



OKLAHOMA
**Office of Management
& Enterprise Services**

Central Purchasing

PROCUREMENT INFORMATION MEMORANDUM

Subject: Fixed and Uniform Rate Contracts
Effective Date: October 1, 2024
Issued by: Amanda Otis, Esq., State Purchasing Director

I. Introduction

As a means of disseminating relevant state procurement information to state entities, the Central Purchasing division of Office of Management and Enterprise Services issues Procurement Information Memoranda. To the extent any information in this Procurement Information Memorandum (“PIM”) conflicts with information in a previously issued memorandum, the information in this PIM controls.

II. Background

Fixed and uniform rate contracts, as defined by Section 85.7(A)(6)(f) of Title 74 are exempt from the competitive bidding requirements of the Central Purchasing Act. These contracts describe a specific method of procurement and are distinct and separate from other competitively bid contracts that are paid at a fixed or flat rate. Fixed and uniform rate contracts must be approved by the Central Purchasing division of the Office of Management and Enterprise Services (“OMES”) and can only be used by agencies for “those services furnished to persons directly benefiting from such services and shall not be used by a state agency to employ consultants or to make other acquisitions.” 74 O.S. § 85.7(A)(6)(f)(2). This type of contract is used when the number of required service providers or the geographic dispersion of service locations effectively render a competitive bid ineffective or when industry standards establish fair rates of the service. A fixed rate contract establishes a maximum rate at which all qualified contractors providing the same services will be compensated. This PIM explains the process for requesting and establishing a fixed and uniform rate contract. For questions about this PIM, please contact central.purchasing@omes.ok.gov

III. What type of transactions are a good fit for fixed and uniform rate contracts?

- A. Fixed and uniform rate contracts provide direct client services. Client services can include services received by clients or prevention services targeting client populations.
- B. A service being considered as a fixed rate contract must be capable of being provided by multiple providers; service provision is not restricted to one corporate entity.

- C. A service being considered as a fixed rate contract is commonly acquired and has an established cost or value that may be documented in a like or similar marketplace or setting.
- D. Services that have established rates, where there are methodologies and payments are subject to federal review and approval shall qualify as fixed and uniform rates. Agencies shall submit the same documentation as required for the federal review process on such fixed rate services to OMES.

IV. Step 1 of Creating a new fixed and uniform rate contract: Submission to OMES

An agency seeking approval from OMES to create a new fixed and uniform rate contract shall submit a written request to central.purchasing@omes.ok.gov. The request shall include the following documentation:

- A. Description of the requested service, including a reference and summary of the federal and state rules, regulations and standards that relate to the client service.
- B. Description of the clientele to be served, including estimated number of clients and geographic location and dispersion of clients.
- C. Required qualifications of the service providers by education, license, and/or experience.
- D. Estimate of the number of service providers required under the contract to meet the needs of the agency based on volume of clients.
- E. Statement certifying that service provision will not be restricted to one corporate entity.
- F. List of all applicable service industry standards for delivery of the requested service in the region.
- G. Summary statement of justification indicating why the service should be considered as a fixed rate. Specifically address in the summary statement why the service should not be acquired through the competitive bidding process.

V. Step 2: Establish the rate

Upon OMES approval that a service is appropriate to be handled with a fixed and uniform rate contract, an agency must establish the proposed rate to be paid for the service by following the process outlined below.

- A. First, the state agency shall schedule a public hearing. Such public hearing must adhere to the requirements of the Open Meetings Act, 25 O.S. §§ 301-314. The agenda for the meeting must include the consideration of the proposed rate. If applicable, agencies shall submit documentation of federal approval to OMES of rates established and regulated by federally approved programs in accordance with section.
- B. Then, the agency must submit the proposed rate to OMES at least thirty (30) days before the state agency is to meet on the proposed rate. OMES shall evaluate the proposal and communicate any observation, reservation, criticism, or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the state agency before or at the time of the hearing. The Director of OMES shall specifically note in written communications whether he or she has determined the rate to be excessive. OMES shall present the findings in writing before the public hearing or in-person at the public hearing. The notification to OMES shall include:
 - i. A copy of the agenda items regarding the proposed rates.
 - ii. The proposed fixed and uniform rate amount, including how the rate was established.

1. *Note:* This can include both direct and indirect costs such as vendor costs, rates or charges, market prices, existing rates offered through insurance, public agencies in Oklahoma or other states for comparable services, national and state indices/data about wages, benefits, capital and transportation, and other relevant program data supporting rates, costs or charges.
2. Documentation shall include any administrative fees charged to each direct client if applicable, and the financial basis (actual cost) for the fees.
- iii. A copy of the proposed contract which includes the proposed fixed rate services.
- C. Finally, at the public hearing the state agency shall read into the minutes any comments made by the OMES Director. After discussion and consideration, the agency shall approve or deny the proposed fixed rate.

VI. Step 3: Reporting

After approval, certain reporting is required. Within two (2) weeks after the convening of the Legislature, the administrative officer of the state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and, upon request, to any member of the House or Senate a complete list of all of the type of services paid for by fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts each type of service. Any rate that has been determined to be excessive by the Director of OMES shall be specifically identified in this report.

VII. Practitioner comments

- A. Fixed and uniform rate contracts do not include those professional services as defined in Section 803 of Title 18 of the Oklahoma Statutes.
- B. Agencies may adopt an OMES-approved fixed rate service from another agency, provided the same description of the services and rate of compensation is used by the requesting agency.
- C. A state agency shall not use the fixed rates contracting process to employ consultants or purchase products. However, this does not prohibit an agency from paying a flat fee to employ a consultant or other professional service.
- D. When a fixed rate is approved at a federal level:
 - i. The methodologies and payments are subject to federal review and approval prior to submission to OMES. In these cases, the agency may submit the same documentation that is required by the approving federal agency.
 - ii. Changes mandated by a federal approving authority may be accomplished by simply notifying OMES of such change.