

TIRES, TUBES AND SERVICES
Led by the State of Iowa

Master Agreement #: 19102

Contractor: BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC

Participating Entity: STATE OF OHIO

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the Tires, Tubes & Services led by the State of Iowa, for use by state agencies and other entities located in the Participating State [or State Entity] authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Cooperative Purchasing Contract: This Contract may be relied upon by Ohio institutions of higher education and Ohio political subdivisions. Ohio political subdivisions include any county, township, municipal corporation, school district, conservancy district, township park district, park district created under Chapter 1545 of the Revised Code, regional transit authority, regional airport authority, regional water and sewer district, port authority or any other political subdivision as described in the Ohio Revised Code. To qualify to use this Contract the political subdivision must be currently enrolled in the State's Cooperative Purchasing Program. Purchases made from this Contract by a political subdivision that is not properly registered with the State's Cooperative Purchasing Program will be a violation of law and may be contrary to the political subdivision's competitive bidding requirements. If a political subdivision or institution of higher education relies upon this Contract to issue a purchase order or other ordering document, the political subdivision or institution of higher education "steps into the shoes" of the State under this Contract. The political division's or institution of higher education's order and this Contract are between the Contractor and the political subdivision or institution of higher education. The Contractor must look solely to the political subdivision or institution of higher education for performance, including payment. The Contractor agrees to hold the state of Ohio harmless with regard to political subdivisions and institution of higher education's orders and political subdivision's and institution of higher education's performance. DAS may cancel this Contract and may seek remedies if the Contractor fails to honor its obligations under an order from a political subdivision or institution of higher education.

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3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Contact:	Gregg Trosper
Address:	200 4 th Avenue South, Nashville, TN 37201
Telephone:	(615) 937-3794
Fax:	(615) 493-0258
Email:	Trospergregg@bfusa.com

Participating Entity

Participating State	State of Ohio
Analyst Name:	Shawn Carter
Address:	4200 Surface Rd, Columbus, OH 43228
Telephone:	(614) 466-0539
Fax:	(614) 485-1056
Analyst Email:	Shawn.Carter@das.ohio.gov

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4. Participating Entity Modifications or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity:

Participating Entity must check one of the boxes below.

- ☐ No changes to the terms and conditions of the Master Agreement are required.
- ☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

Order of Priority: The State of Ohio Standard Contract Terms and Conditions are hereby incorporated into this Participating Addendum (PA) and shall be binding on the contractor. If there is any inconsistency or conflict between the PA Agreement and the Ohio Terms and Conditions, the Ohio Terms and Conditions will prevail. Notwithstanding anything to the contrary, all pricing shall be governed solely by the terms of the Consortium Contract.

The State of Ohio DAS' Standard Contract Terms may be accessed through the following link: Standard Terms and Conditions.

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5. Contractor Revenue Share: The Contractor must pay the Department of Administrative Services (DAS) a revenue share of the sales transacted under this contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering agencies which includes both state agencies and political subdivisions using this Contract.

The contractor must remit any monies due as the result of the close-out report at the time the close-out report is submitted to DAS. The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the Ohio Contract Management Remittance Report

The Contractor should make the check payable to: Treasurer, State of Ohio.

Use the following address for same day or overnight deliveries:

Huntington National Bank
ATTN: L-3686
7 Easton Oval
Columbus, OH 43219

All other deliveries may be sent to the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner, DAS may suspend, terminate or cancel this Contract.

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6. Contractor Quarterly Sales Report: The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales, to include both state agencies and political subdivisions, under this Contract by calendar quarter (e.g. January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the Contract user for the products and/or services listed on the purchase order or other encumbering document, as recorded by the Contractor.

The Contractor will receive an email with a User ID and password and must report the quarterly dollar value of sales to the Department of Administrative Services (DAS) via the Internet using the web form at the Ohio DAS Contract Management Contractor Portal, <https://cm.ohio.gov/>. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period. The Contractor is responsible for emailing the Analyst listed on page one of the contract with any company contact changes.

The Contractor shall also submit a close-out report within one hundred and twenty (120) days after the expiration of this Contract. The Contract expires upon the physical completion of the last outstanding task or delivery order of the Contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close-out report.

The Contractor must forward the Quarterly Sales Report to one of the following addresses,

For same day or overnight deliveries:

Huntington National Bank
ATTN: L-3686
7 Easton Oval
Columbus, OH 43219

All other deliveries may be sent to the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the Contractor fails to submit sales reports, falsifies reports or fails to submit sales reports in a timely manner, DAS may suspend, terminate or cancel this Contract.

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7. Section II, Regulatory Contract Requirements A. – Antitrust

The State of Ohio will remove this from the Terms and Conditions.

8. Section III, Contract Construction A. Terms of Contract - The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the earliest of: (1) the ending date stated in the Contract; (2) the Contract is fully performed by both parties; (3) the Contract is canceled or terminated; or (4) the Contract expires at the end of a biennium unless continued by the State.

This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of the State. The State will issue a notice to the Contractor if the State decides to renew this Contract. The Contractor shall not obligate resources in anticipation of a renewal until notice is provided.

The State of Ohio will add the following language to the contract “The Contract will become effective 04/01/19 for the State of Ohio and will not be renewed beyond the current Master Contract expiration date.”

9. Section III, Contract Construction C. - Assignment / Delegation. The Contractor must not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State. –

This section will be removed, and the State of Ohio will reference section 25 of the Master Agreement.

10. The State of Ohio Clarifies that Dealers are not considered Subcontractors

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11. Section V, Liability Provisions A. – General Representations and Warranties –The Contractor warrants that:

1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with the Contractor's standard business practices.
4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
5. The Deliverables comply with all governmental, environmental and safety standards.
6. The Contractor has the right to enter into this Contract.
7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
8. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to the State.
10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

Any other express warranties offered by the Contractor shall be a minimum of one year or the Contractor's standard warranty whichever is longer.

The State is willing to remove subsections 1, 4 and 5 and to reference the Standard Warranty as outlined in Section 18 of the Master Agreement.

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12. Section V, Liability Provisions B. - Indemnity. The Contractor must indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities including, but not limited to, bodily injury to any person (including injury resulting in death) or damage to property, that may arise out of, or are related to, the Contractor's performance under this Contract, providing such is due to the negligence or other tortious conduct of the Contractor, the Contractor's employees, agents, or subcontractors.

The Contractor must also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions:

1. Modify the Deliverable so that the Deliverable is no longer infringing;
2. Replace the Deliverable with an equivalent or better item;
3. Acquire the right for the State to use the infringing Deliverable as intended; or
4. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.

The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the Ohio Attorney General.

The State of Ohio will add the following language "Notwithstanding this Article V, Section B, Contractor is not responsible for the actions or omissions of Independent Dealers (as defined in the Master Agreement), which are not agents, employees, or subcontractors of Contractor, as such terms may be used in Contractor's agreements with the State of Ohio. Contractor's obligations under this Section shall also not apply to the extent that a claim, suit, or other loss results from the negligence of the State of Ohio or any of its officers, employees, agents, or representatives." to the end of this section of the Terms and Conditions.

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13. Section V, Liability Provisions D. – Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The State reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy(ies) endorsed to reflect per project / per location general aggregate limits.

~~Failure to submit the insurance certificates may result in the Contractor being deemed not responsive. Said certificates shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the State. Failure of the Contractor to maintain this coverage for the duration of the Contract, and any renewals thereto, may considered as a default. All insuring companies shall have and maintain at least an A- (Excellent)rating from A.M. Best, unless otherwise approved in writing by the State.~~

The State of Ohio will add the following language "provided that the waiver of subrogation and primary status will be only to the extent that Contractor is required to indemnify the State of Ohio under the participating addendum and related agreements" to the end of "The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage" sentence.

The State of Ohio has agreed to allow the contractor to increase their Commercial General Liability Insurance from \$1,000,000.00 to \$1,500,000.00 and to allow for the Contractor's defense cost to be under the Contractor's Commercial General Liability. The Contractor's defense cost shall be capped at \$500,000.00. The State has also agreed to remove "The defense cost shall be outside the policy limits." from the terms and conditions.

The State of Ohio has removed "The State reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy(ies) endorsed to reflect per project / per location general aggregate limits." From this section.

The State of Ohio has removed "or decrease in coverage" from the following sentence "Said certificates shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the State."

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14. Section VI. Performance and Compliance H. – Contract Remedies

1. Actual Damages. The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.

The State of Ohio has removed "The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default." From this section.

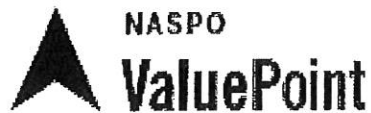
2. Liquidated Damages. If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the default, for every day that the default is not cured by the Contractor.

The State of Ohio will add "per day until remedied" after Contractor.

15. Section VII. Data and Information Control A. – Confidentiality


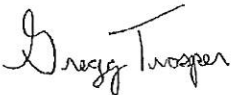
The State of Ohio agrees to remove this section and refer to the Master Agreement section 23.

NASPO ValuePoint
PARTICIPATING ADDENDUM



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

Participating Entity: State of Ohio	Contractor: Bridgestone Americas Tire Operations LLC
Signature: 	Signature: 
Name: MATTHEW M. DAUSCHRODER	Name: Gregg Trosper
Title: MANAGER DIRECTOR	Title: Manager Gov & Military Sales
Date: 7/30/19	Date: 5/17/19

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	tfosket@naspovaluepoint.org

*[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in
appropriate data bases.]*

