



Terms and Conditions for Sole Source Acquisition

****This document may be used in conjunction with OMES-FORM-CP-002, Sole Source Acquisition Certification if negotiated terms and conditions with the supplier do not already exist.**

1. **State Agency:** State Banking Department **Requisition #** 0650000069

2. **Brief Description of Acquisition:** Membership Fees and Education/Training Fees

3. **Contract Period:** The Contract Period is from 7/1/2017 to 6/30/2018

4. **Contract Officer:** _____

5. **Contract Officer email address:** _____

6. **Supplier General Information:**

FEI / SSN : SUPPLIER ID: 0000071192

Company Name: Conference of State Bank Supervisors, Inc.

7. **Supplier Contact Information:**

Address: 1129 20th Street, N.W. 9th Floor

City: Washington

State: DC

Zip Code: 20036

Contact Name: Frank Whetsell

Contact Title: Controller

Phone #: 202-728-5741

FAX#: 202-296-1928

Email: fwhetsell@csbs.org

Website: www.csbs.org

8. **Oklahoma Sales Tax Permit¹:**

☐ YES – Permit #: _____

☐ NO – Exempt pursuant to Oklahoma Laws or Rules

9. **Registration with the Oklahoma Secretary of State:**

☐ YES - Filing Number: _____

☐ NO - Prior to the contract award, the supplier will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

10. **Workers' Compensation Insurance Coverage:**

Supplier is required to provide with the offer a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☒ YES – include a certificate of insurance with the offer

☐ NO - attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2011, § 311 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)²

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <http://www.tax.ok.gov/faq/faqbusssales.html>

² For frequently asked questions concerning workers' compensation insurance, see <http://www.ok.gov/oid/faqs.html#c221>

A. PROVISIONS

A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act unless the items, products, supplies, services, or equipment are exempt pursuant to the Oklahoma Central Purchasing Act;
- A.1.2. "Destination" means delivered to the receiving dock or other point specified in the purchase order.
- A.1.3. "Supplier" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

A.2. Applicable Laws

The Contract shall be subject to Oklahoma case law, the Oklahoma Central Purchasing Act (74 O.S.85.1), Central Purchasing Rules, and other statutory requirements as applicable.

A.3. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Supplier and any subcontractor agree to the following conditions and certify to the best of their knowledge and belief, that they and their principals or participants:

- A.3.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local entity;
- A.3.2. Have not within a three-year period preceding this Contract been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- A.3.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.3.1.2. of this certification; and
- A.3.4. Have not within a three-year period preceding this Contract had one or more public (Federal, State or local) contracts terminated for cause or default.

A.4. Open Records

Financial or proprietary information submitted by a Supplier may be designated by the State Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. § 34.11.1(H)(2) and 74 O.S. § 85.10. Supplier claiming any portion of this contract as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. § 85.10. Otherwise, documents and information contained within this contract are public records and subject to disclosure after contract award or the contract is cancelled.

A.5. Legal Contract

- A.5.1. The Contract may consist of the following documents in order of precedence:
 - A.5.1.1. Purchase order, as amended by Change Order (if applicable);
 - A.5.1.2. The Contract Terms and Conditions, as amended (if applicable); and
 - A.5.1.3. Any listed attachments

A.6. Contract Modification

- A.6.1. The Contract is issued under the authority of the State Purchasing Director or through the delegated authority from the State Purchasing Director to the requisitioning agency who signs the Contract. The Contract may be modified only through a written Contract Modification, signed by the State Purchasing Director or the Chief Administrative Officer of the requisitioning agency.
- A.6.2. Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Central Purchasing Division in writing signed by the State Purchasing Director or through the delegated authority from the State Purchasing Director to the requisitioning agency, or made unilaterally by the Supplier, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such modifications, including unauthorized written Contract Modifications, shall be void and without effect, and the Supplier shall not be entitled to any claim under this Contract based on those modifications. No oral statement of any person shall modify or otherwise affect the

terms, conditions, or specifications stated in the resultant Contract.

A.7. Delivery, Inspection and Acceptance

- A.7.1. Unless otherwise specified in the awarding documents, all deliveries shall be F.O.B. Destination. The Supplier awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the Contract shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the Supplier until accepted by the receiving agency. The Supplier awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.7.2. Supplier awarded the Contract shall be required to deliver products and services as described or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Central Purchasing Division.

A.8. Invoicing and Payment

- A.8.1. Pursuant to 74 O.S. §85.44(B), invoices will be paid after products or services have been delivered and accepted.
- A.8.2. Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §34.71 and 62 O.S. §34.72.

A.9. Tax Exemption

State agency acquisitions are exempt from State sales taxes and Federal excise taxes. Suppliers shall not include these taxes in price quotes.

A.10. Audit and Records Clause

- A.10.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the Supplier agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.10.2. The Supplier awarded the Contract 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 and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) 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.

A.11. Non-Appropriation Clause

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

A.12. Choice of Law

Any claims, disputes, or litigation relating to the Contract shall be governed by the laws of the State of Oklahoma.

A.13. Choice of Venue

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

A.14. Termination for Cause

- A.14.1. The Supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the Supplier.
- A.14.2. The State may terminate the Contract immediately, without a 30-day written notice to the Supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance.
- A.14.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.15. Termination for Convenience

- A.15.1. The State may terminate the Contract, in whole or in part, for convenience if the State Purchasing Director determines that termination is in the State's best interest. The State Purchasing Director shall terminate the Contract by notifying the Supplier through a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 30 days from the date the Notice of Termination for Convenience is issued by the State Purchasing Director.
- A.15.2. If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the Supplier.

A.16. Insurance

The Supplier(s) awarded the Contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The Supplier awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division and the procuring agency with evidence of such insurance and renewals. Should the Supplier not be able to supply evidence of such insurance and renewals the Supplier will be considered in breach of the Contract and the Contract may be immediately terminated.

A.17. Employment Relationship

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or the procuring agency. The Supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

A.18. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007

The Supplier certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at www.dhs.gov/E-Verify.

A.19. Compliance with Applicable Laws

The products and services supplied under the Contract shall comply with all applicable Federal, State, and local laws, and the Supplier shall maintain all applicable licenses and permit requirements. Upon request the Supplier shall provide to Central Purchasing Division and the procuring agency copies of such licenses and permits.

A.20. Gratuities

The right of the Supplier to perform under this Contract may be terminated by written notice if the Contracting Officer determines that the Supplier, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of Central Purchasing.

A.21. Patents and Royalties

The Supplier, without exception, shall indemnify and hold harmless the State of Oklahoma and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the State of Oklahoma. If the Supplier uses any design, device or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the proposal prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

A.22. Disclosures Regarding Lobbyists

- A.22.1. A Supplier may not reimburse itself within its contract pricing for its costs and expenses of lobbyists.
- A.22.2. Any Supplier using the services of a lobbyist to assist in obtaining a Contract shall (1) disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract (2) not bill or otherwise charge the State for such and (3) certify that no such costs were billed to the State.
- A.22.3. The Supplier certifies the name and address of each lobbyist or agent of the Supplier or subcontractor who communicated with a state employee about a Contract has been disclosed prior to Contract award.

A.23. Travel Expense

No reimbursable travel is contemplated under the terms of this contract or contract renewals.

A.24. Oral Agreements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract. All modifications to the contract must be made in writing by the Central Purchasing Division and signed by the State Purchasing Director.

A.25. Non-Collusion

- A.25.1. I am the duly authorized agent of the above named Supplier submitting the documentation herewith, for the purpose of certifying the facts pertaining to the existence of collusion between the Supplier and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract;
- A.25.2. I am fully aware of the facts and circumstances surrounding the making of this contract to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such contract; and
- A.25.3. Neither the Supplier nor anyone subject to the Supplier's direction or control has been a party:
- a. to any collusion among Suppliers in restraint of freedom of competition by agreement to contract at a fixed price or to refrain from submitting supplier contract information,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between the awarded Supplier and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.
- A.25.4. I certify, if awarded the contract, neither the Supplier nor anyone subject to the Supplier's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.
- A.25.5. For the purpose of a contract for services, the Supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the Supplier to fulfill any of the services provided for under said contract.

A.26. Conflict of Interest

The Contract hereunder is subject to the provisions of the Oklahoma Statutes. The Supplier certifies the name of any officer, director or agency who is also an employee of the State of Oklahoma or any of its agencies has been disclosed. Further, the Supplier certifies the name of any state employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Suppliers' firm or any of its branches has been disclosed prior to the Contract.

SUMMATION

This contract constitutes the entire agreement (pages 1 through 5 of this document) and understanding between the parties and supersedes all prior and/or contemporaneous discussions, representations, or contracts (whether written or oral) of the parties relating to the work to be performed.

This contract includes by reference, the following attachments: _____



Signature of Authorized Supplier Representative

THOMAS E. HARLOW

Print Name

5/26/2017

Date

EVP of Finance and Administration

Title