Exhibit B attached hereto shall be submitted to the State of New Jersey's Administrator for all New Jersey purchases.

Contractor shall submit a check, in addition to the report, payable to the Treasurer, State of New Jersey of the sales for the quarterly period less freight, taxes, returned products and credits.

A report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Failure to submit reports and fees on a timely basis shall constitute grounds for suspension of this agreement. Reports and fee delivery will be in accordance with the following schedule:

Calendar Quarter (Jan 1 to Mar 31)
Calendar Quarter 2 (Apr 1 to Jun 30)
Calendar Quarter 3 (Jul 1 to Sep 30)
Calendar Quarter 4 (Oct 1 to Dec 31)

Due May 15
Due August 15
Due November 15
Due February 15

The rebate check and report should be submitted together to the following address:

George Jones
State of New Jersey Administrator
Department of the Treasury
Division of Purchase & Property
33 West State Street, P.O. Box 230
Trenton, New Jersey 08625-0230

b. Custom reports to the State's Administrator:

- MSC will supply quarterly reports covering all purchases made under this agreement in a format mutually agreed to by the parties.
- MSC shall describe additional management reports available, as well as furnish copies or samples of current management reports. MSC shall indicate the flexibility of the reporting system and the ease of changing both format and components tracked.

6. **Price Agreement or Contract Number:** All Purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include Price Agreement or Contract Number.

7. **Compensation and Ordering:**

- a. Pricing shall be as set forth in the Master Price Agreement under the State of Nevada Contract WSCA w5-2011 for facilities maintenance repair and operating (MRO), lighting products, industrial supplies and tools.
- b. The State shall make all payments to MSC under the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.
- c. All orders and payment will be issued directly to MSC.

8. **Miscellaneous:**

- a. This Participating Addendum and any and all litigation arising there from or related thereto shall be brought in State court in the State of New Jersey and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.
- b. All publicity and/or public announcements pertaining to this Participating Addendum shall be approved by the State prior to release.
To the extent that any of the services and products to be supplied under the terms of this Participating Addendum are provided by any third party other than MSC or an affiliate under a subcontract or other arrangement with contractor, such services, which include, by way of example but not limitation, delivery, installation, repair, maintenance and other services, shall be provided, if feasible, by companies whose home office is located in New Jersey. MSC further agrees to make a good faith effort to meet New Jersey's small business set-aside goals as required pursuant to N.J.A.C. 17:13-1 et seq. and Executive Order 71 promulgated by Governor James E. McGreevey, and further, agrees to recognize New Jersey's commitment to increase utilization of minority and woman-owned businesses. In such event, pricing for products sold by contractor directly to the State shall remain as provided under the Master Pricing Agreement and MSC shall remain responsible for the products and services sold by MSC directly to the State.
- c. The following are New Jersey procurement requirements that MSC agrees to fulfill prior to the Commencement Date:
 - i. State of New Jersey Standard Terms and Conditions
 - ii. New Jersey Business Registration (N.J.S.A. 52:32-44);

- iii. Ownership Disclosure (N.J.S.A. 52:25-24.2);
 - iv. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
 - v. Executed Notice of Set-Off for State Tax (N.J.S.A. 54:49-19);
 - vi. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et seq.);
 - vii. Disclosure of Investigations and Actions Involving Bidder
 - viii. Vendor Certification (P.L. 2005, c.271);
 - ix. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et seq.)
 - 1. New Jersey Form AA-302 Affirmative Action Employee Information Report; or New Jersey Affirmative Action Certificate; or Federal Affirmative Action Approval Letter.
- d. This Participating Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Participating Addendum and the Price Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. In the event of any conflict between the terms of the Participating Addendum and this Master Price Agreement, the terms of the Participating Addendum shall prevail.
- e. No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.
- f. This Participating Addendum may not be amended or modified except by written agreement executed by authorized representatives of each party.
- g. The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

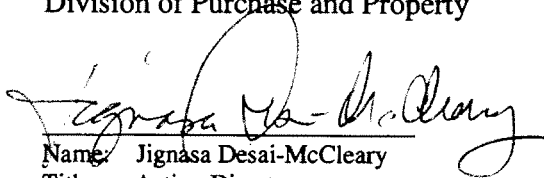
IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Government Entity:

State of New Jersey

Department of Treasury

Division of Purchase and Property



Name: Jignasa Desai-McCleary

Title: Acting Director

Date:

Contractor:

MSC Industrial Supply Co.



Name:

Title: Government Sales

Date:

**Peter E. Biagioli
Vice President
National Accounts & Government**

9/12/11