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STATE OF OKLAHOMA
DEPARTMENT OF CENTRAL SERVICES

PROCUREMENT INFORMATION MEMORANDUM 07-01

TO: All Certified Procurement Officers

REVISION DATE: September 09, 2009

SUBJECT: Fixed and Uniform Rate Contracts — Criteria and Guidelines

References: 74 OS. Supp. 2005, § 85.7(A)(11)

1. Purpose and Overview

- a. Fixed and uniform rate contracts shall only be used by agencies to provide services to their clients, who directly benefit from such services. This type of contract is used when the number of required service providers and/or the geographic dispersion of service locations effectively render the use of competitive bidding procedures to be ineffective for delivery of the service, or when the industry standards for the service facilitate the establishment of fair rates of service for the state. Fixed and uniform rate contracts facilitate the establishment of contracts with providers or provider organizations, and they facilitate budgeting and payment systems effectiveness. Finally, fixed and uniform rate contracts enhance program effectiveness and relationships between using agencies and service providers by allowing provider input into the rate setting process. The result of a fixed rate contract is to establish a rate of payment, or maximum (not to exceed) rate, at which all qualified contractors providing the same services will be compensated.
- b. The Director of the Department of Central Services (DCS) shall approve the acquisition of a service as qualifying for a fixed and uniform rate, in accordance with the criteria and procedures in paragraph 2 below. The requesting state agency shall approve the rate of compensation for a fixed and uniform rate contract and provide documentation for comment by the Director of DCS, in accordance with the procedures in sections 2. and 3, below.
- c. Following approval by the Department of Central Services that the acquisition of a service qualifies as a fixed and uniform rate, the Department of Central Services authorizes agencies offering said services to award contracts for these services, regardless of the contract amount, provided the agency has current DCS approved internal purchasing fixed rate procedures and a Certified Procurement Officer.

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2. Criteria and procedures for qualification of a service for acquisition at a fixed and uniform rate:

- a. Criteria:** An acquisition of a service for a fixed and uniform rate must meet the following conditions for consideration by DCS:
- (1) Fixed rate contracts provide direct client services. Client services can include services received by clients or prevention services targeting client populations.
 - (2) A service being considered as a fixed rate contract must be capable of being provided by multiple providers; service provision is not restricted to one corporate entity.
 - (3) A service being considered as a fixed rate contract is either exempt from competitive bidding, or establishing a fixed rate is more appropriate than competitive bidding because the competitive bidding process is administratively or cost prohibitive or would not result in effective service delivery.
 - (4) Fixed rate contracts do not include those professional services as defined in Section 803 of Title 18 of the Oklahoma Statutes.
 - (5) A service being considered as a fixed rate contract is commonly acquired and has an established cost or value that may be documented in a like or similar marketplace or setting.
 - (6) Each Agency must establish its own description of direct client services, consistent with section 2.a. (1) and make a determination of proposed fixed rates. Agencies may adopt a DCS approved fixed rate service from another agency, provided the same description of the services and rate of compensation is used by the requesting agency, upon notification to and approval by the Director of the Department of Central Services.
 - (7) A state agency shall not use the fixed rates contracting process to employ consultants or purchase products.
 - (8) Services that have established rates, where there are methodologies and payments are subject to federal review and approval shall qualify as fixed and uniform rates. Agencies shall submit the same documentation as required for the federal review process on such fixed rate services to the Department of Central Services.
- b. Procedures:** An agency seeking approval from the Director of the Department of Central Services (DCS) shall submit a written request, which shall include the following documentation to support the request for a service to be qualified as a fixed and uniform rate service acquisition:
- (1) Description of the requested service, including a description and reference to the federal and state rules, regulations and standards that relate to the client service.
 - (2) Description of the service clientele, including estimated number of clients and geographic location and dispersion of clients.
 - (3) Required qualifications of the service providers (by education, license, and/or experience).
 - (4) Estimate of the number of service providers required under contract with the agency to meet the needs of the agency to provide the client service.
 - (5) Statement certifying that service provision will not be restricted to one corporate entity.
 - (6) List of all applicable service industry standards for delivery of the requested service in the region.

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- (7) Summary statement of justification indicating why the service should be considered as a fixed rate. Specifically address in the summary statement why the service should not be acquired through the competitive bidding process.
- (8) The Director of DCS shall approve or deny the request to qualify the acquisition of a service at a fixed and uniform rate.

3. Establishment and Approval of New or Modification of Established Fixed and Uniform Rates

- a. Guidelines: Upon DCS approval of a fixed and uniform rate service, an agency must establish compensation for a new fixed and uniform rate service or modify established fixed and uniform rates of compensation. Documentation regarding agency establishment of a fixed and uniform rate must be submitted to DCS for review and comment, as follows:
 - (1) The proposed fixed and uniform rate amount, including both direct and indirect costs (as applicable). Documentation shall include information on all rates, costs or charges considered by an agency in determining a fixed and uniform rate including, but not limited to the following; vendor costs: rates or charges, market prices, existing rates offered through insurance, public agencies in Oklahoma or other states for comparable services, national and state indices/data about wages, benefits, capital and transportation, and other relevant program data supporting rates, costs or charges.
 - (2) Documentation shall include specific information on both direct and indirect costs of providing the service, if applicable.
 - (3) Documentation shall include any administrative fees charged to each direct client if applicable, and the financial basis (actual cost) for the fees.
 - (4) In those instances when the methodologies and payments are subject to federal review and approval prior to implementation, the state agency will only be required to submit the same documentation that is required by the approving federal agency.
- b. Procedures: The state agency shall approve rates of compensation for fixed and uniform rate service contracts in a public hearing. Consideration of the rates must be a specific agenda item for the public hearing and shall be openly and separately discussed. The notice of a public hearing required for any review of a State Plan, when the methodologies and payments are subject to federal review and approval prior to implementation, will be sufficient notice to the Director of DCS for those instances. Otherwise, agencies must use the following procedures to officially establish fixed and uniform rates:
 - (1) The state agency shall notify the Director of DCS of its pending consideration of the proposed rate at least thirty (30) days before the state agency is to meet on the proposed rate.
 - (2) The notification to DCS shall include:
 - (a) A copy of the agenda items regarding the proposed rates.
 - (b) The proposed rate amount, including both direct and indirect costs (as applicable).
 - (c) Documentation shall be tied to the applicable methodology identified in section 3.a.(1) If the requested service is being initially established and no established cost or value data from providers is available, a detailed rate analysis of the service to be provided must also be included with input from relevant provider associations.
 - (d) A copy of the proposed contract which includes the proposed fixed rate services.

- (3) Agencies shall submit documentation of federal approval to DCS of rates established and regulated by federally approved programs in accordance with section 2. (a) (8) above.
- (4) After the establishment of a fixed rate, changes mandated by a federal approving authority may be accomplished by notifying the Director of DCS of any rate change with a copy of the notice to the State Purchasing Director.
- (5) The Director of DCS shall evaluate a request to establish or modify a fixed and uniform compensation rate and communicate any observation, reservation, criticism, or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the state agency before or at the time of the hearing. The Director of DCS shall specifically note in written communications whether he or she has determined the rate to be excessive.
- (6) The Director of DCS shall present his evaluation in person or his written evaluation shall be presented orally to the agency during the public hearing. Any comments made by the DCS Director shall be made in full as part of the official minutes of the hearing.
- (7) The state agency shall approve or deny the proposed fixed rate.
- (8) Within two (2) weeks after the convening of the Legislature, the administrative officer of the state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and, upon request, to any member of the House or Senate a complete list of all of the type of services paid for by fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate that has been determined to be excessive by the Director of DCS shall be specifically identified in this report.

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