



AMENDMENT NO. 1
To Alternate Contract Source No. 30161700-20-ACS
for
Flooring Materials, with Related Supplies and Services

This Amendment No. 1 (“Amendment”), effective as of the date it is signed by all Parties, to Contract No. 30161700-20-ACS, Flooring Materials, with Related Supplies and Services (“Contract”), is made by and between the State of Florida, Department of Management Services (“Department”), and Tarkett USA, Inc. (“Contractor”). The Department and Contractor are collectively referred to herein as the “Parties.”

WHEREAS, the Contract was entered into by the Parties on February 17, 2020, to continue through October 11, 2023, for the provision of flooring materials with related supplies and services, pursuant to a Master Agreement between the Contractor and Sourcewell, a State of Minnesota local government agency and service cooperative; and

WHEREAS, the Parties wish to amend the Contract to incorporate additional terms and conditions and update related Contract provisions accordingly.

NOW THEREFORE, for the mutual covenants contained herein, the Parties agree to the following:

- 1.0 **Additional Special Contract Conditions.** The Contract is hereby amended to add a new Exhibit D, Additional Special Contract Conditions. Exhibit D is attached and hereby incorporated into the Contract.
- 2.0 **Modifications.** The Contract is hereby amended to modify Section 3, Modifications or Additions to Master Agreement, as follows:

3. Modifications or Additions to Master Agreement.

As used in this document, Contract (whether capitalized or not) will, unless the context requires otherwise, mean this document and all incorporated exhibits, which set forth the entire understanding of the Parties and supersede any and all prior agreements. This Contract may only be modified or amended upon mutual written agreement by the Parties. If amendments are made to the Master Agreement, the Contractor shall: 1) notify the Department of such amendments; and 2) provided the Department is amenable to incorporating the amendments into this Contract, enter into a written amendment with the Department reflecting the addition of such amendments to this Contract.

All exhibits attached or listed below are incorporated in their entirety into, and will form part of, this Contract. Exhibit A and Exhibit D modify or supplement the terms and conditions of the Master Agreement. In the event of a conflict, the following order of precedence will apply:

- a) This Contract document and any amendments, with the latest issued having priority
- b) Exhibit D: Additional Special Contract Conditions

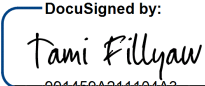
- c) Exhibit A: Special Contract Conditions (Florida)
- d) Exhibit B: State of Florida Price Sheet
- e) Exhibit C: Master Agreement

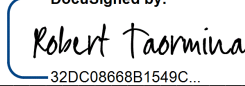
Where the laws and regulations of a state other than the State of Florida are cited or referenced in the Master Agreement, such citation or reference will be replaced by the comparable Florida law or regulation.

- 3.0 **Warranty of Authority.** Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.
- 4.0 **Effect.** Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

State of Florida:
Department of Management Services

Contractor:
Tarkett USA, Inc.

DocuSigned by:

By: _____
Name: **Tami Fillyaw**
Title: **Chief of Staff**
Date: 11/17/2020 | 8:47 AM EST

DocuSigned by:

By: _____
Name: **Robert Taormina**
Title: **associate general counsel**
Date: 11/16/2020 | 2:58 PM EST



ADDITIONAL SPECIAL CONTRACT CONDITIONS Exhibit D

The Contractor and Customers acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in the Department's Contract as modified and supplemented by the Special Contract Conditions and these Additional Special Contract Conditions.

Contractor acknowledges that the Participating State is an agency of the State of Florida and as such, the Contract will include the terms and conditions in these Additional Special Contract Conditions. All references to the Contract in these Additional Special Contract Conditions include the terms and conditions herein.

- A. Orders: Contractor must be able to accept the State of Florida Purchasing Card and MyFloridaMarketPlace (MFMP) purchase orders.
- B. Contractor and Applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers: By execution of a Contract, the Contractor acknowledges that it will not be released of its contractual obligations to the Department because of any failure of a subcontractor, reseller, distributor, or dealer. The Contract terms are applicable to subcontractors, resellers, distributors, and dealers and shall apply to the Contractor's Applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers providing commodities and performing services in furtherance of the Contract. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract.
- C. Purchases Prerequisites: Before fulfilling any Customer purchases and receiving payment, the Contractor and applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers must have met the following requirements, unless further notated below:
 - Have an active registration with the Florida Department of State, Division of Corporations (www.sunbiz.org), or, if exempt from the registration requirements, provide the Department with the basis for such exemption.
 - Be registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>) *only required by applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers if receiving payment.
 - Not be on the State's Convicted, Suspended, or Discriminatory Vendor lists (http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)
 - Have a copy of e-Verify Status on file

- Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>) *only required by applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers if receiving payment.

D. MFMP Electronic Invoicing: The Contractor may supply electronic invoices in lieu of paper-based invoices for those transactions processed through MFMP. Electronic invoices may be submitted to the agency through one of the mechanisms as listed below:

1) EDI (Electronic Data Interchange)

This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog goods and services.

2) PO Flip via AN

This online process allows Contractors to submit invoices via the AN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

The Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within MFMP. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within MFMP the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

E. Contract Reporting: The Contractor shall provide the following reports associated with this Contract.

- 1) Contract Quarterly Sales Reports. The Contractor shall submit Quarterly Sales Reports to the Department's Contract Manager within 15 calendar days after the close of each State fiscal quarter (the State's fiscal quarters close on September 30, December 31, March 31, and June 30). The Contractor's first Quarterly Sales Report will be due 30 calendar days after the first full quarter following Contract execution.

Reports must be submitted in MS Excel format and can be retrieved by accessing the following link at [FL DMS Quarterly Sales Report Form](#). The report shall include all Customer sales received and associated with this Contract during the quarter. Initiation and submission of the Quarterly Sales Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated, or the Department may choose to not renew the Contract.

- 2) Certified and Minority Business Enterprises Reports. Upon Customer request, the Contractor shall report to each Customer, spend with certified and other minority business enterprises in the provision of commodities or services related to the Customer orders. These reports shall include the period covered; the name, minority code, and Federal Employer Identification Number of each minority business enterprise utilized during the period; commodities and services provided by the minority business enterprise; and the amount paid to each minority business enterprise on behalf of the Customer.
 - 3) Ad Hoc Sales Reports. The Department may require additional Contract sales information such as copies of purchase orders or ad hoc sales reports. The Contractor shall submit these documents and reports within the timeframe specified by the Department.
 - 4) MFMP Transaction Fee Reports. The Contractor shall submit monthly MFMP Transaction Fee Reports to the Department. Reports are due 15 calendar days after the end of each month. Information on how to submit MFMP Transaction Fee Reports online can be located on the [Transaction Fee and Reporting website](#). Assistance with the transaction fee reporting system is also available from the MFMP Customer Service Desk by email at feeprocessing@myfloridamarketplace.com or telephone at 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.
- F. Financial Consequences: The following financial consequences will apply for the Contractor's non-performance of the provision of the Quarterly Sales Reports and the MFMP Transaction Fee Reports. The State of Florida reserves the right to withhold payment or implement other appropriate remedies, such as Contract termination or nonrenewal, when the Contractor has failed to comply with these provisions of the Contract. The Contractor and the Department agree that the financial consequences for non-performance are an estimate of damages which are difficult to ascertain and are not penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in U.S. dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every month or quarter, respectively, thereafter.

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Financial Consequences Chart

Deliverable	Performance Metric	Performance Due Date	Financial Consequence for Non-Performance (Per Calendar Day Late/Not Received by the Contract Manager)
Contractor will timely submit complete Quarterly Sales Reports	All Quarterly Sales Reports will be submitted timely with the required information	Reports are due on or before the 15 th calendar day after the close of each State fiscal quarter	\$250
Contractor will timely submit complete MFMP Transaction Fee Reports	All MFMP Transaction Fee Reports will be submitted timely with the required information	Reports are due on or before the 15 th calendar day after the close of each month	\$100

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

- Quarter 1 - (July-September) – due 15 calendar days after close of the period
- Quarter 2 - (October-December) – due 15 calendar days after close of the period
- Quarter 3 - (January-March) – due 15 calendar days after close of the period
- Quarter 4 - (April-June) – due 15 calendar days after close of the period

The Department may not consider renewal of a Contract or price adjustments if the Contractor is late on submitting required reports or for outstanding fees owed.

- G. Business Review Meetings: Both the Department and Customer reserve the right to schedule business review meetings. The Department or Customer will provide the format for the Contractor's agenda. In the event the Department or Customer schedules a business review meeting, the Contractor shall submit the completed agenda to the Department or Customer for review and acceptance prior to the meeting. The Contractor shall address the agenda items and any of the Department's or Customer's additional concerns at the meeting. At a minimum, the agenda items may include:
- a. Contract compliance
 - b. Savings report (in dollar amount and cost avoidance)
 - c. Spend reports by Customer
 - d. Recommendations for improved compliance and performance

Failure to comply with this section may result in the Contractor being placed on a Corrective Action Plan and possible termination of the Contract.