

## ATTACHMENT C

### OKLAHOMA STATEWIDE CONTRACT TERMS

#### 1. Statewide Contract Type

- 1.1 The Contract is a mandatory contract.
- 1.2 The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

#### 2. Orders and Addendums

- 2.1 Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2 Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3 Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

#### 3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

#### 4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

## **5. Termination for Convenience**

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

## **6. Contract Management Fee and Usage Report**

**6.1** Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all Acquisitions under a statewide contract. The payment of such fee will be calculated for all Acquisitions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

**6.2** While Supplier is the awardee of a statewide contract, Acquisitions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information

for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

**6.3** All Contract Usage Reports shall meet the following criteria:

- i.** Electronic submission in Microsoft Excel format to [strategic.sourcing@omes.ok.gov](mailto:strategic.sourcing@omes.ok.gov);
- ii.** Quarterly submission regardless of whether there were Acquisitions under the Contract during the applicable quarterly reporting period;
- iii.** Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv.** Contract quarterly reporting periods shall be as follows:
  - a.** January 01 through March 31;
  - b.** April 01 through June 30;
  - c.** July 01 through September 30; and
  - d.** October 01 through December 31.
- v.** Reports must include the following information:
  - a.** Procuring entity;
  - b.** Order date;
  - c.** Purchase Order number or note that the Acquisition was paid by Purchase Card;
  - d.** City in which products or services were received or specific office or subdivision title;
  - e.** Product manufacturer or type of service;
  - f.** Manufacturer item number, if applicable;
  - g.** Product description;
  - h.** General product category, if applicable;

- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma  
Office of Management and Enterprise Services, Central Purchasing  
5005 North Lincoln Boulevard, Suite 300  
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

## **7 Contract Type and Pricing**

- 7.1 This is a firm, fixed prices with fuel price adjustment and indefinite delivery and indefinite quantity contract. The contract is mandatory to use by the State departments and agencies. The Boards, Commissions, Institutions, Counties, Cities, Higher Education, Hospitals, Sub-Political Divisions, School Districts and Municipalities may avail themselves of using the contract.
- 7.2 Pricing as submitted on the unit price schedule shall contain all direct and indirect costs associated with unit price, e.g., insurance, fees, taxes, profit, overhead, general and administrative expenses. As part of service, no small reusable and not consumed items, and standard operating items will be charged to this contract, i.e., portable radios, cellular phones, digital cameras, ladders, duct tape, warning signs, warning cones, warning barrels, bailing wire, glue, paper towels, pens, pencils.
- 7.3 The State reserves the right to purchase any items under this contract from other statewide contracts issued by the Department of Central Services, Central Purchasing Division when determined in the best interest to the State.

- 7.4. Price reduction adjustment may be offered at any time during the term of the contract. It shall be approved by both parties and shall become effective upon notice.
- 7.5. Fixed rates for services: Fixed labor rates, as listed in the price schedule, apply to all individuals working under this contract. Fixed equipment rates apply to all equipment items listed in the price schedule. Fixed rates for labor and equipment items apply whether supplied by the successful supplier, subcontractor, short-term lease/rental agreement.

7.5.1 If the requesting entity requires and the successful supplier provides an equipment item and/or labor categories for which a fixed rate has not been established, the successful supplier shall submit the new fixed rate and supporting documentation how the fixed rate is calculated, e.g., market price, best customers' invoices to the requesting entity. 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 or labor 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 equipment or labor was first utilized on site if the new fixed rate for the item or labor is notified and submitted to the Contracting Officer within 72 business hours after utilization of item or labor on site. Failure to commit with the specified time frame will result in item or labor not being retroactive.

## **8 Fuel price adjustment**

The following is a definition of the provisions being established to allow for a fuel surcharge or deduction based upon fuel price on the day that solicitation is due.

- 8.1 The successful supplier will be allowed to implement a recovery fee if the price per gallon of fuel increases more than or equal to twenty (20) percent from the fuel price posted on the day the solicitation is due. 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\\_nus\\_w.htm](http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm). After the 20% change has occurred, the fuel surcharge will be structured as .5% for every \$.10/gallon and will be applied to all fuel-operated vehicles and equipment under this contract.

For example, diesel price on the day the solicitation is due is \$2.176, and the diesel fuel subsequently increased by 20% to \$2.611. Then the fuel surcharge would be:

National Average Diesel Price for Midwest Region	Fuel Surcharge
<b>\$2.612</b>	<b>0.5%</b>
<b>\$2.712</b>	<b>1.0%</b>
<b>\$2.812</b>	<b>1.5%</b>
<b>\$2.912</b>	<b>2.0%</b>
<b>\$3.012</b>	<b>2.5%</b>
<b>\$3.112</b>	<b>3.0%</b>
<b>\$3.212</b>	<b>3.5%</b>
<b>each \$.10 additional</b>	<b>add 0.5%</b>

- 8.2 Once the fuel price returns to the twenty (20) percent or less of the fuel price on the day the solicitation is due, surcharges will no longer be charged.
- 8.3 Once the fuel price decreases less than or equal to twenty (20) percent from the fuel price on the day the solicitation is due, the successful supplier shall offer the fuel price deduction to the State as structured as -0.5% for every  $-.10/\text{gallon}$  and will be applied to all fuel-operated vehicles and equipment.

For example, diesel price on the day that solicitation is due is \$2.176, and the diesel fuel decreased by 20% to \$1.741. Then the fuel deduction would be:

National Average Diesel Price for Midwest Region	Fuel Deduction
<b>\$1.740</b>	<b>-0.5%</b>
<b>\$1.640</b>	<b>-1.0%</b>
<b>\$1.540</b>	<b>-1.5%</b>
<b>\$1.440</b>	<b>-2.0%</b>
<b>\$1.340</b>	<b>-2.5%</b>
<b>\$1.240</b>	<b>-3.0%</b>
<b>\$1.140</b>	<b>-3.5%</b>
<b>each \$.10 decrease</b>	<b>minus 0.5%</b>

- 8.4 The fuel surcharge and deduction shall be applied at the day a fuel-operated vehicle or equipment as is used. The index used as the basis for an increase or decrease in the fuel surcharge shall be submitted with the invoice and must match time in driver’s daily log and/or project daily log.

## 9 Additional Insurance

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

Copies of Certificates of Insurance showing such coverage to be in force shall be filed with the Office of Management and Enterprise Services, Central Purchasing Division within thirty (30) days after contract award. The foregoing policies shall be obtained from insurance companies licensed to do business in State of Oklahoma. All such coverage shall remain in full force and effect during the initial term of the contract and any renewal or extension thereof.

9.1 Successful supplier agrees to assume full liability for all claims arising from this contract including claims resulting from negligent acts of all of its employees and subcontractor(s). Successful supplier is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractor(s) to comply with insurance requirements does not limit successful supplier's liability or responsibility.

9.1.1 Employers Liability: The successful supplier(s) shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws statutes, and regulations to the full extent applicable and shall maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State shall not be held responsible in any way for claims filed by the successful supplier(s) or their employees for services performed under the terms of this contract.

9.2.1 Commercial General Liability Insurance: The successful supplier(s) at all times during the terms of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the successful supplier(s) or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness, and death and property damage arising out of the successful supplier's premises/operations, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract) and contain separation of insured's (cross liability) conditions.

The successful supplier(s) waives all rights against the State for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

9.2.2 The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)

\$1,000,000.00

Products-Completed Operations Aggregate

\$1,000,000.00

Personal and Advertising Injury Aggregate

\$500,000.00

Pollution Liability Coverage

\$1,000,000.00

Each Occurrence (applies to all of above)

\$500,000.00

Fire Damage Limit (per occurrence)

\$1,000,000.00

Medical Expense Limit (any one person)

\$500,000.00

9.2.3 Business Auto Policy (BAP): In the event that services delivered pursuant to this contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the successful supplier(s), subcontractor, or anyone employed by either.

The successful supplier(s) shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000.00 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

The successful supplier(s) waives all rights against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.