

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES

CHAPTER 115. PROCUREMENT

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SUBCHAPTER 1. GENERAL PROVISIONS

260:115-1-1. Purpose and authority

(a) **Procurement rules purpose.** The purpose of this Chapter is to provide information, requirements and procedures for state procurement staff, suppliers and state agencies subject to the Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et seq., referred to in this Chapter as the "Purchasing Act", to establish fair and consistent acquisition processes that satisfy the needs of the state. It is the policy of the State to make acquisitions from suppliers through a competitive selection process that is fair, open and objective in order to achieve optimum value, quality and serve the best interest of the taxpayers. All suppliers and state agencies are responsible for knowing the requirements of this Chapter. These rules are administered by the Office of Management and Enterprise Services to provide direction and ensure compliance with the Purchasing Act and other applicable state laws and rules. These rules have been promulgated by the Director of the Office of Management and Enterprise Services in accordance with the Administrative Procedures Act and pursuant to the authority of 74 O.S. §85.5., 74 O.S. 85.45S. and 62 O.S. §34.28

(b) **Information technology acquisitions.** Unless otherwise provided by law, state agencies shall make information technology and telecommunications acquisitions in accordance with the Purchasing Act, the Oklahoma State Finance Act [62 O.S. §§34 et seq.], the Information Technology Consolidation and Coordination Act, 62 O.S. §§35.1 et seq., the rules of this chapter, and requirements established by the Chief Information Officer and the OMES Information Services Division.

(c) **Official directives.** The State Purchasing Director or Chief Information Officer, as applicable, shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures to ensure compliance with provisions of the Central Purchasing Act, procurement rules and any other matter relating to state agency acquisitions.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-1-2. Definitions

In addition to terms defined in the Purchasing Act, the following words or terms, when used in state procurement shall have the following meaning, unless the context clearly indicates otherwise:

"Acquiring agency" means the state agency authorized to enter into a contract with a supplier, which may or may not be the state agency receiving the acquisition.

"Acquisition authority" or **"acquisition threshold"** means the dollar or value amount within which a state agency is approved to make acquisitions without submitting a requisition to the OMES Purchasing Division.

"Addendum" means a written modification to a contract.

"All or none bid" means a bid in which the bidder states only an award for all items or services included in the acquisition will be accepted.

"Alteration" means a modification a bidder makes to a submitted bid prior to the response due date.

"Alternate bid" means a bid which contains an intentional substantive variation to a basic provision, specification, term or condition of the acquisition.

"Amendment" means a written change, addition, correction, or revision made by the acquiring agency to procurement documents in connection with a solicitation.

"Authorized signature" means a manual, electronic or digital signature or other identifier uniquely linked to a person authorized to sign document on behalf of a supplier or acquiring agency.

"Best and Final Offer" or **"BAFO"** means a final offer submitted in writing by a bidder, as requested by an acquiring agency.

"Bid bond", or **"surety"** means a form of surety or guaranty that may be required to be submitted with a bid.

"Business days" means Monday through Friday and is exclusive of weekends and Oklahoma state holidays.

"Central Purchasing Division" means the Central Purchasing Division of the Office of Management and Enterprise Services.

"Certified Procurement Officer" or **"CPO"** means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Clarification" means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date/time" means the date and Central Time bids are due.

"Commodity classification" means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

"Competitive solicitation" means an acquisition process bids are submitted to the acquiring agency pursuant to terms, conditions and other requirements of the acquisition and which may be electronic when the terms of the acquisition expressly permits or requires electronic submission and the requirements of applicable statutes and rules are met.

"Days" means calendar days unless otherwise specified.

"Debar" or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the Supplier List, bidding, offering to bid, receiving an award of contract with an acquiring agency and which may also result in cancellation of existing contracts with the State of Oklahoma.

"Director" or **"OMES Director"** means the Director of the Office of Management and Enterprise Services or a designee.

"Electronic Signature" means the execution of a signature as defined in the Electronic Transactions Act.

"Firm bid" means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the acquiring agency accepts or rejects the bid.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Invoice" means to a proper invoice as defined by the State Comptroller.

"Minor deficiency" means an immaterial defect in a bid or variation in a bid from the exact requirements of an acquisition that may be corrected or waived without prejudice to other bidders.

"Multi-award" means the award of a contract to two or more suppliers to furnish an indefinite quantity or category of item, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service or product compatibility.

"Non-responsive" means a bid or proposal that has been determined not to conform to essential requirements of an acquisition.

"Oklahoma Correctional Industries" or **"OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

"OMES" means the Oklahoma Office of Management and Enterprise Services.

"Ratification of an unauthorized commitment" means the act of approving an unauthorized commitment made by a state agency and the written agreement documenting the approval.

"Reciprocity" means a preference, which the State Purchasing Director or state agency shall apply against the price submitted for an acquisition by an out-of-state bidder whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means an individual or business entity that registers with the OMES Purchasing Division pursuant to 74 O.S. § 85.33.

"Requisition number" means an identifier the acquiring agency assigns to a requisition.

"Requisitioning unit" means the unit in a state agency responsible for making acquisitions.

"Responsible bidder" means an individual or business entity demonstrating capabilities in all respects to fully perform the requirements of a contract including, but not limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, and performance history which will ensure good faith performance.

"Responsive" means a bid or proposal that has been determined to conform to the essential requirements of an acquisition.

"Reverse Auctioning" means a procurement method wherein pre-qualified bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' price positions are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation.

"State Use Committee" means the statutory Committee that certifies severely disabled individuals and sheltered workshops as qualified organizations to contract with the state to provide products and services, which are designated in the State Use Committee procurement schedule for state agency acquisitions pursuant to 74 O.S. §§ 3001 et seq.

"Statement of Work" means a detailed description of the work which a state agency requires a supplier to perform or accomplish.

"Supplier performance evaluation" means information provided to the State Purchasing Director, in a manner the State Purchasing Director prescribes, that documents the quality of an acquisition.

"Supplier List" means a list of individuals or business entities that have registered with the OMES Purchasing Division in order to receive notification of solicitations for commodity classifications specified in their registration application.

"Suspension" means an action by the State Purchasing Director to suspend an individual or business entity from being included on the Supplier List, being eligible to submit bids to state agencies and from being awarded a contract by a state agency subject to the Purchasing Act.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-1-3. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-1-4. State Purchasing Director authority [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-1-5. Chief Information Officer Authority [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-1-6. Waivers

(a) **Waiver request.** A state agency may request a waiver from certain requirements of the rules of this chapter or the Purchasing Act from the State Purchasing Director if:

- (1) the state agency reasonably believes that it would be unable to perform a necessary function due to the inability to make an acquisition pursuant to

rules of this Chapter or the Purchasing Act; or,
(2) a court order directs the state agency to make an acquisition from a specified vendor or provider.

(b) **Approval of waiver request.** After a waiver request is reviewed, the State Purchasing Director shall notify the state agency of the approval, conditional approval or denial of the waiver request.

(c) **Acquisition pursuant to a waiver.** A waiver does not exempt an agency from compliance with the agency's approved internal purchasing procedures including but not limited to obtaining required certifications and documentation required under this chapter or the Purchasing Act .

(d) **Waiver of Acquisition Based on Agency Expertise.** Prior to a state agency making an acquisition in excess of its acquisition threshold amount, pursuant to 74 O.S. §85.5(N), the agency shall submit a written request in the manner prescribed by, and associated requirements and criteria established by, the State Purchasing Director.

(e) **Additional requirements pursuant to a waiver.** In addition to the requirements of 74 O.S. §85.5(N), an agency making an acquisition in excess of its acquisition threshold amount pursuant to a waiver based on agency expertise shall comply with applicable portions of 74 O.S. §85.7, the rules of this Chapter and any other applicable state laws and rules. The quarterly report required by 74 O.S. §85.5(N) shall be submitted by the 5th business day of each new fiscal quarter.

(f) **Reporting requirement pursuant to a waiver.** An agency shall submit a report in electronic format to the State Purchasing Director on a quarterly basis, which lists all contracts issued pursuant to this section.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-1-7. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-1-8. Contract management fee, levy or rebate [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

SUBCHAPTER 3. SUPPLIER PROVISIONS

260:115-3-1. Purpose [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-2. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-3. Supplier registration

(a) **Purpose.** Unless otherwise specified, supplier registration pursuant to this section provides a supplier with automatic notification of bid opportunities but is not required for a supplier to respond to a solicitation. Automatic notification is dependent upon a supplier providing the Office of Management and Enterprise Services valid and up-to-date information. Supplier registration is required for any supplier selected for contract award or renewal of a contract pursuant to the Central

Purchasing Act and these rules. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Registration.** A supplier may complete registration online as established by 74 O.S. 85.33, for each commodity classification listed in the registration application. A successfully completed registration application will result in the individual or business entity being placed on the Supplier List for a one-year period, at which point, registration is required to be renewed in order to remain in active registered status. Registered suppliers are to be notified by the acquiring agency pursuant to applicable laws and rules, of solicitations for each commodity classification for which a supplier maintains active registered status. The State Purchasing Director shall not place a supplier on the Supplier List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not responsible.

(c) **Registration renewal.** A registered supplier may renew a registration prior to the expiration date of the supplier's current registration in order to remain on the Supplier List.

(d) **Voluntary removal from Supplier List.** A supplier may submit a written request to the OMES Purchasing Division to request to be removed from the Supplier List for a commodity classification.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-4. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-5. Procurement ethics - prohibited conduct

The Oklahoma Central Purchasing Act, State Ethics Commission rules and other state laws contain regulations, prohibitions and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-6. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-7. Bid preparation

(a) **Form requirements.** A bid shall include all required forms in connection with an acquisition.

(1) A bid shall include an acknowledgement of receipt of any solicitation amendment. A bidder that submitted a bid prior to the amendment and bid due date shall submit the acknowledgement by the specified bid response due date and time.

(2) Should the bidder alter a form, the bidder shall initial each alteration.

(3) Any form requiring a bidder's signature shall have an authorized signature.

(4) If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner specified by the laws of the bidder's state.

(b) **Firm bid for one hundred twenty (120) days.** A bid shall be considered a firm bid for one hundred twenty (120) days following the bid closing date, unless otherwise stated by the acquiring agency.

(c) **Bidder travel expenses.** The price submitted in a solicitation shall include travel expenses to perform the contract.

(d) **Tax exemptions.** A bid shall not include a requirement that an acquiring agency pay sales tax and federal excise tax nor seek reimbursement of other taxes assessed or paid in connection with an acquisition. Such a reimbursement would provide an impermissible indirect tax exemption that is not otherwise provided by the Oklahoma legislature. Purchases made by a supplier on behalf of an acquiring agency are not exempt from sales, federal or other taxes unless otherwise authorized by law and state agencies are further exempt from sales and excise taxes.

(e) **Payment terms.** Payment by an acquiring agency is not late until forty-five (45) days after receipt of a valid and proper invoice. Stricter payment language in a bid will not be valid. Early payment discounts may be negotiated and awarded unless prohibited by federal or state law.

(f) **Used or new products.** A bid shall offer new items of current design unless used, reconditioned or remanufactured products are specified as acceptable.

(g) **Price.** Unless specified otherwise, a bid shall include a firm, fixed price for the term of the contract.

(h) **Alternate bids.** Unless otherwise prohibited, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall be a complete bid. The bidder shall clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall title each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(i) **All or none bid.**

(1) If a contract may be awarded to more than one bidder, a bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) If a contract may be awarded to more than one bidder by item, a bidder may indicate that the terms and conditions of the bid are all or none.

(j) **Bidder delivery and shipping.** If a delivery date for goods and/or services is not specified, the bid shall specify the delivery date. A bid shall include all costs associated with delivery of the acquisition F.O.B. destination to the receiving state agency unless otherwise specified by the acquiring agency.

(k) **Sample submission.** Submission of samples of the required items or products may be required when essential to the assessment of product quality during bid evaluation. When required, samples must be received no later than the bid response due date and time.

(1) **Sample identification.** The bidder shall clearly identify the sample the bidder submits by placing the bidder's name, bidder's address, requisition number and closing date/time on both the sample container and on the sample shipping container.

(2) **Sample costs.** The bidder shall pay all costs associated with submission of the sample.

(3) **Sample requirements.** A sample shall represent the quality of the whole.

(4) **Sample tests.** Whenever testing is determined necessary, appropriate standard testing procedures will be used. All samples submitted may be subject to consumption or destruction as a result of tests by the agency.

(5) **Sample tests costs.** If a sample fails to meet the required specification or standards, the bidder may be required to pay testing costs the acquiring state agency incurs.

(6) **Return of sample to bidder.** If return of samples is stipulated in a bid, samples not destroyed by testing may be returned at the bidder's expense.

(7) **Successful bidder samples.** Samples submitted by the successful bidder may be retained to ensure the products or items delivered meet specifications.

(l) **Proof of insurance.** A bid shall include proof of all insurance required prior to contract award. A supplier who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

(m) **Subcontractor notice.** A bid shall identify any proposed subcontractor and a bidder shall provide any required information regarding such subcontractor.

(n) **Bid readability.** A bid shall be legibly handwritten in ink or, as required, created via a word processing tool or a specified file format.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-8. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-9. Bid documents open for public inspection

(a) Unless incorporated into an awarded contract, bid documents are not disclosable. An electronic quote, bid or proposal submitted through an online solicitation process is subject to the same public disclosure laws.

(b) If a bid contains information that the bidder considers confidential, the bidder shall:

- (1) specifically identify what information is confidential;
- (2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public if the information is incorporated into an awarded contract; and
- (3) submit all such information considered confidential either under separate cover or copied in a separate section of the bid as required. Failure to comply with this requirement may result in the decision to not consider bidder's confidential claim. The acquiring agency has no responsibility to look outside the required section of a bid for portions claimed as confidential and an entire bid will not be considered confidential in any event.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-10. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-11. Bid submission, withdrawal, change and rejection

(a) **Bid submission contents.** Bidders shall submit all required forms, documents and contents as instructed. The legal name and complete address of the bidder, solicitation number and closing date shall be prominently displayed on each item

submitted or if electronically submitted, in the subject line of the submission. Bidders may be required to prequalify in certain instances and, if so, shall prequalify in accordance with procedures established by the acquiring agency.

(b) **Bid receipt.** Upon receipt, the acquiring state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(c) **Late bids.** A bid received after the closing date and time shall be rejected acceptance of the bid is authorized due to a significant error or incident that occurred which affected timely receipt. Unless opened for identification, a bid that was not electronically submitted and was received late will be returned unopened in a timely manner.

(d) **Bid withdrawal before closing date.** A bidder who desires to withdraw a bid prior to the closing date shall submit a written withdrawal request on the bidder's company letterhead and signed by the bidder's authorized representative or via electronic notice, as instructed by the acquiring agency. The withdrawal request must identify the requested method of return of the proposal, the person authorized to receive the returned bid, the bidder's name, solicitation number and closing date.

(1) If the bid was not submitted electronically and is to be returned via U.S. Postal Service or other small package carrier, the bidder must provide a method for return shipping charges.

(2) If the bid will be withdrawn in person, the authorized person must provide proof of identity as required by the acquiring agency. After confirmation of identity, the person accepting the withdrawn bid shall sign a receipt for the bid.

(e) **Bid withdrawal after closing date.** Withdrawal of a bid after the closing date shall not be authorized by the State Purchasing Director unless the bidder can prove a significant error by the bidder exists in the bid.

(f) **Bid change prior to closing date.** A bidder who desires to change a bid submitted to a state agency shall withdraw the submitted bid and submit another bid before the closing date.

(g) **Reasons for bid rejection.** A bid may be rejected when the bid is determined to be non-responsive or if the bidder is in violation of applicable procurement ethics laws or rules or determined not to be responsible for reasons including, but not limited to, those listed in 260:115-7-32.

(h) **Change to a submitted bid.** A bidder who desires to change a bid submitted to a state agency shall withdraw the submitted bid and submit another bid before the closing date.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-12. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-13. Bid withdrawal [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-14. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-15. Change to a submitted bid [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-16. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-17. Contract award [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-18. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-19. Supplier's Protest

(a) A supplier may protest a contract award by a state agency or OMES to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or OMES within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons in specificity for protest.

(2) **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents.

(A) The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.

(B) The State Purchasing Director or state agency, whichever is applicable, shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.

(3) **Supplier appeal of decision to deny protest.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the OMES Director.

(A) Such appeal shall be filed by the supplier within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to 75 O.S. §§309 et seq.

(B) The OMES Director may enter an order staying contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced to the OMES Director. The OMES Director shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

(4) **Director actions and determination.** The OMES director may hear the appeal or assign the supplier's appeal to an Administrative Law Judge retained by the agency.

(A) If the appeal is assigned to an Administrative Law Judge, the Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the OMES Director.

(B) If the appeal is heard by the OMES Director, the OMES Director shall have all powers granted by law including all powers delegated to the Administrative Law Judge by this section.

(C) The OMES Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.

(D) The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, shall be paid by the state agency responsible for the initial solicitation.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [Reference 75 O.S. §§250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.

(B) **Burden of proof.** The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the supplier protesting the contract award, OMES, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. §§ 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

- (i) Establish a scheduling order;
- (ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
- (iii) Rule on all interlocutory motions;
- (iv) Require briefing of any or all issues;
- (v) Conduct hearings;
- (vi) Rule on the admissibility of all evidence;
- (vii) Question witnesses; and

(viii) Make proposed findings of facts and conclusions of law to the OMES Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.

(6) **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S. § 309.

(b) An agency making an acquisition pursuant to 74 O.S. §85.5(N) shall conduct all actions and bear all costs associated with the protest or appeal of a contract award.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-20. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-21. Supplier suspension and debarment

(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier in accordance with this section. The State Purchasing Director may serve upon the supplier a notice to show cause why the supplier should not be suspended. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

Cause for suspension shall be any of the following reasons:

- (1) a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required in connection with an acquisition;
 - (2) a supplier fails to perform pursuant to the contract;
 - (3) a supplier provides acquisitions that fail to meet the requirements of the contract;
 - (4) a supplier fails to deliver an acquisition pursuant to the contract;
 - (5) a supplier fails to timely replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects;
 - (6) a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or incomplete information on a bidder registration form;
 - (7) a supplier fails to keep a bid firm, for the period specified, after the solicitation closing date;
 - (8) a supplier fails to resolve a dispute with a state agency;
 - (9) upon the final decision by the appropriate regulatory authority or court of competent jurisdiction that a supplier engaged in discriminatory practices;
 - (10) a supplier misrepresents, fails to provide, or allows to expire a professional certification required in connection with an acquisition;
 - (11) a supplier colludes with other suppliers to restrain competitive bidding;
 - (12) a supplier provides a state employee with a kickback;
 - (13) the State Purchasing Director determines, in his or her sole discretion, that a supplier is no longer responsible or qualified to do business with the State of Oklahoma;
 - (14) a supplier violates any provision of the Oklahoma Central Purchasing Act;
 - (15) any other reason the State Purchasing Director determines appropriate;
- or

(16) violation of applicable procurement ethics rules or laws.

(b) **Suspension notice.** The State Purchasing Director shall send written notice of suspension to a supplier within five (5) business days of the State Purchasing Director's determination. The notice shall designate the suspension period, which shall begin three (3) business days from the date of the notice and shall expire no later than the end of the period specified in the notice.

(c) **Supplier suspension appeal.** A supplier may appeal a suspension in writing to the State Purchasing Director within five (5) business days of receipt of the suspension notice; however, the supplier shall be suspended pending a determination of the appeal. The State Purchasing Director shall affirm or deny the appeal in writing to the supplier.

(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the Supplier List.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the OMES Director pursuant to 75 O.S. § 309 and the provisions of 260:115-3-19; however, the supplier shall be suspended pending a determination of the appeal.

(d) **Supplier request for reinstatement.** A suspended supplier may request reinstatement from the State Purchasing Director prior to the end of the supplier's suspension period. The State Purchasing Director may consider reinstating the supplier upon submission by the supplier of documents that indicate a change of conditions.

(e) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts, the State Purchasing Director shall send written notice of reinstatement to the supplier.

(f) **Cause for debarment.** The State Purchasing Director may debar a supplier resulting in revocation of the supplier being included on the Supplier List, ineligible to submit bids in connection with an acquisition and ineligibility to be awarded a contract by a state agency subject to the Central Purchasing Act and cancellation of any or all existing contracts with the State of Oklahoma. The State Purchasing Director may serve upon the supplier a notice to show cause why the supplier should not be debarred. For the purposes of this section, "State Purchasing Director" does not include employees of state agencies to whom the State Purchasing Director has delegated authority. The debarment shall be for a period of no more than three (3) years. Debarment shall be for any of the following reasons:

(1) conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption;

(2) conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Office of Management and Enterprise Services, an immediate family member of an official of the Office of Management and Enterprise Services, or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority;

(3) conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974; or

(4) debarment by federal government entities.

(g) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of a supplier.

(1) **Disassociation.** The efforts, if any, of the supplier, to disassociate itself from individuals and business entities responsible for convictions.

- (2) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.
- (3) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.
- (4) **Time period.** The period of time during which the acts leading to conviction of the individual or business entity occur.
- (5) **Failure to respond to inquiries.** Failure of the individual or business entity to respond to inquiries by the State Purchasing Director regarding factors that may lead to debarment.
- (6) **Other factors.** Any other factors regarding the supplier that the State Purchasing Director determines appropriate.

(h) **State Purchasing Director options.** Upon review and consideration of factors relevant to the proposed debarment of a supplier, the State Purchasing Director shall take one of the following actions and provide written notice of the action to the supplier:

- (1) **Decline to debar.** Decline to debar the supplier;
- (2) **Suspension.** Suspend the supplier as the State Purchasing Director determines appropriate;
- (3) **Debarment.** Debar the supplier for a period that shall begin three (3) business days from the date of the final order of debarment and expire no later than the end of the period specified in the order.

(i) **Reinstatement after debarment.** A debarred supplier may submit a written request for reinstatement to the State Purchasing Director. The State Purchasing Director shall consider information provided to determine whether reinstatement is merited and shall provide written notice of the reinstatement approval or denial.

(j) **Supplier appeal of State Purchasing Director's action.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the OMES Director within ten (10) business days of receipt of the debarment notice or the denial of reinstatement notice pursuant to 75 O.S. § 309 and the provisions of 260:115-3-19.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-3-22. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-3-23. Supplier debarment [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

SUBCHAPTER 5. STATE AGENCY PROVISIONS

260:115-5-1. Purpose [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-2. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-3. Certified Procurement Officers (CPO)

(a) **Duties.** A CPO shall provide assistance and oversight to a state agency to ensure acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, applicable rules, other statutory provisions and the state agency's internal purchasing procedures.

(b) **Decertification.** The State Purchasing Director may require retraining of, suspend and/or revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, applicable rules, other statutory provisions, or the state agency's internal purchasing procedures.

(c) **Continuing education.** To maintain certification, a CPO shall attend continuing education as required by the State Purchasing Director. Continuing education courses must be related to procurement practices and approved in advance for CPO education credit by the State Purchasing Director. The State Purchasing Director shall establish a policy relating to how often courses may be repeated to qualify for continuing education credit.

(1) A CPO shall submit required documentation verifying continuing education course attendance to the State Purchasing Director. The burden of proof rests solely upon the CPO to demonstrate, in advance of taking a course and to the satisfaction of the State Purchasing Director, that all continuing education courses reported meet all of the requirements as to content and subject matter related to procurement practices.

(2) A CPO may claim continuing education credit only for the compliance period in which the course was completed and credit granted.

(3) Failure by a CPO to complete required continuing education within the allowed time period will result in suspension of the CPO's purchasing authority.

(4) A suspended CPO must repeat the CPO certification course and demonstrate proficiency in procurement practices by passing the CPO prescribed certification examination in order to be reinstated and restore purchasing authority. State Purchasing Director approval is required prior to a suspended CPO repeating the CPO certification course.

(5) In the event of extenuating circumstances, a CPO may submit a written request to the State Purchasing Director for reinstatement and an extension of time to allow the CPO to fulfill required continuing education credits. The State Purchasing Director may approve the request for a reinstatement period not to exceed three (3) months to provide time to fulfill education credits.

(d) **Change in status.** A CPO or the state agency employing such CPO shall immediately notify the State Purchasing Director when the CPO:

- (1) is no longer performing as a CPO;
- (2) transfers to another state agency; or
- (3) terminate employment with the state.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-4. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-5. Procurement ethics - prohibited conduct [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-6. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-7. State agency purchasing procedures

(a) **Development.** In addition to statutory requirements and requirements set forth elsewhere in these purchasing or other applicable procurement rules, a state agency's internal purchasing procedures must also include the method whereby an unsuccessful bidder may protest a contract award, provisions for procurement policies under statutorily applicable emergency events, purchase card procedures and other information required by the State Purchasing Director. Internal purchasing procedures are not effective until approved.

(b) **Notice of approval or denial to state agency.** After submission by a state agency of its proposed internal purchasing procedures, the State Purchasing Director shall notify the state agency of approval or indicate revisions necessary to bring the procedures into compliance.

(c) **State agency resubmission following disapproval.** The state agency shall resubmit its proposed internal purchasing procedures until the procedures are approved.

(d) **Purchasing procedure review.** State agency internal purchasing procedures shall be reviewed by the state agency as needed, but at least annually. If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the proposed new procedures in entirety to the State Purchasing Director for approval and, in any event, submit updated internal purchasing procedures to the State Purchasing Director for approval every two (2) years.

(e) **State agency Purchase Card (P/Card) procedures.** A state agency shall amend its internal purchasing procedures to include the agency's Purchase Card (P/Card) procedures within six (6) months of completing the P/Card Program implementation process through OMES and submit the internal purchasing procedures to the State Purchasing Director. The P/Card procedures shall include provisions for procurement policies under statutorily applicable emergency events and the state agency's approved food policy and must specify the process established by the agency to ensure a PCard held by a terminated or separated employee or an employee who no longer has a job function requiring a P/Card, is promptly surrendered to the State Agency P/Card Administrator.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-8. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-9. Retention of state agency acquisition records

A state agency shall retain all records relative to acquisitions and contracts in a reasonably accessible location and make such records available to the State Purchasing Director for review and OMES audit staff for audit purposes. Such records shall include but are not limited to justification for the acquisition, supporting documents, related information, contract, evaluations, protest information, performance information and written reports, The retention period for such records is for the duration of the contract term and for a period of seven (7)

years following completion of performance and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal action is pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the audit, litigation or action are resolved or until the end of the seven (7) year retention period, whichever is later. The Purchasing Division shall retain records for acquisition it processes on behalf of an agency for the same retention period.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-10. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-11. State agency requisitions to OMES Purchasing Division

A state agency shall submit a requisition to the OMES Purchasing Division whenever:

- (1) the agency does not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 and an acquisition exceeds Twenty-Five Thousand Dollars (\$25,000.00);
- (2) the agency's acquisition authority has been reduced by the State Purchasing Director and the acquisition exceeds the dollar amount of the reduced acquisition authority;
- (3) an acquisition exceeds the state agency's acquisition authority or
- (4) a change order for a state agency acquisition would increase the total contract dollar amount above the agency's acquisition authority.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-12. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-13. Authorized signatures for state agency procurement

(a) State agencies shall provide the State Purchasing Director with a current Authorized Signature Form. The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source certifications change order requests, and surplus property transactions that may be submitted to the State Purchasing Director. To notify the State Purchasing Director a designation no longer exists, the form shall be dated and identify the name and title of those individuals who are no longer designated to sign and approve requisitions, sole source certifications, change order requests and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

(b) State agencies shall also maintain a list of individuals authorized to sign and approve requisitions, sole source certifications, change order requests, and purchase orders for acquisitions within the agency's approved acquisition authority. The list shall include the name, title, and signature of each individual, the effective date of their signature authorization and ending date of the authorization, when applicable.

The agency shall maintain a file of the signature authority lists in the location of the agency's centralized procurement records, and shall be available to the State Purchasing Director, upon request.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-14. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-15. Agency savings reporting

On September 1 of each year, the chief administrative officer of each state agency shall submit an electronic report to the State Purchasing Director listing savings realized by the agency in the previous fiscal year through the application of best spend practices. The September 1st date is within the State Purchasing Director's discretion to change. If such date is changed, the State Purchasing Director shall provide state agencies with advance written notice six months prior to the new date the electronic reports are due. The State Purchasing Director will define the report content required to collect savings data from state agencies, which will include but may not be limited to:

- (1) total spend by commodity classification; and
- (2) participation in mandatory statewide contracts.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-16. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-17. Ratification of an unauthorized commitment

If a state agency makes an unauthorized commitment on behalf of the state to a supplier, the state may, if in the best interest of the state, ratify the commitment.

(1) **State agency actions.** The chief administrative officer of the state agency shall approve or disapprove a request for ratification of an unauthorized commitment.

(A) **Chief administrative officer approves request.** If the chief administrative officer approves the request, the state agency shall perform steps as follows:

- (i) The state agency shall negotiate a proposal for a ratification agreement with the supplier.
- (ii) The chief administrative officer shall document facts and circumstances of the unauthorized commitment.
- (iii) The chief administrative officer shall sign the proposed ratification agreement.
- (iv) The chief administrative officer shall provide a copy of the ratification agreement and, upon request, the supporting documents to the State Purchasing Director.

(B) **Chief administrative officer disapproves request.** If the chief administrative officer disapproves the request, the state agency shall retain documents from the supplier and the state agency.

(2) State Purchasing Director actions. The State Purchasing Director shall retain a copy of the ratification agreement.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-18. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-19. Audits of state agencies

(a) Audit notification. In connection with the State Purchasing Director's audit responsibilities, a state agency shall be provided written advance notice of all scheduled audits.

(b) State agency responsibilities.

- (1) The state agency shall provide appropriate work space and use of office machines, as needed, for the audit team.
- (2) The state agency shall promptly provide records for acquisitions for the audit period.
- (3) The state agency shall make the state agency's relevant staff available to assist the audit team.

(c) Audit following reduction of state agency acquisition authority. If the State Purchasing Director reduces the acquisition authority of a state agency, the Audit Team shall periodically audit the state agency's acquisitions in order to review the agency's efforts to correct the cause of the reduced authority.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-5-20. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-5-21. Procedures for state agency privatization contracts

A state agency desiring to contract to privatize a function, program, service, unit or division valued at One Million Dollars (\$1,000,000.00) or more shall be subject to the Oklahoma Privatization of State Functions Act [Reference 74 O.S. §§588.1 et seq] and the privatization contract procedures established by the State Purchasing Director.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19]

SUBCHAPTER 7. PROCUREMENT

PART 1. GENERAL PROCUREMENT

260:115-7-1. Purpose [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-2. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-3. State agency acquisitions

(a) **State Use Committee.** State Use Committee contracts are mandatory contracts provided the conditions of 74 O.S. §3007(A) are satisfied. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule. 74 O.S. §3001 et seq.

(b) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee, pursuant to 74 O.S. §3007(A) state agencies shall make acquisitions from the Oklahoma Correctional Industries ("OCI") provided the conditions of 57 O.S. §549.1 are satisfied. If OCI is unable to meet state agency requirements for an acquisition even though the acquisition is listed in its distributed catalog or on its website, OCI shall certify to the State Purchasing Director that it is not able to provide the acquisition.

(c) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.

(1) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price unless the State Purchasing Director provides prior written approval of an acquisition from another supplier. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(2) **Non-mandatory statewide contracts.** State agencies are encouraged to use non- mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.

(d) **Open Market Acquisitions.** State agencies may make acquisitions within their approved acquisition authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of this Chapter, any other applicable laws or rules, and the agency's approved internal purchasing procedures.

(e) **Acquisitions from other governmental agencies.** Although a state agency may contract with another department of state government or institution in certain instances pursuant to 74 O.S. §581 or §1001 through §1008, an acquisition shall not be made under any such contract with the intent of evading provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(f) **Competitively Bid Acquisitions.**

(1) **Sealed Bids.** A competitive sealed bid process shall be utilized as required by state law and rules of this Chapter or when it is determined by the acquiring agency to be in the best interest of the state. Competitive sealed bids shall be required for all solicitations.

(2) **Bid contents and solicitation amendment.** The procurement documents shall indicate specifications of the acquisition, all information to be submitted with a bid and may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition. If a solicitation is amended, notice shall be provided online.

(3) **Supplier notification.** Notification of registered suppliers, as required under the Purchasing Act, of an open solicitation is dependent upon a supplier providing the Office of Management and Enterprise Services valid and up-to-date information. The State Purchasing Director will use reasonable efforts to notify suppliers recommended by a state agency for a solicitation.

(4) **Limited contact.** All communication between potential bidders and staff of the acquiring agency related to a solicitation shall:

(A) be limited to the acquiring agency's designated procurement personnel;

(B) strictly prohibited from any other acquiring agency personnel, unless otherwise stated in the instructions to bidders; and,

(C) be documented in writing and filed in the acquisition file.

(5) **Evaluation method.** Bidder instructions in connection with a solicitation shall clearly identify the evaluation method as lowest and best or best value and applicable evaluation criteria.

(6) **Terms and conditions.** All state terms and conditions for the acquisition shall be included in the procurement documents.

(7) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(8) **Rejection of bids.** In addition to reasons outlined in 260:115-7-32, if determined to be in the best interest of the State of Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(9) **Pre-bid conference.** Bidder instructions may state that a pre-bid conference will be held and shall state whether bidder attendance is mandatory or non-mandatory.

(10) **Closing date and time.** Instructions to bidders shall include the bid response due date and time. In the event it is determined that a significant error or event occurred that affected the receipt of a bid, the State Purchasing Director may authorize acceptance of a bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(11) **Bid receipt.** Upon receipt, the outside of all envelopes or containers shall be clearly marked with the receipt date and time. Electronic submission of bids must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(g) Agency acquisitions over \$25,000.00 and not exceeding an agency acquisition threshold amount.

(1) **Basic requirements.** State agencies that have an internal or statutorily designated CPO and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions exceeding \$25,000.00 but not exceeding the agency's approved acquisition threshold amount and make all acquisitions pursuant to all applicable requirements of the Purchasing Act, any other applicable state laws and rules and by means of a formal method of competitive solicitation utilizing a sealed bid process.

(2) **Certifications, verifications and other required documents.**

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any

competitive bid and/or contract submitted to the State for an acquisition. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) Certifications for services contracts. Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(C) Bonds and sureties. Bidders may be required to submit a bid bond, performance bond, or other type of approved surety with the bid.

(i) The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.

(ii) In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit.

(iii) When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

(iv) Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and § 1204. Documentation of verification of registration and status with the Secretary of State must include, at a minimum, a copy of the entity summary information from the Secretary of State's website or the supplier's statement providing specific details supporting

the exemption claimed, must be filed in the acquisition file.

(h) **State agency acquisitions processed by the OMES Purchasing Division.** A state agency submitting requisitions to the OMES Purchasing Division for issuance of a solicitation shall comply with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(1) **Forms.** State agencies shall use forms and the process for requisitions provided or approved by the State Purchasing Director.

(2) **Evaluation criteria and evaluators.** Prior to issuance of the solicitation, an agency shall identify and provide contact information for the bid evaluators and written criteria necessary to evaluate a responsive bid such as technical scope, cost, experience, references etc.

(3) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition. The State Purchasing Director may also require a state agency to submit additional information with a requisition.

(4) **Competitive bid award.** The State Purchasing Director shall award a contract resulting from the solicitation to the responsible bidder(s) that provides the lowest and best, or best value bid, as applicable.

(i) **Trade-ins.** State agencies may trade in items when they make an acquisition of a like item. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. Written documentation of the fair market value analysis shall be filed in the acquisition file by the state agency. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(j) **Recycled materials.** State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 36 Ok Reg 1633, eff 9-13-19; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-4. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-5. Split purchases [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

PART 3. REQUIREMENTS FOR ACQUISITIONS [REVOKED]

260:115-7-11. Acquisitions not exceeding \$5,000.00 [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-12. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

**260:115-7-13. Acquisitions over \$5,000.00 and not exceeding \$25,000.00
[REVOKED]**

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-14. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

**260:115-7-15. Acquisitions over \$25,000.00 and not exceeding \$50,000.00
[REVOKED]**

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 36 Ok Reg 1633, eff 9-13-19; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-16. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

**260:115-7-17. Acquisitions over \$50,000.00 and not exceeding \$100,000.00
[REVOKED]**

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-18. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-19. Emergency acquisitions [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-20. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-21. Acquisition pursuant to a waiver [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-22. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

**260:115-7-23. State agency acquisitions processed by the Central Purchasing
Division [REVOKED]**

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-24. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-25. Acquisition limitation exception [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

PART 5. COMPETITIVE SEALED SOLICITATIONS

260:115-7-30. Competitive sealed solicitations [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 36 Ok Reg 1633, eff 9-13-19; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-31. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-32. Bid evaluation and contract negotiation and award

(a) **Evaluation Criteria and Documentation.** The evaluation criteria used shall be consistent with the evaluation criteria communicated to potential bidders.

Evaluation of the bids shall be documented and filed in the acquisition file and, whether the criteria is based on the lowest and best bid or best value, the criteria shall be consistent with criteria specified in the Purchasing Act.

(b) **Prohibited disclosure.** The decision regarding supplier evaluation or recommendation for award shall not be announced in any public manner or forum, including board meetings, until the contract has been awarded.

(c) **Public inspection.** The evaluation documentation shall be open for public inspection following contract award.

(d) **Bid clarification.** Clarification may be requested from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(e) **Past performance.** Bidder performance on previous contract awards may be considered in the evaluation.

(f) **Reasons for bid rejection.** The acquisition file shall be documented if a bid is non-responsive. Unless a bid minor deficiency may be cured pursuant to this rule or other guidance or directive of the State Purchasing Director, a bid may be rejected as non-responsive, or a bid from a bidder who is not responsible may be rejected, for reasons including, but not limited to reasons listed in this section:

(1) **Non-responsive bid.**

(A) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation may be considered non-responsive.

(B) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered non-responsive.

(C) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered non-responsive.

(D) **Form entries improper.** If information provided in the solicitation documents is not legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered non-responsive.

(E) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered non-responsive.

(F) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid may be considered non-responsive.

(G) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding supplier's state of residence, the bid may be considered non-responsive.

(H) **Bid does not contain bid bond or other surety.** If a bidder fails to include a bid bond or other surety specified as a requirement by a solicitation, the bid may be considered non-responsive.

(I) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered non-responsive.

(J) **Items not suitable for intended use.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered non-responsive.

(K) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid may be considered non-responsive.

(L) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the State Purchasing Director issues to a solicitation, the bid may be considered non-responsive.

(M) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered non-responsive.

(N) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid may be considered non-responsive.

(O) **Signatures on solicitation documents.** If an authorized signature is omitted from any solicitation document that requires an authorized signature, the bid may be considered non-responsive.

(2) **Bidder not responsible.**

(A) **Failure to provide required information.** If a bid does not include required information relating to responsibility, or the State Purchasing Director determines a bidder is not responsible, the bid may be rejected.

(B) **Proof of insurance.** Whenever applicable, if a bidder is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the bidder may be found not responsible.

(C) **Past performance.** If the State Purchasing Director has received performance complaints on a supplier, the supplier may be found not responsible.

(g) **Other factors in determination of bid responsiveness.** A minor deficiency in a bid may be waived or cured if the acquiring agency determines the deficiency does not prejudice the rights of other bidders, if there is sufficient time prior to contract award in which to cure the deficiency or is not a cause for bid rejection. A minor deficiency does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition. For illustrative purposes, examples are:

- (1) failure to have an authorized signature;
- (2) failure to obtain a notary signature, stamp or seal;
- (3) failure to sign or initial amendments to bid.

(h) **Contract Negotiation.** Any negotiations shall be conducted by the agency with authority to make the acquisition and may be conducted with one or more

suppliers.

(i) Negotiation team.

(1) A state agency may request assistance from the State Purchasing Director when conducting negotiations, which may include a request for the designation of a negotiator or negotiation team.

(2) The State Purchasing Director or designee shall serve as the lead negotiator when negotiations are being conducted for solicitations issued by the OMES Purchasing Division.

(j) Negotiation process. As applicable, the negotiation process shall be conducted as follows:

(1) The lead negotiator shall notify suppliers of the date and time for negotiations.

(2) The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process.

(3) The lead negotiator shall determine the location and manner of negotiation.

(4) The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation.

(5) The lead negotiator may require suppliers to submit a best and final offer.

(6) The lead negotiator shall prepare a summary that shall document the following:

(A) an overview setting forth the solicitation number, names and titles of participants, description of the solicitation, date and location of the negotiation, and purpose of the negotiation; and

(B) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.

(C) A summary created under these rules shall become a part of the acquisition file retained.

(k) Terms. The following applies to the terms of a state contract:

(1) If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition. Except as otherwise provided by 70 O.S. §3206.3 and 74 O.S. §1365, any patented property or copyrighted material developed by contracts subject to the Central Purchasing Act, shall be the property of the State of Oklahoma under the sole management of the Office of Management and Enterprise Services.

(2) No alterations or variations of the terms of the contract shall be valid or binding upon the state, unless made in writing and accepted by the agency with authority to make the acquisition.

(3) A contract shall not contain a term obligating the state or a specific acquiring agency to :

(A) defend, indemnify or hold harmless another person or entity;

(B) be bound by terms and conditions unknown at the time of signing such contract, not specifically attached to the contract but only found included in embedded links or which may be unilaterally changed by the other party;

(C) any venue other than Oklahoma County, Oklahoma;

(D) construe the contract in accordance with any laws other than the law of the state of Oklahoma;

(E) binding arbitration;

(F) a person other than the state Attorney General to defend or represent the state;

(G) automatic renewal such that state funds would be obligated in a subsequent fiscal year;

(H) a default remedy assessed against the state including but not limited to liquidated damages; or

(I) payment or reimbursement of taxes;

(4) Any prohibited term included in a contract shall be void and the contract shall be otherwise enforceable as if it did not contain such term. Should the inclusion of any prohibited term result in amounts erroneously paid by the state, the supplier will immediately reimburse such amount upon request by the state.

(l) **Time of award.** The contract award shall not be made at the time of a bid opening but shall be made upon completion of the following:

(1) bid evaluation;

(2) documentation of evaluation on each bid;

(3) determination of the lowest and best or best value bidder;

(4) verification of Oklahoma and Federal debarment status;

(5) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and § 1204;

(6) coordination of award with the requisitioning state agency, if applicable; and

(7) completion of any award-related administrative tasks.

(m) **Award by item.** If the procurement documents do not specify an all or none bid, more than one bidder may be awarded a contract by item or groups of items.

(n) **No contract award.** A contract may not be awarded when:

(1) no bid meets the requirements of the solicitation.

(2) all bids exceed fair market value for the acquisition.

(3) the bid price exceeds available state agency funds.

(4) the state agency no longer requires the acquisition in the form or manner specified.

(5) not awarding the contract is determined to be in the best interest of the state.

(o) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the successful bid shall be determined by a coin toss.

(p) **Notification of successful bidder.** The successful bidder shall be notified within a reasonable time after determination of the contract award.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-33. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-34. Contract negotiation [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-35. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-36. Contract award [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

PART 7. ADDITIONAL PROCUREMENT INFORMATION [REVOKED]

260:115-7-40. Fixed and uniform rate contract [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-41. Acquiring utility services [REVOKED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14; Added at 32 Ok Reg 1776, eff 9-11-15; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-42. Recycled materials [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-43. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-44. Trade-ins [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-45. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-46. State travel

The State Travel Office is within the Central Purchasing Division and awards contracts for travel and travel services. State agencies shall make travel arrangements through the statewide travel supplier for commercial air travel for state employees in the course of official duties or for persons traveling at state expense.

(1) **State agency travel arranger.** The State Purchasing Director encourages state agencies to appoint one or more travel arrangers. The arrangers shall book air travel for the state agency except in case of an emergency. If the state agency appoints a travel arrangers, the state agency shall notify the Travel Office and provide the arranger's name, mailing address, telephone number, and email address.

(2) **Airline ticket purchases exceptions.** The state agency shall determine when an exception to airline ticket purchase shall apply. The state agency shall retain documents the state agency used in exception determination as required by internal purchasing procedures established pursuant to 260:115-5-7. Exception documentation shall be made available per the State of Oklahoma Policy and Procedures for Purchase Card and Online Booking

Tool.

(A) If the state agency can acquire air travel at less cost than the contract travel agency, the state agency may use this exception.

(B) If air travel originates outside the state and it is impractical for the state agency, the state agency may use this exception.

(C) If air travel is due to an emergency and time does not permit use of the contract travel agency, the state agency may use this exception.

(D) If air travel is part of a package arrangement by an organization that schedules a meeting or conference, the state agency may use this exception.

(3) **State agency credit card for airline travel.** A state agency that acquires a purchase card to book and pay for official airline travel shall complete mandatory training as required by the Office of Management and Enterprise Services and comply with all State Purchase Card procedures issued by OMES.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 35 Ok Reg 1367, eff 9-14-18]

260:115-7-47. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-48. Electronic commerce and online bidding [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

PART 9. INFORMATION TECHNOLOGY ACQUISITIONS

260:115-7-52. General requirements [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-7-53. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-7-54. Accessible information and communication technology (ICT) acquisitions

(a) Procurement.

(1) To ensure accessibility of information technology for individuals with disabilities pursuant to 62 O.S. §34.28, procurement of information technology shall be subject to the Oklahoma Information and Communication Technology (ICT) Accessibility Standards (link: <https://omes.ok.gov/services/information-services/accessibility-standards#standards>) prescribed by the Office of Management and Enterprise Services and maintained by the Information Services Division.

(2) When developing, procuring, maintaining or using information technology, or when administering contracts or grants that include the procurement, development upgrading, or replacement of information technology each state agency shall ensure, unless an undue burden would be imposed on the agency, that the information technology allows

employees, program participants, and members of the general public access to use of information and data that is comparable to the access by individuals without disabilities. [62 O.S. §34.28(B)] When used in this section, "state agency" includes all agencies defined in 62 O.S. §34.29.

(3) Unless an exception applies, an agency must procure a product or service that best meets the business needs of the agency and the applicable ICT Accessibility Standards.

(A) Accessibility determination must be conducted as part of the acquisition evaluation.

(B) Accessibility must be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it must be accomplished through review of vendor provided information submitted in the form of a Voluntary Product Accessibility Template (VPAT) or comparable document with judgments made regarding degree of conformance to the ICT Accessibility Standards.

(C) The relative accessibility weighting may be adjusted for due cause based on the specific procurement.

(D) When acquiring a product, an agency shall acquire products that comply with applicable ICT Accessibility Standards when such products are available in the commercial marketplace or when such products are developed in response to an agency solicitation.

Agencies cannot claim a product, as a whole is not commercially available by stating no product in the marketplace meets all of the ICT Accessibility Standards. Instead, an agency must identify commercial, off-the-shelf products that best meet the general, technical and functional requirements as defined by the agency.

Once those products have been identified, the agency should purchase the product that is the most accessibility compliant.

(b) Contract clauses.

(1) All solicitations and contracts for information technology shall include the accessibility clause adopted by the Information Services Division pursuant to 62 O.S. §34.28.

(2) The ICT Accessibility Standards shall be published on the OMES website.

(3) A supplier shall provide a written certification, signed by an authorized officer of the supplier, describing the extent to which the product or service complies with applicable ICT Accessibility standards required by such contracts or solicitations prior to the expenditure of state funds. An agency may also utilize a VPAT published on a supplier's primary website. A VPAT obtained from a supplier website shall be good for a one-year period.

(c) Exceptions. Exceptions to compliance with ICT Accessibility Standards include:

(1) information technology operated by state departments or agencies, the function, operation or use of which involves intelligence activities, crypto logic activities related to public safety, command and control of law enforcement, equipment that is an integral part of a weapon or weapons system or systems which are critical to the direct fulfillment of public safety or intelligence missions. Systems which are critical to the direct fulfillment of public safety or intelligence missions do not include a system that is to be used for routine administrative and business applications

(including payroll, finance, logistics and personnel management applications);

(2) information technology acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract;

(3) information technology located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;

(4) information technology requiring a fundamental alteration in the nature of a product or its components to achieve accessibility;

(5) Except as required to comply with the ICT Accessibility Standards, state departments and agencies are not required to install specific accessibility-related software or attach an assistive technology device to information technology products unless required by other applicable State or Federal laws;

(6) When state agencies provide public access to information or data through information technology, agencies are not required to make products owned by the agency available for access and use by individuals with disabilities at a location other than where the information technology is provided to the public, or to purchase products for access and use by individuals with disabilities at a location other than where the information technology is provided to the public;

(7) information technology that would impose an undue burden on the agency.

(d) Documentation of exceptions. Whenever an agency determines that an acquisition exceeding \$5,000.00 meets the criteria of a general exception or undue burden, the agency shall document the explanation of why, and to what extent, compliance with applicable ICT Accessibility Standards meets an exception or creates an undue burden on the agency. Agencies are encouraged but not required to maintain documentation for commercial off-the-shelf acquisitions of \$5,000.00 or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical.

(1) The explanation shall be documented on a form prescribed by the Information Services Division and signed by the chief administrative officer of the agency or an employee of the agency to which responsibility for accessibility compliance has been delegated.

(2) The documentation shall be retained in the acquisition file to support the procurement.

(e) Alternative means of access. When compliance with ICT Accessibility Standards imposes an undue burden, agencies shall provide individuals with disabilities the information and data involved by an alternative means of access that allows an individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

SUBCHAPTER 9. CONTRACT MANAGEMENT

260:115-9-1. Contract performance, payment, disputes and termination

(a) Delivery. A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

(b) **Inspection and payment.** A state agency must establish quality assurance procedures that ensure timely and thorough inspection of acquisitions delivered to the agency. The state agency in receipt of an acquisition shall inspect the acquisition within a reasonable time after supplier delivery. The state agency shall not pay for acquisitions a supplier has yet to deliver, unless otherwise authorized by law or administrative rule. State agency payment to a supplier for an acquisition may not constitute final acceptance of the acquisition by the state agency. If subsequent state agency inspection affirms that the acquisition does not meet or exceed the specifications of the contract, or that the acquisition has latent defects, the state agency shall notify the supplier. The supplier shall retrieve and replace the acquisition at the supplier's expense or the supplier shall refund payment received if the supplier is unable to replace the acquisition.

(c) **Rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service. Whenever a supplier provides a state agency with defective products or fails to perform in accordance with contract requirements, a state agency shall notify the supplier in writing of the deficiency and include information necessary for the supplier to resolve the problem. If the state agency and supplier are unable to resolve the dispute, the state agency shall submit a written request for dispute resolution to the State Purchasing Director.

(d) **Acquisition title.** Title to an acquisition shall not pass from the supplier to a state agency until the state agency receives, inspects and accepts the items. The state agency shall document, at a minimum, the date of delivery, the name and address of the supplier, a description of the goods received and, as applicable, the signature of the receiving agency employee. Following transfer of title of an acquisition to a state agency, the supplier shall submit invoices to the state agency.

(e) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall obtain the prior written approval of the acquiring agency before utilizing a subcontractor.

(f) **Contract modifications.** If a supplier determines modifications to a contract, are needed the supplier shall notify the acquiring agency. No modifications shall be effective prior to the written approval of the acquiring agency via an addendum or revised purchase order when a purchase order is used instead of a written contract.

(g) **Contract assignment.** A supplier shall not assign any portion of a contract except as set forth in the contract terms and conditions.

(h) **State agency submission of supplier performance evaluation form.** A state agency may request the State Purchasing Director seek dispute resolution by submitting a Supplier Performance Evaluation, whenever a supplier:

- (1) fails to timely retrieve and replace an acquisition that does not meet or exceed contract specifications;
- (2) does not refund payment for an acquisition that does not meet or exceed contract specifications; or,
- (3) fails to resolve any other problem that conflicts with the contract specifications or terms and conditions in a timely manner.

(i) **State Purchasing Director dispute resolution action.** The State Purchasing Director shall notify the state agency and supplier the outcome of dispute resolution efforts and if the dispute is resolved, the notice shall include any dispute resolution terms and conditions.

(1) **Supplier fails to meet terms or conditions.** If the supplier fails to meet specifications or terms or conditions of the dispute resolution or the terms and conditions of the contract if dispute resolution efforts are not successful, the State Purchasing Director is authorized to terminate the contract between the supplier and the state agency, and may suspend the supplier.

(2) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution or the terms and conditions of the contract, the State Purchasing Director is authorized to order an audit of the state agency's acquisitions.

(j) **Reasons for contract termination.** An acquiring agency may terminate a contract in its entirety or any portion thereof if:

- (1) a supplier fails to post, or allows to expire, a required bid bond, performance bond, or other type of surety bond;
- (2) a supplier fails to deliver an acquisition pursuant to the contract;
- (3) a supplier fails timely to replace at the supplier's expense, acquisitions that fail to meet the requirements of the contract or have latent defects;
- (4) a supplier misrepresents the supplier's ability to provide an acquisition;
- (5) a supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform;
- (6) a supplier commits an unlawful act or an act that impairs the supplier's ability to perform;
- (7) a supplier commits an act that could result in the supplier's suspension or debarment from the Supplier List;
- (8) an administrative error occurs prior to contract performance; or,
- (9) if sufficient appropriations are not made by the Legislature or other appropriate governing entity or intended funding source to pay amounts due for multiple year agreements.

(k) **Supplier responsible for damages.** If an acquiring agency terminates a contract, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the acquiring agency, as applicable, may seek damages from the supplier. In addition to damages set forth in a contract, direct damages foreseeable at the time of contracting and payable by the supplier shall include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-9-2. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-9-3. Change orders [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-9-4. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-9-5. Supplier invoice submission [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-9-6. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-9-7. State agency and supplier disputes [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 32 Ok Reg 1776, eff 9-11-15; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-9-8. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-9-9. Contract termination [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

SUBCHAPTER 11. PURCHASE CARDS AND OTHER ELECTRONIC PAYMENT MECHANISMS

260:115-11-1. State Purchase Card Program

(a) **Use of State Purchase Cards.** Use of State Purchase Cards authorized by the State Purchasing Director shall be subject to the policies and procedures of the State Purchase Card Program established by the State Purchasing Director to ensure compliance with the statewide contract for this service. [Reference 74 O.S. §85.5]

(b) **Conditions of participation.** Conditions of participation in the State Purchase Card Program are:

- (1) compliance with the terms of the State Purchase Card Procedures established by the State Purchasing Director;
- (2) cardholder execution of the appropriate Purchase Card employee agreement prior to assuming Purchase Card duties and being issued a State P-Card and
- (3) successful completion of prescribed initial and ongoing Purchase Card training

(c) **Compliance.** Failure to comply with all conditions of participation may result in removal of a state agency and/or employee from the purchase card program by the State Purchasing Director.

(d) **Security.** The state entity that employs the cardholder is responsible for maintaining adequate security of State P-Card account numbers and related information. The cardholder shall ensure the State P-Card is kept in a secure manner and the State P-Card account number on the card is not posted or left in a conspicuous place. Use of any State Purchase Card authorized by the State Purchasing Director is limited to the person whose name is embossed on the card. The card shall not be loaned to another person.

(e) **Recordkeeping.** A receipt shall be obtained for all purchases regardless of the order method. The receipt shall include an itemized and detailed description of the purchase and, at a minimum:

- (1) name and location of supplier;
- (2) date of purchase;
- (3) description of product purchased;

- (4) unit price and quantity purchased; and,
- (5) transaction total.

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]

260:115-11-2. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-11-3. State Purchase Card Employee Agreement [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-11-4. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-11-5. Training [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-11-6. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-11-7. Security [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

260:115-11-8. [RESERVED]

[Source: Reserved at 31 Ok Reg 1526, eff 9-12-14]

260:115-11-9. Recordkeeping [REVOKED]

[Source: Added at 31 Ok Reg 1526, eff 9-12-14; Revoked at 38 Ok Reg 631, eff 1-20-21 (emergency); Revoked at 38 Ok Reg 1870, eff 9-11-21]

SUBCHAPTER 13. DISABLED VETERAN BUSINESS ENTERPRISE ACT

260:115-13-1. Awarding contracts

(a) Bidder Requirements.

- (1) Bidder shall respond to the solicitation as a service-disabled veteran business by checking 'YES' to the Disabled Veteran Business Enterprise Act question on the Responding Bidder Information form in the solicitation.
- (2) Bidder shall provide a letter from the United States Department of Veterans Affairs which certifies the veteran(s) has a service connected disability.
- (3) Bidder shall provide documentation of the business organizational structure demonstrating,
 - (A) Not less than fifty-one percent (51%) of the business ownership is by one or more service-disabled veterans, and
 - (B) The management and daily business operation is controlled by one or more service-disabled veterans.

(b) Solicitation Evaluation Requirements. After the total evaluation score for each responding bidder has been calculated, three percentage (3%) bonus points will be added to the total evaluation score for each responding bidder meeting the criteria of a service-disabled veteran business.

[Source: Added at 35 Ok Reg 1368, eff 9-14-18; Amended at 38 Ok Reg 631, eff 1-20-21 (emergency); Amended at 38 Ok Reg 1870, eff 9-11-21]