



**Contract #: SW750A / Guardrail Parts**

**TABLE OF CONTENTS**

- A. GENERAL PROVISIONS
  - A.1. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
  - A.2. Legal Contract
  - A.3. Contract Modification
  - A.4. Delivery, Inspection and Acceptance
  - A.5. Invoicing and Payment
  - A.6. Tax Exemption
  - A.7. Audit and Records Clause
  - A.8. Non-Appropriation Clause
  - A.9. Choice of Law
  - A.10. Choice of Venue
  - A.11. Termination for Cause
  - A.12. Termination for Convenience
  - A.13. Insurance
  - A.14. Employment Relationship
  - A.15. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007
  - A.16. Compliance with Applicable Laws
  - A.17. Special Provisions Special
- B. SPECIAL PROVISIONS
  - B.1. DEFINITIONS
  - B.2. AUTHORIZED USERS
  - B.3. EXTENSION OF CONTRACT
  - B.4. CONTRACT PERIOD
  - B.5. CONTRACT PRIORITY, TYPE AND PRICE
  - B.6. PRICE TERM
  - B.7. NEW FIXED RATES
  - B.8. FUEL PRICE ADJUSTMENT
  - B.9. CONTRACT ADMINISTRATION
  - B.10. CONTRACT MANAGEMENT FEE AND QUARTERLY USAGE REPORTING
  - B.11. POST AWARD MODIFICATIONS
  - B.12. PURCHASING CARD
  - B.13. PAYMENT
  - B.14. SUBCONTRACTING
  - B.15. HEADING
  - B.16. REFORMATION AND SEVERABILITY
  - B.17. NO WAIVER OF DEFAULT
  - B.18. RELATIONSHIP OF THE PARTIES
  - B.19. MEDIA RELEASES
  - B.20. PERMITS AND INSURANCE
- C. SPECIFICATIONS
  - C.1. CONTRACT IDENTIFICATION
  - C.2. SCOPE OF WORK AND DELIVERABLES
  - C.3. PRODUCT QUALITY



**State of Oklahoma  
Department of Central Services  
Central Purchasing**

**Contract Requirements**

- 
- C.4. DELIVERY CAPABILITIES
  - C.5. ORGANIZATION AND PERSONNEL REQUIREMENTS

## **A. GENERAL PROVISIONS**

### **A.1. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By submitting a response to this contract:

- A.1.1.** The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
  - A.1.1.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
  - A.1.1.2.** Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - A.1.1.3.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph of this certification;
  - A.1.1.4.** Have not within a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default.
- A.1.2.** Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

### **A.2. Legal Contract**

- A.2.1.** The Contract will consist of the following documents in order of preference: Contract award documents, including but not limited to the Purchase Order, Contract Modifications, required certification statement, affidavit, and change orders; the solicitation including any amendments; and the successful bid to the extent that the bid does not conflict with the requirements of the Contract award documents or solicitation or applicable law. In the event there is a conflict between any of the preceding documents, the Contract award documents prevail over the solicitation, and both the Contract award documents and the solicitation shall prevail over the successful bid.

### **A.3. Contract Modification**

- A.3.1.** The Contract is issued under the authority of the State Purchasing Director who signs the Contract. The Contract may be modified only through a written Contract Modification, signed by the State Purchasing Director.
- A.3.2.** Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Central Purchasing Division in writing, or made unilaterally by the contractor, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the Supplier shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

### **A.4. Delivery, Inspection and Acceptance**

- A.4.1.** Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The bidder(s) awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.4.2.** Supplier(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Central Purchasing Division.

### **A.5. Invoicing and Payment**

- A.5.1.** Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.5.2.** Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §41.4a and 62 O.S. §41.4b.

## **A.6. Tax Exemption**

Purchases by the State of Oklahoma are exempt from Oklahoma sales or use taxes and Federal excise tax. The Central Purchasing Division shall furnish tax exemption certificates upon written request.

## **A.7. Audit and Records Clause**

- A.7.1.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.7.2.** The successful bidder(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of seven years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved, or until the end of the three year retention period, whichever is later.

## **A.8. Non-Appropriation Clause**

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

## **A.9. Choice of Law**

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

## **A.10. Choice of Venue**

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

## **A.11. Termination for Cause**

- A.11.1.** The supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.11.2.** The State may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance. A
- A.11.3.** If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

## **A.12. Termination for Convenience**

- A.12.1.** The State may terminate the Contract, in whole or in part, for convenience if the State Purchasing Director determines that termination is in the State's best interest. The State Purchasing Director shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State Purchasing Director.
- A.12.2.** If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

## **A.13. Insurance**

The successful bidder(s) awarded the Contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The supplier awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division and the procuring agency with evidence of such insurance and renewals.

## **A.14. Employment Relationship**

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not

employees of the State of Oklahoma or the procuring agency. The supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

**A.15. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007**

By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

**A.16. Compliance with Applicable Laws**

The products and services supplied under the Contract shall comply with all applicable federal, state and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

**A.17. Special Provisions Special**

Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

## **B. SPECIAL PROVISIONS**

### **B.1. DEFINITIONS**

The following definitions shall be part of any contract awarded or order placed as result of this Request for Proposal (RFP).

#### **B.1.1. STANDARD DEFINITIONS**

- B.1.1.1.** Addendum – A written change, addition, alteration, correction, or revision to a statewide contract issued by the state agency responsible for making the acquisition.
- B.1.1.2.** Contract - A mutually binding legal relationship obligating the contractor to furnish an acquisition and the State to pay for it. It includes all types of commitments that obligate a state entity to an expenditure of funds or action that, unless otherwise authorized, is in writing. Specifically, it is the contract #: SW750.
- B.1.1.3.** Contracting Officer– The State representative designated by the State Purchasing Director, who is responsible for the Contract, determining scope issues, and assuring quality of performance of successful supplier(s). The State reserves the right to change the Contracting Officer at any time.
- B.1.1.4.** CP – State of Oklahoma, Department of Central Services, Central Purchasing Division.
- B.1.1.5.** DCS – State of Oklahoma Department of Central Services
- B.1.1.6.** DOT – U.S. Department of Transportation
- B.1.1.7.** Mandatory – Use is required
- B.1.1.8.** May – Denotes that which is permissible, not mandatory.
- B.1.1.9.** ODOT – Oklahoma Department of Transportation
- B.1.1.10.** Release – Purchase order issued against the specified contract.
- B.1.1.11.** Requesting entity –Entities include all Oklahoma State Departments, Boards, Commissions, Agencies, Institutions, Counties, Cities, Higher Education, Hospitals, School Districts, Sub-Political Divisions and Municipalities.
- B.1.1.12.** Shall or Must – Denotes that which is a mandatory requirement..
- B.1.1.13.** Should – Denotes that which is recommended, not mandatory.
- B.1.1.14.** State – State of Oklahoma
- B.1.1.15.** Successful supplier /successful bidder- The supplier that is awarded a contract. It is used interchangeably with "awarded supplier" or "contractor".

### **B.2. AUTHORIZED USERS**

The contract shall cover requirements during the specified period for all State Departments, Boards, Commissions, Agencies, Institutions, Counties, Cities, Higher Education, Hospitals, Political Sub-Divisions, School Districts and Municipalities.

### **B.3. EXTENSION OF CONTRACT**

The State may extend the term of this contract up to 120 days if mutually agreed upon by both parties in writing.

### **B.4. CONTRACT PERIOD**

This contract shall not become effective until approved by the State Purchasing Director, Central Purchasing Division, Department of Central Services. The contract is for a 12 month period, commencing January 1, 2011 and ending December 31, 2011. The contract may be renewed at the same terms and conditions for up to five (5) one-year option periods.

### **B.5. CONTRACT PRIORITY, TYPE AND PRICE**

This contract is mandatory to State agencies, boards, commissions and departments. Local governments (City, County, School Districts and etc.) are permitted to utilize this contract. Conditions included in this contract shall be the same for local governments. The State has no responsibility for payments owed by local governments. Successful supplier must deal directly with the local governments.

This is a firm, fixed price, indefinite delivery and indefinite quantity contract with annual price adjustments.

This statewide contract is awarded by Central Purchasing Division to take advantage of volume discount pricing for goods and/or services that have a recurring demand from one or more entities. However, if a requesting state agency locates a supplier that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by Central Purchasing Division.

### **B.6. PRICE TERM**

Prices proposed are the maximum for a period of one year from the date the contract becomes effective. Prices are subject to change at the end of each one year period. Such changes shall be based on changes in actual costs incurred excluding fuel price

change (see fuel price adjustment clause). Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Central Purchasing Division reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Central Purchasing Division also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next one year period.

Requests for price changes shall be **RECEIVED IN WRITING AT LEAST FIFTEEN DAYS PRIOR TO THEIR EFFECTIVE DATE**, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the contract may be cancelled subject to cancellation clauses. The successful supplier remains responsible for performing according to the contract terms at the contract price for all orders received before price revisions are approved or before the contract is cancelled.

Pricing as submitted on the price schedule shall contain all direct and indirect costs associated with unit price, e.g., insurance, fees, taxes, profit, overhead, general, administrative expenses and contract management fee.

Each item required by the RFP must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

## **B.7. NEW FIXED RATES**

Fixed rates for items apply whether supplied by the successful supplier, its subcontractor, or its short-term lease/rental agreement.

If the requesting entity requires and the successful supplier provides an equipment item categories for which a fixed rate has not been established, the successful supplier shall submit the new fixed rate and supporting documentation on how the fixed rate is calculated, e.g., market price to the requesting entity, manufacture cost plus markup. Once the fixed rate is reviewed and agreed by the requesting entity, the requesting entity shall submit the fixed rate and related documentation to the Contracting Officer (by way of email or fax) indicating a need of such item category for completion of the specific project. The rate offered shall not be higher than the rate charged to the successful supplier's best customer. Retroactive to the date the item was first shipped to the ordering location if the new fixed rate for the item is notified and submitted to the Contracting Officer within 72 business hours after shipment of item. Failure to commit with the specified time frame may result in item not being retroactive.

## **B.8. FUEL PRICE ADJUSTMENT**

The following is a definition of the provisions being established to allow for a fuel surcharge for a delivery fee when a diesel fuel price is greater than \$4.00 per gallon.

- B.8.1.** If requested, the successful supplier will be allowed to implement a recovery fee if the diesel price per gallon of fuel increases more than \$4.00 per gallon. The successful supplier shall use index pricing from the weekly Retail Gasoline and Diesel prices for the Midwest region as posted each Monday by the Energy Information Agency at [http://tonto.eia.doe.gov/dnav/pet/pet\\_pri\\_gnd\\_dcus\\_r20\\_w.htm](http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_r20_w.htm) to determine a fuel price increase. After more than \$4.00 has occurred, the fuel surcharge will be structured as 5% for every \$.10/gallon and will be applied to all vehicles used for delivery products under this contract.

For example, diesel price increased to \$4.10. Then the fuel surcharge would be:

National Average Diesel Price for Midwest Region		Fuel Surcharge
<b>\$4.10-\$4.19</b>		<b>5%</b>
<b>\$4.20-\$4.29</b>		<b>10%</b>
<b>\$4.30-\$4.39</b>		<b>15%</b>
<b>\$4.40-\$4.49</b>		<b>20%</b>
<b>\$4.50-\$4.59</b>		<b>25%</b>
<b>\$4.60-\$4.69</b>		<b>30%</b>
<b>\$4.70-\$4.79</b>		<b>35%</b>
<b>each \$.10 additional</b>		<b>add 5%</b>

Therefore, if the delivery fee for an item proposed by the supplier was \$20.00 per round trip, then based on the above table, when diesel price was \$4.10, the delivery fee would be \$20.00 x 5% = \$21.00.

- B.8.2.** Once the fuel price returns to \$4.00 or less, surcharges may no longer be charged.

- B.8.3.** The fuel surcharge shall be applied at the day a vehicle is used.

- B.8.4.** The index used as the basis for an increase in the fuel surcharge shall be submitted with the invoice and will match date and time products delivered shown in a delivery receipt form.

## **B.9. CONTRACT ADMINISTRATION**

This Contract is issued by the Oklahoma Department of Central Services, Central Purchasing Division on behalf of the State of Oklahoma (collectively, including all other relevant State of Oklahoma authorized entities, the "State"). Central Purchasing Division is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Central Purchasing Division is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.

## **B.10. CONTRACT MANAGEMENT FEE AND QUARTERLY USAGE REPORTING**

### **B.10.1. Management Fee:**

Pursuant to Oklahoma State Statute Title 74, Chapter 4, Section 85.33B The State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department of Central Services. The State Purchasing Director shall ensure that a contract that provides a management fee, levy or rebate provides value to acquiring agencies exceeding open market acquisition costs.

Pursuant to this statute, the State Purchasing Director hereby imposes a management fee on this Statewide Contract, as defined below:

MANAGEMENT FEE	
Management Fee Percentage:	One Percent (1%)

By executing this Statute, the parties agree that the management fee identified in the table above has been included in new contract pricing, which new contract pricing has been approved by The State Purchasing Director and will become effective upon the Effective Date January 1, 2011. The Management fee (hereinafter, "the Fee") will be collected by successful supplier on all sales pursuant to this Statewide Contract placed on or after the "Effective Date" defined above. The Fee shall be remitted by successful supplier to The State Purchasing Director as further described below.

### **B.10.2. Quarterly Payment and Usage Reporting Requirements:**

The parties agree that the collected Fees and the corresponding Quarterly Sales Report, which identifies the total sales pursuant to this Statewide Contract for the corresponding fiscal quarter, shall be submitted by successful supplier to the Central Purchasing Director. The total sales reported in the Quarterly Sales Report should be limited to sales in which the successful supplier has received payment from the requesting entities. The Fees and the Quarterly Sales Report must be received by the State Purchasing Director on or before the successful supplier's Payment Due Date as defined in the table below:

Fiscal Quarters	Months	Successful Supplier's Payment Due Date
Quarter 1	January 1 <sup>st</sup> – March 31 <sup>st</sup>	<u>April 30<sup>th</sup></u>
Quarter 2	April 1 <sup>st</sup> – June 30 <sup>th</sup>	<u>July 31<sup>th</sup></u>
Quarter 3	July 1 <sup>st</sup> – September 30 <sup>th</sup>	<u>October 31<sup>th</sup></u>
Quarter 4	October 1 <sup>st</sup> – December 31 <sup>st</sup>	<u>January 31<sup>th</sup></u>
-----	-----	<u>30 calendar days following the termination of this Statewide Contract for any reason</u>



The Quarterly Usage Report must be in Excel spreadsheet format provided to successful supplier and submitted via email to the Contracting Officer name herein in the notice of award page Successful supplier must use this excel spreadsheet to report without altering descriptions, and headings. Additional explanation or information is allowed to be added or inserted to this excel spreadsheet, if needed. There are two tabs in the Quarterly Usage Report as follows:

- Volume sales report by entity
- Line item report

At the end of each quarter as defined above, successful supplier shall prepare the Quarterly Sales Report. In the event no sales have occurred, the successful supplier must submit the Quarterly Usage Report, indicating no sales have occurred. No later than the date identified above as the "Successful supplier's Payment Due Date" for each quarter, successful supplier shall remit a check payable to the Oklahoma Department of Central Services, Central Purchasing Division for the Fees, which check shall include the note "Management Fee" and the contract number to the following address.

- (U.S. POSTAL SERVICE)  
Oklahoma Department of Central Services,  
Central Purchasing Division  
Attn: Gai Hunter (subject to change, see notice of award or most updated addendum)  
P.O. Box 528803  
Oklahoma City, OK 73152
- (COMMON CARRIER)  
Oklahoma Department of Central Services,  
Central Purchasing Division  
Attn: Gai Hunter (subject to change, see notice of award or most updated addendum)  
2401 N. Lincoln, Ste 116  
Oklahoma City, OK 73105

**B.10.3. Auditing and Contract Close Out:**

**B.10.3.1.** All usage reports and Fee payments shall be subject to audit by the State. Successful supplier shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Successful supplier shall permit the Auditor of the State of Oklahoma or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the successful supplier relating to orders, invoices or payments or any other documentation or materials pertaining to this Statewide Contract, wherever such records may be located during normal business hours. Successful supplier shall not impose a charge for audit or examination of the successful supplier's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the successful supplier for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

In no event shall successful supplier retain any amount of money in excess of the compensation to which successful supplier is entitled and all Fees owed the Oklahoma Department of Central Services, Central Purchasing Division shall be paid within thirty (30) calendar days of termination of this Statewide Contract for any reason.

**B.10.3.2.** Modifying or Canceling the Fee: The State Purchasing Director reserves the right to modify and/or cancel the Fee at any time. Successful supplier shall immediately amend the Statewide Contract pricing to reflect any modification or cancellation of the Fee by The State Purchasing Director. In addition, The State Purchasing Director reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

**B.10.3.3.** Late Payment Fee: In the event The State Purchasing Director does not receive the successful supplier's payment of the Fees on or before the successful supplier's Payment Due Date, the Purchasing Director may request late payment charges. The parties agree the successful supplier will pay the interest on the overdue Fees at a rate provided by the State Treasurer based on the average interest rate for 30 day time deposits of State funds during the last calendar quarter of the last preceding fiscal year. (Titles 62, § 41.4a & 4b and 74, § 840.14. and OSF Prompt Payment Rules/Regulations).

**B.10.3.4.** Default: The parties agree the successful supplier's responsibility to collect and remit the management fee on behalf of the State Purchasing Director is a serious responsibility as the successful supplier is handling state funds. Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring successful supplier in default and may result in suspension or cancellation.

## **B.11. POST AWARD MODIFICATIONS**

Following contract award, during the term of the contract, including any optional renewal periods, or prior to renewal of the contract, the State may make changes or revisions within the scope of work of the contract. The State Purchasing Director or designee and the contractor may negotiate in good faith adjustments to terms, conditions, prices or other matters of mutual concern and interest. Such negotiations will be conducted in accordance with the Central Purchasing rules and result in an addendum or modification to the contract.

## **B.12. PURCHASING CARD**

The State currently has a contract with Bank of America to enable selected State employees to purchase needed goods and services using a State of Oklahoma purchasing card. This card functions as any consumer or commercial VISA/MASTER Card. The State requires the awarded Supplier to accept the State of Oklahoma's Purchasing Card and local government's Purchasing Card as a form of payment. There shall be no additional cost to a requesting entity for use of purchasing cards as a payment method.

## **B.13. PAYMENT**

Payment shall be made after delivery and acceptance of the material by the ordering location, and after receipt of invoice. Purchase order number shall appear on all invoices.

## **B.14. SUBCONTRACTING**

The successful Supplier shall be responsible for subcontractor payments and contract performance, to the extent of the services to be performed by subcontractors. Payments to subcontractors shall not rely upon receiving payments from the State. The successful supplier is required to have substantially financial stability to support their business operations.

This contract shall be between the State and the awarded successful supplier. The successful supplier shall be responsible for subcontractor adherence to the terms, specifications, and all applicable regulations. Any subcontract shall not relieve the successful supplier of any responsibility for performance under this contract.

## **B.15. HEADING**

Headings Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the contract.

## **B.16. REFORMATION AND SEVERABILITY**

Each provision of the contract is severable from all other provisions of the contract and, if one or more of the provisions of the contract is declared invalid, the remaining provisions of the contract remain in full force and effect.

## **B.17. NO WAIVER OF DEFAULT**

If a party fails to insist upon strict adherence to any term of the contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the contract.

## **B.18. RELATIONSHIP OF THE PARTIES**

The relationship between the State and successful supplier is that of client and independent supplier. No agent, employee, or servant of successful supplier or any of its subcontractors must be or must be deemed to be an employee, agent or servant of the State for any reason. Successful supplier will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of the contract.

## **B.19. MEDIA RELEASES**

News releases (including promotional literature and commercial advertisements) pertaining to the solicitation and contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the solicitation and contract are to be released without prior written approval of the State and then only to persons designated.

## **B.20. PERMITS AND INSURANCE**

Successful supplier must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, and all necessary insurance coverage to perform under this contract.