

CHAPTER 120. STATE USE PROGRAM

[Authority:62 O.S., § 34.6]

[Source:Codified 9-12-14]

260:120-1-1. Purpose

This chapter is to provide information, requirements and procedures for state procurement staff, suppliers, and state entities subject to the State Use Program authorized in 74 O.S. §3001 et seq., to establish fair and consistent acquisition processes that satisfy the needs of the state, provide value, quality and ensures the best interest of all taxpayers. All suppliers and state entities are responsible for knowing the requirements of this chapter in the State Use Program.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 40 Ok Reg 2145, eff 9-14-23]

260:120-1-2. Definitions

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

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

"Direct Labor" means the engagement in direct production, manufacturing, processing and/or assembling of products or services offered by the qualified nonprofit agency for procurement by the state.

"State Purchasing Director" means the director of the Central Purchasing Division of the Office of Management and Enterprise Services appointed by the OMES Director.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 32 Ok Reg 1786, eff 9-11-15; Amended at 40 Ok Reg 2145, eff 9-14-23; Amended at 42 Ok Reg, Number 21, effective 8-1-25]

260:120-1-3. State Use Program Qualifications

(a) **Certification to participate in the program.** To ensure compliance with the Act, the State Purchasing Director shall certify individuals and qualified nonprofit agencies prior to contract award.

(b) **Individual Certification.** An individual and/or their guardian and/or legal representative (power of attorney) shall apply for certification to the State Use Program by submitting the following documents to indicate the individual meets the statutory definition of a person with significant disabilities, the individual shall provide:

(1) 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.

(2) 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 and preventing the individual from engaging in normal competitive employment with supporting medical records; and

(3) any additional information the State Purchasing Director may require related to work history, vocational assessments, and work-related documents.

(c) **Qualified Nonprofit Agency Certification.** 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 certification to the State Use Program and submit the following documents that indicate the nonprofit agency meets the requirements of a qualified nonprofit agency:

(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) an affidavit that the individual with significant disabilities will perform 75% of the work to produce the products or services the nonprofit agency offers for procurement to the state; and

(3) a current copy of the nonprofit agency's certificate of insurance for worker's compensation insurance and a Certificate of Liability, and/or

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

(d) Continuation of Certification.

(1) No later than January 31st of each year succeeding initial certification by the State Purchasing Director, the qualified nonprofit agency shall provide evidence to the State Purchasing Director as follows:

(A) a report for products and services on the State Use Program procurement schedule indicating the qualified nonprofit agency for the person with significant disabilities 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.

(B) a report indicating the number of individuals with significant disabilities employed by the qualified nonprofit agency and engaged in Direct Labor; AND

(C) a report indicating the amount of wages and benefits paid to individuals with significant disabilities engaged in Direct Labor; AND

(D) a current copy of the qualified nonprofit agency certificate of insurance for worker's compensation insurance and Certificate of Liability, and/or

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

(2) An person with significant disabilities shall submit:

(A) a work history for the previous calendar year that indicates the number of Direct Labor hours the individual worked and the number of Direct Labor hours a subcontractor or other individuals worked; 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 certification by the State Purchasing Director.

(e) Failure to meet certification. Whenever a qualified nonprofit agency or a person with significant disabilities fails to meet requirements of certification, the State Purchasing Director may:

(1) Remove the qualified nonprofit agency or individuals' products and services from the procurement schedule; or,

(2) Revoke the certification of the qualified nonprofit agency; or,

(3) Cancel awarded contracts to the qualified nonprofit agency or individual.

(f) Notice of failure to meet qualifications. The State Purchasing Director shall direct the contracting officer to send written notice to the qualified nonprofit agency or individual 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; Amended at 40 Ok Reg 2145, eff 9-14-23; Amended at 42 Ok Reg, Number 21, effective 8-1-25]

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

The Contracting Officer shall review all submissions to the fair market price for products and services as they are received from the qualified nonprofit agencies in accordance with the State Purchasing Director's approved Fair Market Price Policy and in the manner described in this section. Likewise, all prices shall be reevaluated annually in a manner consistent with the processes outlined in the Fair Market Price Policy.

(1) The qualified nonprofit agency shall submit fully referenced documentation to the contracting officer recommending the fair market price for products and services. The contracting officer may prepare a current market analysis to determine if the recommendation is the fair price for the products or services requisitioned or used by state agencies by utilizing internal as well as external sources and established pertinent criteria. When appropriate, the criteria may include, but are not limited to:

(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 shall recommend a fair market price to include tiered pricing with supporting documentation to the State Purchasing

Director for consideration within forty-five (45) days of submission by qualified nonprofit agency.

(3) The State Purchasing Director shall approve, modify, amend or disapprove the fair market price submitted by the qualified nonprofit agency. If the submission from the qualified nonprofit agency has not been rejected or amended within 30 days of receipt to the State Purchasing Director, then the submission from the qualified nonprofit agency shall be considered approved and will be added to the contracts between the qualified nonprofit agency and the state agencies utilizing the product or service. The new price will be added to the contract within 30 days of approval or deemed approval.

(4) Whenever the State Purchasing Director 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 State Purchasing Director 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 State Purchasing Director shall approve, each contract for the product or service.

(7) When the fair market price for a product or service approved by the State Purchasing Director exceeds a current market price for the same product or service and such lower market price has been verified by the agency through compliance with the Fair Market Price Policy and Exemption Policy approved by the OMES Central Purchasing Division, the State Use contracting officer may grant a temporary exception to a requesting agency so that agency may purchase the product or service from another supplier offering a significantly lower market price. The State Use contracting officer will report granted exceptions to the Central Nonprofit Agency.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 32 Ok Reg 1786, eff 9-11-15; Amended at 40 Ok Reg 2145, eff 9-14-23; Amended at 42 Ok Reg, Number 21, effective 8-1-25]

260:120-1-5. Procurement schedule

(a) **Compilation of procurement schedule.** The contracting officer or designee shall maintain and publish a current list of all products and services offered by qualified nonprofit agencies.

(b) **Approval of procurement schedule.** The State Purchasing Director shall approve items on the schedule or delete items from the schedule, consistent with the provisions of the Act, and shall designate the final schedule of approved products and services as the Procurement Schedule.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 40 Ok Reg 2145, eff 9-14-23; Amended at 42 Ok Reg, Number 21, effective 8-1-25]

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 grievance.** Any party who is aggrieved pursuant to the statutes or rules regarding state use may file a written grievance with the State Purchasing Director within ten (10) days of the aggrieved action.

(b) **Investigation of a grievance.** The State Purchasing Director may assign a designee to investigate and make recommendations to the State Purchasing Director for resolving the grievance.

(c) **State Purchasing Director response to a grievance.** The State Purchasing Director shall respond in writing to the grieving party within ten (10) days of receipt of the grievance.

(d) **Grievance process.** All grievances shall be handled in accordance with the provisions of the Administrative Procedures Act. [74 O.S. Section 250 et seq.].

260:120-1-9. List of jobs [REVOKED]

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Revoked at 40 Ok Reg 2145, eff 9-14-23]

260:120-1-10. Meetings [REVOKED]

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Revoked at 40 Ok Reg 2145, eff 9-14-23]

260:120-1-11. Reports

(a) **Failure to provide reports or documentation.** Reports or documentation requested from a qualified nonprofit agency or individual by the State Purchasing Director through the contracting officer, shall be completed within thirty (30) days of the date requested. The State Purchasing Director may suspend or cancel contracts of otherwise qualified nonprofit agencies or individuals who fail to provide reports, documentation or information required by utilization terms of a contract.

(b) **Sales Report.** The Central Nonprofit Agency (CNA) shall provide a quarterly usage report of purchases made by state agencies and other governmental entities, from all contracts to the State Purchasing Director. The report shall include:

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

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 40 Ok Reg 2145, eff 9-14-23; Amended at 42 Ok Reg, Number 21, effective 8-1-25]

260:120-1-12. Contract levy

(a) **Contract levy.** Pursuant to 74 O.S., Section 3004.1, an administrative fee shall be levied against qualified nonprofit agencies for every contract awarded under the act for products and services. In addition, a management fee, calculated as a percentage of the selling price, may be assessed for the above mentioned contracts as defined in the solicitation for State Use program management services.

(b) **Reports and administrative fee payments.** Qualified nonprofit agencies shall submit a quarterly report no later than forty-five (45) days following the end of each calendar quarter. The report shall contain the total amount of payments received from state agencies and other governmental entities and the administrative fee based on the total amount of payments stated in the report. The one percent (1%) fee assessment and five (5%) management fee will be based on the total amount of payments stated in the report.

(c) **Failure to submit quarterly reports and payments.** Any administrative payment or usage report that is past due more than forty-five (45) days shall be considered delinquent. A written notice of delinquency shall be sent by the Central Purchasing Division to each qualified nonprofit agency considered delinquent. The notice shall state the amount due and or the usage report missing and requirements for compliance.

(d) **Revocation of a qualified nonprofit agency.** Failure to provide quarterly reports and administrative fee payments will be reported to the State Use Contracting Officer and the State Purchasing Director and may result in the revocation of the qualified nonprofit agencies' product and/or services being offered on the procurement schedule and/or termination of their contracts.

[Source: Added at 31 Ok Reg 1551, eff 9-12-14; Amended at 40 Ok Reg 2145, eff 9-14-23; Amended at 42 Ok Reg, Number 21, effective 8-1-25]