

**THE STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES
PIGGYBACK CONTRACT**

**BETWEEN
CITY OF TAMARAC
AND
OFFICE DEPOT, INC.**

This Piggyback Contract ("**Contract**") is made and entered into this 23rd day of November, 2010 ("**Effective Date**"), by and between the Southeast Florida Governmental Purchasing Cooperative (hereinafter referred to as the "**Customer**"), and Office Depot, Inc., a Delaware corporation with corporate headquarters located at 6600 North Military Trail, Boca Raton, FL 33496 (hereinafter referred to as "**Office Depot**").

WITNESSETH:

WHEREAS, the State of Florida, Department of Management Services and Office Depot entered into that Contract 618-000-11-1, effective as of October 18, 2010, for Office and Education Consumables, pursuant to invitation to Negotiate No. 618-001-10-1 (the "**Master Agreement**"); and

WHEREAS, the Master Agreement permits government entities to purchase goods and services in accordance with terms and conditions set forth in the Master Agreement; and

WHEREAS, the Customer has determined that the terms and conditions of the Master Agreement would be economically beneficial to the Customer; and

WHEREAS, the Customer has determined that the most effective and feasible manner of obtaining office supplies and services offered under the Master Agreement is for the Customer to become a participating government agency under the Master Agreement; and

WHEREAS, the Customer is eligible to purchase under the Master Agreement; and

WHEREAS, the undersigned representative of the Customer is authorized, on behalf of the Customer, to contract with Office Depot for the purchase of the office supplies and services in accordance with the terms of the Master Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and promises herein stated and in conjunction with the cooperative agreement referenced, the parties hereto agree to the following terms and conditions:

1. INCORPORATION OF MASTER AGREEMENT.

The purpose of this Contract is to allow the Customer to purchase supplies from Office Depot at the discounted prices set forth in the Master Agreement. To that end, the Master Agreement is hereby incorporated by reference as if set forth herein in its entirety, including all subsequent amendments thereto. However, to the extent any terms and conditions set forth in the Master Agreement (excepting any terms and conditions relating to price and cost) conflict with any terms and conditions of this Contract (the "**Supplemental Terms**"), the Supplemental Terms shall prevail.

2. CREDIT TERMS.

Customer's credit limit shall be established by Office Depot's credit department. Office Depot reserves the right to lower Customer's credit limit or refuse to ship any orders if at any time: (a) Customer's account is materially past due and Customer has not responded with a reasonable response within three (3) business days of written notice of said delinquency to work with Office Depot to resolve the issues; (b) in Office Depot's commercially reasonable opinion, Customer's credit standing becomes impaired as a result of Customer's payment habits having slowed down

to an unsatisfactory level with all non-critical suppliers including Office Depot; (c) Customer's financial condition becomes unstable based on Customer's financial reports or reputable third party ratings, or (d) if there are severe risk alerts from reputable third party credit bureaus.

3. **DESKTOP DELIVERIES.**

Office Depot agrees to, in the performance of work and services under this Agreement, provide desk-top deliveries to Customer.

4. **NOTICES.**

All notices, requests, demands and other communications under this Agreement shall be given in writing. Such notices shall be deemed to have been given when delivered in person or three (3) business days after being sent via certified mail or upon delivery if sent via reputable overnight delivery service and addressed to the appropriate party at its mailing address set forth below:

To Customer: City Manager
City of Tamarac
7525 NW 88th Avenue
Tamarac, FL 33321

With a copy to City Attorney at the following address:Goren, Cherof, Doody & Ezrol, P.A.

3099 East Commercial Blvd., Suite 200
Fort Lauderdale, FL 33308

To Office Depot: Office Depot, Inc.
5345 Oakbrook Parkway
Norcross, GA 30093
Attn: James E. Pollman, Regional Vice President

with a copy to: Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496
Attn: Office of the General Counsel

5. **TERMINATION FOR CONVENIENCE.**

Either party may terminate this Contract for convenience by providing the other party sixty (60) days prior written notice.

IN WITNESS WHEREOF, the Customer and Office Depot have executed this Contract on the Effective Date.

OFFICE DEPOT, INC.

SOUTHEAST FLORIDA GOVERNMENTAL
PURCHASING COOPERATIVE

By: CITY OF TAMARAC

By: [Signature]
Name: Jim Pollman
Title: Vice President
Date: 11/23/10

By: [Signature]
Name: Jeffrey L. Miller
Title: City Manager
Date: 12/8/10

Mr 11/24/10



CONTRACT BETWEEN
FLORIDA DEPARTMENT OF MANAGEMENT SERVICES
AND
OFFICE DEPOT
CONTRACT 618-000-11-1

This Contract is by and between the State of Florida, Department of Management Services (Department), Division of State Purchasing (Division), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and Office Depot (Contractor).

Whereas, the Contractor replied to the Division's Invitation to Negotiate (ITN), No.: 618-001-10-1 – Office and Educational Consumables and

Whereas, the Division negotiated and accepted the best terms and conditions for Office and Educational Consumables pursuant to Section 287.057(1) (c).

Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract.

1.0 NAME OF PROJECT

Office and Educational Consumables.

2.0 SUMMARY OF THE CONTRACTUAL SERVICES (SCOPE OF WORK)

The scope of products for this Office and Educational Consumables contract are described in section 1.2 of the ITN document and are summarized in the table below. The Product Categories listed below refers to categories covered under this agreement.

Product Categories in Scope
<ul style="list-style-type: none">▪ Consumables▪ Breakroom & Cleaning Supplies▪ Folders, Binders & Accessories▪ Paper – Other▪ Paper - 20# White (Recycled and Virgin)▪ Toner HP▪ Toner Non HP▪ Toner Remanufactured▪ IT Peripherals▪ Equipment

3.0 DELIVERABLES

The ITN identifies all the performance requirements and expectations to be satisfied by the contractor throughout the term of the contract. However, included below are the primary deliverables related to the scope of work above. Also included below are the required minimum level of service and criteria for evaluating successful completion of each deliverable. The Contractor will provide the following Deliverables:

3.1 Monthly Service Level Agreement Metrics and Reports:

- A. Delivery Timing** – The Contractor shall maintain an on-time delivery rate of 95% or greater. On-time delivery will be defined as delivery of order within two (2) business days of placement of order. This SLA supersedes Section 4.11 Transportation and Delivery of the General Conditions. The contractor shall submit to the Department this monthly service level agreement report in Microsoft Excel that details the on-time delivery rate. Specifically, the report shall include the number of orders delivered complete within the 2 business day requirement divided by total number of orders delivered.
- B. Order Accuracy** - The Contractor shall maintain an order accuracy rate of 98% or greater. Order accuracy rate is defined as the number of items delivered as ordered divided by the total number of items ordered. The contractor shall submit to the Department this monthly service level agreement report in Microsoft Excel that details the order accuracy rate. Specifically, the report shall include the number of orders with order accuracy rate of more than 98% divided by total number of orders.
- C. Order Completeness / Fill** - The Contractor shall maintain an order fill rate of 95% or greater. Order fill rate is defined as a number of items on an order filled completely as ordered divided by to the total number of lines on an order. The contractor shall submit to the Department this monthly service level agreement report in Microsoft Excel that details the order fill rate. Specifically, the report shall include Number of orders with order fill rate of more than 95% divided by total number of orders.
- D. Price Accuracy** - The Contractor shall maintain a price accuracy rate of 99.5% or greater. Price accuracy is defined as the number of audited items each month where the net price (calculated by multiplying the list price by 1 minus the discount % for that product category) is equal to or less than the contract price (calculated by multiplying the list price, outlined in Section 3.2, by 1 minus the discount % for that product category). The Contractor shall obtain a third party firm at no additional cost to the State to conduct external price audits on this contract. The Contractor shall contract with a third party firm (to be approved by the Department) to conduct a monthly random sampling (a minimum of 570 items per month) of contract items to confirm the accuracy of list price, discount % and net price. Specifically, the third party firm will confirm the prices displayed on the Contractor's website are equal to or less than the contract terms. The third party firm shall provide a monthly report to the Department indicating the Price Accuracy Rate (Price Accuracy Rate = the number of audited items each month where the net price (calculated by multiplying the list price by 1 minus the discount % for that product category) is equal to or less than the contract price (calculated by multiplying the list price, outlined in Section 3.2, by 1 minus the discount % for that product category) divided by the number of audited items). Also, at a minimum, the monthly report shall identify items not in compliance with the contract terms, provide the date of the audit, and screenshots of the Contractor's on-line catalog of all items in the random sample that were not in compliance with the contract terms.
- E. Backorder Fill** – The contractor will ship backorders within five (5) calendar days of original order, unless special circumstances apply. The contractor will submit to the Department at the customer or the Departments request a report in Microsoft Excel that details the item name and product ID, reason for shortage, and plan of action when delivery may be expected or suggested replacement).

3.2 Quarterly Sales Report Data:

The Contractor shall report sales data to the Contract Manager on a quarterly basis using the Contract Quarterly Reporting Form in Attachment G – Quarterly Reporting Form.

The following summary data must be reported to the Contract Manager on a quarterly basis:

- Total purchases on the contract for the quarter
- Total purchases on the contract for the quarter by Eligible User
- Total purchases for the quarter made using the State's Purchasing Card
- Total Certified Vendor (including Minority, Women, and Service-Disabled Veteran) purchases for the quarter by Eligible User.

The following detailed data must be reported to the Contract Manager on a quarterly basis in Excel spreadsheet format:

- Eligible User (Customer) Entity Name
- Product Category
- Item Description
- Manufacturer Name
- Manufacturer Part Number
- UPC
- Unit of Measure
- Quantity Shipped
- Date Shipped
- List Price
- Invoice Price
- Core Item Flag (indicates if item is on Core Items list)
- P-Card Flag (indicates if transaction was paid for using a P-Card).
- Flag Purchases made within the stores (if applicable)

3.3 Annual Service Level Agreement Metrics and Reports:

- A. **Price Accuracy** - The Contractor shall maintain a price accuracy rate of 99.5% or greater. Price accuracy is defined as the number of audited items each month where the net price (calculated by multiplying the list price by 1 minus the discount % for that product category) is equal to or less than the contract price (calculated by multiplying the list price, outlined in Section 3.2, by 1 minus the discount % for that product category). The Contractor shall Contract with a third party firm (to be approved by the Department) to conduct an annual (on each anniversary of the contract effective date) sampling of Customer invoices (a minimum of 600 customer invoices for the 12 month period) to confirm accuracy of list prices and discount %, and that net prices of invoiced items are equal to or less than the contract terms. Specifically, the third party firm will confirm the price charged to the Customer is equal to or less than the contract terms during that time period. The third party firm shall provide an annual report to the Department indicating the Price Accuracy Rate (Price Accuracy Rate = the number of audited items each year where the net price (calculated by multiplying the list price by 1 minus the discount % for that product category) is equal to or less than the contract price (calculated by multiplying the list price, outlined in Section 3.2, by 1 minus the discount % for that product category) divided by the number of audited items). Also, at a minimum, the annual report will include copies of the invoices in the random sample that were not in compliance with the contract terms.

4.0 SUMMARY OF PEANALTY FOR FAILURE OF CONTRACTOR TO MEET DELIVERALBES

The Contractor is required to meet the performance standards as described in Section 3.0 above. Contractor is required to meet performance standards for Delivery Timing, Order Accuracy, Order Completeness/Fill and Price Accuracy on standard contract orders only, special/custom orders can be excluded from the calculations of these performance standards. Failure to meet the performance standards specified will result in the specified damages to the State as shown in the chart below. On the 15th of the month following the month being reported, the Contractor shall submit a report to the Contract Administrator containing the information required in Section 3.0 above. Performance Assurances, if applicable, will be paid via check or money order made out to the Department of Management Services in US Dollars within 30 days after report submission. These damages are assessed for failures over each 12 month period beginning with the first full month of contract performance and every 12 months thereafter.

Item	First Failure	Second Failure	Third Failure	Fourth Failure	Fifth Failure*	Each Additional Failure
Submit Report	\$0	\$500	\$500	\$1,000	\$2,000	\$3,000
Delivery Timing – less than 95% on time	\$0	\$0	\$1,000	\$1,000	\$2,000	\$3,000
Order Accuracy – less than 98% of items delivered are accurate	\$0	\$0	\$1,000	\$1,000	\$2,000	\$3,000
Order Completeness/ Fill – less than 95%	\$0	\$0	\$1,000	\$1,000	\$2,000	\$3,000
Price Accuracy – less than 99.5%	\$0	\$0	\$2,000	\$3,000	\$4,000	\$5,000

*Note: If respondent fails to meet the performance standards 5 or more times in a 12 month contract period, the State shall have grounds to initiate contract breach and termination proceedings.

5.0 EFFECTIVE DATE

This Contract shall begin on October 18, 2010, or on the last date in which it is signed by all parties, whichever is later.

6.0 EXPIRATION DATE

This Contract shall expire three years from the effective date of the Contract, unless cancelled earlier in accordance with its terms.

7.0 RENEWAL

Upon mutual written agreement, the Department and the Contractor may renew the Contract for up to three (3) years as allowed by Section 287.057 (13)(a), Florida Statutes and pursuant to the provision of PUR 1000 Section 26.

8.0 INTELLECTUAL PROPERTY

The parties do not anticipate that any intellectual property will be developed as a result of this contract. Any intellectual property developed as a result of this contract will belong to and be the sole property of the state. This provision will survive the termination or expiration of the contract.

9.0 PREFERRED PRICE

The Contractor agrees to submit to the Department at least annually an affidavit from an authorized representative attesting that the Contractor is in compliance with the preferred pricing provision in Section 5.14 Best Pricing Comparison of the ITN.

10.0 CONTRACT DOCUMENTS

This Contract, together with the following attached documents, set forth the entire understanding of the parties with respect to the subject matter. In case of conflict, the terms of this Contract shall control. If a conflict exists among any of the attached documents, the documents shall have priority in the order listed:

- A. **ATTACHMENT I:**
Office and Educational Consumables ITN No.: 618-001-10-1, as amended.
- B. **ATTACHMENT II:**
Contractor's Response to the ITN.
- C. **ATTACHMENT III:**
Contractor's Best and Final Offer Pricing.

11.0 CONTRACT MANAGEMENT

- A. **Contract Manager**
The Department employee who is primarily responsible for overseeing the Contractor's performance of its duties and obligations pursuant to the terms of this Contract. The Contract Manager shall be as follows:

Mark Hernandez
Division of State Purchasing
Department of Management Services
4050 Esplanade Way
Tallahassee, FL 32399-0950
Telephone: (850) 414-6741
Fax: (850) 414-6122
E-mail: mark.hernandez@dms.myflorida.com

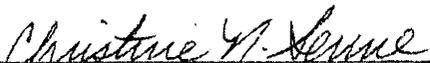
The Department may appoint a different Contract Manager, which shall not constitute an amendment to the Contract, by sending written notice to Contractor. Any communication to the Department relating to the Contract shall be addressed to the Contract Manager.

- B. **Contractor's Representative**
Morrie Norwood
Office Depot
4300-1 Tennessee Street
Tallahassee, FL 32034 [city, state, zip]
Telephone: 850-575-0255
Fax: 850-575-1581
E-mail: morrie.norwood@officedepot.com

State of Florida
Department of Management Services

Approved as to form and legality
by the Department General Counsel's Office


By: Linda H. South


by Christine N Senne

10/15/10
Date

09/24/2010
Date

Contractor:


Signature

Jim Pollman
Print Name

10/13/10
Date



Product Category	BAFO Office Depot Discount % off List
Core	
Breakroom & Cleaning Supplies	40%
Consumables	66%
Folders, Binders & Accessories	70%
Toner - HP	35%
Toner - Non HP	32%
IT Peripherals	34%
Equipment	30%
Non-Core	
Breakroom & Cleaning Supplies	40%
Consumables	66%
Folders, Binders & Accessories	70%
Paper - Other	60%
Toner - HP	35%
Toner - Non HP	32%
Toner - Reman	63%
IT Peripherals	34%
Equipment	30%
Generic Core and Non-Core	
Consumables	79%
Folders, Binders & Accessories	75%
Equipment	36%
IT Peripherals	32%
Paper - Other	71%
Breakroom & Cleaning Supplies	55%
Paper - 20# White (Recycled and Virgin)	79%
Toner - Non HP	61%
Toner - Remanufactured	63%

BAFO Office Depot Volume Discounts Proposed	
When Annual Spend Level Exceeds...	Additional Discount Off List Price Offered
\$5,000,000	0.00%
\$10,000,000	0.00%
\$15,000,000	0.00%
\$20,000,000	0.00%
\$25,000,000	0.00%
\$30,000,000	0.00%
\$35,000,000	0.00%
\$40,000,000	0.00%
\$45,000,000	0.00%
\$50,000,000	0.00%
\$55,000,000	0.00%
\$60,000,000	0.00%
\$65,000,000	0.00%
\$70,000,000	0.00%