



PURPOSE: These guidelines are designed to assist state agencies in meeting their obligations under the Oklahoma Privatization of State Functions Act [74 O.S. §§ 588 et seq.], the Oklahoma Central Purchasing Act [74 O.S. §§ 85.1 et seq.] and the Office of Management and Enterprise Services Central Purchasing rules [OAC 260:115]. The guidelines are illustrative only and do not validate the privatization of a state agency function, nor do they relieve a state agency of its legal responsibility to fully comply with all applicable provisions of Oklahoma Statutes and rules. Agencies are encouraged to seek legal counsel in addition to consulting with the Office of Management and Enterprise Services throughout the process.

DEFINITIONS. As used in this overview:

“Agency” means an agency, board, commission or other entity of state government. [74 O.S. § 588]

“OMES” means the Office of Management and Enterprise Services.

“Privatize” means to enter into a contract for the performance of a duty or function that is currently being performed by a state employee. [74 O.S. § 588]

PRIVATIZATION PROCESS GUIDELINES

- (a) **Agency** determines a need to privatize a function, program, service, unit or division valued at \$1,000,000.00 or more.
- (b) Prior to contracting for privatization, the **agency** must perform a cost analysis. [74 O.S. § 588.1(A)]
 - (1) A thorough preliminary cost analysis provides a baseline and sufficient facts to give impetus to privatization. The projected outcome should clearly reflect identified savings and quality improvement. Provide specific examples of quality enhancements; e.g., recidivism reduced by 20%, etc.
 - (2) “Cost analysis” means a study that includes but is not limited to:
 - (A) All direct personnel costs, materials and supplies, equipment, capital and equipment depreciation costs, rent, maintenance and repairs, utilities, insurance, travel, operations overhead and general administrative overhead associated with privatization of a function, program, service, unit or division.
 - (B) A feasibility study determining whether other state agencies could perform the function, program, service, unit or division sought to be privatized.
 - (C) An analysis of the cost savings and quality enhancements expected to be gained by privatizing. [74 O.S. § 588]
- (c) **Agency** provides to the Office of Management and Enterprise Services a copy of:
 - (1) The cost analysis, prepared pursuant to (b) of these guidelines. [74 O.S. § 588.1(A)]
 - (2) The established plan and cost analysis on how to return the privatized function, program, service, unit or division to the state if there is a contract cancellation. [74 O.S. § 589(G)]
- (d) **OMES** conducts review of the cost analysis report and determines whether it fulfills content requirements.
 - (1) Upon completing the review, OMES notifies the **agency** of its finding.
 - (2) If the cost analysis report is found to be deficient, OMES returns the report to the agency with instructions specifying the inaccuracy or defect to be corrected. [74 O.S. § 588.1(C)]
- (e) Upon receiving OMES notice finding the cost analysis report in compliance with content requirements, the **agency** must allow its employees the opportunity to submit proposals for improving the operations, efficiency or organization of the entity being considered for privatization [74 O.S. § 589(A)]. **Agency** provides simultaneous written notice of its intent to privatize to:
 - (1) All employees impacted by the proposed privatization of its intent to privatize.
 - (A) Notice to employees shall contain:
 - (i) " ... a specific statement that the employees have an opportunity to submit proposals to the agency; ... " [74 O.S. § 589(A)(2)].
 - (ii) The name of the designated **agency** contact for employee inquiries, including phone and email information.
 - (iii) Physical and mailing location where proposals must be submitted.
 - (iv) The date and time of the deadline for proposals to be submitted, which may be no less than 30 days from the date the notice is issued.
 - (2) The director of the Office of Management and Enterprise Services. [74 O.S. § 589(A)(3)]
- (f) **Agency** shall provide information to its employees necessary to assist their development of proposals, which includes [74 O.S. § 589(B)]:
 - (1) Revenue expenditure data.

- (2) Wage and salary data.
- (3) An inventory of the supplies, equipment and facilities associated with the program being privatized.
- (4) The cost analysis report performed by the **agency** approved by OMES.
- (g) **Agency** shall ensure any proposals submitted by employees remain confidential until considered simultaneously in the bid or proposal process with nonemployee bids. [74 O.S. § 589(C)]
- (h) **After** the date and time for submission of agency employees' proposals established in the employee privatization notice (see (e)(1)(A) of this checklist), **agency** shall notify the OMES director of its intent to solicit bids from interested parties. [74 O.S. § 589(D)]
- (i) **Prior** to issuing a solicitation of bids from nonemployees, **agency** shall send written notice to the governor, president pro tempore of the Senate and speaker of the House of Representatives, which must state [74 O.S. § 589(D)]:
 - (1) **Agency's** intent to solicit bids for privatization.
 - (2) **Agency** has given the opportunity to its employees to submit proposals prior to the decision to privatize.
- (j) **Agency** issues public solicitation for privatization pursuant to the Oklahoma Central Purchasing Act [74 O.S. §§ 85.1 et seq.] and rules of the Office of Management and Enterprise Services [OAC 260:115], unless otherwise provided by law. **Agency** must include provisions in the solicitation requiring the following information:
 - (1) Financial stability of the supplier. [74 O.S. § 589(F)(1)]
 - (2) A list of all past and present litigation associated with the supplier. [74 O.S. § 589(F)(1)]
 - (3) Supplier's references related to past government contract performance information. [74 O.S. § 589(F)(1)]
 - (4) A detailed description of how the supplier will perform the contract, including staffing and equipment information. [74 O.S. § 589(F)(2)]
 - (5) Payment to the awarded supplier be linked to contract performance. [74 O.S. § 589(H)]
 - (6) Amount agreed upon in the contract may be reduced if the agency experiences a budget shortfall. [74 O.S. § 589(H)]
 - (7) Contractor agrees to offer available employee positions pursuant to the contract to qualified regular employees of the **agency** whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor. [74 O.S. § 589(I)]
- (k) **After** the bid is closed and responses are evaluated **and prior** to award of a privatization contract, **agency** shall conduct a comprehensive written analysis of the contract cost based upon the designated bid, which shall be maintained in the acquisition file and specifically include the following:
 - (1) The costs of transition from public to private operation.
 - (2) The severance payments to agency employees.
 - (3) Monitoring and otherwise administering contract performance. [74 O.S. § 589(E)]
- (l) **Prior** to award, **agency** shall submit to OMES:
 - (1) The privatization contract.
 - (2) A comprehensive report, which includes:
 - (A) The initial cost analysis report approved by OMES prior to beginning of the privatization process. [See (b) of these guidelines.]
 - (B) Original proposals submitted by impacted employees.
 - (C) Original bid responses submitted by nonemployees.
 - (D) Comprehensive written analysis of the contract cost compiled pursuant to (k) of this process.
 - (E) Important factors/components in the selected private vendor's proposal.
 - (F) Important factors/components in proposals submitted by impacted employee(s).
 - (G) Findings as to why **agency** recommends privatizing with the private vendor.
 - (3) A written statement signed by the agency director certifying that:
 - (A) The provisions of the Oklahoma Privatization of State Functions Act and all other applicable laws regarding the privatization of the respective state functions have been complied with.
 - (B) The quality and cost of the services to be provided by the selected bidder are likely to exceed the quality and cost benefit standards for the state function as formerly delivered by agency employees.
 - (C) The proposed privatization contract is in the best interest of the public.

- (m) Upon award of a privatization contract, **agency** shall certify in writing to the governor, president pro tempore of the Senate, and speaker of the House of Representatives that:
- (1) The provisions of the Oklahoma Privatization of State Functions Act and all other applicable laws regarding the privatization of the respective state functions have been complied with. [74 O.S. § 589.1(1)]
 - (2) The quality and cost of the services to be provided by the selected bidder are likely to exceed the quality and cost benefit standards for the state function as formerly delivered by agency employees. [74 O.S. § 589.1(2)]
 - (3) The proposed privatization contract is in the best interest of the public. [74 O.S. § 589.1(3)]