

CHAPTER 120. STATE USE COMMITTEE OPERATIONAL PROCEDURES

[Authority: 62 O.S., § 34.6] [Source: Codified 9-12-14]

260:120-1-1. Purpose

This subchapter contains the procedures and rules for the operations of the State Use Committee.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-2. Definitions

The following words or terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Committee" means the Oklahoma State Use Committee.

"Contracting officer" means the person employed by the Department of Central Services as a contracting officer in the Purchasing Division, appointed by the State Purchasing Director with the advice of the Committee and designated specifically to solicit, develop, and negotiate contracts with agencies and individuals.

"FEI" means Federal Employer Identification.

"Individual" means a severely disabled person that is self-employed and has been certified by the Committee to supply products and services, seventy-five percent (75%) of which, is actually manufactured, produced, processed, assembled, performed or offered by the severely disabled person.

"IRS" means the Internal Revenue Service.

"Severely disabled person" means an individual who has a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and includes any blind person. [74 O.S., Section 3003(4)]

"Substantial handicap to employment" means a residual, limiting physical or mental condition resulting from an injury, disease, or congenital defect which so limits the person's mobility, communication, self-care, self-direction, work tolerance, or work skills that the person is unable to engage in normal competitive employment over an extended period of time.

"The Act" means the provisions of 74 O.S., Section 3001 et seq. which relate to the purchase of products and services from qualified organizations.

"Qualified nonprofit agency for the severely handicapped" means a nonprofit agency which is certified as a sheltered workshop by the wage and hour division of the U.S. Department of Labor and employing severely disabled persons who constitute at least seventy-five percent (75%) of the personnel engaged in direct production of products or services offered by the agency for procurement by this state. [74 O.S., Section 3003(3)]

"Qualified organization" means a blind person, qualified nonprofit agency for the severely handicapped or severely disabled person contracting to supply goods or services. [74 O.S., Section 3003(5)]

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 32 Ok Reg 1786, eff 9-11-15]

260:120-1-3. Qualifications

(a) **Qualification by Committee.** To ensure compliance with the Act, the Committee shall qualify individuals and nonprofit agencies prior to contract award.

(b) Individual qualification. An individual shall apply for qualification to the Committee and submit the following documents:

(1) To indicate the individual meets the statutory definition of a severely disabled person, the individual shall provide:

(A) a copy of the application and supporting documentation the individual submitted to the Social Security Administration for determination of disability and a copy of the final disability determination from the Administration;

(B) a narrative report, prepared and signed by a person licensed in the state of Oklahoma as a physician describing physical disabilities, or a psychiatrist or psychologist describing mental disabilities. The report shall fully describe the nature of the disability constituting a substantial handicap to employment with supporting medical records; and

(C) any additional information the Committee may require related to work history, vocational assessments and work related documents.

(2) an affidavit that the individual will perform 75% of the work to produce the products or services the individual offers for procurement by the state; and

(3) a statement which describes the nature and extent as expressed in a percentage of work a subcontractor, other person or entity may perform to produce the products or services.

(c) Agency qualification. A nonprofit agency that has been approved by the Wage and Hour Division of the U.S. Department of Labor as a sheltered workshop shall apply for qualification to the Committee and submit the following documents that indicate the nonprofit agency meets the requirements of a qualified organization:

(1) a tax-exempt FEI number issued by the IRS, or a certificate from the IRS verifying that the entity meets the requirements for nonprofit status as defined by the IRS; and,

(2) a statement describing the nature and extent as expressed in a percentage of the work a subcontractor, other person or entity may perform to produce the products or services the nonprofit agency provides per a contract the Committee awards.

(3) a copy of certification as a sheltered workshop issued by the U. S. Department of Labor.

(4) a current copy of the nonprofit agency's certificate of insurance for worker's compensation insurance.

(d) Continuation of qualification. On January 31st of each year succeeding initial qualification by the Committee, the qualified organizations shall provide evidence to the Committee of continued ability to qualify as follows:

(1) A qualified nonprofit agency for the severely handicapped shall submit:

(A) a current copy of its certification as a sheltered workshop from the U.S. Department of Labor; and

(B) a report for products and services on the Committee's procurement schedule indicating the qualified nonprofit agency for the severely handicapped's total labor hours in direct production by disabled workers and total agency labor hours in direct production by non-disabled workers during the previous calendar year.

(C) a current copy of the qualified nonprofit agency for the severely handicapped's certificate of insurance for worker's compensation insurance.

(2) An individual shall submit:

(A) a work history for the previous calendar year that indicates the number of hours the individual worked and the number of hours a subcontractor or other individuals worked in direct production of the products and services on the Committee's procurement schedule; and

(B) a current physician, psychiatrist or psychologist statement indicating the current status of the condition which constitutes a substantial handicap to employment, which

shall include changes in the condition since the previous date of qualification by the Committee.

(e) **Failure to meet qualifications.** Whenever an a qualified organization fails to meet qualifications, the Committee may:

- (1) Remove the qualified organization's products and services from the procurement schedule; or,
- (2) Revoke the qualification of the qualified organization.

(f) **Notice of failure to meet qualifications.** The Committee shall direct the contracting officer to send written notice to the qualified organization at least thirty days prior to the effective date of the action taken pursuant to subsection (e) of this section.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-4. Determination of fair market price

The contracting officer shall recommend a fair market price for products and services in accordance with the State Use Committee's approved Fair Market Price Policy and in the manner described in this section.

(1) The contracting officer shall prepare a current market analysis to determine the fair price for the products or services requisitioned or used by state agencies utilizing internal as well as external sources and established pertinent criteria. When appropriate, the criteria may include, but not be limited to:

- (A) A survey of comparable private contracts for like products and services;
- (B) Research of other governmental entities within and outside the State of Oklahoma;
- (C) Comparison, when appropriate, of wholesale and retail pricing of like commodities.

(2) Based on the data described in OAC 260:120-1-4(1), the contracting officer or designee shall recommend a fair market price with supporting documentation to the Committee for consideration.

(3) The Committee shall, by majority vote, approve, modify, amend or disapprove the recommended fair market price.

(4) Whenever the Committee establishes a price, the price shall become the fair market price.

(5) If the product or service is one for which the pricing does not vary by state agency or location, the fair market price as approved, modified, or amended, shall remain in effect until the Committee establishes a new fair market price.

(6) If the product or service is one for which the price does vary depending on the state agency, location, or specifications, the Committee shall approve, each contract for the product or service.

(7) If the product or service is one for which fair market has not been established, either because the fair market for the type of product or service has been determined to vary depending on the state agency, location or specifications, the Contracting Officer, with the approval of the State Purchasing Director, is authorized to award a contract in accordance with the State Use Fair Market Price Policy to a qualified individual or organizations, thereby establishing fair market price, which establishment shall be subject to ratification by the Committee at the next regular Committee meeting.

(8) In the event of an emergency, with approval of the State Purchasing Director, the contracting officer may award a contract to an individual or agency for a maximum period of three (3) months without prior Committee approval, but subject to Committee approval at the next regular Committee meeting. If the Committee approves the contract, the contract shall terminate at the end of the contract period.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 32 Ok Reg 1786, eff 9-11-15]

260:120-1-5. Procurement schedule

- (a) **Compilation of procurement schedule.** The contracting officer shall maintain and publish a current list of all products and services offered by qualified organizations.
- (b) **Approval of procurement schedule.** The Committee shall approve items on the list or delete items from the list, consistent with the provisions of the Act, and shall designate the final list of approved items as the Procurement Schedule by majority vote. If additional products or services are offered by individuals or agencies, the Committee may add products and services to the Procurement Schedule by majority vote.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-6. [RESERVED]

[Source: Reserved at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-7. [RESERVED]

[Source: Reserved at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-8. Grievances

- (a) **Filing a protest or grievance.** Any party who is aggrieved may file a written protest or grievance with the Chairperson of the Committee within fifteen (15) days of the aggrieved action.
- (b) **Investigation of protest or grievance.** The Chairperson may assign a protest or grievance to a subcommittee to investigate and make recommendations to the Committee for resolving the grievance.
- (c) **Protest process.** All protests shall be handled in accordance with the provisions of the Administrative Procedures Act. [75 O.S., Section 250 et seq.]
- (d) **Committee response to protest or grievance.** The Committee shall respond in writing to the protesting or grieving party within ninety (90) days of receipt of the protest or grievance.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-9. List of jobs

The Committee shall publish a catalog listing the jobs that workshops can do for the State of Oklahoma, annually. The list of jobs shall be the Procurement Schedule.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-10. Meetings

- (a) **Number of regular meetings.** The Committee shall conduct a minimum of six meetings per year, in compliance with the Open Meeting Act. The schedule for regular meetings will be adopted at the last regular meeting of each calendar year.
- (b) **Special meetings.** Special meetings shall be called by the Committee Chairperson.
- (c) **Quorum.** A majority of all current members of the Committee shall constitute a quorum.
- (d) **Request for notices of meeting.** Upon written request, the Committee Vice-Chairperson shall notify any person, state agency, qualified organization or contractor, at least ten days prior to meeting dates, and shall make available the minutes of all meetings.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-11. Reports

(a) **Failure to provide reports or documentation.** Reports or documentation requested from a qualified organization by the Committee through the contracting officer, shall be completed within thirty (30) days of the date requested. The Committee may cancel contracts of otherwise qualified organizations who fail to provide reports, documentation or information required by utilization terms of a contract.

(b) **Sales to political subdivisions other than the state.** A qualified organization shall provide a quarterly report of purchases made by a political subdivision, excluding state agencies, from a contract the Committee awards. The report shall include:

- (1) the name and address of each political subdivision;
- (2) total amount of sales made to each political subdivision.

(c) **Notice of contract cancellation.** The Committee shall direct the Contracting Officer to send written notice to a qualified organization at least thirty days prior to the cancellation date of a contract pursuant to subsection (a) of this section.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]

260:120-1-12. Contract levy

(a) **Contract levy.** Pursuant to 74 O.S., Section 3004.1, a one percent (1%) fee assessment shall be levied against qualified organizations for every contract awarded under the act for products and services of the severely disabled.

(b) **Monthly reports and contract levy payments.** Qualified organizations shall submit a monthly report by the 15th of each month to the State Use Contracting Officer. The report shall contain the total amount of payments received from state agencies and the one percent (1%) fee assessment based on the total amount of payments stated in the report.

(c) **Failure to submit monthly reports and payments.** Any fee assessment payment that is past due more than sixty (60) days shall be considered delinquent. A written notice of delinquency shall be sent by the State Use Contracting Officer to each qualified organization considered delinquent. The notice shall state the amount due and requirements for compliance.

(d) **Revocation of a qualified organization.** Failure to provide monthly reports and payments will be reported to the State Use Committee and the State Purchasing Director and may result in the revocation of the "qualified organization" procurement schedule and/or termination of their contracts.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14]