



OKLAHOMA

**OFFICE OF
MANAGEMENT
AND
ENTERPRISE SERVICES**

CENTRAL PURCHASING

**ADMINISTRATIVE RULES
OAC 260:115**

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**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 115. PROCUREMENT**

SUBCHAPTER 1. GENERAL PROVISIONS

260:115-1-1. Purpose

The purpose of this Chapter is to provide information and procedures for suppliers that desire to sell products and services to state agencies, and for state agencies subject to the Central Purchasing Act, to establish fair and consistent purchasing processes that satisfy the needs of the state. 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 Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et seq., and other state laws and rules, which may be applicable to state agency acquisitions. 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.

260:115-1-2. Definitions

In addition to terms defined in 74 O.S., §85.2, the following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Acquisition authority" means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

"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 solicitation will be accepted.

"All or none solicitation" means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

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

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

"Amendment" means a written change, addition, correction, or revision to a solicitation made by the state agency responsible for making the acquisition.

"Authorized signature" means a manual, electronic or digital signature or other identifier uniquely linked to a person authorized to sign documents the supplier submits to the State Purchasing Director.

"Bid bond", "performance bond" or "surety" means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

"Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. [74 O.S. §85.2] When used in this Chapter, bidder is synonymous with a "supplier" or "vendor" responding to a solicitation.

"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 as a procurement officer or analyst by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Chief Information Officer" means the chief administrative officer of the Information Services Division of the Office of Management and Enterprise Services.

"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 a solicitation specifies responses are due.

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

"Competitive solicitation" means a process for acquiring goods or services wherein bidders submit bids to the Central Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive solicitation process may be electronic when the terms of the solicitation expressly permit 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 the State of Oklahoma for acquisitions by state agencies or a contract the Office of Management and Enterprise Services awards or administers and 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 his designee.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

"Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to place human life or safety in imminent danger or threaten significant property interests with imminent destruction; or, is a condition certified by the Governor as a serious environmental situation. [Reference 74 O.S. §85.7]

"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 State Purchasing Director 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.

"Forms" means documents the OMES Director prescribes and requires suppliers and state agencies to use to provide information to OMES.

"Indefinite quantity contract" means a contract the State Purchasing Director, CIO, or a state agency establishes based on historical usage of a service or product rather than a specified

quantity of said service or product and which does not obligate the State to purchase any certain amount.

"Information Services Division" means the Information Services Division of the Office of Management and Enterprise Services.

"Information technology" or **"IT"** means any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text. [62 O.S. §34.29]

"Invitation to bid" or **"ITB"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers to request submission of bids by suppliers for acquisitions.

"Material deficiency" or **"material deviation"** means a supplier's failure to provide information necessary to evaluate a solicitation.

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

"Non-collusion certification" means a certification submitted by a supplier with any competitive bid or contract executed by the state for goods or services in accordance with 74 O.S. §85.22.

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

"Oklahoma Central Purchasing Act" means 74 O.S. §§85.1 et seq.

"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.

"Oklahoma Information Technology Accessibility Standards" or **"IT Accessibility Standards"** means the accessibility standards adopted by the Office of Management and Enterprise Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220, August 7, 1998) to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

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

"Online Bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. The term also means all functions that pertain to the obtaining of any goods or services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"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 a supplier that registers with the Central Purchasing Division pursuant to 74 O.S. §85.33.

"Remedy" means to cure, alter, correct or change.

"Request for information" or **"RFI"** means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.

"Request for proposal" or **"RFP"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

"Request for quotation" or **"RFQ"** means a simplified written or oral solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of a quote for acquisitions.

"Requisition number" means an identifier the state agency or OMES assigns to a requisition.

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

"Responsible supplier" means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but may not be limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.

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

"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.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"State official" means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

"State Purchasing Director" means the director of the Central Purchasing Division of the Office of Management and Enterprise Services appointed by the OMES Director; and, includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority. [74O.S. §85.2] Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf. In regards to the procurement of information technology or telecommunications, the term means the Chief Information Officer of the Office of Management and Enterprise Services.

"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 contractor or supplier to perform or accomplish.

"Supplier" or **"vendor"** means an individual or business entity that sells or desires to sell acquisitions to state agencies [74 O.S. §85.2].

"Supplier performance evaluation" means information a state agency or OMES Procurement provides to the State Purchasing Director, in a manner the OMES Director prescribes, that documents the quality of service or products provided by a supplier.

"Supplier registration" means a process a supplier uses to register with the Central Purchasing Division to automatically receive solicitations based on a commodity class for a specified period of time.

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

"Suspension" means an action by the State Purchasing Director to suspend a supplier's authority to be included on the Supplier List, be eligible to submit bids to state agencies and be awarded a contract by a state agency subject to the Central Purchasing Act.

"Utility service" or "utilities" means a public service furnishing electricity, natural gas, water, or sewage.

260:115-1-3. [RESERVED]

260:115-1-4. State Purchasing Director authority

(a) **General.** The OMES Director, the Oklahoma Central Purchasing Act and other laws prescribe the duties, responsibilities and authority of the State Purchasing Director. 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) **Authority.** Pursuant to the provisions of Section 85.4 of this title [Title 74], the State Purchasing director, under the supervision of the Director of the Office of Management and Enterprise Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies. [74 O.S. §85.5]

(c) **Official directives.** The State Purchasing Director 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, the Procurement rules and any other matter relating to state agency acquisitions and procurement.

260:115-1-5. Chief Information Officer Authority

(a) **General.** The Chief Information Officer is appointed by the Governor and has authority over the Information Services Division of the Office of Management and Enterprise Services.

(b) **Authority.** The Chief Information Officer, or any employee or agent of the Chief Information Officer acting within the scope of delegated authority, shall have the same power and authority regarding the procurement of all information technology and telecommunications products and services ... for all state agencies as the State Purchasing Director has for all acquisitions used or consumed by state agencies as established in The Oklahoma Central Purchasing Act.

(c) **Official directives.** The Chief Information Officer shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures for the acquisition of information technology and telecommunications goods and services.

260:115-1-6. Waivers

(a) **Waiver request.** A state agency may request a waiver from requirements of the rules of this chapter from the Director of the Office of Management and Enterprise Services, 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,
- (2) a court order directs the state agency to make an acquisition from a specified vendor or provider.

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

260:115-1-7. [RESERVED]

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

Pursuant to 74 O.S. §85.33A, the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to OMES. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Office. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S. §85.33A. 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.

SUBCHAPTER 3. SUPPLIER PROVISIONS

260:115-3-1. Purpose

(a) This Subchapter provides information, requirements and procedures for suppliers who desire to sell products or services to Oklahoma state agencies. It is the policy of the State to purchase goods and services 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 in accordance with Oklahoma laws and OMES rules.

(b) Each subchapter of this Chapter contains information and requirements related to state agency procurement. It is beneficial and the responsibility of a supplier to become familiar with all rules of this Chapter to ensure compliance with the Central Purchasing Act and other laws governing state agency procurement.

260:115-3-2. [RESERVED]

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. Supplier registration is required for any supplier selected

for 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.

(1) Suppliers may be required to prequalify for the purpose of responding to online solicitations.

(2) Suppliers shall prequalify in accordance with procedures established by the State Purchasing Director.

(b) **Registration.** A supplier may apply for registration online as established by 74 O.S. 85.33, for each commodity class listed in the registration application, to be placed on the Supplier List for a one-year period. Registered suppliers are to be notified by the Central Purchasing Division or by non-exempt state agencies pursuant to applicable laws and rules, of solicitations for each commodity class for which a supplier registers. 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 a responsible supplier.

(c) **Registration fee.** 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. The Office of Management and Enterprise Services shall not refund supplier registration fees.

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

260:115-3-4. [RESERVED]

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

(a) **Standard of 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.

(b) **Supplier gratuities.** A supplier or any prospective supplier shall not give or donate anything of value to the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of the immediate family of the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission. [Reference 74 O.S. §85.13]

(c) **State Purchasing Director action upon supplier violation.**

(1) The State Purchasing Director shall suspend or debar a supplier determined to be in violation of provisions of this section.

(2) The State Purchasing Director shall reject bids submitted by any supplier determined to be in violation of provisions of this section.

(3) The State Purchasing Director may terminate a contract with any supplier determined to be in violation of provisions of this section, if the termination shall be in the best interest of the State.

260:115-3-6. [RESERVED]

260:115-3-7. Bid preparation

(a) **Form requirements.** The bidder shall complete and submit all required forms as specified by the solicitation.

(1) Information the bidder submits shall be legibly hand written, typewritten, printed or electronically conveyed.

(2) Should the bidder alter the form or bid information, the bidder shall initial each alteration.

(3) Any form requiring a bidder's signature submitted to the OMES 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 sixty (60) days.** A bidder's bid shall be considered a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.

(c) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. Unless otherwise provided by law, a state agency shall not pay travel expenses not specified by the successful solicitation response.

(d) **Tax exemptions.** State agency acquisitions are exempt from sales taxes and federal excise taxes. Purchases made by suppliers on behalf of a state agency are not exempt from sales or federal taxes.

(e) **Payment terms.** Suppliers are paid by state agencies pursuant to 62 O.S. §34.71. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.

(f) **Used or new products.** A bidder shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.

(g) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.

(h) **Alternate bids.** Unless the solicitation prohibits, 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 number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(i) All or none bid.

(1) Award to more than one bidder. If the solicitation specifies that the State Purchasing Director may award a contract to more than one bidder, a bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) Award by item. If the solicitation indicates that the State Purchasing Director may award the bid 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.** If the solicitation does not specify a delivery date for goods and/or services, the bidder shall specify the delivery date in the bid.

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

(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 costs for the sample and submission to the State.

(3) **Sample requirements.** A bidder shall submit a sample that represents the quality of the whole.

(4) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, 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 the sample a bidder submits fails to meet the specification or standards the solicitation requires, 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 bidder's solicitation response, samples not destroyed by testing may be returned at the bidder's expense.

(7) **Successful bidder samples.** The State Purchasing Director may retain samples submitted by the successful bidder to ensure the products or items delivered meet specifications in the solicitation

(l) **Proof of insurance.** The successful bidder shall provide proof of all insurance required by the solicitation 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.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the bidder shall provide the information in the bid.

260:115-3-8. [RESERVED]

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

(a) Documents a bidder submits in a response to a solicitation are public records and shall be available for review, upon request, only after a supplier is selected and the contract is awarded. An electronic quote, bid or proposal submitted through an online solicitation process is subject to the same public disclosure laws.

(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall:

(1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information;

(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; and

(3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.

(c) The State Purchasing Director shall review the information and may or may not designate a bidder's financial information or proprietary information as confidential and may or may not reject all requests to disclose the information so designated. [Reference 74 O.S. § 85.10]

260:115-3-10. [RESERVED]

260:115-3-11. Bid submission

- (a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.
- (b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, solicitation number and closing date shall be prominently displayed on each item submitted as specified in the solicitation.
- (c) **Submission of non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement.
- (d) **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.
- (e) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the State Purchasing Director has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.

260:115-3-12. [RESERVED]

260:115-3-13. Bid withdrawal

- (a) **Bid withdrawal before closing date.** A bidder who desires to withdraw a bid prior to the closing date shall submit to the State Purchasing Director a written withdrawal request created on the bidder's company letterhead and signed by the bidder's authorized representative. 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 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 person must provide personal identification to validate they are the person identified in the withdrawal request. After confirmation of identity, the person accepting the withdrawn bid shall sign a receipt for the bid.
- (b) **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.

260:115-3-14. [RESERVED]

260:115-3-15. 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.

260:115-3-16. [RESERVED]

260:115-3-17. Contract award

(a) **Time of award.** The contract award shall be made upon completion of bid evaluation and associated administrative tasks necessary to complete the acquisition. State agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, until the State Purchasing Director has issued the award of contract.

(b) **Reasons for bid rejection.** The State Purchasing Director may reject a bid when the bid is determined to be non-responsive or the bid is from a supplier who is not responsible, for reasons included, but not limited to, those listed in 260:115-7-32.

(c) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) business days of the contract award.

(d) **Public inspection.** The evaluation documentation shall be open for public inspection, upon request, following contract award.

260:115-3-18. [RESERVED]

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 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 et

seq.

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

260:115-3-20. [RESERVED]

260:115-3-21. Supplier suspension from Supplier List

(a) Cause for suspension. The State Purchasing Director may suspend a supplier in accordance 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. The suspension shall be for a period of time not to exceed one (1) year for any of the following reasons:

- (1) a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation;
- (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 in the solicitation 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 by the solicitation;
- (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.

(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 include 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 order.

(c) **Supplier's 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.

(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, 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 et seq. and the provisions of

260:115-3- 19.

- (e) Suspension. The suspension period shall begin on the date appearing on the notice of final order of suspension and shall expire no later than the end of the term specified in the order.
- (f) 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.
- (g) 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.

260:115-3-22. [RESERVED]

260:115-3-23. Supplier debarment.

- (a) Cause for debarment. The State Purchasing Director may debar a supplier and revoke the supplier's authority to be included on the Supplier List, to be eligible to submit bids to state agencies, to be awarded a contract by a state agency subject to the Central Purchasing Act and cancel any existing contracts with the State of Oklahoma. 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.
- (b) Debarment considerations. The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.
 - (1) Disassociation. The efforts, if any, of the individual or business entity, 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 individual or business entity the State Purchasing Director determines appropriate.
- (c) State Purchasing Director options. Upon review and consideration of factors relevant to the

proposed debarment of an individual or business entity, the State Purchasing Director shall take one of the following actions:

- (1) Decline to debar. Decline to debar an individual or business entity;
- (2) Suspension. Suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate;
- (3) Debarment. Debar an individual, a business entity, or both 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.
- (d) Debarment notice. If the State Purchasing Director debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing.
- (e) Reinstatement after debarment. A debarred individual or business entity may submit a written request for reinstatement to the State Purchasing Director. The State Purchasing Director shall consider information the individual or business entity provides to determine if the individual or business entity merits reinstatement. The State Purchasing Director shall provide written notice of the reinstatement approval or denial.
- (f) 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 the date of the final order of debarment or the denial of reinstatement notice pursuant to 75 O.S. §§309 et seq and the provisions of 260:115-3-19.

SUBCHAPTER 5. STATE AGENCY PROVISIONS

260:115-5-1. Purpose

The purpose of this subchapter is to provide state agencies and certified procurement officers with information and procedures to achieve consistent and effective procurement practices resulting in quality, cost-saving acquisitions that serve the best interests of the state. In addition to the rules of this Chapter, state agencies and certified procurement officers shall comply with provisions of the Oklahoma Central Purchasing Act, statutes relating to the State Use Committee, and all other state laws and rules, as applicable or as required for state agency acquisitions.

260:115-5-2. [RESERVED]

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

- (a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S. §85.5. 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) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.
- (c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.
- (d) **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, the Central Purchasing rules, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may 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, the Central Purchasing rules, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** To maintain certification, a CPO shall attend continuing education as required by the CPO Procurement Training Program established 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 documentation verifying continuing education course attendance to the State Purchasing Director as required by the CPO Procurement Training Program. 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.

(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.

(g) **Change in status.** A CPO shall immediately notify the State Purchasing Director when they:

(1) are no longer performing as a CPO;

(2) transfer to another state agency; or,

(3) terminate their employment with the state.

260:115-5-4. [RESERVED]

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

(a) **Standard of 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.

(b) **One year limitation for certain contracts.** Unless otherwise provided by law, a state agency is prohibited from entering into a sole source contract, a professional service contract or

a contract for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. [Reference 74 O.S. §85.42(A)] An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf. [Reference 74 O.S. §85.42(D)].

(c) **Supplier gratuities.** The State Purchasing Director and any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of their immediate family, under the Oklahoma Central Purchasing Act shall not accept any gift, donation, or gratuity for himself or any member of his immediate family from any supplier or prospective supplier of any acquisition covered by the Oklahoma Central Purchasing Act. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission. [Reference 74 O.S. §85.13]

260:115-5-6. [RESERVED]

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

(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, ". . . which shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations". A state agency must state the method whereby a supplier may protest a contract award by the agency pursuant to 260:115-3-19 in its internal purchasing procedures, and include provisions for procurement policies under statutorily applicable emergency events. Internal purchasing procedures are not effective until approved in accordance with this section.

(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director. 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.

(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the Central Purchasing rules.

(d) **OMES Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the OMES Director shall notify the state agency if the procedures comply or indicate revisions necessary to bring the procedures into compliance.

(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the OMES Director notifies the state agency the procedures comply.

(f) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.

(g) **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. The P/Card procedures shall include provisions for procurement policies under statutorily applicable emergency events. The P/Card procedures must specify the process established by the agency to ensure a P/Card 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.

260:115-5-8. [RESERVED]

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

(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts as follows:

(1) **Acquisitions independently processed by agency.** Retain documents for the duration of the contract term and for a period of seven (7) years following completion 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 actions are 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 action are resolved or until the end of the seven (7) year retention period, whichever is later; and,

(2) **Acquisition documents submitted to Central Purchasing Division for processing.** Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.

(b) **Records retention location.** A state agency shall retain procurement records and documents in a reasonably accessible location unless a written waiver is provided by the State Purchasing Director.

(c) **Records availability.** A state agency shall make acquisition records available to the State Purchasing Director for review and the OMES Audit staff for audit purposes.

(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

260:115-5-10. [RESERVED]

260:115-5-11. State agency acquisitions

(a) A state agency shall submit a requisition to the State Purchasing Director for each of its acquisitions, whenever:

(1) the agency does not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 260:16-5-3 and 260:16-5-7 and an acquisition exceeds Five Thousand Dollars (\$5,000.00);

(2) the agency's acquisition authority has been reduced by the OMES Director and the acquisition exceeds the dollar amount of the reduced acquisition authority; or,

(3) an acquisition exceeds the state agency's acquisition authority.

(b) OMES may contract with a state agency for the services of qualified personnel to assist or conduct purchasing activities for the agency upon written request by the agency or in the event the State Purchasing Director determines the needs of the agency are such to require qualified procurement personnel. [Reference 74 O.S. §85.3] The state agency shall reimburse administrative costs to OMES for the services of employees necessary to provide procurement services pursuant to this subsection.

260:115-5-12. [RESERVED]

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. 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 designated by the appointing authority 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.

260:115-5-14. [RESERVED]

260:115-5-15. Agency savings reporting

On October 1, 2010 and October 1 of each year thereafter, 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 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; and
- (2) participation in mandatory statewide contracts.

260:115-5-16. [RESERVED]

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 ratification request.

(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.

260:115-5-18. [RESERVED]

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

The State Purchasing Director shall review state agency acquisitions to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act, promulgated rules of the Office of Management and Enterprise Services, provisions of 74 O.S. §3001 through §3010, other laws of the State of Oklahoma, and the state agency's approved internal purchasing procedures. If the State Purchasing Director finds state agency procurement practice deficiencies, the State Purchasing Director shall report the findings to the OMES Director.

(1) **Audit notification.** OMES shall notify the state agency of all scheduled audits.

(2) **State agency responsibilities.**

(A) The state agency shall provide work space for the audit team.

(B) The state agency shall provide records for acquisitions for the audit period.

(C) The state agency shall make the state agency's CPO available to assist the audit team.

(3) **Audit following reduction of state agency acquisition authority.** If the OMES 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 audit findings of noncompliance.

260:115-5-20. [RESERVED]

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 Hundred Thousand Dollars (\$100,000.00) 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.

**SUBCHAPTER 7. PROCUREMENT
PART 1. GENERAL PROCUREMENT**

260:115-7-1. Purpose

The purpose of this subchapter is to provide information and requirements for state agencies subject to the Central Purchasing Act, in order to establish fair and consistent procurement practices. All state agencies are responsible for knowing the requirements of this subchapter. Suppliers are encouraged to become knowledgeable in state procurement practices to expedite transacting business with the state.

260:115-7-2. [RESERVED]

260:115-7-3. Methods state agencies use to make acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition purchase price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts to the extent a fair market value has been established. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S. §§ 3001 et seq. 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.

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

(A) **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. 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.

(B) **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.

(3) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency or if it does not have an established fair market value, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S. §549.1 or statewide contracts as follows:

(A) If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, the product or service is available from OCI and is the lowest and best offer, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best.

(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to OMES for issuance of a solicitation to include OCI as a vendor. The award shall be made to OCI if such product or service is the lowest and best bid.

(C) If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

(D) If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

(E) If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the OMES Director shall resolve the issue.

(4) **Standard contracts.** 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. The most common types of acquisitions include:

(A) Contract for definite quantity. If a state agency is able to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for acquisition by the state agency.

(B) Contract for indefinite quantities. If an agency is unable to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for an indefinite quantity of items or services.

(C) Contract for scheduled acquisitions. When a state agency's needs for certain items are compiled (aggregated) and purchased in bulk at predetermined intervals, the State Purchasing Director or the state agency may establish a contract for scheduled acquisitions. The intervals shall be established in accordance with market characteristics or using agency consumption patterns, with consideration of seasonal factors and warehousing facilities. A schedule shall be developed for particular commodities monthly, quarterly, or annually. If a contract for scheduled acquisitions is established for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(5) Sole source and sole brand acquisitions.

(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make a sole source or sole brand acquisition within the agency's acquisition authority. [Reference: 74 O.S. §85.45j]

(B) The chief administrative officer of any state agency not utilizing the State's financial and information system for acquisitions shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Five Thousand Dollars (\$5,000.00) executed by the state agency in the preceding month pursuant to the Oklahoma Central Purchasing Act. The monthly list shall be submitted on a form prescribed and approved by the State Purchasing Director.

(C) If the sole source or sole brand acquisition amount exceeds the agency's acquisition authority, the agency shall submit the requisition to the State Purchasing Director.

(6) Emergency acquisition. State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make an emergency acquisition in accordance with 74 O.S. §85.7.

(7) Acquisitions from other governmental agencies. A state agency may contract with any other department of state government or institution pursuant to 74 O.S. §581 or §1001 through §1008. A state agency may contract with any "public agency" pursuant to 74 O.S. §1001 through §1008, which includes a political subdivision of this state or another state, and any agency of this state or of the United States. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(8) Acquisition pursuant to waiver. If the OMES Director approves a state agency's request for a waiver pursuant to 260:16-1-12, a state agency with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7 may make the acquisition for which the waiver was approved, within their approved

purchasing authority limit.

260:115-7-4. [RESERVED]

260:115-7-5. Split purchases

State agencies shall not make split purchases for the purposes of evading their approved dollar threshold for competitive bids. Split purchasing for the purpose of evading competitive bidding requirements is a felony. [Reference 74 O.S. §85.7(A)(2)(a)]

PART 3. REQUIREMENTS FOR ACQUISITIONS

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

State agencies shall make open market acquisitions not exceeding \$5,000.00 provided the acquisition process is fair and reasonable.

260:115-7-12. [RESERVED]

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

(a) **Basic Requirements.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions over \$5,000.00 and not exceeding \$25,000.00 pursuant to this section.

(b) **Acquisition Preparation.** The state agency shall prepare and document the state agency's specifications and all information required from the supplier for an acquisition. An agency shall choose an appropriate solicitation methodology, i.e. formal or informal competitive solicitation, based on the complexity of an acquisition.

(c) **Supplier selection.**

(1) The state agency shall solicit from a minimum of three (3) registered suppliers (if available) for acquisitions over \$5,000.00 and not exceeding \$10,000.00 and ten (10) registered suppliers for acquisitions over \$10,000.00 and not exceeding \$25,000.00, from the Supplier List in the appropriate commodity classification. Selection of suppliers shall be rotated whenever more than ten (10) suppliers are registered.

(2) State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce.

(3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. Documentation of prices, delivery dates and the evaluation shall be placed in the acquisition file.

(4) All awards shall be based on lowest and best or best value criteria.

(5) 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 goods or services. 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) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency

must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **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]

(D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

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

(ii) Irrevocable letter of credit. In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit.

(iii) Bond or surety return. When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety, the State Purchasing Director shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

260:115-7-14. [RESERVED]

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

(a) Basic requirements. State agencies that have an internal CPO or a designated CPO through an interagency agreement 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 \$50,000.00 in accordance with this section, by means of a formal method of competitive solicitation, i.e. sealed bid solicitations.

(b) Acquisition preparation. The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the agency shall develop evaluation criteria for the acquisition prior to bid opening.

(c) **Supplier selection.**

- (1) The state agency shall solicit all registered suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director or the Federal government shall not be awarded a contract.
- (2) State agencies shall solicit prices and delivery dates by means of sealed bid using mail or electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.
- (3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.
- (4) All awards shall be based on lowest and best or best value criteria.
- (5) 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 goods or services. 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) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.
 - (C) **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]
 - (D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.
 - (i) Form of bond. 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) Irrevocable letter of credit. In lieu of bonds specified in this subsection, the

acquiring state agency may approve submission of an irrevocable letter of credit.

(iii) Bond or surety return. 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.

(E) **Verification of registration and status with Secretary of State.** 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.

260:115-7-16. [RESERVED]

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

State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115- 5-3 and 260:115-5-7, shall send a written request to the State Purchasing Director to request acquisition authority exceeding \$50,000.00 but not exceeding \$100,000.00. The State Purchasing Director shall consider the agency's internal purchasing procedures, procurement training and certifications of the agency's procurement staff, and any other information deemed necessary by the State Purchasing Director to make the determination to approve or disapprove the request. If approved, the agency shall:

- (1) make all acquisitions within this acquisition authority pursuant to 74 O.S. §85.7, any other applicable state laws and rules, including Section 260:115-7-15;
- (2) award all contracts based on lowest and best or best value criteria; and,
- (3) solicit all suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency using solicitation forms prescribed by the OMES Director.

260:115-7-18. [RESERVED]

260:115-7-19. Emergency acquisitions

State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make an emergency acquisition authorized by 74 O.S. §85.7. For an emergency acquisition, the State Purchasing Director shall:

- (1) select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce;
- (2) Obtain the following certifications, verifications and other required documents, as applicable, from the supplier selected for contract award:

(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 goods or services. 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) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which

must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **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]

(iv) Bonds and sureties. The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

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

(III) Bond or surety return. 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.

(v) **Verification of registration and status with Secretary of State.** 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.

260:115-7-20. [RESERVED]

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

If the OMES Director approves a state agency's request for a waiver [Reference 260:115-1-6], a state agency with a CPO and approved internal purchasing procedures as required by 260:115-5- 3 and 260:115-5-7, may make the acquisition for which the waiver was approved, within their approved purchasing authority limit. When an acquisition is made pursuant to a waiver, the State Purchasing Director:

(1) may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce;

(2) shall obtain the following certifications, verifications and other required documents, as

applicable, from the supplier selected for contract award:

(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 goods or services. 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) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **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]

260:115-7-22. [RESERVED]

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

A state agency submitting requisitions to the Central Purchasing Division pursuant to 260:115- 5-11 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 for requisitions provided or approved by the State Purchasing Director.

(2) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract, which includes applicable statutory language required by the Oklahoma Central Purchasing Act, 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]

(3) **Evaluation Criteria.** An agency shall include written criteria necessary to evaluate a supplier's response to a solicitation such as technical scope, cost, experience, references etc.

(4) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.

(5) **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.

(6) **Competitive bid evaluation.** The State Purchasing Director shall evaluate bids and may request assistance of the state agency.

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

(8) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

260:115-7-24. [RESERVED]

260:115-7-25. Acquisition limitation exception

(a) A state agency making an acquisition pursuant to 74 O.S. §85.5(T) must have an internal CPO and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7, in addition to the subject matter experts, legal and procurement staff required by law.

(b) Prior to making an acquisition pursuant to this section, a state agency shall submit in writing to the OMES Director, a statement of the agency's intent to make an acquisition pursuant to 74

O.S. §85.5(T). The agency may only proceed with the acquisition upon receipt of certification by the OMES Director that the proposed purchase does not conflict with consolidated statewide spend initiatives.

(c) Agencies making an acquisition pursuant to this section shall comply with 74 O.S. §85.7, the rules of this Chapter and any other applicable state laws and rules.

(d) 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. The report shall be submitted by the 5th business day of each new quarter.

PART 5. COMPETITIVE SEALED SOLICITATIONS

260:115-7-30. Competitive sealed solicitations

(a) **General.** The State Purchasing Director shall utilize a competitive sealed solicitation 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 solicitations for acquisitions shall be issued by invitation to bid, request for proposal or request for quotation.

(b) **Solicitation contents.** The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(c) **Supplier notification.**

(1) Registered suppliers. The State Purchasing Director shall notify suppliers of solicitations for commodities for which the supplier registers.

(2) Suppliers a state agency recommends. The State Purchasing Director will also notify suppliers recommended by a state agency for a solicitation.

(d) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the

State Purchasing Director shall notify each supplier sent the original solicitation of the amendment.

(1) A supplier shall acknowledge receipt of an amendment in the supplier's bid or quotation for submission by the closing date and time specified in the solicitation.

(2) If a supplier has already submitted a bid, the supplier shall submit an acknowledgment of receipt of the amendment by the closing date and time specified in the solicitation.

(e) **Limited contact.** The State Purchasing Director may limit contact regarding a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact may be described in the solicitation. All communication between suppliers and the acquiring agency related to a solicitation shall:

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

(2) strictly prohibited from any other acquiring agency personnel, unless otherwise stated in the solicitation; and,

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

(f) **Evaluation method.** The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:

(1) lowest and best; or,

(2) best value.

(g) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(h) **Terms and conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** 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 Section 3206.3 of Title 70 of the Oklahoma Statutes and Section 1365 of this title, 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. [74 O.S. §34.3(B)]

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. 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 State Purchasing Director.

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

(4) **Rejection of all bids.** If the State Purchasing Director finds it 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.

(i) **Non-Collusion certification.** The State Purchasing Director shall include a non-collusion certification statement in a solicitation. The non-collusion certification shall be included with any bid or proposal submitted to the agency issuing the solicitation.

(j) **Pre-bid conference.** The State Purchasing Director may state in a solicitation that a supplier pre-bid conference will be held and shall state whether supplier attendance is mandatory or non- mandatory.

(k) **Shipping.** Bidders shall include all costs associated with delivery of the acquisition F.O.B.

destination to the receiving state agency in the solicitation response, unless otherwise specified in the solicitation.

(l) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the OMES Director may authorize OMES to accept an electronic 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.

(m) **Bid receipt.** Upon receipt, a 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.

(n) **Firm bid for sixty (60) days.** A supplier's bid shall be considered a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.

(o) **Sample submission.** A solicitation may specify submission of samples to the State Purchasing Director for evaluation purposes. Any samples requested must be provided free of charge.

(1) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.

(2) **Return of bidder samples.** Samples which are not destroyed by testing will be returned at the supplier's expense if return of the samples is stipulated in the supplier's solicitation response.

(3) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(4) **Samples become property of state.** A sample shall become the property of the State of Oklahoma unless a bidder requests its return and will be disposed of in the same manner as surplus or salvage property.

260:115-7-31. [RESERVED]

260:115-7-32. Bid evaluation

(a) **Evaluation criteria and documentation.** The State Purchasing Director shall develop evaluation criteria to be included in a solicitation, which will be considered during the evaluation of bids.

(b) **Evaluation scoring tool.** Any evaluation scoring tool utilized shall be consistent with the evaluation criteria contained in the solicitation.

(c) **Documentation.** Evaluation of the bids shall be documented and filed in the acquisition file.

(1) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid. [Reference 74 O.S. §85.2]

(2) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation methodology is best value, the State Purchasing Director shall develop and apply criteria consistent with 74 O.S. §85.2.

(d) **Prohibited disclosure.** Agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, including board meetings, until the State Purchasing Director has issued the award of contract.

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

(f) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(g) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(h) **Reasons for bid rejection.** The State Purchasing Director shall document in the acquisition file if a bid is non-responsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (h)(2) of this section, the State Purchasing Director may reject a bid that is non-responsive, or a bid from a bidder who is not responsible, 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 the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

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

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

(i) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities.

(1) The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.

(2) When the State Purchasing Director issues a solicitation on behalf of a state agency, the State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.

(j) **Other factors in determination of award.**

(1) **Minor deficiencies.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(2) **Other types of deficiencies.** If the State Purchasing Director determines there is sufficient time prior to the award of a contract and it is in the best interest of the State, the State Purchasing Director may authorize a bidder to cure the following types of deficiencies prior to the award of a contract:

(A) failure to have an authorized signature;

(B) failure to obtain a notary signature, stamp or seal;

(C) failure to sign or initial amendments to bid.

(k) **Evaluation criteria.** The State Purchasing Director shall establish evaluation criteria for solicitation responses. A state agency shall maintain written documentation of bid evaluations in the acquisition file.

260:115-7-33. [RESERVED]

260:115-7-34. Contract negotiation

(a) **Negotiation.** The State Purchasing Director may negotiate contracts by following the rules for negotiation in this section. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions within the state agency's approved dollar

threshold and shall follow the rules for negotiation in this section.

(b) 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 for a team when negotiations are being conducted for solicitations issued by Central Purchasing.

(c) Negotiation process.

(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 contract file retained.

260:115-7-35. [RESERVED]

260:115-7-36. Contract award

(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The contract award 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, whenever the contract amount is Twenty-five Thousand Dollars (\$25,000.00) or greater;

(6) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to 68 O.S. §1364 if such entity is required to do so;

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

(8) completion of any administrative tasks.

(b) **Award by item.** If a solicitation does not specify an all or none bid, the State Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.

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

(1) The State Purchasing Director determines no bid meets the requirements of the

solicitation.

(2) The State Purchasing Director determines that all bids exceed fair market value for the acquisition.

(3) The State Purchasing Director determines the bid price exceeds available state agency funds.

(4) The State Purchasing Director determines the state agency no longer requires the acquisition in the form or manner the solicitation specifies.

(5) The State Purchasing Director determines not awarding the contract to be in the best interest of the state.

(d) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.

(e) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

PART 7. ADDITIONAL PROCUREMENT INFORMATION

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

(a) "Any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions . . . " of 74 O.S. §85.7 and procedures required by the Office of Management and Enterprise Services. [Reference 74 O.S. §85.7] The OMES Director must approve a services contract, prior to award, as qualifying for a fixed and uniform rate.

(b) Fixed and uniform rate contracts shall be limited to contracts 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. [Reference 74 O.S. §85.7]

260:115-7-41. Acquiring Utility Services

State agencies may obtain required electrical, gas, water, or sewer utility services from sources of supply which are most advantageous to the agency if competition is not present or practical.

260:115-7-42. 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.

260:115-7-43. [RESERVED]

260:115-7-44. 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.

260:115-7-45. [RESERVED]

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 arranger, 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.

260:115-7-47. [RESERVED]

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

(a) When a state agency determines electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the state agency may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) The use of electronic commerce for solicitation, notification, and other procurement processes as provided for in 74 O.S. §85.45r and the Oklahoma Central Purchasing Act and/or the Public Building Construction and Planning Act shall be subject to the policies and procedures of the Online Bidding Standards authorized by the OMES Director and established by the State Purchasing Director.

PART 9. INFORMATION TECHNOLOGY ACQUISITIONS

260:115-7-52. General requirements

Unless otherwise provided by law, state agencies shall acquire information technology products and services in accordance with the Oklahoma Central Purchasing Act [74 O.S. §§85.1 et seq.], the Oklahoma State Finance Act [62 O.S. §§34 et seq.] the rules of this chapter, and requirements established by the Information Services Division of the Office of Management and Enterprise Services.

260:115-7-53. [RESERVED]

260:115-7-54. Accessible information technology (IT) 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 Technology Accessibility Standards prescribed by the Office of Management and Enterprise Services and maintained by the Information Services Division. These standards apply to all information technology purchased after the effective date of these rules, providing the solicitation process was not initiated prior to the effective date.

(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 IT 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 IT 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 IT 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 IT 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 IT 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 IT 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 IT 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 IT 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 IT 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 IT 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.

SUBCHAPTER 9. CONTRACT MANAGEMENT

260:115-9-1. Supplier contract performance

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

(b) **Inspection.** Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

(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.

(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the 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 the signature of the receiving agency employee.

(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 notify the state agency and the Central Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

(f) **Contract changes.** If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section 260:115-9-3.

(g) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization unless otherwise specified in the solicitation.

(h) **Performance evaluation.**

(1) State agencies shall develop a process to consistently assess and document the quality of products and/or services acquired from a supplier.

(2) State agencies shall retain written documentation of evaluation of the performance of services provided pursuant to a professional services contract with the acquisition file. If the evaluation indicates deficiencies with the supplier's work, the state agency shall submit a Professional Service Evaluation to the State Purchasing Director. [Reference 74 O.S. §85.41]

260:115-9-2. [RESERVED]

260:115-9-3. Change orders

(a) **Contract increases.** Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation. For the purposes of (b) and (c) of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(c) **Acquisitions by the Central Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency.

260:115-9-4. [RESERVED]

260:115-9-5. Supplier invoice submission

(a) **Supplier invoice submission.** Following transfer of title of an acquisition to a state agency, the supplier shall submit invoices to the state agency.

(b) **Advance payment for acquisitions.** The state agency shall not pay for acquisitions a supplier has yet to deliver, unless otherwise authorized by law.

(c) **Payment and state agency acceptance.** 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 state agency shall request a refund from the supplier if the supplier is unable to replace the acquisition.

260:115-9-6. [RESERVED]

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

(a) **Quality assurance inspections by state agencies.** A state agency must establish quality assurance procedures that ensure timely and thorough inspection of acquisitions delivered to the agency. It is critical that problems with delivery or the quality of the acquisition delivered be promptly communicated to the agency's primary procurement official and the State Purchasing Director.

(b) **Resolution of dispute between a state agency and supplier.** 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.

(c) **State agency submission of supplier performance evaluation form.** A state agency shall request the State Purchasing Director seek dispute resolution by submitting a Supplier Performance Quality Report, 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 in a timely manner.

(d) **State Purchasing Director dispute resolution action.**

(1) **State Purchasing Director resolves dispute.** If the State Purchasing Director resolves the dispute, the supplier and state agency shall be notified of the dispute resolution terms and conditions.

(A) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(B) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 260:115-5-19.

(2) **State Purchasing Director fails to resolve the dispute.** If the State Purchasing Director fails to resolve the dispute between the state agency and the supplier, the State Purchasing Director shall take an action in this subparagraph.

(A) **Supplier fails to meet terms and conditions.** If the State Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(B) **State agency fails to meet contract terms and conditions.** If the State Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 260:115-5-19.

260:115-9-8. [RESERVED]

260:115-9-9. Contract termination

(a) **The State Purchasing Director may terminate a contract in its entirety or any portion thereof, between a supplier and a state agency if:**

- (1) a supplier fails to post, or allows to expire, a bid bond, performance bond, or other type of surety bond the solicitation specifies;
- (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) the State Purchasing Director determines that an administrative error occurred prior to contract performance; or,

(9) if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements.

(b) **Supplier responsible for damages.** If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

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 (P/Cards) authorized by the State Purchasing Director [Reference 74 O.S., §85.5] 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.

(b) Condition of participation. A condition of participation in the State Purchase Card Program shall be compliance with the terms of the State Purchase Card Procedures established by the State Purchasing Director. Failure to comply with all conditions of participation may result in a state entity's removal from the purchase card program by the State Purchasing Director.

260:115-11-2. RESERVED

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

State entity P/Card Program participants must sign the State of Oklahoma Purchase Card Employee Agreement form prior to assuming their duties and being issued State Purchase Cards.

260:115-11-4. RESERVED

260:115-11-5. Training

(a) State entity P/Card Program participants. State entity P/Card participants must successfully complete the training prescribed by the State Purchasing Director prior to assuming their duties and prior to being issued P/Cards.

(b) State entity responsibility. It is the responsibility of the State Entity P/Card Administrator to ensure employees maintain the continuing program training in accordance with OMES requirements.

260:115-11-6. RESERVED

260:115-11-7. Security

(a) 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.

(b) The cardholder shall ensure the State Purchase Card is kept in a secure manner and the State Purchase Card account number on the card is not posted or left in a conspicuous place.

(c) The state entity is responsible for maintaining adequate security of State Purchase Card account numbers and related information.

260:115-11-8. RESERVED

260:115-11-9. Recordkeeping

A receipt shall be obtained for all purchases regardless of the order method. The receipt shall give an itemized and detailed description of the purchase and must include 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.

SUBCHAPTER 13. DISABLED VETERAN BUSINESS ENTERPRISE ACT

260:115-13-1. Awarding contracts

Bidders responding to a solicitation meeting the criteria of a service-disabled veteran business as defined in 74 O.S. §85.44E shall be given a three percentage (3%) bonus points preference during the solicitation evaluation.

(1) Bidder Requirements.

(A) 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.

(B) Bidder shall provide a letter from the United States Department of Veterans Affairs which certifies the veteran(s) has a service connected disability.

(C) Bidder shall provide documentation of the business organizational structure demonstrating,

(i) Not less than fifty-one percent (51%) of the business ownership is by one or more service-disabled veterans, and

(ii) The management and daily business operation is controlled by one or more service-disabled veterans.

(2) **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.

(3) **Reporting Requirements.** Pursuant to 74 O.S. §85.44E, the Director of the Office of Management and Enterprise Services shall have a goal of three percent (3%) of all contracts be awarded to service-disabled veteran businesses. On or before September 1 of each year, each state entity shall submit an electronic report to the State Purchasing Director documenting all solicitations awarded by the state entity in the previous fiscal year. The State Purchasing Director will define the report format and content required to collect the service-disabled veteran business data.