

SUBCHAPTER 27. USE OF BEST VALUE COMPETITIVE PROPOSALS TO AWARD A CONTRACT

580:20-27-1. Purpose

The purpose of this Subchapter is to provide information and procedures to issue competitive solicitations and award contracts using Best Value methodology. The rules implement the provisions of 61 O.S. §103(E) of the Public Competitive Bidding Act of 1974, which authorizes use of Best Value competitive proposals as an alternative to strictly price or qualification-based competition. The rules ensure fair and consistent contracting processes that satisfy the needs of the state. All vendors and state agencies are responsible for knowing the requirements of this Subchapter. These rules are administered by the Construction and Properties Division of the Department of Central Services to provide direction and ensure compliance with the Oklahoma Public Competitive Bidding Act, and other state laws and rules applicable to state construction acquisitions. These rules have been promulgated in accordance with the Administrative Procedures Act and pursuant to the authority of 61 O.S. §103(E) and 61 O.S. §209.

580:20-27-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.

"Best Value" means *an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state.*" [61 O.S. §103(E)]

"Department" means the Department of Central Services.

"Division" means the Construction and Properties Division of the Department of Central Services, State of Oklahoma.

"Past Performance Rating" means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

1 "Project" means the scope of services for which the Division requests competitive proposals
2 from interested construction services vendors by issuance of a Solicitation or Request for
3 Proposal.

4 "Project Capability" means the ability of a vendor to perform the requested services based
5 on understanding of the requirement and mastery of necessary technical requirements while
6 demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

7 "Risk Assessment" means identification of risks that the vendor does not control and the
8 vendor's plan to minimize the risk.

9 "Selection Committee" means a group of state representatives, designated by the
10 Administrator, assembled to evaluate and rank proposal submittals by vendors.

11 "Selection Monitor" means the Administrator or his/her appointed representative placed in
12 the role of presiding over a Selection Committee.

13 "State agency" means an agency, board, commission, counsel, court, office, officer, bureau,
14 institution, unit, division, body, or house of the executive or judicial branches of government of
15 this state, whether elected or appointed, excluding only political subdivisions. [61 O.S., §202]

16 "Value-added" means adjustment to the project requirement and/or benefit offered to the
17 owner that may be proposed by a vendor, stated in terms of impact to the project in return for a
18 deviation in price, schedule or quality.

19 "Vendor" means any service provider competing for a contract or performing work under a
20 contract awarded by the Division. The term "Vendor" is interchangeable with Contractor,
21 Construction Manager, Consultant, Design-Builder or other service provider. Vendor is used
22 interchangeably with Bidder, Proposer and Offeror in context with the immediate topic herein.

24 **580:20-27-3. Components of Best Value vendor selection and project delivery**

25 (a) **Goal.** The goal of using the Best Value contract solicitation method is, for each service
26 delivery, to identify the construction vendor that is an expert, is efficient, can pre-plan the work
27 and deliver the service with minimal deviation in the owner's expectations (cost, schedule and
28 quality) and thereby provide the owner the greatest value for the lowest price.

29 (b) **Principles.** The intent of the Best Value solicitation process is to promote:

30 (1) efficiency;

31 (2) transparency;

32 (3) accountability;

- (4) measurements;
- (5) alignment;
- (6) expertise;
- (7) dominant information;
- (8) risk minimization;
- (9) reduced need for decision making;
- (10) reduced transactions; and,
- (11) win-win-win outcome (owner, vendor, customer).

(c) **Phases.** The Best Value vendor selection and project delivery process consists of three (3) primary phases:

- (1) **Phase 1.** Vendor selection
- (2) **Phase 2.** Pre-award/clarification period, which includes but may not be limited to:
 - (A) agreement on scope;
 - (B) description of services using performance measurements, if applicable; and,
 - (C) creation of contract requiring a Weekly Risk Report (WRR), Risk Management Plan (RMP), and all applicable legal terms and conditions.
- (3) **Phase 3.** Management by Risk Minimization, which requires:
 - (A) the vendor to manage and control the project using a weekly risk report and risk management plan (WRR/RMP); and,
 - (B) the Division to perform project quality assurance by ensuring the vendor is using a quality control plan (WRR/RMP). The Division's quality assurance personnel are not limited to quality assurance and may inspect the project on a periodic basis.

580:20-27-4. [RESERVED]

580:20-27-5. Selection committee

- (a) **Members.** Whenever a solicitation is issued requiring Best Value methodology to determine the successful bidder, the Administrator or Division designee will appoint members to a Selection Committee. The Committee will consist of three to five individuals with at least one representing the Division. The balance may consist of state agency representatives.
- (b) **Selection Monitor.** One Committee member, which may be the Administrator or his/her appointed representative, is designated as the Selection Monitor. The Selection Monitor is a non-

1 voting member and presides over the Selection Committee. Duties of the Selection Monitor may
2 include:

3 (1) schedule and preside over Committee meetings;

4 (2) provide instructions to Committee members on the Best Value methodology for
5 evaluation and rating of bid submittals;

6 (3) tabulation of the evaluation scores;

7 (4) review the Committee's rating results for dominant information and/or inconsistencies;

8 (5) discuss evaluations with Committee members to seek clarifications, if necessary;

9 (6) prioritize the final rating score in matrix;

10 (7) assist the Committee in determining the highest ranked firms for further consideration in
11 interviews.

12 (8) assist the Committee in determining the apparent Best Value firm; and,

13 (9) assisting with the Pre-Award Period activities.

15 **580:20-27-7. Vendor selection**

16 The Best Value Selection Phase uses a series of filters to identify which bidder provides the
17 most value (lowest cost and highest performance) to the State. On or before the date stated in the
18 solicitation, vendors submit documentation requested in the solicitation or bid documents that
19 will be evaluated, rated and/or weighted, and include, but are not limited to:

20 (1) **Past performance information.** On forms specified by the Administrator, the vendor
21 submits performance information collected from past customers about past projects/services
22 the vendor has completed. The selection committee does not evaluate this information and
23 does not see the past performance scores until the selection process enters the Prioritization
24 filter.

25 (2) **Project capability.** Using forms or formats specified by the Administrator, the vendor
26 submits proof of their ability to perform the requirements of the proposed project/service
27 specified in the solicitation, which includes but is not limited to risk assessment and
28 mitigation, technical capability and documented performance measurements, vendor's ability
29 to provide additional value to the State, and pricing as information required by the
30 solicitation.

31 (3) **Interviews.** The Selection Monitor will schedule interviews with representatives of
32 short-listed organizations as designated by the Committee. The interview provides a forum

1 for the vendor to discuss the project and answer questions concerning their ability to deliver
2 the project/service to the State.

3 (4) **Prioritization.** After completion of (1) through (3) of this subsection by the Selection
4 Committee, the Selection Monitor prioritizes bidders from the highest performing to least
5 performing based upon past performance scores and the committee ratings and evaluation of
6 the information provided by each vendor.

7 (5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the
8 bidders to identify the apparent Best Value vendor. The Selection Monitor evaluates all
9 information to ensure that the prioritization is justifiable and there is no evidence warranting
10 adjustment of the prioritization and ratings in any way. If the committee's ratings are not
11 balanced, supporting past performance information is absent or pricing is not competitive or
12 justified, the Selection Monitor may override the prioritization by providing written
13 justification of the actions taken.

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15 **580:20-27-8. [RESERVED]**

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17 **580:20-27-9. Pre-Award Period**

18 (a) The identified apparent Best Value vendor is invited to participate in the Pre-award
19 Clarification Phase. Only one vendor at a time may be invited to participate. This period is the
20 final 'filter' and the invited vendor is still at risk (the project is the invited vendor's to lose). The
21 pre-award period is not a contract negotiation activity. Once invited to the pre-award period, the
22 vendor is responsible for scheduling and management of the related activities. The objective is
23 to:

- 24 (1) ensure the vendor understands the project scope; and,
25 (2) allow the vendor to clarify how they will deliver the project/service on time;
26 (3) identify the accountabilities of other parties; and
27 (4) explain how the vendor will mitigate and manage any risk the vendor does not control.

28 (b) The vendor is responsible for understanding the project requirements and expectations.

29 (c) To complete the Pre-award Clarification Phase, the vendor conducts required meetings,
30 identifies specific requirements and provides relevant documents, including but not limited to,
31 the following:

1 (1) A critical milestone schedule that includes the pre-award period, the award,
2 project/service delivery and the project completion, including requirements for information
3 or actions by other parties necessary to meet the schedule;
4 (2) Identify (ask questions) all technical concerns the customer may have or issues or risks
5 identified by the customer and provide an explanation of how they will satisfy those
6 concerns; make any additional investigations as warranted;
7 (3) Provide a listing of major sub-vendor and suppliers. Ensure that any sub-vendors have a
8 complete understanding of the project and have no technical or non-technical questions or
9 concerns;
10 (4) Verification and identification of the roles and responsibilities of the Division and the
11 Division's customer;
12 (5) Identify and document in writing any value-added ideas the Division has accepted or
13 rejected, along with corresponding adjustments to the contract terms;
14 (6) A project plan including any final clarification of their proposal and any omitted
15 information and identification of value added provisions accepted by the owner;
16 (7) Validation that the proposal is accurate and complete prior to submitting their final
17 project scope;
18 (8) Develop a weekly risk report template to communicate accountabilities and deviations,
19 beginning with the pre-award period;
20 (9) Develop a risk management plan, which includes any risks the vendor does not control
21 and how the vendor will mitigate or minimize those risks should they occur;
22 (10) Identify a performance measurement plan to communicate to the Division how the
23 vendor is performing during the project duration; and
24 (11) Provide assurances to satisfy any remaining project concerns that the Division may
25 have, including but not limited to adverse publicity, noncompliance with local, State or
26 Federal law, safety and accident prevention or other risks within the control of the vendor
27 that would cause unnecessary time-and-effort transactions by the Division.
28 (d) If the bidder determines their proposal contains errors or their proposal is inaccurate, the
29 bidder may withdraw the project proposal without incurring a penalty. The bidder shall be
30 prohibited from modifying their proposal cost, duration, or project team, unless there is dominant
31 information justifying such action as determined by the Administrator.

(e) The vendor must schedule a final Pre-Award Meeting at the end of the pre-award clarification period to present a summary of the project items developed. The pre-award documents must be concise, organized and suitable for attachment to the Division's owner-vendor agreement.

(1) The final pre-award meeting is not a question and answer session.

(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Division must be conducted prior to the pre-award meeting.

(3) The bidder makes a pre-award meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Pre-Award Phase.

(f) The Pre-Award/Clarification Phase is the final selection filter. If at any time during the Pre-Award/Clarification Phase, the Division determines progress being made by the invited bidder is unsatisfactory, the Division may terminate Pre-Award Phase activities with the invited bidder. The Division may then commence a new Pre-Award/Clarification Phase with the next highest ranked bidder.

580:20-27-10. [RESERVED]

580:20-27-11. Risk minimization and performance

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality or project schedule caused by the vendor, the State, unforeseen conditions or other parties. The Phase consists of, but is not limited to:

(1) **Weekly Risk Report System (WRR).** The WRR is a project requirement and tool the vendor must use to manage and document all risks that occur throughout a project. The WRR is a standardized format prescribed by the Administrator, which may include:

(A) all key contact information;

(B) project milestone schedule;

(C) risk sheet;

(D) modification/deviation tracking;

(E) risk management plan (RMP);

(F) any risks the Division may require the vendor to document that could impact the customer or the Division's satisfaction.

(b) The vendor shall submit a risk report for the project/service weekly throughout their contract, or as otherwise required by the Administrator.

580:20-27-12. [RESERVED]

580:20-27-13. State transparency and Best Value documentation

(a) For successful outcomes, the Best Value operating environment must be transparent to all stakeholders. The following key components are critical to the integrity of Best Value methodology:

(1) A solicitation must clearly state submittal requirements.

(2) A solicitation must clearly define the solicitation/acquisition schedule, which may include a Pre-Bid Education meeting to review Best Value concepts, process and submittal requirements

(3) Following a contract award, the Division will provide a debriefing meeting to bidders, upon request. Alternatively, if scheduled by the solicitation, the Division will provide a debriefing review for all participants.

(b) To protect the integrity of the selection process and fairness to bidders, the following will remain confidential as stated:

(1) Identities of individual bidders will not be revealed to voting members of a selection committee during evaluation of key submittals as identified in the solicitation until such time as the highest rated bidders are identified and advanced to the oral interview or award phase.

(2) To preserve integrity in the event a re-bid is necessary, contents of the individual bidders' submittals shall not be open to public inspection until such time as the contract award is made.

(3) A bidder shall clearly identify any information submitted in a response to a solicitation that the bidder considers confidential or proprietary. The Administrator shall review the information and may or may not designate a bidder's information or proprietary information as confidential and may or may not reject requests to disclose the information so designated.

1 (c) Following the contract execution, all selection process documentation not otherwise
2 protected will be available to the public for inspection. The following shall be posted on the
3 Division's website:

- 4 (1) Tabulation of bid evaluation scores, and
5 (2) Tabulation of bid pricing, and
6 (3) Identification of Awardee and awarded price.

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8 **580:20-27-14. [RESERVED]**

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10 **580:20-27-15. Post project vendor performance rating**

11 (a) Upon completion of a project, the Administrator, in consultation with the customer agency,
12 will conduct a performance review of the vendor.

13 (b) The final vendor project performance review will replace previous performance evaluations
14 for use in future contract award evaluations.

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16 **580:20-27-16. [RESERVED]**

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18 **580:20-27-17. Other requirements for contracts awarded using Best Value methodology**

19 Rules of this section apply to any contract awarded by the Division using Best Value
20 methodology to select the successful vendor.

21 (1) When otherwise prohibited by state law, fee proposals shall not be requested by a
22 solicitation or considered by the selection committee prior to commencement of the Pre-
23 Award Period (ie. Consultant or Construction Manager solicitations).

24 (2) Construction service solicitations and contracts shall comply with the requirements of the
25 Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds,
26 defect bonds and change order limits.

27 (3) Solicitations for on-call, indefinite delivery and statewide specialty service contracts
28 resulting in multiple contract awards may include the following provisions:

29 (A) Top ranked vendors may receive awards as set forth by the solicitation and
30 determined by the selection committee.

1 (B) Multiple vendors may be invited to the Pre-Award period to facilitate multiple
2 awards. Multiple vendors must not be placed in competition with one another during this
3 period.

4 (C) Ranking, price schedule and performance information for awardees will be published
5 by the Division as information to potential end users.

6 (D) Authorized end users may utilize the available contracts according to procedures
7 established by the Division for issuing proposal requests, making requisition and issuance
8 of work orders.

9 (E) Following completion of a work order assignment, the vendor's performance will be
10 documented and added to the published performance line for consideration by future
11 customers.

12 (4). Construction Manager/At-Risk may use Best Value methodology to select subcontractors
13 only in accordance with a plan authorized by the Administrator. Components of the plan
14 must, as a minimum, include the following provisions:

15 (A) Bid Notices: Method of making uniform public notification to interested
16 subcontractors and suppliers;

17 (B) Availability of Bid Documents for inspection or acquisition by interested bidders;

18 (C) Bidding and bid submittal requirements, including contents of submittals and the
19 place and time that bids are due.

20 (D) Method of evaluation of bid documents to determine final recommended contract
21 awards.

22 (E) Method of public publication of pricing, scoring and final award information.

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24 **580:20-27-18. [RESERVED]**

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26 **580:20-27-19. Industry Advisory Committee**

27 (a) **Committee.** In order to maintain a balanced approach among stakeholders, the Administrator
28 may establish an advisory committee comprised of volunteers from organizational stakeholders
29 of the state construction program.

30 (b) **Purpose.** The purpose of the Committee is to assist with procedures, review case studies,
31 recommend implementation strategies, promote education and promote continual improvement.

1 The Administrator may ask the committee to review complaints or concerns from stakeholders
2 and recommend resolution thereof.

3 (c) **Membership.** Committee membership is comprised of delegates from organizations
4 representing general construction contracting; specialty contracting, suppliers, consultants and
5 customers.

6 (d) **Meetings.** The Administrator or designee is the Committee Chairperson and has
7 responsibility for scheduling meetings.

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9 **580:20-27-20. [RESERVED]**

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11 **580:20-27-21. Third party oversight**

12 The Administrator may arrange for program oversight by an independent research
13 organization or university. Services provided by the third party may include:

14 (1) auditing the selection and project delivery processes;

15 (2) preparing case study documentation;

16 (3) ensure correct application of Best Value principles and processes; and,

17 (4) provide educational support on theory, principles, application and updates to Best Value
18 best practices.

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20 **580:20-27-22. [RESERVED]**

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22 **580:20-27-23. State Best Value methodology training**

23 (a) The Division will provide training opportunities for vendors, which may include:

24 (1) educational information at Best Value pre-bid meetings;

25 (2) additional educational opportunity(s) to vendors when solicitations are for services
26 exceeding ten million dollars (\$10,000,000.00);

27 (3) periodic or annual Best Value training for the customer and vendor community to review
28 Best Value theory, application, selection process, case studies, and updates to the Division's
29 adopted processes; and,

30 (4) additional training for vendor and customer groups, upon request and subject to
31 availability.

1 (b) The Division will publish or otherwise make education materials available to parties
2 interested in additional Best Value training.

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4 **580:20-27-26. [RESERVED]**

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6 **580:20-27-27. Bid protests**

7 A bidder may protest a contract awarded pursuant to this subchapter in accordance with OAC
8 580:20-1-10.1.

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10 **580:20-27-28. [RESERVED]**

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12 **580:20-27-29. Waivers**

13 The Administrator may waive or modify any provision or requirement of this subchapter
14 when such waiver is in the best interest of the State.