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**STATE OF OKLAHOMA CONTRACT WITH EMS SUCCESS INC.**

This State of Oklahoma Contract is entered into between the State of Oklahoma by and through the Oklahoma State Department of Health and EMS Success Inc. (“Supplier”) and is effective as of the effective date set forth on a properly issued purchase order or, if no effective date is listed, the date of last signature (“Effective date”). The initial Contract term, which begins on the effective date of the Contract, is through June 30, 2026, and may have an opportunity for extension at the sole discretion of the agency.

**Purpose**

The State is awarding the Contract to Supplier for the FY26 OERSSIRF monies to fund assessment activities, stabilization and/or reorganization of at-risk emergency medical services, development of regional emergency medical services, training for emergency medical directors, access to training front line emergency medical services personnel, capital and equipment needs pursuant to OAC 310:642-1 and 63 O.S. 2008, § 1-2512.1., as more particularly described in certain Contract Documents.. The Supplier submitted no additional terms, no exceptions, and no master terms. This Contract Document memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under the Contract. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
  - 2.1. Solicitation EV00000707, Attachment A;
  - 2.2. General Provision, Exhibit 1
  - 2.3. General Terms, Attachment B;
  - 2.4. Agency Terms, Attachment C;
  - 2.5. Budget, Attachment E-1.
3. The parties additionally agree:
  - 3.1. Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.

- 3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
4. Payment obligations rest solely with the Oklahoma State Department of Health.  
  
Please send invoices and billing inquiries to:  
Oklahoma State Department of Health  
123 Robert S Kerr Avenue Ste 1702  
Oklahoma City, Oklahoma 73102  
United States  
  
Email: [phsworkforce@health.ok.gov](mailto:phsworkforce@health.ok.gov)
5. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**SIGNATURES**

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Agreement and to bind their respective party thereto.

**STATE OF OKLAHOMA  
by and through the OKLAHOMA STATE  
DEPARTMENT OF HEALTH:**

**EMS SUCCESS INC.**

By:   
Lisa Martinez-Leeper (Oct 28, 2025 15:06:24 CDT)

By:   
Justin Hunter (Oct 28, 2025 14:25:33 CDT)

Name: Lisa Martinez-Leeper

Name: Justin Hunter

Title: Chief Administrative Officer

Title: President

Date: Oct 28, 2025

Date: Oct 28, 2025

Agency Counsel

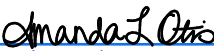
By:   
J. Chance Gibbs (Oct 28, 2025 15:09:38 CDT)

Name: J. Chance Gibbs

Title: Assistant General Counsel

Date: Oct 28, 2025

The State Purchasing Director is signing solely to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act pursuant to 74 O.S., 85.5 concerning acquisitions by state agencies.

By:   
Amanda Otis (Oct 28, 2025 15:09:57 CDT)

Name: Amanda Otis

Title: State Purchasing Director

Date: Oct 28, 2025

# Attachment A

## Solicitation No. EV00000707

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded on behalf of Oklahoma State Department of Health by and through the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract document.

### I. PURPOSE

The Office of Management and Enterprise Services (OMES), Central Purchasing Division, is seeking responses on behalf of the Oklahoma State Department of Health from potential Suppliers to award monies to fund assessment activities, stabilization and/or reorganization of at-risk emergency medical services, development of regional emergency medical services, training for emergency medical directors, access to training front line emergency medical services personnel, capital and equipment needs pursuant to OAC 310:642-1 and 63 O.S. 2008, § 1-2512.1. A Contract resulting from this Solicitation may be designated for use as a Statewide Contract.

The Contract is awarded on behalf of the Oklahoma State Department of Health for the award of OERSSIRF monies to applicants pursuant to the requirements and guidelines contained within OAC 310 Chapter 642, attached to this solicitation and hereinafter referred to as "Exhibit 1".

#### 1. Contract Term and Renewal Options:

- 1.1. The initial Contract term, which begins on the effective date of the Contract, is one year and there may be opportunity for extension at the sole discretion of the agency. An extension to an OERSSIRF funded project shall not entitle the applicant to additional OERSSIRF funding beyond what was initially awarded.

#### 2. Solicitation Criterion:

The Bid will be evaluated using the scoring criteria outlined in Exhibit 1 (310:642-5-1):

Points shall be awarded and evaluated using a best value criterion, based on the following:

- a. Statutory purpose of proposal aspects
- b. The number of jurisdictions covered by the EMS department
- c. The population density of the EMS department's service area
- d. The distance to a Level I or Level II trauma center
- e. The number of resident EMTs within the EMS department

- f. The amount of funding requested
- g. The percentage of matching funds

**3. Scope and Description: See Exhibit 1 (310:642-7-1)**

- a. All requirements for a valid proposal for OERSSIRF funding are outlined in OAC 310:642-3. Please reference Exhibit 1.
- b. Forms in Exhibit 2 are required to be completed and included in the proposal

**4. Pricing**

Pricing shall be proposed using Section 10 – “**Budget/Proposed Expenditures**” of **Exhibit 2**. Pricing shall be proposed as a single total firm, fixed cost and include all information concerning fees, other costs, and any other information relevant to the total cost.

**5. All Technical responses shall be proposed using Exhibit 2**

## Exhibit 1.

### CHAPTER 642. EMERGENCY RESPONSE SYSTEMS STABILIZATION AND IMPROVEMENT REVOLVING FUND

[Authority: 63 O.S., § 1-2512.1]

[Source: Codified 7-25-10]

Effective September 11, 2023: Senate Joint Resolution No 22 will amend OAC 310:641-5-1 by deleting sections (H) and (I) from paragraph 2. Previous awards and evaluations will not be required to complete the response to the Request for Proposals (RFP)

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 310:642-1-1. Purpose

The rules in this chapter are promulgated to:

- (1) Define the process for appropriate distribution of the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund (OERSSIRF) pursuant to 63 O.S. 2008, § 1- 2512.1.
- (2) Provide standards for monitoring and enforcement of the provisions of the statute and these rules.

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-1-1 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-1-1 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

##### 310:642-1-2. Program Description

The Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund program is authorized by 63 O.S. 2008, § 1-2512.1. This law authorizes the Department to distribute funds for specified purposes. This Chapter interprets and implements the law authorizing the expenditure and distribution of funds by the Department. The Department's rules applicable to OERSSIRF expenditures shall be construed so as to consider only the OERSSIRF expenditures program administered by the Department.

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-1-2 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-1-2 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

##### 310:642-1-3. Definitions

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

Exhibit 1.

**"Applicant"** means a qualified entity that submits a proposal for OERSSIRF funds.

**"Department"** means the Oklahoma State Department of Health.

**"Emergency Medical Services System"** means the network of emergency medical dispatchers (EMDs), certified emergency medical responders (EMRs), licensed emergency medical technicians (EMTs), certified emergency medical response agencies (EMRAs), licensed ambulance services, EMS

## Exhibit 1.

medical directors, recognized training institutions, and communications centers that work together to deliver prompt, effective pre-hospital emergency medical care to the citizens of Oklahoma.

**"Qualified entity"** means any person or organization licensed, certified or approved by the Department as part of the EMS system, such as EMS personnel, certified emergency medical response agencies, licensed ambulance services, approved training institutions, approved emergency medical dispatch agencies, approved medical directors or any combination thereof, or their associations or sponsoring organizations, such as EMS districts, cities or counties that operate certified emergency response agencies or licensed ambulance services, or education systems operating EMS training institutions.

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-1-3 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

*Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-1-3 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

## SUBCHAPTER 3. PROPOSALS

### **310:642-3-1. Proposal review and disposition**

(a) **General procedures.** The general procedure to be followed in the funding proposal, review and consideration process for financial assistance under the OERSSIRF program shall be as follows:

(1) **Pre-proposal conference.**

(A) All potential applicants are encouraged to participate in a pre-proposal conference.

The Department shall summarize available funding, areas of need identified by any state assessment, and the status of previous OERSSIRF-funded projects.

(B) At the pre-proposal conference, preliminary matters may be generally discussed to familiarize all concerned parties with the proposal period, requirements and procedures.

(2) **Proposal.** An applicant shall initiate proposal review and consideration by submission to the Department of applicant's proposal for financial assistance. A proposal shall be submitted by the qualified entity using forms described in 310:642-7-1 (relating to content of application), within the application period specified in OAC 310:642-3-2 (relating to deadlines for filing.)

(3) **Scoring and selection.** Eligible proposals shall be scored by the following process.

(A) A public meeting shall be scheduled for the purpose of scoring the eligible OERSSIRF proposals and awarding the funds that have been identified by the Department as the balance available for distribution on the last day of the preceding calendar year.

(i) A five (5) person review panel shall be appointed by the Commissioner.

(ii) Each appointed member will sign an attestation stating the appointee has no financial or other direct personal interest in any of the project proposals before the Department.

(B) The panel shall be seated and the reviews will begin under the direction of Department staff.

(i) Department staff will distribute proposals and scoring tools, collect the completed scoring tools for each proposal from the panelists, and tally the scores for each proposal at the end of the process.

(ii) The tallied scores shall be posted as soon as the totals are computed.

Exhibit 1.

(C) The project with the highest score of total points shall be selected for funding, and the projected cost of the project deducted from the balance of the fund.

(D) The project with the next highest score of total points shall be selected for funding, and the cost deducted from the balance of the fund and continuing in like manner until insufficient funds remain to fund the next highest-scoring project.

(E) Any remaining funding shall be retained by the fund and distributed the next year.

## Exhibit 1.

### (b) **Criteria applicability.**

(1) The criteria set forth in subsections (c) and (d) of this Section shall constitute guidelines and standards for proposal review and consideration by the Department.

(2) The criteria and standards set forth in subsections (c) and (d) of this Section shall be applied to each proposal without exception.

(c) **General approval standards and criteria.** The Department shall be under a continuing obligation to ensure the following standards and criteria are satisfied before any proposal is approved for funding and may determine compliance with these standards and criteria during preliminary review, scoring and selection or during a post selection review:

(1) **Compliance with applicable law.** The proposed project must be found to be in compliance with 63 O.S. § 1-2512.1, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be a qualified entity and the proposed project must be for a qualified purpose as defined in 63 O.S. § 1-2512.1.

(3) **Local need, support and priority.** The applicant shall demonstrate that the project is needed in the area to be served and is sufficient, as proposed, to serve such needs. Applicant shall demonstrate local support, interest and commitment in and to the proposed project.

(4) **Availability of other assistance.** Applicant shall demonstrate appropriate due diligence to ensure no alternative sources of revenue could be obtained and utilized for project financing.

(5) **Economic feasibility.** The applicant shall demonstrate the overall economic viability and feasibility of the project.

(6) **Project feasibility.** The applicant shall demonstrate that the project is feasible and cost effective.

(7) **Statewide needs and public interest.** The applicant shall demonstrate the relationship between the proposed project and the overall EMS development needs within the State of Oklahoma and show that proposed project will serve the public interest and welfare.

(d) **Criteria for denying a proposal.** The Department may deny a proposal for OERSSIRF funding for any of the following reasons:

(1) The applicant is not an eligible entity.

(2) The project does not serve the goals of 63 O.S. § 1-2512.1.

(3) Insufficient availability of funding.

(4) The proposal is received after the deadline.

### (e) **Department action.**

(1) After reviewing and considering the submitted proposal, the Department may take one of the following actions:

(A) The Department may approve and fund the proposal as submitted.

(B) The Department may reject and deny the proposal based upon any applicable criteria described in subsection (d) of this Section.

(2) Upon approval of a proposal, the Department may authorize the execution of all necessary funding documents and instruments, and may accordingly authorize and provide for disbursements and such further or additional action as may be necessary to complete and implement the approved transaction.

***EDITOR'S NOTE:** <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-3-1 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Amended at 37 Ok Reg 1440, eff 9-11-20]

***EDITOR'S NOTE:** <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

*Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-3-1 was*

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*no longer effective, and remained as such until added again by permanent action on 7-25-10.*

**310:642-3-2. Applicable law, deadline for proposals, eligible project costs, maximum award**

(a) The Department shall administer proposals for OERSSIRF funds in accordance with any provisions of

## Exhibit 1.

law applicable to such proposals and OERSSIRF funds.

(b) To be considered for and receive funding from funds available for OERSSIRF in any given fiscal year, an application must be completed in accordance with this Chapter and filed by the applicant and received by the Department on or before the thirtieth (30) calendar day after the issuance of the Request for Proposals (RFP). Any application not properly completed and filed shall not be considered for or funded from funds that may become available during that fiscal year.

(c) The Department shall issue a Request for Proposals (RFP) for the OERSSIRF each year. The submission period, including time for questions, shall not be less than thirty (30) calendar days. The Department shall identify qualified staff to ensure questions received through the RFP process are answered and posted appropriately.

(d) An OERSSIRF proposal submitted for consideration in a prior fiscal year that was not approved for funding in that prior fiscal year may be submitted again in any year.

(e) For purposes of evaluating, approving and funding proposals for OERSSIRF funds, categories of project costs which are eligible for assistance shall include those project costs described in 63 O.S. § 1- 2512.1:

- (1) Funding assessment activities,
- (2) Stabilization and/or reorganization of at-risk emergency medical services,
- (3) Development of regional emergency medical services,
- (4) Training for emergency medical directors,
- (5) Access to training front line emergency medical services personnel,
- (6) Capital and equipment needs.

(f) No qualified entity shall receive more than \$500,000 in OERSSIF funding assistance in any twelve (12) month period, or for any single project.

***EDITOR'S NOTE:** <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-3-2 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

***EDITOR'S NOTE:** <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

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## SUBCHAPTER 5. SCORING

### **310:642-5-1. OERSSIRF funding priority point system**

Proposals shall be ranked based on the total number of points awarded by the Department consistent with this Chapter.

(1) The following formula shall be used to rank funding proposals:  $T = S + M + D + H + E + AR + PM + PG + PE$ , where:

- (A) T = Total points
- (B) S = Statutory purposes
- (C) M = Multiple jurisdictions
- (D) D = Population density
- (E) H = Distance to the nearest level I or II trauma center
- (F) E = Number of project-area EMTs
- (G) AR = Amount of funding requested
- (H) PM = Project matching
- (I) PG = Previous funding assistance
- (J) PE = Previous funding evaluation

(2) Points may be awarded as described below:

Exhibit 1.

(A) **Statutory purposes (S):** Points shall be awarded for each of the relevant statutory purposes of the proposal as follows:

⊕ Funding assessment activities: 50 points

Exhibit 1.

- (ii) Stabilization and/or reorganization of at-risk emergency medical services: 100 points
- (iii) Development of regional EMS: 50 points
- (iv) Training for emergency medical directors: 50 points
- (v) Access to training front line emergency medical services personnel: 100 points
- (vi) Capital and equipment needs: 50 points

(B) **Multiple jurisdictions (M):** Points shall be awarded for projects addressing the EMS needs of multiple jurisdictions, as follows:

- (i) Two cities or towns: 25 points
- (ii) Three cities or towns: 50 points
- (iii) County wide: 100 points
- (iv) Multi-county: 150 points
- (v) State wide: 200 points

(C) **Population density (D):** Points shall be awarded for projects encompassing areas of lowest per-mile population density as recorded by the United States Census Bureau, as follows:

- (i) 5,000.0 to 8,968.1: 0 points
- (ii) 1,000.0 to 4,999.9: 10 points
- (iii) 200.0 to 999.9: 20 points
- (iv) 79.6 to 199.9: 30 points
- (v) 30.0 to 79.5: 40 points
- (vi) 10.0 to 29.9: 50 points
- (vii) Less than 10.0: 100 points

(D) **Distance to trauma center (H):** Points shall be awarded for project areas where the average distance between the furthest and closest points within the project area to a trauma center classified by the State of Oklahoma or the American College of Surgeons as level I or II, as follows:

- (i) 0-25 miles: 0 points
- (ii) 25-49 miles: 10 points
- (iii) 50-74 miles: 20 points
- (iv) 75-99 miles: 30 points
- (v) 100-124 miles: 40 points
- (vi) 125-149 miles: 50 points
- (vii) 150 miles and over: 100 points

(E) **EMTs (E):** Points shall be awarded for proposals encompassing project areas with fewer resident licensed EMTs at any level of licensure as recorded by the Department as follows:

- (i) 100 or more resident EMTs: 0 points
- (ii) 50-99 resident EMTs: 20 points
- (iii) 25-49 resident EMTs: 40 points
- (iv) 0-24 resident EMTs: 60 points

(F) **Amount of funding requested (AR):** Points under this category for amount of funding requested are determined as follows:

- (i) \$400,001 to \$500,000: -50 points
- (ii) \$300,001 to \$400,000: -40 points
- (iii) \$200,001 to \$300,000: -30 points
- (iv) \$100,001 to \$200,000: -20 points
- (v) \$80,000 to \$100,000: 10 points
- (vi) \$60,000 to \$79,999: 20 points
- (vii) \$40,000 to \$59,999: 30 points
- (viii) \$20,000 to \$39,999: 50 points
- (ix) Any AR greater than \$500,000 shall be denied

(G) **Project matching (PM).** If the proposal proposes the use of matching funds,

Exhibit 1.

points shall be awarded consistent with the following formula:

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- (i) 90% of the requested funds: 90 points
- (ii) 80% of the requested funds: 80 points
- (iii) 70% of the requested funds: 70 points
- (iv) 60% of the requested funds: 60 points
- (v) 50% of the requested funds: 50 points
- (vi) 40% of the requested funds: 40 points
- (vii) 30% of the requested funds: 30 points
- (viii) 20% of the requested funds: 20 points
- (ix) 10% of the requested funds: 10 points

(H) ~~**Previous funding assistance (PG).** If a qualified entity has been approved for one (1) or more OERSSIF proposals from the Department for projects awarded in the past, points shall be deducted from the proposal according to all of the following provisions that apply unless the previous proposal was for an assessment of the need for the establishment of EMS or stabilization of an at risk EMS:~~

- (i) ~~One (1) funded project in the preceding twelve (12) month period: 80 points.~~
- (ii) ~~More than one (1) OERSSIF project in the preceding twelve (12) month period: 100 points.~~
- (iii) ~~One (1) OERSSIF funded project more than twelve (12) months in the past: 50 points.~~
- (iv) ~~Two (2) OERSSIF funded projects more than twelve (12) months in the past: 80 points.~~
- (v) ~~Three (3) OERSSIF funded projects more than twelve (12) months in the past: 100 points.~~
- (vi) ~~Four (4) OERSSIF funded projects more than twelve (12) months in the past: 150 points.~~
- (vii) ~~Five (5) or more OERSSIF funded projects more than twelve (12) months in the past: 175 points.~~
- (viii) ~~If the qualified entity has received a previous OERSSIF funding for a project that remains un-evaluated or for which any refund has not been paid as of August 31st of the year following the approved completion date of the project, the proposal will be given 50 points for each such funded project.~~

(I) ~~**Previous funding evaluation (PE).** The project score established through the Department's evaluation required by OAC 642-9-1(a) for each previously-completed OERSSIF project shall earn the following points:~~

- (i) ~~Significantly Improved: 100 points~~
- (ii) ~~Improved: 50 points~~
- (iii) ~~Not Improved: 50 points~~
- (iv) ~~Worsened: 100 points~~

Effective September 11, 2023: Senate Joint Resolution No 22 will amend OAC 310:641-5-1 by deleting sections (H) and (I) from paragraph 2. Previous awards and evaluations will not be required to complete the response to the Request for Proposals (RFP)

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-5-1 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

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## SUBCHAPTER 7. DISBURSEMENT

### 310:642-7-1. Content of proposal

(a) The proposal shall be submitted using the forms provided by the Department. The proposal form shall include the following sections:

- (1) Proposal Information, including the name of the contact person, mailing address, e-mail address, phone number and type of qualifying applicant entity.
- (2) Instructions, including an outline of the legal requirements and the priority point system.
- (3) A section requiring a narrative description of the proposed project.
- (4) A section enumerating the requirements of the OERSSIRF statute, requiring a description of the proposed project's compliance with each section.
- (5) A section requiring a narrative description of the proposed project's compliance with each of the priority point criteria.
- (6) A checklist allowing evaluation of compliance with solicitation requirements.

(b) Each proposal shall include a section setting forth the criteria that will be used to evaluate the success of the project. The criteria shall include:

- (1) Specific, objective metrics for evaluation of the project. For example: a percentage decline in response time or improvement in the number of available EMTs within a region, measured against the same metric at the start of the project.
- (2) A clear methodology and a description of data sources for computing the performance measures proposed in the project plan, for example, comparing responder response times or the total number of EMTs in a region against the same metric at the end of the project.
- (3) Benchmark measures for each of the following assessment levels:
  - (A) Significantly improved.
  - (B) Improved.
  - (C) Not Improved.
  - (D) Worsened.

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[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

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### 310:642-7-2. Disbursement of funds

(a) **Action following Department approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of an OERSSIRF proposal, the Department shall furnish to the applicant a written notice of approval. The notice shall advise the applicant that the funds approved shall be made available to the applicant by the Department for such purposes and upon conditions as provided in paragraph (2) of this subsection (relating to additional conditions prior to disbursement of funds).

(2) **Additional conditions prior to disbursement of funds.**

(A) Applicant shall establish a special and separate federally insured fund or account within applicant's accounting system in and through which the proceeds shall be administered and accounted for by the applicant.

(B) Unless otherwise provided and approved by the Department, applicant shall submit to the Department all plans, specifications and benchmark completion reports for the project for Department approval, all of which shall be complete and in sufficient detail as would

Exhibit 1.

be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Department with a written and verified statement setting forth:

## Exhibit 1.

- (i) The amount of funds necessary for release and disbursement at closing needed for commencement of the project, and
- (ii) The reasonable availability of all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Department, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a vendor agreement.

(3) **Department action on request for withdrawal of funding.** If, prior to disbursement of the monies to the applicant, the project bids exceed the estimates or it otherwise develops that the OERSSIRF proposal amount approved by the Department, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request to decline funding and withdraw its proposal for the current fiscal year.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.**

At the time of and upon compliance by the applicant with the applicable requirements in subsection (a) of this Section, the Department shall disburse the approved amount of OERSSIRF funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** Funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during, or upon, completion of the project, all as deemed appropriate by the Department under the project circumstances presented. The Department shall conduct on-site inspections to confirm completion of benchmarks described in the project plan.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the monies to the applicant it develops that the applicant needs more money for the project than the OERSSIRF amount disbursed by the Department, the Department may evaluate remaining funds and at its discretion may increase funding no more than 10% over the original proposed amount.

(4) **Post-disbursement action regarding unexpended funding.** If following completion of the project the applicant needed less money for the project than disbursed by the Department, the applicant shall return the unexpended amount to the Department. Unused funding shall be returned to the fund and made available during the next funding year.

(5) **Reports.** The Department may require quarterly or biannual progress reports and may at any time perform on-site inspections.

(A) Applicants shall provide all requested documents at the time of the inspection, or as required by the Department.

(B) Department staff shall report any suspected misappropriation of funds to the appropriate law enforcement authority.

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-7-2 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

*EDITOR'S NOTE: <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

*Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-7-2 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

## SUBCHAPTER 9. EVALUATION

### 310:642-9-1. Evaluation of Projects

The Department shall perform an evaluation of the project within six (6) months of its completion, summarizing its effectiveness using benchmark measures identified in the proposal as

## Exhibit 1.

required by 310:642-7-1(b)(3)(relating to content of proposals).

**EDITOR'S NOTE:** <sup>1</sup>This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective. Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-9-1 was no longer effective, and remained as such until added again by permanent action on 7-25-10.

## Exhibit 1.

[Source: Added at 27 Ok Reg 2536, eff 7-25-10]

**EDITOR'S NOTE:** <sup>1</sup>*This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the text of the Section is no longer effective.*

*Therefore, on 7-15-10 (after the 7-14-10 expiration of the emergency action), the text of section 310:642-9-1 was no longer effective, and remained as such until added again by permanent action on 7-25-10.*

## ATTACHMENT B

### STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms ("General Terms") is a Contract document in connection with the Contract awarded by the State of Oklahoma by and through the Office of Management and Enterprise Services.

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

#### **1 Scope and Contract Renewal**

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier's performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State exercises such option to extend ninety (90) days, the State shall notify the Supplier in

writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5 Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

## **2 Contract Effectiveness and Order of Priority**

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.

- 2.2 Contract documents shall be read to be consistent and complementary. Any conflict among the Contract documents shall be resolved by giving priority to Contract documents in the following order of precedence:

- A. any Amendment;
- B. terms contained in this Contract document
- C. any Contract-specific State terms including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D. any applicable Solicitation;
- E. any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
- F. any statement of work, work order, or other mutually agreed Contract documents.

- 2.3 If there is a conflict between the terms contained in this Contract document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract document or Acquisition-specific terms. In no event will any linked document alter or override such

referenced terms except as specifically agreed in an Amendment.

- 2.4 Any Contract document shall be legibly written in ink or typed. All Contract transactions, and any Contract document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

### **3 Modification of Contract Terms and Contract documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Amendment. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.
- 3.3 Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.4 Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, no Contract document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.5 To the extent any term or condition in any Contract document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, the State or Customer makes no representation or

warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

#### **4 Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 Amendment** means a mutually executed, written modification to a Contract document.
- 4.3 Bid** means an offer a Bidder submits in response to the Solicitation.
- 4.4 Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.5 Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.6 Customer** means the governmental entity receiving goods or services contemplated by the Contract.
- 4.7 Debarment** means action taken by a debaring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.8 Destination** means delivered to the receiving dock or other point specified in the applicable Contract document.
- 4.9 Governmental Entity** means any governmental entity specified as a political

subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.

- 4.10 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees, and designees thereof.
- 4.11 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.12 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.13 OAC** means the Oklahoma Administrative Code.
- 4.14 OMES** means the Office of Management and Enterprise Services.
- 4.15 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.16 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.17 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.18 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.19 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include

information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.

**4.20 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

## **5 Pricing**

**5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.

**5.2** Pursuant to 74 O. S. §85.40, all travel expenses of Supplier must be included in the

total Acquisition price.

- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on-board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

## **6 Ordering, Inspection, and Acceptance**

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.

- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service. Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final

acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3** Supplier shall deliver products and services on or before the required date specified in a Contract document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4** Product warranty and return policies and terms provided under any Contract document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

## **7 Invoices and Payment**

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest

is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.

- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

## **8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation**

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better. Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a notice of cancellation and includes the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for

Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$1,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 combined single limit each accident;
- D.** If the Supplier will access, process, or store state data, then Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with a limit of not less than \$5,000,000 per occurrence; and
- E.** Additional coverage required in writing in connection with a particular Acquisition.

**8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or Supplier's employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, Supplier's employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

**8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

## **9 Compliance with Applicable Laws**

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
  - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
  - C.** Prospective participant requirements set at 2 C.F.R. part 376 in connection with Debarment, Suspension and other responsibility matters;
  - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
  - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
  - F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
  - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
  - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify);

- I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
  - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at <http://www.dhs.gov/E-Verify>. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non- electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

## **10 Audits and Records Clause**

- 10.1** As used in this clause and pursuant to 67 O.S. §203, "record" includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, 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. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration

of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

## **11 Confidentiality**

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.
- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it

or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonably should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.

- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- 11.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.
- 11.7** Customer may be provided access to Supplier's Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier

acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this Contract.

- 11.8** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to the Supplier.

## **12 Conflict of Interest**

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

## **13 Assignment and Permitted Subcontractors**

- 13.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 13.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers

prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

**13.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

**13.4** All payments under the Contract shall be made directly to the Supplier, except as provided in 13.1 above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

**13.5** Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

## **14 Background Checks and Criminal History Investigations**

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The

costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or service.

## **15 Patents and Copyrights**

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

## **16 Indemnification**

### **16.1 State Shall Not Indemnify**

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State

pursuant to Oklahoma Constitution article 10, Section 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

## **16.2 Acts or Omissions**

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
  
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

## **16.3 Infringement**

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or

(d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

#### **16.4 Notice and Cooperation**

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

#### **16.5 Coordination of Defense**

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

#### **16.6 Limitation of Liability**

**A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.

- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

## **17 Termination for Funding Insufficiency**

- 17.1** Notwithstanding anything to the contrary in any Contract document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.
- 17.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded.

**17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

## **18 Termination for Cause**

**18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

**18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

**18.3** The State may terminate the Contract if the scope includes PR Vendor services and the Supplier, or Supplier's employee, violate the lobbying clause. PR Vendor services is defined to include a contract for public relations (PR), marketing or communication services. The State may immediately terminate the Contract with no more than 10-days notice under this section.

**18.4** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or

associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

- 18.5** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-1 is an example.

## **19 Termination for Convenience**

- 19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.
- 19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory nor to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies

provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

## **20 Suspension of Supplier**

**20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

**20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

**20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such a resumption will occur.

## **21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract. A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written

notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

## **22 Certification Regarding State Employees Prohibition From Fulfilling Services**

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

## **23 Force Majeure**

**23.1** Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

**23.2** Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

**23.3** Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself

by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

## **24 Security of Property and Personnel**

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

## **25 Notices**

All notices, approvals or requests allowed or required by the terms of any Contract document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

### **If Sent to the State:**

State Purchasing Director

2401 N. Lincoln Blvd., Second Floor Oklahoma City, Oklahoma 73105

### **With a copy, which shall not constitute notice, to:**

Purchasing Division Deputy General Counsel 2401 N. Lincoln Blvd., Second Floor  
Oklahoma City, Oklahoma 73105

## **26 Miscellaneous**

### **26.1 Choice of Law and Venue**

Any claim, dispute, or litigation relating to the Contract documents, in the singular

or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.7(F), where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract documents, shall be in Oklahoma County, Oklahoma. The State expressly declines any terms that minimize its rights under Oklahoma law, including but not limited to, Statutes of Limitations.

## **26.2 Employment Relationship**

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

## **26.3 Transition Services**

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

## **26.4 Publicity**

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

## **26.5 Open Records Act**

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) pricing provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

## **26.6 Failure to Enforce**

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

## **26.7 Mutual Responsibilities**

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into

similar agreements with others.

- C. The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D. The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E. Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

#### **26.8 Invalid Term or Condition**

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

#### **26.9 Severability**

If any provision of a Contract document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### **26.10 Section Headings**

The headings used in any Contract document are for convenience only and do not constitute terms of the Contract.

### **26.11 Sovereign Immunity**

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

### **26.12 Survival**

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

### **26.13 Entire Agreement**

The Contract documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

### **26.14 Gratuities**

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

### **26.15 Import/Export Controls**

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

**ATTACHMENT C**  
**AGENCY TERMS**

**1. Limited English Proficiency**

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program needs service or information in a language other than English in order to effectively be informed of or participate in the program, the Respondent shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide the information in appropriate languages to such persons.

An inability by the Respondent to provide the information in the appropriate language to a significant number or proportion of the population eligible to be served or likely to be directly affected by the program may result in termination of the contract.

**2. Charitable Choice Providers**

Providers who are members of the faith community are eligible to compete for contracts with the State of Oklahoma on the same basis as any other provider. Such providers shall not be required to alter their forms of internal governance, their religious character or remove religious art, icons, scripture, or other symbols. Such providers may not, however, discriminate against clients on the basis of their religion, religious beliefs, or clients' refusal to participate in religious practices (45 CFR Part 87.1c). Organizations that receive direct financial assistance from the OSDH under any OSDH program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the OSDH. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the OSDH, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

**3. Procurement Integrity**

Respondent certifies that it has not entered into this contract with this or any other Oklahoma state agency that would result in a substantial duplication of the services or duplication of the end product rendered by the Respondent or its employees.



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**Applicants submitting an invoice to the Department for reimbursement of deliverables must include documentation the vendor participated in and/or received the deliverable.**