

**PARTICIPATING ADDENDUM
NATIONAL JOINT POWERS ALLIANCE (NJPA)
OFFICE AND CLASSROOM RELATED SUPPLIES
MASTER PRICE AGREEMENT
NJPA IFB# 072005, NJPA CONTRACT# OC 072005**

Government Entity: The State of New Jersey

This Participating Addendum is made as of the 1st day of September, 2009, by and between Staples Advantage, a Division of Staples Contract & Commercial, Inc. (herein referred to as "STAPLES"), having its principal office located at 45 Cedar Lane, Englewood, NJ 07631 and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Division") whose address is 33 West State Street, 8th Floor, PO Box 039, 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 NJPA Contract OC 072005 for office and classroom related supplies was established by NJPA 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 NJPA permits states to participate in its contract, NJPA Contract OC 072005 for office and classroom related supplies, and the Director has determined that it is in the State's best interest to participate in the NJPA Contract OC 072005 for office and classroom related supplies; and which contract is incorporated herein by reference.

WHEREAS, STAPLES is the vendor awarded a contract (NJPA OC 072005) by NJPA, after a comprehensive bid process, under the NJPA Contract OC 072005 for office and classroom related supplies; and

WHEREAS, STAPLES has agreed to the State's Waivered Terms and Conditions for commodities, 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 STAPLES to provide office and classroom related supplies, to the State under the NJPA Contract OC 072005; and

WHEREAS, the parties agree that this Participating Addendum shall (unless otherwise set forth herein) reflect the pricing under NJPA Contract OC 072005 Staples (the "NJPA Master Price Agreement") for office and classroom related supplies ("Office Supplies Program"),

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. **(a) Term of Master Price Agreement.** The Parties acknowledge and agree that this Participating Addendum shall be in effect from September 1, 2009 until the expiration of NJPA Contract #072005 on July 31, 2010 (“NJPA Initial Term”). If a new NJPA Master Price Agreement for Office Supplies Program is awarded to Staples by NJPA then the State shall enter into a new Participating Addendum with Staples that shall be in effect from the commencement date until the expiration of the new NJPA Master Price Agreement (“NJPA Renewal Term”) unless earlier terminated for cause.

(b) Term of Participating Addendum. In accordance with the NJPA Initial Term, the term of this Participating Addendum shall be effective from September 1, 2009 through July 31, 2010 (“Participating Addendum Initial Term”). Should a new NJPA Master Price Agreement be entered into with Staples, the Parties shall enter into a new Participating Addendum which shall be effective for the NJPA Renewal Term specified in the new NJPA Master Price Agreement for Office Supplies Program (“Participating Addendum Renewal Term”)

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 (the “Cooperative Purchasing Partners), shall be authorized to purchase products under the terms and conditions of this agreement. Contract will be valid from date executed by both parties, through the current renewal term of July 31, 2010. STAPLES shall provide to the State and its Cooperative Purchasing Partners the services and products set forth in the STATPLES Contract with NJPA OC 072005 at the pricing, terms and conditions therein set forth and the terms and conditions specifically set forth in this Participating Addendum.

3. **Changes: Intentionally left blank.**

4. **Primary Agreement Contact:**

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

Name: Beverly Speck

Title: Procurement Specialist

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

Department of Treasury

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

Telephone: (609) 777-0203

Fax: (609) 292-0490

E-mail: beverly.speck@treas.state.nj.us

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

Name: John Jones
Title: Regional Vice President
Contractor: Staples Advantage, a division of Staples Contract & Commercial, Inc.
Address: 28 Eastmans Rd, Parsippany, NJ 07054
Telephone: 973-434-4462
Fax: 973-434-4954
E-mail: john.jones2@staples.com

5. Rebate:

(1) Staples agrees that instead of offering the standard NJPA rebate, Staples will apply 5% as a reduction in the unit price of those items purchased by the State that are on the State's Core List, NJPA Hot List, and NJPA Core List, as defined below.

(2) In consideration for entering into this Participating Addendum ending on July 31, 2010 Staples will pay the State a conversion allowance rebate in an amount up to \$100,000 for the State's inventory that Staples cannot accommodate in its buy back program with the State ("Conversion Allowance Rebate"). Staples will pay the Conversion Allowance Rebate within forty-five (45) days after September 1, 2009. In the event that the State terminates this Agreement without cause the State will reimburse the Conversion Allowance Rebate by paying Staples an amount equal to the actual Conversion Allowance Rebate paid divided by 11 for each month or portion thereof by which the Term is shortened as a result of such Early Termination.

6. Reports:

(1) Staples will supply quarterly reports covering all purchases made under this agreement in a format mutually agreed to by the parties.

(2) Staples shall describe additional management reports available, as well as furnish copies or samples of current management reports. Staples shall indicate the flexibility of the reporting system and the ease of changing both format and components tracked.

7. 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:

8. Prices.

8.1 Definitions

"NJPA Master Price Agreement" means NJPA Contract OC 072005 Staples for office and classroom related supplies ("Office Supplies Program").

"Office Supplies Program" means the office and classroom related supplies offered under the NJPA Master Price Agreement.

"Premium Products" means cut sheet paper and toner cartridges.

8.2 State's Core List. The State's Core List is comprised of certain items offered under the current or any future NJPA Master Price Agreement. The Parties agree that the State's Core List (Attachment #1) has been priced lower than the NJPA ceiling prices set forth in the NJPA Master Price Agreement. The prices on the State's Core List shall be adjusted to reflect the same increase and/or decrease percentage effective on the date of any contract price change approved by NJPA. However, State's Core List prices (with the exception of Premium Products) shall change no more often than once per contract year. The pricing for Premium Products may be adjusted to reflect increases which will be in direct proportion to actual manufacturer's price adjustments to Staples. Staples agrees to provide the State with thirty (30) days notice accompanied by manufacturers' documentation prior to such price increases. Staples agrees that increases shall not exceed the applicable NJPA contract ceiling price.

8.3 Products not on the State's Core List. All Products not included on the State's Core List shall be priced in accordance with the Office Supplies Program and shall be included on Staples' e-commerce platform, Stapleslink ("E-Commerce Platform"). The Parties acknowledge that the Office Supplies Program prices may fluctuate throughout the duration of the current or any future NJPA Master Price Agreement as NJPA approves price changes

9. Compensation and Ordering:

- (1) Except for items on the State' Core List, pricing shall be as set forth in the NJPA Master Price Agreement for Office Supply Program.
- (2) The State shall make all payments to Staples under the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.
- (3) All orders and payment will be issued directly to Staples.
- (4) Staples shall provide access to customized ordering ecommerce site.

10. Delivery:

Standard Delivery. STAPLES shall use commercially reasonable efforts to ship Products ordered by The STATE before 5:00 p.m. local time within one (1) business day after acceptance of a purchase order, except for special order Products or Products that are back ordered. In the event that a Product is back ordered or shipment is delayed for any reason, The STATE will be notified of such delay and STAPLES shall use commercially reasonable efforts to delivery the delayed Product as promptly as commercially practicable. STAPLES will treat any such delayed order as active unless The STATE contacts STAPLES and provides other instructions. STAPLES's standard shipments shall be F.O.B. The STATE's location in the forty-eight (48) contiguous United States. Additional freight charges may apply for special delivery, rush or special order Products. Standard delivery shall include inside delivery and/or department delivery where available.

11. Minimum Order Size:

STAPLES and The STATE agree that the minimum order size shall be \$35.00 per order (“Minimum Order Size”). STAPLES’ on-line ordering system will not accept orders below The STATE’s Minimum Order Size. In the event that an ordering agency places an order below the Minimum Order Size, such ordering agency will be notified that the order cannot be processed because it is below The STATE’s Minimum Order Size.

12. Returns:

The following return policy will apply to those Products that pertain to this Participating Addendum:

STAPLES will accept returns of stocked office supply products in salable condition up to thirty (30) days after receipt by The STATE, including Staples® Brand office supply products. The product must be returned to STAPLES with its complete and original manufacturer’s packaging intact and undamaged, including Universal Product Code (UPC), manuals and parts, and a copy of the packing slip. Any product that is returned without any promotional item(s), that was included in the original transaction (e.g., buy printer, get free ink) will have the value of the promotional item deducted from the amount refunded.

Staples understands that the following products may not be ordered under this Participating Addendum, and Staples shall so designate such items on its E-Commerce Platform. In the event such items are ordered even though unauthorized, the following terms shall apply to returns:

Software products, including Staples® Brand software products, must be returned within thirty (30) days of receipt by the STATE unopened and in salable condition. An opened or defective software product can be exchanged for the same title and version of the software product within thirty (30) days of receipt by the STATE. Subject to manufacturers’ returns policies and restrictions, business machines, computers, consumer electronics, networking, peripherals, storage and technology products, including Staples® Brand products in each of these categories, must be returned within fourteen (14) days of receipt of product. Unassembled furniture, including Staples® Brand furniture, must be returned within fourteen (14) days of receipt of product. Assembled or custom furniture, including Staples® Brand furniture, may not be returned, except damaged or defective assembled or custom furniture may be returned within fourteen (14) days of receipt of product. Non-stock products and custom imprinted products are not returnable, except damaged or defective non-stock products and/or custom imprinted products may be returned within thirty (30) days of the STATE receiving such product. The STATE may process product returns online by accessing STAPLES’ e-commerce platform.

13. Small Business Enterprises:

Staples shall make commercially reasonable efforts to explore opportunities to utilize New Jersey based Small/Women/Minority Business Enterprises in connection with the products and services provided hereunder. The following are potential opportunities:

Development during this process.

(5) (A) Staples shall offer the State of New Jersey's office supply contract pricing to all those NJ based SBE/MWBE businesses that meet the following criteria:

a. Pass Staples Advantage credit check

b. Annual spend is greater than \$6,000

c. Maintain a minimum order amount of \$35.00

d. Is not competitors of Staples

e. SBE/MWBEs that elect to participate must agree that Staples Advantage will be the customers' primary vendor for products offered under the Office Supply Program. Staples reserves the right to discontinue the program with any customer who does not purchase complete market basket of items for internal use under the Office Supply Program

f. Staples shall work directly with the SBE/WBE to resolve any compliance issues with the above criteria. If such issues are not resolved, Staples reserves the right terminate the relationship with such SBE/MWBE's. The State shall not be obligated to investigate or otherwise participate in the resolution of any dispute between Staples and any such customer

(6) Staples shall work with the Division of Minority and Women Business Development to identify potential NJ SBE/MWBE printing companies that may be able to provide printed products to Staples as it pertains to the roll out of this contract award.

14. Buy Back Program.

Based on the State of New Jersey awarding a single vendor office supply contract to Staples, Staples has prepared the following Proposed Inventory Depletion and Buy-Back Program for the State of New Jersey's Distribution and Support Services ("DSS") office supply inventory:

(a) Proposed Inventory Depletion. DSS will continue to sell and deplete their inventory of office supplies until September 1, 2009 (the "Depletion Period"). Staples will work with DSS to develop and list blocked SKUs from the Office Supply Program during the Depletion Period for Products (the "Blocked Products") that are close substitutes to office supplies stocked by DSS. Staples' ecommerce platform will direct end users to purchase DSS office supplies instead of the Blocked Products. During the Depletion Period, DSS will (i) provide Staples with monthly updates of the SKU count and projected sell-down of DSS office supplies (ii) notify Staples promptly when depleted SKUs are discontinued so that Staples may unblock the Blocked Products.

(b) Staples Buyback. Upon completion of the Depletion Period, Staples will buy back the remaining DSS inventory of full case-pack quantities of office supplies that are (i) active and part of Staples' stocked inventory (ii) of good quality and condition and (iii) free from patent defects in material, design, and workmanship ("Buyback Products"). Staples will purchase each of the Buyback Products at the then-current average DSS inventory price(s). DSS may dispose of the remaining office supply inventory not purchased by Staples as it sees fit.

(c) Conversion Allowance Rebate. In accordance with Section 4 (2) of this Participating Addendum, Staples, Staples will pay DSS a Conversion Allowance Rebate to offset the then-current average DSS value of remaining office supply inventory. The Conversion Allowance Rebate shall be calculated based on the the then-current average DSS price(s) of the remaining inventory of office supplies up to \$100,000. Staples shall not be responsible for paying for any remaining inventory of office supplies in excess of \$100,000.

15. Miscellaneous:

- 1) 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.
- 2) All publicity and/or public announcements pertaining to this Participating Addendum shall be approved by the State prior to release.
- 3) 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 Staples or an affiliate under a subcontract or other arrangement with Staples, 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. Staples 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. 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 Staples directly to the State shall remain as provided under the current or future NJPA Master Pricing Agreement and Staples shall remain responsible for the products and services sold by Staples directly to the State.

- ~~Complete Candidate Declaration and Disclosure of Political Contributions~~
- ~~(N.J.S.A. 19:44A-20:13 et seq.)~~
(Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et seq.)
 - ~~New Jersey Form AA 202 Affirmative Action Employee Information Report, or New Jersey Affirmative Action Certificate; or Federal Affirmative Action Approval Letter.~~

- 5) This Participating Addendum and the NJPA Master Price Agreement together with their 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 NJPA Master Price Agreement, together with their exhibits, shall not be added to or incorporated into this Participating Addendum or the NJPA Master Price Agreement and their 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 NJPA Master Price Agreement and their exhibits shall prevail and govern in the case of any such inconsistent terms. In the event of any conflict between the terms of the Participating Addendum and the Master Price Agreement, the terms of the Participating Addendum shall prevail.
- 6) 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.
- 7) This Participating Addendum may not be amended or modified except by written agreement executed by authorized representatives of each party.
- 8) 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

Contractor:

Staples Contract & Commercial, Inc.

Alice K. Small

Name: Alice K. Small

Title: Acting Director

Date: 8/12/09

Joseph B. Doody

Name: JOSEPH B. DOODY

Title: PRESIDENT NAD

Date:

8/11/09

Approved as to Form:

ANNE MILGRAM

Attorney General of the State of New Jersey

By: Cynthia Hackett

Title: Deputy Attorney General

Date:



ANNE MILGRAM

Attorney General of the State of New Jersey

Antonia Hackett

Title: Deputy Attorney General

Date: 8/12/09

