OKLAHOMA DEPARTMENT OF CENTRAL SERVICES

CENTRAL PURCHASING

ADMINISTRATIVE RULES
OAC 580:15

(Includes 2009 Emergency Rules, effective October 1, 2009.)

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TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 15. CENTRAL PURCHASING

SUBCHAPTER 2. GENERAL PROVISIONS

Section

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580:15-2-1. Purpose

This subchapter provides information to suppliers that desire to sell acquisitions to state agencies, and to state agencies to ensure compliance with provisions of the Oklahoma Central Purchasing Act. These rules of the Purchasing Division of the Department of Central Services conform to requirements of the Oklahoma Central Purchasing Act, 74 O.S., Sections 85.1 et seq. Promulgation of these rules is by the Director of the Department of Central Services and pursuant to 74 O.S., Section 85.5, 74 O.S., Section 85.45s and 62 O.S., Section 41.5t..

580:15-2-2. Definitions

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.

"Affiliates" means associated business entities or individuals that directly or indirectly control or can control other business entities, or individuals that associate with a business entity but derive financial benefit from another business entity.

"Aircraft" means any device now known, or hereafter invented, used, or designed for navigation of or flight in the air or airspace.

"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 written modification to a contract.

"Alternate bid" means that with the submission of a bid that meets the requirements of the solicitation, a bidder, at the same time, includes another bid, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

"Amendment" means a written change, addition, alteration, correction, or revision to a solicitation issued by the state agency responsible for making the acquisition. The terms addendum and amendment are synonymous.

"Authorized signature" means a manual, electronic or digital signature or other identifier uniquely linked to a person the supplier authorizes 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.

"Business days" means Monday through Friday and is exclusive of weekends and state holidays.

"Certified procurement officer or **CPO"** means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Clarification" means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date" means the date and time a solicitation specifies after which a bid is considered late and the Purchasing Division or state agency will not accept a bid.

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

"Commodity list" means a list of all items and services in a commodity classification.

"Competitive bidding" means a process of acquisition wherein bidders submit bids to the Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive bidding process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirement of the statutes and/or 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 suppliers list, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Department of Central Services awards or administers.

"Department" or **"DCS"** means the Department of Central Services.

"Director" means the Director of the Department of Central Services.

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"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 endanger human life, safety poses imminent danger to significant property or is condition certified by the Governor as a serious environmental situation.

"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.

"Fixed rate" means a rate the Department establishes for contracts for services a supplier provides to persons directly benefiting from the services.

"Forms" means documents the Director prescribes and requires suppliers and state agencies to use to provide information to the Department or Purchasing Division.

"Indefinite quantity contract" means a contract the State Purchasing Director 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 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., Section 41.5t.1]

"Internet" means the global information network of both federal and nonfederal systems that are linked together by a globally unique address and includes the subnetwork called the World Wide Web.

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

"Life Cycle Costing" means a procurement technique that takes into account demonstrable and documented operating, maintenance, the cost of money, other costs of ownership, usage, resale or residual value in addition to acquisition price in making an award on lowest and best or best value.

"Material deficiency" or **"material deviation"** means 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 required of a supplier to be submitted pursuant to the Oklahoma Central Purchasing Act with any competitive bid or contract executed by the state for goods or services.

"Nonresponsive" means a bid that does not conform to essential requirements in a solicitation.

"Office of State Finance" or **"OSF"** means the Oklahoma Office of State Finance.

"Oklahoma Central Purchasing Act" means 74 O.S., Sections 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"** or **"Standards"** means the accessibility standards adopted by the Office of State Finance together with the Department of Central 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.

"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, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information 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.

"Purchasing Division" or **"Division"** means the Purchasing Division of the Department of Central Services.

"Ratification" means the act of approving an unauthorized commitment made by a state agency.

"Reciprocity" means a preference, which the State Purchasing Director shall apply against the price an out of state bidder submits for an acquisition whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means a supplier that registers with the Purchasing Division pursuant to 580:15-4-2.

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

"Request for proposal" 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" means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.

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

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

"Responsive offer" means an offer a supplier submits, which conforms in all material respects to requirements a solicitation states.

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

"Reverse Auctioning" means a procurement method wherein 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' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

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

"Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance.

"Settlement agreement" means a document that reflects an agreement between the state and an individual or business entity that ratifies an unauthorized commitment.

"Solicitation" means *a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or a request for quotation.* [74 O.S., Section 85.2 (34)]

"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 Purchasing Division of the Department of Central Services appointed by the Director of the Department or the Purchasing Director's designee.

"State Use Committee" means a committee that certifies severely disabled individuals and sheltered workshops as qualified organizations that contract with the state to provide products and services made by severely disabled individuals, and establishes the State Use Committee procurement schedule for state agency use pursuant to 74 O.S., Sections 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 complaint" or **"performance evaluation"** means information a state agency or the Purchasing Division provides to the State Purchasing Director, in a manner the Director prescribes, that documents supplier performance.

"Supplier registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for commodities on a commodity list for a specified period of time. The process for bidder registration for the receipt of online solicitations may be a separate list. Online bidders may be required to prequalify and online solicitations may be restricted to prequalified online bidders.

"Suppliers list" means a list of individuals or business entities that desire notification of solicitations for specified commodity lists.

"Suspension" means action by the State Purchasing Director to exclude an individual or business entity from the suppliers list.

580:15-2-3. Statutory citations

Statutory citations refer to the most recent codification of statute.

580:15-2-4. Purchasing Division

The Purchasing Division is a division of the Department of Central Services.

580:15-2-5. Purchasing Division forms

The Director shall approve forms that the Division uses, requires suppliers to use or requires state agencies to use. The Division shall provide forms upon request.

580:15-2-6. Bid submission document open for public inspection

(a) Documents a supplier submits in a bid are public records and shall be available for review, upon request, after a supplier is selected and the bid is awarded. An electronic bid submitted through the online bidding 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 bidder's financial information or proprietary information confidential and may or may not reject all requests to disclose the information so designated. [74 O.S., Section 85.10].

580:15-2-7. State Purchasing Director authority

(a) **General.** The State Purchasing Director is an employee of the Department of Central Services. The Director and the Oklahoma Central Purchasing Act prescribe the duties, responsibilities and authority of the State Purchasing Director.

(b) **New Contracting Procedures.** Whenever the State Purchasing Director develops and tests new contracting procedures and said procedures are used for acquisitions, the State Purchasing Director shall promptly notify state agencies.

(c) **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 agency personnel regarding a solicitation shall be documented and submitted to DCS for inclusion in the bid file.

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

(e) **Negotiation**. The State Purchasing Director or designee may negotiate contracts by following these rules for negotiation. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions exceeding $10,000.00 only with the prior written approval of the State Purchasing Director.

(1) **Negotiation team.** The State Purchasing Director shall designate a negotiator or negotiation team. The State Purchasing Director or designee shall serve as the lead negotiator for a team.

(2) **Negotiation process.**

(A) The lead negotiator shall notify vendors of the date and time for negotiations.
(B) 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.
(C) The lead negotiator shall determine the location and manner of negotiation.
(D) 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.
(E) The lead negotiator may require suppliers to submit a best and final offer.
(F) The lead negotiator shall prepare a summary that shall document the following:

(i) an overview setting forth the solicitation number, names and titles of participants, description of the contract, date and location of the negotiation, and purpose of the negotiation; and

(ii) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.

(G) A summary created under these rules shall become a part of the contract file retained.

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

580:15-2-8. Legal counsel

Legal counsel for the Purchasing Division is legal counsel for the Department of Central Services.

580:15-2-9. Exceptions

The Oklahoma Central Purchasing Act grants some state agencies, departments and acquisitions exceptions from some or all provisions of the Oklahoma Central Purchasing Act. The Purchasing Director shall adhere to provisions for exceptions for each state agency, department or acquisition pursuant to the Oklahoma Central Purchasing Act. State agencies and departments shall contact the Purchasing Director if the state agency or department requires information regarding exceptions.

580:15-2-10. Emergency declarations [REVOKED]

580:15-2-11. Waivers

(a) **Waiver request.** A state agency may request a waiver from competitive bidding requirements or rules of this chapter from the Director of the Department of Central Services, if:

(1) the state agency reasonably believes that the state agency 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 Director shall notify the agency of the approval, conditional approval or denial of the waiver request.

SUBCHAPTER 4. SUPPLIER PROVISIONS

Section

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580:15-4-16. State agency and supplier disputes
580:15-4-17. Contract termination
580:15-4-18. Supplier suspension from suppliers list
580:15-4-19. Supplier debarment
580:15-4-20. Other provisions [Revoked]

580:15-4-1. Purpose

This Subchapter provides information for suppliers and procedures that suppliers shall follow to ensure compliance with provisions of the Oklahoma Central Purchasing Act.

580:15-4-2. Supplier registration

(a) **General.** The Purchasing Division shall place a registered supplier on the suppliers list for each commodity class for which a supplier registers. The Division shall provide the supplier information for each commodity class for which the supplier desires to register. Except in an emergency acquisition declared in accordance with Oklahoma statutes or pursuant to a waiver approved in accordance with 580:15-2-11, the Division shall notify registered suppliers of invitations to bid or requests for proposal for each commodity class for which a supplier registers.

(b) **Registration.** Suppliers shall submit supplier registration forms to the Purchasing Division. The State Purchasing Director shall not place a supplier on the supplier list if the supplier provides incomplete information or if the State Purchasing Director determines the supplier is not responsible.

(c) **Registration fee.** Suppliers shall pay an annual fee as set by 74 O.S., §85.33 to the Purchasing Division for each commodity class for which the supplier registers.

(d) **Voluntary removal from suppliers list.** Suppliers may request the Purchasing Division remove them from the suppliers list for a commodity.

(e) **Registration fee refunds.** The Purchasing Division shall not refund supplier registration fees.

580:15-4-3. Minority business enterprise program [REVOKED]

580:15-4-4. Supplier provisions

(a) **Supplier relationship restrictions**. The Oklahoma Central Purchasing Act prohibits some suppliers from supplying acquisitions to a state agency pursuant to 74 O.S., Section 85.3.

(1) Supplier is an employee of the Purchasing Division. An employee of the Purchasing Division shall not sell to or otherwise provide an acquisition to a state agency subject to the Oklahoma Central Purchasing Act.

(2) Purchasing Division employee is an owner of the supplier. An employee of the Purchasing Division shall not be an employee, partner, associate, officer or stockholder in or with a business entity that sells to or otherwise provides an acquisition to a state agency subject to the Oklahoma Central Purchasing Act.

(3) Purchasing Division employee's spouse or child owns stock in a supplier. The spouse or child of an employee of the Purchasing Division shall not be a stockholder of any business entity which sells to or otherwise provides an acquisition to a state agency subject to the Oklahoma Central Purchasing Act.

(4) Purchasing Division employee's relative is an employee of, or a stockholder of a supplier. A relative within the third degree, whether by consanguinity or affinity, of an employee of the Purchasing Division shall not sell to or otherwise provide an acquisition to a state agency subject to the Oklahoma Central Purchasing Act or own an interest in any business entity which does so. This prohibition shall not apply if such relative, excluding a spouse or child, owns stock worth Five Thousand Dollars ($5,000.00) or less, or One Percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Purchasing Act.

(b) **One year limitation for contracts with state officials**. A state agency shall not enter into a sole source contract, a professional service contract or a contract for the services of a state official for one year after the termination date of the state official from the state agency. A state agency may enter into a sole source contract, contract for professional services or a contract for the services of a person at any time with a person that is a qualified interpreter for the deaf [74:85.42(D)].

(c) **Supplier gratuities**. A supplier shall not give or donate anything of value to an employee of the Department or a member of the immediate family of an employee of the Department [74 O.S., §85.13].

(1) The Purchasing Director shall suspend or debar a supplier convicted of a violation pursuant to this provision.

(2) The Purchasing Director shall reject bids of a supplier convicted of a violation of this provision. The Purchasing Director may terminate a contract with the supplier convicted of a violation of this provision, if the termination shall be in the best interest of the state agency.

580:15-4-5. Bid solicitation

(a) **General.** The Purchasing Division shall comply with provisions of the Oklahoma Central Purchasing Act and rules the Department promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers. When a state agency purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent 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) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

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

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

(3) **Emergency notification.** For an emergency acquisition authorized by Oklahoma statutes, the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce.

(5) **Amendments to a solicitation**. If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) **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.

(e) **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.

(f) **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.

(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 contractor 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.

(g) **Non-Collusion certification.** The 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 Purchasing Division.

(h) **Pre-bid conference.** The State Purchasing Director shall state in a solicitation if the State Purchasing Director shall hold a supplier pre-bid conference and shall state whether supplier attendance is mandatory or non-mandatory.
(i) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.
(j) **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 Director of Central Services may authorize the Division 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.
(k) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.

(1) **Sample receipt**. If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.
(2) **Sample identification**. The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.
(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.
(4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.
(5) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.
(6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.
(7) **Unsuccessful bidder samples.**

(A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.
(B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.
(C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.

(8) **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.
(9) The State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.

(l) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

580:15-4-6. Bid preparation

(a) **General.** A bid a supplier submits to the Purchasing Director shall agree to all terms and conditions the solicitation specifies.

(b) **Forms the Purchasing Director requires suppliers to submit.** The Purchasing Director shall include forms in the solicitation suppliers shall submit with the supplier's bid.

(c) **Additional form requirements.**

(1) **Data the supplier submits.**

(A) The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(B) Information the supplier submits shall be legibly hand written, typewritten, ~~or~~ printed or electronically conveyed and shall meet all terms and conditions of the solicitation.

(C) Should the supplier alter form or bid information, the supplier shall initial each alteration.

(2) **Authorized signature.** A form a supplier submits with the supplier's bid to the Purchasing Division shall bear an authorized signature. Any form requiring a supplier's signature submitted to the Purchasing Division shall have an authorized signature.

(3) **Notary seal.** If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner state laws of the bidder's state specify.

(d) **Contract.** The contract the State Purchasing Director awards pursuant to a solicitation shall consist of the following contract documents: invitation to bid, or request for proposal or request for quotation; Purchasing Division attachments including, but not limited to, amendments, change orders or modifications; the supplier's bid or quotation with attachments, reviewed and approved by the State Purchasing Director; and, the purchase order the State Purchasing Director issues. A contract the State Purchasing Director awards may incorporate by reference all provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.

(e) **Firm bid for sixty (60) days.** The Purchasing Director shall consider a supplier's bid a firm bid for sixty (60) days following the bid closing date.

(f) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. The state shall not pay travel expenses the bid price does not include.

(g) **Tax exemptions.** State agency acquisitions are exempt from sales taxes [68 O.S., §1365] and federal excise taxes [Chapter #.32, Internal Revenue Code #73-73-016-3K]. Bidders shall not include these taxes in price quotes. The Purchasing Director shall supply tax exemption certificates to bidders if the bidder requests.

(h) **Payment terms.** State agencies shall pay suppliers pursuant to 62 O.S., Section 41.4a, et seq. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.

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

(1) **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.

(2) **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.

(3) **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.

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

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

(l) **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.

(m) **All or none bid.**

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

(n) **High technology systems**.

(1) **New high technology system**. The Purchasing Director shall not evaluate a bid for a high technology system unless the bid includes a statement of work and:

(A) **System upgrade schedule**. Documentation by the bidder of the projected schedule of recommended or required upgrades or improvements to the high technology system over a projected three-year period following the target purchase date; or,

(B) **No system upgrades**. Documentation that the bidder does not plan any recommended or required system upgrades or improvements to the high technology system, over a projected three-year period following the target purchase date.

(2) **High technology system upgrades.** The State Purchasing Director shall not evaluate a bid for an upgrade to a high technology system unless the bid includes a statement of work and:

(A) documentation that the vendor agrees to provide the upgrade or improvement at no charge to the state;

(B) documentation that the vendor previously agreed in a contract to provide the upgrade or improvement at no additional charge to the state;

(C) documentation the state agency obtained from the vendor that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or,

(D) documentation the vendor will no longer supply assistance to the state agency for the purpose of maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.

(o) **Bidder delivery.** A solicitation shall specify a delivery date or allow the bidder to specify a firm delivery date. If the solicitation does not specify a delivery date, the bidder shall specify the delivery date in the bid.

(p) **Sample submission**. For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the Purchasing Director. [Reference OAC 580:15-4-5(k)]

(q) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

580:15-4-7. 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, bid number and closing date shall be prominently displayed as stated in the solicitation.
(c) **Submission of non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.
(d) **Purchasing Division bid receipt.** Upon receipt, the Purchasing Division 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 Director of the Department of Central Services 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.

580:15-4-8. 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 method of return, 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 that significant error by the bidder exists in the bid.

580:15-4-9. Supplier bid change

A bidder who desires to change a bid the bidder submitted to the Purchasing Division shall withdraw the submitted bid and submit another bid before the closing date.

580:15-4-10. Public bid opening

Public bid opening. Bidders may request a bid be opened in public. No evaluation or award shall be made at the public opening.

580:15-4-11. Bid evaluation

(a) **Evaluation document.** The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.

(b) **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.

(c) **Reasons for bid rejection.** The State Purchasing Director shall indicate in the solicitation file if a bid is nonresponsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (i) of this Section, the State Purchasing Director may reject a bid that is nonresponsive or a bid from a nonresponsible bidder for reasons that include, but are not limited to the following:

(1) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation shall be considered nonresponsive.

(2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered nonresponsive.

(3) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered nonresponsive.

(4) **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 nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered nonresponsive.

(6) **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 shall be considered nonresponsive.

(7) **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 suppliers' state of residence, the bid shall be considered nonresponsive.

(8) **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 shall be considered nonresponsive.

(9) **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 nonresponsive.

(10) **Bid nonresponsive**. If a bid does not offer items suitable for the intended use of the items, the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid shall be considered nonresponsive.

(12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the Purchasing Director issues to a solicitation, the bid may be considered nonresponsive.

(13) **Bidder not responsible.** 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.

(14) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered nonresponsive.

(15) **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 shall be considered nonresponsive.
(16) **Past performance.** If the Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.
(17) **Signatures on solicitation documents.** If an authorized signature is omitted from any solicitation document that requires an authorized signature, the bid may be considered nonresponsive.
(18) **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.

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

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

(f) **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.

(g) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bid.

(h) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(i) **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.

(j) **Proof of insurance.** A vendor 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.

580:15-4-12. 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 Title 68, Sections 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 Title 68, Section 1364 if such entity is required to do so;
(7) coordination of award with the requisitioning state agency, if necessary; and
(8) completion of any administrative tasks.-

(b) **Award by item.** If a solicitation does not specify an all or none bid, the 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 Purchasing Director determines no bid meets the requirements of the solicitation.
(2) The Purchasing Director determines that all bids exceed fair market value for the acquisition.
(3) The state agency determines that bid price exceeds available state agency funds.
(4) The state agency determines that it no longer requires the acquisition in the form or manner the solicitation specifies.

(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 Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

580:15-4-13. Supplier's protest

A supplier may protest a contract award by a state agency or the Purchasing Division 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 the Central Purchasing Division within ten (10) business days of contract award. The protest notice shall state supplier 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) Written notice of the decision by the State Purchasing Director or the agency, if applicable, to sustain or deny the protest will be sent to the supplier within ten (10) business days of receipt of the protest.
(C) An agency making an acquisition pursuant to 74 O.S. Section 85.5(T) shall conduct all actions and bear all costs associated with the protest or appeal of a contract award.

(3) **Supplier appeal of State Purchasing Director denial.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the Director of Central Services. The supplier shall file a written appeal 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., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the appeal or assign the supplier's appeal to an administrative law judge the Department retains.

(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 Director.

(B) If the appeal is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(C) The Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.

(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.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [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 and the Department of Central Services, 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., Section 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, including requests for a temporary stay of the contract award pending a final order from the Director;

(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 Director.

(G) **Remedies**. The Administrative Law Judge may recommend that the Director deny the supplier's appeal or that the contract award be cancelled and rebid.

(6) **Supplier appeal of Director denial.** If the Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

580:15-4-14. 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.

(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 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 15-6-6(e)(2).

(g) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization without written approval of the State Purchasing Director.

580:15-4-15. 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.

(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.

580:15-4-16. State agency and supplier disputes

The Purchasing Director shall seek resolution of disputes between state agencies and suppliers.

(1) **Supplier does not retrieve and replace defective acquisition.** If a supplier fails timely to retrieve and replace an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.

(2) **Supplier does not make refund for defective acquisition.** If a supplier does not refund payment for an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.
(3) **Other supplier problems.** State agencies or the Purchasing Division shall submit a supplier complaint form for a problem that a supplier does not resolve in a timely manner.
(4) **Purchasing Director dispute resolution.** When a state agency notifies the Purchasing Director of a dispute with a supplier, the Purchasing Director shall seek to resolve the dispute.
(A) **Purchasing Director resolves dispute.** If the Purchasing Director resolves the dispute between the state agency and the supplier, the Purchasing Director shall notify the supplier and the state agency of resolution terms or conditions.
(i) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.
(ii) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-15.
(B) **Purchasing Director fails to resolve the dispute.** If the Purchasing Director fails to resolve the dispute between the state agency and the supplier, the Purchasing Director shall take an action in this subparagraph.
(i) **Supplier fails to meet terms and conditions.** If the Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.
(ii) **State agency fails to meet contract terms and conditions.** If the Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-15.

580:15-4-17. 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 suppliers list; or,
(8) the State Purchasing Director determines that an administrative error occurred prior to contract performance.

(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.

580:15-4-18. Supplier suspension from suppliers list

(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier from the suppliers list and from submitting bids to the Purchasing Division or any other state agency subject to the Central Purchasing Act for a period of time not to exceed one (1) year for any of the following:

(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 timely to 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 bids firm for sixty (60) days from the solicitation closing date;

(8) a supplier fails to resolve a dispute with a state agency;

(9) upon a determination by the appropriate regulatory authority or court 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 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 notify a supplier of the supplier's suspension within five (5) business days of the State Purchasing Director's determination.

(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 suppliers list.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the Director of Central Services pursuant to 75 O.S., Section 309 et seq. and the provisions of 580:15-4-13.

(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 supplier the State Purchasing Director suspends may request the State Purchasing Director to allow the supplier to register for the suppliers list before 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 authorize the supplier to register for the suppliers list pursuant to 580:15-4-2.

580:15-4-19. Supplier debarment.

The State Purchasing Director may debar a supplier from the suppliers list and from submitting bids to the Purchasing Division or other state agencies subject to the Central Purchasing Act for a period of no more than three years.

(1) **Cause for debarment.**

(A) Fraud, bribery or corruption. The State Purchasing Director may debar a supplier upon conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption.

(B) **Gift, donation or gratuity.** The State Purchasing Director may debar a supplier upon 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 Department of Central Services or an immediate family member of an official of the Department of Central Services.

(C) **Anti-Kickback Act of 1974.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974.

(2) **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.

(3) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.

(A) **Disassociation.** The State Purchasing Director may consider the efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.

(B) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.

(C) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.

(D) **Time period.** The State Purchasing Director may consider the period of time during which the acts leading to conviction of the individual or business entity occur.

(E) **Failure to respond to debarment notice.** The State Purchasing Director shall consider failure to respond to the debarment notice by the individual or business entity.

(F) **Other factors.** The State Purchasing Director may consider other factors regarding the individual or business entity.

(4) **State Purchasing Director options.** Upon completion of review of debarment records, the State Purchasing Director shall take an action affecting the individual or business entity.

(A) **Decline to debar.** The State Purchasing Director may decline to debar an individual or business entity.

(B) **Suspension.** The State Purchasing Director may suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate.

(C) **Debarment.** The State Purchasing Director may debar an individual, a business entity, or both. The debarment period shall begin on the day the supplier receives notice of final order of debarment and shall expire no later than the end of the term specified in the order.

(5) **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 the individual or business entity merits reinstatement to the suppliers list. The State Purchasing Director may approve or deny reinstatement of the individual or business entity to the supplier's list and shall provide written notice of the reinstatement approval or denial.

(6) **Supplier appeal of State Purchasing Director actions.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the Director within ten (10) business days of the date of the State Purchasing Director's notice of debarment or denial of reinstatement pursuant to 75 O.S., Section 309 et seq and the provisions of 580:15-4-13.

580:15-4-20. Other provisions [REVOKED]

SUBCHAPTER 6. STATE AGENCY PROVISIONS

Section

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580:15-6-1. Purpose

The purpose of this subchapter is to provide state agencies and certified procurement officers information to make acquisitions for state agencies. State agencies and certified procurement officers shall comply with provisions of the Oklahoma Central Purchasing Act, State Use Committee, other statutory provisions and rules of the Purchasing Division for state agency acquisitions. State agencies may submit questions regarding rules of the Purchasing Division to the State Purchasing Director.

580:15-6-2. 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., Section 85.5(D).
(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, rules of the Purchasing Division, 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, rules of the Purchasing Division, other statutory provisions, or the state agency's internal purchasing procedures.
(f) **Continuing education.** To maintain certification, a CPO shall attend eighteen (18) hours of continuing education for each calendar year following the year of certification. 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 determine how often courses may be repeated to qualify for continuing education credit.

(1) Prior to December 31 of each calendar year, a CPO shall submit to the State Purchasing Director, documentation verifying continuing education course attendance. 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 the required 18 hours of qualifying education within the allowed period will result in suspension of the CPO's purchasing authority.
(4) A suspended CPO must attend the next available CPO certification course approved by the State Purchasing Director.
(5) A suspended CPO that has remained suspended for a period of more than one year must repeat the CPO certification course and demonstrate proficiency in procurement practices by passing the CPO prescribed certification examination.
(6) 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 the previous year's required continuing education credits. The State Purchasing Director may approve or deny the request. A reinstatement approved to allow an extension of time to fulfill education credits shall not exceed three (3) months.

(g) **Change in status.** A CPO shall notify the State Purchasing Director when they are no longer performing as a CPO, when they transfer to another state agency, or when they terminate their employment with the state.

580:15-6-3. State agency purchasing procedures

(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency.
(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director.
(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 rules of the Purchasing Division.

(d) **State Purchasing Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the Director, or the Director's designee, 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 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.

580:15-6-4. State agency acquisition records retention
(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts for the duration of the contract term and for a period of three (3) years following completion and/or termination of the acquisition. If an audit, litigation, or other action involving such records is started before the end of the three (3) 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 three (3) year retention period, whichever is later.
(b) **Records retention location.** A state agency shall retain records and documents in a central 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 Department of Central Services 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.

580:15-6-5. Methods State Agencies Use to Make Acquisitions
State agencies shall make acquisitions using a method of acquisition in this section.
(1) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or nonmandatory.
(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) **Nonmandatory statewide contracts.** State agencies may use nonmandatory statewide contracts when an agency determines it is in the best interest of the state.
(2) **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. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S., Section 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.

(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, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S., Section 549.1.

(A) An agency, using its procurement authority may place a direct order with OCI without competitive bidding, or issue a solicitation, which shall include OCI as a vendor. If a solicitation is issued, the award shall be made to OCI if such product or service is the lowest and best bid.

(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to the Purchasing Division 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 Director of the Central Services shall resolve the issue.

(4) **Standard contracts.**

(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.

(D) **Open market contracts.** State agencies may make open market acquisitions within their approved purchasing authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division and the agency's approved internal purchasing procedures.

(5) **Sole source and sole brand contracts.**

(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 580:15-6-2 and 580:15-6-3, may requisition a sole source or sole brand acquisition within the agency's purchasing authority limit pursuant to the provisions of the Oklahoma Central Purchasing Act.

(B) The chief administrative officer of each state agency shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) 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 purchasing authority, the agency shall submit the requisition to the State Purchasing Director.

580:15-6-6. State agency acquisitions

(a) **Acquisition authority.** All acquisitions made by state agencies shall be in accordance with the Oklahoma Central Purchasing Act, 74 O.S., §85.1 et. seq., other applicable statutory provisions, this Chapter and the agency's approved internal purchasing procedures.

(b) **Acquisitions not exceeding $5,000.00.** State agencies shall make open market acquisitions not exceeding Five Thousand Dollars ($5,000.00) that are fair and reasonable.

(c) **Acquisitions over $5,000.00 and not exceeding $10,000.00.** 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 580:15-6-2 and 580:15-6-3 shall make acquisitions over $5,000.00 and not exceeding Ten Thousand Dollars ($10,000.00) pursuant to this subsection. All awards shall be based on lowest and best or best value criteria.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition.

(A) The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification.

(B) Any competitive bid for goods or services shall contain a non-collusion certification.

(2) **Supplier selection**. The state agency shall solicit a price quote from a minimum of three suppliers, which may be from the registered supplier list in the appropriate commodity classification compiled by the Purchasing Division and made available to state agencies. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be solicited.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The state agency shall obtain documentation of the pricing and delivery dates from the suppliers.

(4) **Evaluation.** 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.

(5) **Verification and documentation.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide a non-collusion certification pursuant to 74 O.S., Section 85.22. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(A) **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.

(B) S**ervices 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. Section 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. Section 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. Section 85.42]

(6) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(7) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(d) **Acquisitions over $10,000.00 and not exceeding $25,000.00.** 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 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding $10,000.00 but not exceeding $25,000.00 in accordance with this subsection. All awards shall be based on lowest and best or best value criteria.

(1) **Solicitations.** 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 solicitation shall also include:

(A) evaluation criteria for the acquisition; and,

(B) a non-collusion certification pursuant to 74 O.S., Section 85.22 and the provisions of 580:15-4-7(c).

(2) **Supplier selection.** The state agency shall solicit a minimum of ten (10) suppliers in the appropriate commodity classification from the registered suppliers list compiled by the Purchasing Division and available to state agencies along with any other suppliers identified by the state agency. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be awarded a contract.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, facsimile or by means of electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

(4) **Non-Collusion certification.** Any state agency solicitation that is competitively bid shall contain a non-collusion certification statement pursuant to 74 O.S., Section 85.22. A supplier

shall complete and submit the non-collusion certification with their response to the solicitation. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(5) **Evaluation.** 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.

(6) **Verification and documentation.** If the state agency and the supplier execute a contract for the acquisition, the contract must include the non-collusion certification, signed and submitted with the solicitation pursuant to 580:15-4-7(c) and 74 O.S., Section 85.22.

(A) **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.

(B) **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. Section 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. Section 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. Section 85.41]

(7) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(8) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(e) **Acquisitions over $25,000.00 and not exceeding $50,000.00.** 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 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding $25,000.00 but not exceeding $50,000.00 in accordance with this subsection. All awards shall be based on lowest and best or best value criteria.

(1) **Solicitations.** 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 solicitation shall also include:

(A) evaluation criteria for the acquisition; and,

(B) a non-collusion certification pursuant to 74 O.S. Section 85.22 and the provisions of 580:15-4-7(c).

(2) **Supplier selection.** The state agency shall solicit all suppliers in the appropriate commodity classification from the registered suppliers list compiled by the Purchasing Division and available to state agencies along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be awarded a contract.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, facsimile or by means of electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

(4) **Non-Collusion certification.** Any state agency solicitation that is competitively bid shall contain a non-collusion certification statement pursuant to 74 O.S. Section 85.22. A supplier shall complete and submit the non-collusion certification with their response to the solicitation. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(5) **Evaluation.** 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.

(6) **Verification and documentation.** If the state agency and the supplier execute a contract for the acquisition, the contract must include the non-collusion certification, signed and submitted with the solicitation pursuant to 580:15-4-7(c) and 74 O.S., Section 85.22.

(A) **Sales tax permit verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a 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.

(B) **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 provide a sworn statement certifying the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency.

(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., Section 85.41.]

(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.

(7) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(8) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(f) **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 580:15-6-2 and 580:15-6-3 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 make acquisitions at this level in accordance with 74 O.S. Section 85.7, any other applicable state laws, and subsection (g) of this Section. All awards shall be based on lowest and best or best value criteria.

580:15-6-6.1. Acquisition limitation exception

(a) A state agency making an acquisition pursuant to 74 O.S. Section 85.5(T) must have an internal CPO and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3, in addition to the subject matter experts, legal and procurement staff required by law.

(b) Prior to making an acquisition pursuant to this subsection, a state agency shall submit in writing to the Director of the Department of Central Services, a statement of their intent to make an acquisition pursuant to 74 O.S. Section 85.5(T). The agency may only proceed with the acquisition upon receipt of certification by the Director that the proposed purchase does not conflict with consolidated statewide spend initiatives.

(c) Agencies making a purchase pursuant to this section shall comply with procurement rules and policies of the Department of Central Services.

(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.

580:15-6-6.2 Additional information

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

(b) **Change orders.** 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.

(1) **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.

(2) **Acquisitions by the 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. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(c) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of Oklahoma Central Purchasing Act.

(d) **Acquisitions from another governmental agency.** A state agency may contract with a political division or subdivision, agency of the United States or another state agency pursuant to 74 O.S., Section 581 or Sections 1001 through 1008. 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.

(e) **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.

(f) **Trade-ins.** State agencies may trade in items when they make an acquisition of a like item with prior written approval of the State Purchasing Director. 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. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(g) **OneNet acquisitions.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(h) **Authorized signature.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form, (DCS/Purchasing Form 001). 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, purchase orders, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

(i) **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.

580:15-6-7. State agency open market acquisitions exceeding two thousand five hundred dollars ($2,500) and not exceeding ten thousand dollars ($10,000.00) [REVOKED]

580:15-6-8. State agency open market acquisitions not exceeding ten thousand dollars ($10,000.00) [REVOKED]

580:15-6-9. State agency acquisitions exceeding ten thousand dollars ($10,000.00) and not exceeding twenty-five thousand dollars ($25,000.00) [REVOKED]

580:15-6-10. State agency acquisitions processed by the Central Purchasing Division

(a) State agencies that do not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall submit requisitions for acquisitions exceeding Five Thousand Dollars ($5,000.00) to the State Purchasing Director. State agencies whose acquisition authority has been reduced by the Director shall submit all acquisitions exceeding the established authority dollar amount to the State Purchasing Director. All acquisitions exceeding the state agency's spending limit shall be submitted to the State Purchasing Director.

(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 signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of of the Central Purchasing Act.

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

(4) **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.

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

(6) **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.

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

(b) The Department may contract with a state agency for the services of qualified personnel to assist or conduct purchasing activities for the agency upon 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. [74 O.S. §85.3] The state agency shall reimburse administrative costs to the Department for the services of employees necessary to provide procurement services pursuant to this subsection.

580:15-6-11. Additional purchasing information [REVOKED]

580:15-6-12. Professional service contract requirements [REVOKED]

580:15-6-13. Sole source and sole brand acquisitions [REVOKED]

580:15-6-14. State travel

The State Travel Office is within the Purchasing Division. The Travel Office awards contracts to for travel and travel services. State agencies shall make travel arrangements through contract travel agencies for commercial air travel for state employees in the course of official duties or for persons traveling at state expense.

(1) **State agency travel coordinator.** The State Purchasing Director encourages state agencies to appoint one or more travel coordinators. The coordinators shall book air travel for the state agency except in case of an emergency. If the state agency appoints a travel coordinator, the state agency shall notify the Travel Office and provide the coordinator's name, mailing address, telephone number, and facsimile number.
(2) **State travel zones.** The Travel Office shall divide the state into geographic zones. The zone served by the travel agency shall be indicated in the statewide contract.
(3) **Airline ticket purchases.** State agencies shall purchase airline tickets from contract travel agencies within the zone of the state agency location.
(4) **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 uses in exception determination pursuant to 580:15-6-4.
(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.
(5) **State agency credit card for airline travel.** A state agency that acquires a state travel credit card to book and pay for official airline travel shall complete mandatory training as required by the Department of Central Services and comply with all State Purchase Card procedures issued by the Department.

580:15-6-15. 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 Department, provisions of 74 O.S., Sections 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 Director.
(1) **Audit notification.** The Department 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 purchasing authority.** If the Director reduces the purchasing 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.

580:15-6-16. Director review of Purchasing Director audit findings [REVOKED]

580:15-6-17. 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 settlement agreement with the supplier.

(ii) The chief administrative officer shall sign the proposed settlement agreement.

(iii) The chief administrative officer shall document facts and circumstances of the unauthorized commitment.

(iv) The chief administrative officer shall provide a copy of the settlement agreement and 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 settlement agreement.

580:15-6-18. State purchase card program

Use of state purchase cards authorized by the State Purchasing Director [Reference 74 O.S., Section 85.5L.] shall be subject to the policies and procedures of a purchase card program established by the State Purchasing Director to ensure compliance with the statewide contract for this service.

580:15-6-19. Electronic commerce and online bidding

The use of electronic commerce for solicitation, notification, and other procurement processes as provided for in 74 O.S., Section 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 Director of the Department of Central Services and established by the State Purchasing Director.

580:15-6-20. Procedures for state agency privatization contracts

(a) **Cost analysis report.** Before any agency contracts to privatize a function, program, service, unit, or division valued at One Hundred Thousand Dollars ($100,000.00) or more, the agency must perform a cost analysis and submit a copy of the written cost analysis report to the Department of Central Services.

(b) **Cost analysis report contents.** The cost analysis report shall include, but not be limited to:

(1) A cost-benefit analysis comparison that shall include the collection and analysis of the direct and indirect costs of the current governmental operation and the private vendor contract. Costs shall be itemized in the report and shall include direct personnel costs, materials and supplies, facility and equipment maintenance and repairs, equipment, rent, utilities, insurance, travel, operations overhead, transition costs associated with shifting the service delivery from the government agency to a private vendor and general administrative overhead associated with privatization of a function.

(2) A feasibility study determining whether another state agency could assume the function, program, service, unit, or division proposed to be privatized.

(3) An analysis of the cost savings and quality enhancements expected to be gained by privatizing.

(4) The availability of multiple qualified and competitive private vendors.

(c) **Cost analysis report review.** The State Purchasing Director shall review the contents of the cost analysis report and determine whether it meets the requirements of the Oklahoma Privatization of State Functions Act [Reference 74 O.S., Section 588 et seq] and this section. The State Purchasing Director shall send written notice to the agency of the results of the review. If the contents of the report are found deficient, the notice shall contain instructions to correct the deficiencies and the cost analysis report shall be returned to the agency along with the notice.

(d) **Privatization request for proposal.** An agency shall include the following requirements with any request for proposal for a privatization contract:

(1) Financial stability of the vendor, past and present litigation and references related to past government contract performance information; and

(2) Detail of how the vendor will perform the contract, including staffing and equipment information.

(e) **Agency certification statement.** An agency shall submit to the State Purchasing Director for approval, a privatization contract together with a written statement, signed by the agency director, certifying that:

(1) The provisions of the Oklahoma Privatization of State Functions Act and all other applicable laws regarding the privatization of the respective state functions have been complied with;

(2) The quality and cost of the services to be provided by the selected bidder are likely to exceed the quality and cost benefit standards for the state function as formerly delivered by agency employees; and

(3) The proposed privatization contract is in the best interest of the public. [74 O.S., Section 589.1]

580:15-6-21. Information Technology (IT)

(a) **Procurement.**

(1) To ensure accessibility of information technology for individuals with disabilities and compliance with Title 62, Section 41.5t, procurement of information technology shall be subject to the Oklahoma Information Technology Accessibility Standards prescribed by the Office of State Finance and maintained by the OSF Information Services Division. These standards apply to all information technology purchased after the effective date of these rules and standards, providing the solicitation process was not initiated prior to the effective date.

(2) When developing and procuring information technology products (either directly or through administration of contracts or grants) a product, each state agency, as defined in Title 62, Section 41.5t.1., shall ensure that the products comply with all applicable standards, unless an undue burden would be imposed on the agency.

(3) When procuring a product, the accessibility determination will be conducted as part of the evaluation. Accessibility will be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it will be done 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 access standards. The relative accessibility weighing may be adjusted for due cause based on the specific procurement. Agencies cannot claim a product, as a whole is not commercially available because no product in the marketplace meets all the standards.

(b) **Contract clauses.**

(1) All solicitations and contracts for information technology shall include a clause, prescribed by the Director pursuant to Title 74, Section 85.7d, ensuring compliance with applicable IT Accessibility Standards, which are in effect on the date of issuance of said solicitation or contract.

(2) The information technology clause(s) and IT Accessibility Standards shall be made available at the principle office of the DCS Central Purchasing Division and published on the DCS website.

(3) A supplier shall provide a written certification, signed by an authorized officer of the supplier, that the product or service complies with applicable IT 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.**

(1) If a state agency determines that compliance with any provisions of the IT Accessibility Standards imposes an undue burden or qualifies as an exception pursuant to this section, the agency shall submit a written explanation of why, and to what extent, such undue burden or exception exists, with its requisition.

(A) The explanation shall be submitted on a form prescribed by the Director and signed by the chief administrative officer of the agency or an employee of the agency to which responsibility for Section 508 compliance has been delegated..

(B) The explanation shall be retained with the requisition file.

(2) Unless an exception applies, acquisitions of IT supplies and services must meet the applicable accessibility standards. Exceptions to the Standards include:

(A) IT 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);

(B) IT 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;

(C) IT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;

(D) IT requiring a fundamental alteration in the nature of a product or its components;

(E) Except as required to comply with the 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;

(F) 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;

(G) IT that would impose an undue burden on the agency.

(d) **Documentation of exceptions.** If an agency determines that compliance with any provision of the IT Accessibility Standards meets the criteria of a general exception, the agency shall maintain documentation in the agency acquisition file to support the procurement, which explains why, and to what extent, compliance with each such provision 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 $2,500.00 or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical.

(e) **Alternative means of access.** When compliance with these 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.

580:15-6-22. Information technology contract clauses [REVOKED]

580:15-6-23. Exception to compliance with IT Accessibility Standards [REVOKED]

580:15-6-24. General exceptions [REVOKED]