



**State of Oklahoma
Office of Management and Enterprise Services
Purchasing Division**

PROCUREMENT INFORMATION MEMORANDUM

Affected Entities/Personnel: Executive State Agencies	Subject: Contract Award Multi-Year Contracts
Effective Date of PIM: 03/01/2017	Point of Contact: PIM@omes.ok.gov
Prior PIM: 2009-02	Statutory and Rule Reference: N/A
Last Reviewed: N/A	Next Scheduled Review: 03/01/2018
Date PIM Last Revised: N/A	Replaces: OMES PIM 2009-02
Approved: Ferris Barger, State Purchasing Director	Approval Date: 02/22/2017

As a means of disseminating relevant state procurement information to state entities, the Office of Management and Enterprise Services, Purchasing Division periodically issues Procurement Information Memoranda. To the extent any information in this Procurement Information Memorandum (“PIM”) conflicts with information in a previously issued memorandum, the information in this PIM controls. This PIM specifically address multi-year contracts and supersedes OMES PIM 2009-02, as revised on January 1, 2015, regarding multi-year contracts. To the extent OMES PIM 2009-02, as revised on January 1, 2015, addresses change orders, OMES PIM 2009-02 will remain in full force and effect until superseded by a new PIM.

Summary

Pursuant to 74 O.S. § 85.5(A) and OAC 260:115-1-4, the State Purchasing Director has sole and exclusive authority and responsibility for all acquisitions used and consumed by state agencies. Acting under this authority granted to him by the Oklahoma Statute and Oklahoma Administrative Rule, the State Purchasing Director has determined that the procurement practice of entering into both a multi-year contract with a one year base term and options to renew and a multi-year contract with more than one year base term is permitted as described below.

1. Legal Framework and Background

Oklahoma Constitution Article X, Section 23 states that the state shall never create or authorize the creation of any debt or obligation, or fund or pay any deficit, against the state, or any department, institution or agency thereof, regardless of its form or the source of the money from which it is to be paid, except as is provided in Sections 24 and 25 of Article X of the Oklahoma Constitution.

Section 23 has been interpreted to prohibit a contract which binds the State to an agreement to expend funds from future fiscal years.

The Oklahoma Supreme Court upheld a leasing arrangement spanning a period of sixty consecutive months and found such leasing arrangement to not be a violation of the Oklahoma constitutional debt prohibitions because the lease agreement explicitly provided that if the Legislature failed to allocate funds for payment, the obligation would cease at the end of the term for which there were allocated funds. *U.C. Leasing, Inc. v. State ex rel. State Bd. of Public Affairs*, 1987 OK 43.

The Oklahoma Supreme Court stated that “multi-year commitments expressly made contingent on future legislative appropriations did not violate constitutional debt limitation provisions” in *In re Okla. Capitol Improvement Auth.*, 1998 OK 25.

Accordingly, the Oklahoma Attorney General stated that an agreement between a vendor and a state agency with a primary term of one year which permits an option to renew on a yearly basis does not violate the Constitution debt prohibition provided a non-appropriations clause is included in the agreement. 2004 OK AG 18.

2. Updated Procurement Practice

- a) State Agencies are permitted to create multi-year contracts so long as the annual amount of the contract does not exceed the agency’s annual procurement authority.
- b) Multi-year contracts created by an agency can be renewed at the agency level.
- c) Contracts can be created that have a one (1) year base term with (x) number of options to renew so long as the contract complies with 2004 OK AG 18.
- d) Contracts can be created that have a base term that is longer than one year so long as the contract complies with 2004 OK AG 18.

3. Criteria

- a) Solicitation for multi-year contracts not exceeding \$50,000 annually: Agencies with approved internal procedures and an internal Certified Procurement Officer or a designated CPO through an interagency agreement may conduct solicitations for multi-year contracts in which no single year exceeds the delegated authority limit per 12-month period.

****Example:** An agency with a \$50,000 workflow authority could solicit and award a 5 year, \$250,000 contract.

- b) When an agency elects to conduct the solicitation:

- i) The solicitation shall include a separate line and contract period for each year, not to exceed the delegated workflow authority limit of the agency per the 12 month period.
- ii) In its evaluation of cost for the purposes of determining either “lowest and best” or “best value”, the agency shall consider and include supplier’s (total costs) pricing for the first year and all renewal periods;
- iii) Change in the scope of the contract remains prohibited, and the original contract shall state the maximum number of renewal periods which shall not be exceeded. If the total cost of the contract (including all renewal periods) exceeds \$25,000, the agency shall solicit all suppliers listed in the PeopleSoft supplier file for the commodity and all recommended suppliers;
- iv) The agency shall verify, pursuant to the applicable provisions of law, that the supplier is eligible to do business in the State of Oklahoma by confirming with the Secretary of State and franchise tax payment status, and sales tax permit, pursuant to Sections 1203, 1204, and 1364 of Title 68 of the Oklahoma Statutes;
- v) Agency CPO’s are expected to be aware of market-place conditions when considering the length of multi-year contracts. Some circumstances will require contract periods of less than three years due to volatility of commodity costs or other factors.
- vi) The agency shall include an appropriate non-appropriation clause in the general provisions or terms and conditions of the solicitation;
Contracts that include component or phased delivered items that have a fixed price established (per unit or per hour) must include an indefinite delivery clause and should be based upon historical usage for pricing purposes. The clause should state that the historical usage is not a commitment and the State may purchase more or less units as agency needs dictate.

- c) Renewal of multi-year contracts: The authority to process renewals applies to multi-year contracts initially bid by the agency, provided no single year exceeds the delegated workflow purchasing authority limit.

- d) Existing multi-year contracts initiated and administered by Central Purchasing on behalf of an agency; will continue to be managed by Central Purchasing.

4. Practitioner Comments

- a) When considering the length of a multi-year contract, the market place conditions and potential advances in technology should be considered.
- b) The best practice is to create a contract that is no longer than five years by either:
 - i) Creating a contract with a one (1) year base terms with four (4) options to renew or
 - ii) Creating a contract with a five (5) year base term.