



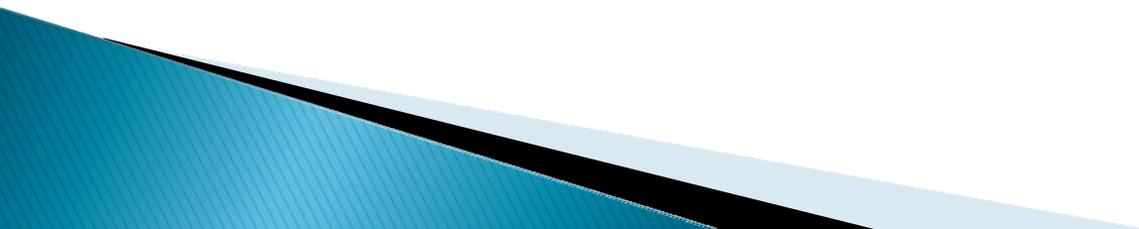
Department of Central Services Central Purchasing Division

2011 Administrative Rules Overview

July 21, 2011

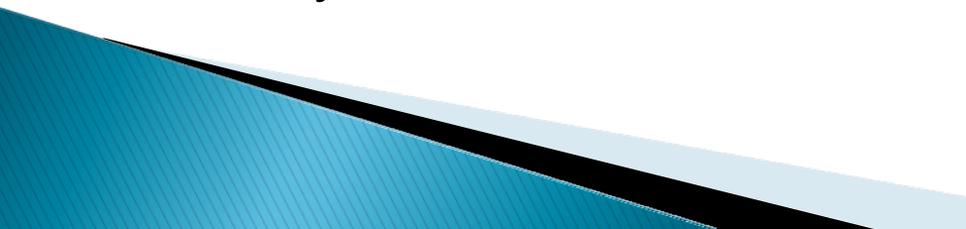
Scott Schlotthauer, State Purchasing Director

SESSION AGENDA

- ▶ **Welcome & Introductions**
 - ▶ **2011 Central Purchasing Rules - OAC 580:16-
What's Changed?**
 - ▶ **2011 House of Representatives Interim
Studies**
 - ▶ **2011 Central Purchasing-related Legislation**
 - ▶ **Central Purchasing Activities**
 - ▶ **Questions & Answers**
- 

CP Rules PowerPoint Slides

Adoption of a completely new chapter of Central Purchasing does not provide users with the typical underlining and strikeouts of text, which allow readers to quickly identify changes from previous rules. The rules portion of this PowerPoint was drafted in an effort to provide agencies with highlights of 2011 rule revisions that are incorporated within the new, reorganized Chapter 16. The citation to a rule's Chapter 15 location appears in brackets in each rule highlighted in the PowerPoint for reference. The final slide contains contact information should you have any questions or would like additional clarification about a rule highlighted in this presentation. Thank you.



Previous Chapter & Organization

- ❑ **Title 580: Chapter 15 or OAC 580:15**
- ❑ **Effective June 25, 2010**
- ❑ **Chapter organization**
 - **Subchapter 2: General Provisions**
 - **Subchapter 4: Supplier Provisions**
 - **Subchapter 6: State Agency Provisions**

SUBSTANTIVE RULE CHANGES

SUBCHAPTER 1. GENERAL PROVISIONS

□ 580:16-1-2. Definitions

➤ **Addendum** – a written modification to a contract

□ New

➤ **Alteration** – a modification a bidder makes to a solicitation response prior to the response due date

□ Former definition defined alteration the same as an addendum. New definition mirrors definition in solicitation T&As.

Substantive Changes Cont.

- **Alternate or alternative bid** – a bid or proposal, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.
 - ❑ Revisions to definition taken from NASPO definition.
- **Amendment** – a written change, addition, correction, or revision to a solicitation made by the state agency responsible for making the acquisition.
 - ❑ Deleted “The terms addendum and amendment are synonymous.”

Substantive Changes Cont.

- **Bidder** – an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. When used in this Chapter, bidder is synonymous with a “supplier” or “vendor” responding to a solicitation.
 - ❑ Current statutory definition was added for clarification of the use of multiple terms in the Chapter.
- **Life cycle costing**
 - ❑ Deleted

Substantive Changes Cont.

- **“Request for information or RFI”** – a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation
 - ❑ New – added back to rules
- ❑ **580:16-1-6. Purchasing forms [580:15-2-5)**
 - ❑ Added availability of forms on DCS website

Substantive Changes Cont.

SUBCHAPTER 3. SUPPLIER PROVISIONS

□ **580:16-3-21. Supplier's protest** [580:15-4-13]

(a)(4)(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.

➤ Former language 580:15-4-13(D): "The cost of actions required by the provisions of this section, together with other necessary expenses incurred pursuant to this section, shall be paid by the state agency responsible for the initial solicitation."

Substantive Changes Cont.

(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.

➤ Added language for emphasis

□ **580:16-3-25. Supplier debarment** [580:15-4-19]

➤ Added “. . . and cancel any existing contracts with the State of Oklahoma.”

Substantive Changes Cont.

SUBCHAPTER 5. STATE AGENCY PROVISIONS

□ 580:16-5-7. State agency purchasing procedures

[580:15-6-3]

➤ A state agency must state the method whereby a supplier may protest a contract award by the agency pursuant to 580:16-3-21 in its internal purchasing procedures.

- New - added to (a)

Substantive Changes Cont.

- **580:16-5-7. State agency purchasing procedures**
 - (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 DCS. 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
 - Language taken from official P/Card Procedures

Substantive Changes Cont.

- ❑ **580:16-5-13. Authorized signatures for state agency procurement [580:15-6-6.2]**
 - Deleted last two references to “affidavit” and replaced with “certification”
- ❑ **580:16-5-17 (1)(A) Ratification of an unauthorized commitment [580:15-6-17]**
 - (ii) The chief administrative officer shall document facts and circumstances of the unauthorized commitment.
 - Previously was (iii)
 - (iii) The chief administrator officer shall sign the proposed ratification agreement.
 - Previously was (ii); replaced “settlement” with “ratification”

Substantive Changes Cont.

❑ **580:16-5-17 (1)(A) Ratification of an unauthorized commitment [580:15-6-17] (cont.)**

(iv) The chief administrative officer shall provide a copy of the ratification agreement and, upon request, the supporting documents to the State Purchasing Director.

➤ replaced “settlement” with “ratification” and added “upon request” related to supporting documents submitted to State Purchasing Director

Substantive Changes Cont.

❑ **580:16-5-21. Procedures for state agency privatization contracts [580:15-6-20]**

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.

- Replaced statutory list of requirements with simple statement & have developed Checklist/Guideline documents to assist agencies with process.

Substantive Changes Cont.

SUBCHAPTER 7. PROCUREMENT PART 1. GENERAL PROCUREMENT

- **580:16-7-3. Methods state agencies use to make acquisitions [580:15-6-5]**
 - (1) . . . State Use Committee contracts are mandatory contracts to the extent a fair market value has been established.
 - Added clarification related to when State Use contracts are mandatory, which reflects current practice

Substantive Changes Cont.

- **580:16-7-3. Methods state agencies use to make acquisitions [580:15-6-5] (cont.)**
 - **(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 Corrections Industries pursuant to 57 O.S. 549.1 or statewide contracts as follows . . .
 - Clarification added to correspond with revision to (1)

Substantive Changes Cont.

PART 3. REQUIREMENTS FOR ACQUISITIONS

- **580:16-7-13. Acquisitions over \$5,000.00 and not exceeding \$25,000.00 [580:15-6-6]**
 - This section is a consolidation of 580:15-6-6(d) and 580:15-6-6(e) for acquisitions exceeding \$5,000 and not exceeding \$25,000; appropriate language added to cover purchasing requirements in this range.
 - (c) **Supplier selection.** Selection of suppliers shall be rotated whenever more than ten (10) suppliers are registered.
 - Clarification added to provide for commodity lists with less than ten suppliers when rotation is unnecessary. Former language was “Selection of suppliers shall be rotated.”

Substantive Changes Cont.

- ❑ **580:16-7-21. Acquisition pursuant to a waiver**
[580:15-2-11 and 580:15-4-5]
 - Expands rule language to add required criteria for this type of acquisition from previous version in 580:15-4-5(c)(4)
- ❑ **580:16-7-23. State agency acquisitions processed by the Central Purchasing Division** [580:15-6-10]
 - (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.
 - New – provides evaluation criteria to CPD at beginning of acquisition process to assist expediting solicitation process

Substantive Changes Cont.

PART 5. COMPETITIVE SEALED BIDS

❑ 580:16-7-30. Competitive sealed solicitations

[580:15-4-5]

(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.

➤ Added language for flexibility to use sealed solicitation method when other methods are available, e.g. telephone quotes etc.

Substantive Changes Cont.

- **580:16-7-30. Competitive sealed solicitations**
[580:15-4-5] (cont.)

(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;

Substantive Changes Cont.

- **580:16-7-30. Competitive sealed solicitations (cont.)**
 - (e) Limited contact. (cont.)**
 - (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.
 - CPO guidance expanded from 580:15-4-5(d) by adding (1),(2), and (3); previous language ended “limited contact” requirements with . . shall be documented & filed in the acquisition file.”

Substantive Changes Cont.

□ 580:16-7-30. Competitive sealed solicitations (cont.)

(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 Department of Central Services. [74 O.S. 34.3(B)]*

➤ Added statutory language for emphasis & quick reference.

Substantive Changes Cont.

□ 580:16-7-30. Competitive sealed solicitations (cont)

(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.

➤ Former language in 580:15-4-5(j): Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation. Language added to new rule to emphasize including costs in solicitation responses.

Substantive Changes Cont.

- **580:16-7-30. Competitive sealed solicitations (cont)**
 - (o) **Sample submission.**
 - (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.

Substantive Changes Cont.

- **580:16-7-30. Competitive sealed solicitations (cont.)**
 - (o) **Sample submission. (cont.)**
 - (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.
 - Language related to samples cleaned up to eliminate redundancies; condensed 9 bullets in previous 580:15-4-5(I) to 4 in new Chapter; eliminated use of “unsuccessful bidder samples” because “unsuccessful” is not always the case;

Substantive Changes Cont.

□ 580:16-7-32. Bid Evaluation [580:15-4-11]

(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.

Substantive Changes Cont.

□ **580:16-7-32. Bid Evaluation [580:15-4-11] (cont.)**

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

(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]

Substantive Changes Cont.

□ **580:16-7-32. Bid Evaluation [580:15-4-11] (cont.)**

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

(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.

➤ Language expanded for clarification. Formerly: 580:15-4-11(a) Evaluation documentation. Prior to distribution of a solicitation, the State Purchasing Director shall establish written evaluation criteria for use in evaluation of the bids. Evaluation of the bids shall be documented and filed in the acquisition file.

Substantive Changes Cont.

□ 580:16-7-32. Bid Evaluation [580:15-4-11] (cont.)

(h) Reasons for bid rejection.

- Reasons in subsection were separated between “not responsible” and “non-responsive”
- Some “shall be considered . . .” changed to “may be considered . . .”

□ 580:16-7-36. Contract award [580:15-4-12]

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

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

- (5) - NEW

Substantive Changes Cont.

PART 7. ADDITIONAL PROCUREMENT INFORMATION

□ 580:16-7-44. Trade-ins [580:15-6-6]

- Deleted required “prior written approval by the State Purchasing Director
- Added “Written documentation of the fair market value analysis shall be filed in the acquisition file by the state agency.” for audit trail.

Substantive Changes Cont.

PART 9. INFORMATION TECHNOLOGY ACQUISITIONS

☐ 580:16-7-56. Accessible information technology (IT) acquisitions [580:15-6-21]

- No substantive changes made to this section. Revisions only eliminated duplicate language and provided clarification.

Substantive Changes Cont.

SUBCHAPTER 9. CONTRACT MANAGEMENT

□ **580:16-9-1. Supplier contract performance** [580:15-4-14]

(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.

➤ (1) is NEW

Substantive Changes Cont.

□ **580:16-9-7. State agency and supplier disputes**

[580:15-2-7]

(a) **Quality Assurance inspections by stat 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.

➤ (a) is NEW

Substantive Changes Cont.

□ **580:16-9-7. State agency and supplier disputes** [580:15-2-7] (cont.)

(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

➤ (b) is NEW

Substantive Changes Cont.

SUBCHAPTER 11. PURCHASE CARDS AND OTHER ELECTRONIC PAYMENT MECHANISMS

□ 580:16-11-1. State Purchase Card Program

- New sections related to P/Card Program include 580:16-11-1 through 580:16-11-9
- Requirements in these sections are taken directly from current State P/Card Procedures and are static requirements, unlikely to change in the event of a change in P/Card contract supplier.

House of Representatives 2011 Approved Interim Studies

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IS #	Study	Author(s)	Committee	Meetings	Status
11-001	Addressing Abandoned and Neglected Properties	Representative Seneca Scott/Brian Crain, Senate Author, Representative	N/A		Combined with 11-035

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House of Representatives

2011 Approved Interim Studies

- **11-002 and 11-112** are studies of the state purchasing act and an analysis of Central Purchasing Procedures to provide an overview of state managed spend items, review the procedures which apply to agency level purchasing officials, analyze the effectiveness of recent legislative purchasing system reforms and explore possibilities for additional savings. Representatives Jason Murphey, Lisa Billy, Jeff Hickman, and Mark McCullough.

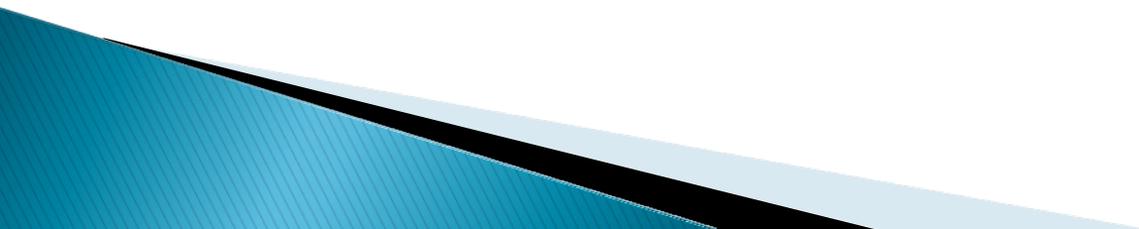
Committee – Government Modernization

House of Representatives

2011 Approved Interim Studies

- **11-007, 11-015 and 11-019** are studies to examine Higher Education's near universal exemption from Legislative oversight and general unaccountability to the Oklahoma governmental authorities, practices, and processes. The study will provide an overview of the statutory exemptions granted to Oklahoma Higher Education entities and the possible need for changes in the Oklahoma Constitution. Representatives Jason Murphey, Corey Holland, and Mark McCullough
Committee – Higher Education

House of Representatives 2011 Approved Interim Studies

- **11-021 and 11-125** are studies and reviews of ongoing state agency and process consolidation efforts and study the opportunity for additional reforms. Representative Jason Murphey and Lewis Moore.
Committee – Government Modernization
- 

House of Representatives

2011 Approved Interim Studies

- **11-118** is an interim study that will perform a comprehensive review of all companies that receive state contracts, whether directly or indirectly, in order to determine compliance with the E-Verify System and enforcement of lawful employment in Oklahoma. The 10th U.S. Circuit Court of Appeals ruled Feb. 2, 2010, that Oklahoma can enforce the provision of its immigration law requiring state contractors to use the federal government's E-Verify system to prove the legal status of employees. Representative Eric Proctor.
Committee – House Members of the Joint Immigration Committee

Central Purchasing Related Legislation

□ **HB 1034**

- Modifies language related to the Oklahoma Central Purchasing Act.
- Effective November 1, 2011
- Removes "certified procurement analysts" as a certification option for state agency purchasing officials.
- It also modifies allowed use of the state purchase card to include:
 - unlimited interagency payments, and
 - professional services, such as those provided by a physician, a veterinarian, an attorney, an architect and a certified public accountant.

Central Purchasing Related Legislation

HB 1034 Continued

- It requires a state agency to evaluate the performance of all professional service contracts exceeding the "fair and reasonable" dollar threshold. It requires contracts entered into with the state to include a statement that no person who has been involved in any manner in the development of that contract while employed by the state shall be employed to fulfill any of the services provided under the contract.

Central Purchasing Related Legislation

□ **HB 2140**

- Creates the State Government Administrative Process Consolidation and Reorganization Reform Act of 2011
- Effective August 26, 2011
- It consolidates the Department of Central Services, Office of Personnel Management, Edmployees Benefits Council and the Oklahoma State and Education Employees Group Insurance Board into the Office of State Finance

Central Purchasing Related Legislation

□ HB 1086

- Creates the Transparency, Accountability and Innovation in Oklahoma State Government 2.0 Act of 2011
- Effective August 26, 2011
- Requires rather than allows the State Governmental Technology Applications Review Board to consider and approve social media policies used by state offices

Central Purchasing Related Legislation

□ **HB 1086 continued**

- A new section of law to be codified in the Oklahoma Statutes as Section 85.7e of Title 74, The Department of Central Services or its successor agency shall utilize a wiki venue to provide for the public two-way communication between procurement officers and potential vendors who have questions regarding a request for proposal or invitation to bid. The Department shall provide editing access to all interested potential bidders and viewing access to all members of the public.

Central Purchasing Related Legislation

□ HB 1086 continued

- The Department of Central Services or its successor agency shall provide agency-level procurement officers with a wiki platform for reporting the availability of items for purchase at a cost which is less than comparable products on a mandatory statewide purchase contract. The Department shall provide wiki editing access to all state agency procurement officers and viewing access to all members of the public.
- State agency procurement officers shall utilize the wiki described in subsection B of this section to report all findings of products which can be purchased for less than comparable products which are on a mandatory statewide purchasing schedule.

Central Purchasing Related Legislation

□ **HB 1304**

- Creates the information Technology Consolidation and Coordination Act
- Effective August 26, 2011

Central Purchasing Activities

- ❑ Vendor Registration
- ❑ Solicitation postings
- ❑ Cost savings reporting
 - ❑ DCS/PURCHASING FORM 094
- ❑ Requisitions submitted to Central Purchasing:
 - Specifications
 - Evaluation Tool
 - Contact Information
- ❑ sciQuest

CONTACTS

- ❑ Email questions related to Chapter 16. Central Purchasing rules or suggested changes to the Central Purchasing Act to:

Keith_Gentry@dcs.state.ok.us

- ❑ Email suggestions or recommendations for Central Purchasing rules to:

Gerry_Smedley@dcs.state.ok.us