



Special Audit Report -
Statewide
Contract 60715

Department of Central
Services



Office of the Oklahoma State Auditor and Inspector
Jeff A. McMahan, CFE

**DEPARTMENT OF
CENTRAL SERVICES**

**SPECIAL AUDIT REPORT ON STATEWIDE
CONTRACT 60715**

**OFFICE OF THE STATE AUDITOR AND INSPECTOR
JEFF A. McMAHAN**



STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR

Jeff A. McMahan
State Auditor and Inspector

June 22, 2007

**TO THE HONORABLE DREW EDMONDSON
OKLAHOMA ATTORNEY GENERAL**

Transmitted herewith is the special audit report on the Department of Central Services' awarding of statewide contract 60715. The procedures we performed were conducted pursuant to 74 O.S. § 18f.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of the engagement.

The Office of the State Auditor and Inspector is committed to serving the public interest by providing independent oversight and issuing reports that serve as a management tool to the state to ensure a government which is accountable to the people of the State of Oklahoma.

Sincerely,


JEFF A. McMAHAN
State Auditor and Inspector

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DEPARTMENT OF CENTRAL SERVICES

STATEWIDE CONTRACT 60715

SPECIAL AUDIT REPORT SUMMARY

JEFF A. McMAHAN, CFE

**OFFICE OF THE STATE
AUDITOR & INSPECTOR**

Why the audit was performed

This special audit was conducted at the request of the Attorney General pursuant to 74 O.S., § 18f.

Audit Summary

The results of this audit identified that mandatory Statewide Contract 60715 for information technology consulting services was not awarded in the best interests of the State of Oklahoma.

Key Issues from the Report

- Portions of the Request for Proposal (RFP) were not in compliance with applicable sections of the Oklahoma Administrative Code (OAC) and the Central Purchasing Act.
 - Bid award criteria, lowest and best or best value, was not clearly indicated – page 7;
 - The use and evaluation of subcontractors was not sufficiently addressed – page 9;
 - Supplier acknowledgement of all terms and conditions of the solicitation was implied – page 10.
- Bids determined to be responsive were not in compliance with applicable sections of the OAC and the RFP.
 - Documentation missing from bids – page 13 and page 15;
 - Suppliers attempting to alter the terms and conditions of the RFP – page 13;
 - No supporting documentation for decisions made by the buyer – page 12 and page 16;
 - Proof of liability insurance not verified by DCS – page 16.
- Bids not evaluated in compliance with applicable sections of the OAC and best practices.
 - Artificially large gaps may have been created by the scoring scale utilized – page 17;
 - Subjective language used in evaluation criteria – page 17;
 - Points were awarded based on the average score given for multiple skill sets – page 17;
 - Initial review of resumes submitted with bids was not performed in a consistent and thorough manner – page 18;
 - Quantity discounts used for services – page 18;
 - Bids to be evaluated were divided between evaluation team members rather than being evaluated as a team – page 21;
 - Added value points for two vendors were not applied correctly – page 21.
- Expenditures charged to contract were not monitored to ensure quantity discounts are being received by state agencies utilizing the contract. – page 22.
- References provided in the bids were not consistently verified for all bids – page 23.

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BACKGROUND

The Purchasing Division (PD) of the Department of Central Services (DCS) performs procurement functions for state agencies and provides oversight of their procurement activities as defined by the Oklahoma Central Purchasing Act (74 O.S. § 85.1).

The PD issued a request for proposal (RFP) on October 19, 2005, to establish a mandatory statewide contract¹ for the provision of information technology consulting services². The RFP consisted of the following nine categories with multiple skill sets in each category:

1. *Management Consultants* – includes but not limited to long-term strategic planning assessing risks associated with privacy, security, technology, and delivery strategies and assisting with definition and documentation of hardware and software standards for enterprise infrastructure;
2. *Development Consultants-Mainframe* – includes but not limited to developing plans for automated data processing systems, developing block diagrams and logic flow charts, and providing support for the installation, testing, implementation and ongoing maintenance of information systems;
3. *Development Consultants-Client Server/Micro* – includes but not limited to analyzing functional business applications and requirements for developing programs, performing problem-solving and determination tasks, and providing performance measurements;
4. *Web Developer Consultants* – includes but not limited to consulting on domain registrations, web performance analysis, web security, and intrusion detection;
5. *Database Management Consultants* - includes but not limited to reviewing project design deliverables as well as performing capacity planning , performance analysis, and tuning;
6. *Security Consultants* - includes but not limited to developing strategy, methodology, best practices, and processes concerning privacy and security as well as researching, identifying, evaluating and selecting security software;
7. *Network Consultants* – includes but not limited to performing daily operation and support of Local Area Network computer systems as well as installing hardware and software components comprising the network;
8. *Infrastructure Consultants* – includes but not limited to performing risk assessments and project feasibility studies as well as performing research on strategic IT topics;

¹ A mandatory statewide contract means all state agencies shall use the contract for the specified services unless the ordering agency has received a written exception from the contracting officer.

² One amendment to the RFP was issued on November 17, 2005.

9. *Operations Consultants* – includes but not limited to monitoring application batch operations, evaluating system problems, and recovering databases, recreating files, and insuring interagency interfaces are correct.

Twenty-eight proposals were submitted. From these, the PD selected three vendors for each category and awarded statewide contract 60715 on January 19, 2006. As of March 8, 2007, 19 agencies have utilized the contract by obligating \$6.9 million³ with five of the six awarded vendors. (See *Appendix B* of this report for a breakdown by vendor.)

After the announcement of the award, perceived inconsistencies in the solicitation and evaluation of the contract were brought to the attention of the Attorney General's Office where a request for an audit pursuant to 74 O.S. §18f was issued.

To address these concerns, we determined our procedures should focus on answering the following three questions:

- Did the RFP contain relevant information to ensure compliance with applicable sections of the Oklahoma Administrative Code (OAC) and Central Purchasing Act?
- Were the bids in compliance with applicable sections of the OAC and the RFP?
- Were the bids evaluated in compliance with applicable portions of the OAC?

In the body of the report, the applicable sections of the OAC may be summarized. The full text of these sections may be seen in their entirety in *Appendix A* of this report.

KEY PERSONNEL

John Richard.....Executive Director
Betty Cairns.....Director of Central Purchasing
Gary Rowland.....DCS Buyer

³ This number is based on the amount of purchase orders created for this contract; it does not represent expenditures.

QUESTION #1

Did the RFP contain relevant information to ensure compliance with applicable sections of the Oklahoma Administrative Code and Central Purchasing Act?

FINDINGS

Based on our review of the RFP and Amendment 1 to the RFP and on conversations with management, we determined:

- DCS did not indicate in the solicitation whether the bid award criteria were lowest and best or best value. Management stated this indication was implied. However, the bidder⁴ would not have been able to determine this by reading the solicitation. We recommend DCS directly state in the RFP the bid award criteria in accordance with OAC 580:15-4-5(d).
- The issue of a pre-bid conference was not addressed in the RFP. To comply with OAC 580:15-4-5(i), we recommend DCS state in the solicitation whether there will be a pre-bid conference and whether the suppliers' attendance is mandatory.
- DCS did not sufficiently address the use of subcontractors in either the RFP or Amendment 1 to the RFP. In an effort to reduce confusion experienced by potential bidders and to provide a fair basis for evaluation, we recommend DCS use specific language in the RFP regarding its requirements for subcontractors and how that information will be evaluated.
- OAC 580-15-4-6(a) requires the bid submitted to agree with all terms and conditions of the solicitation. While this was implied in the RFP, we recommend a statement be included on the signature page to ensure the supplier acknowledges agreement to comply with the specifications of the RFP.

SUMMARY

The most common issue noted during the review of the RFP was DCS's assumption that implied statements would be interpreted uniformly by all bidders. When writing the RFP, which either becomes the contract or is a part of the contract when the award is made, the language should be specific. This would decrease confusion among the bidders as well as reduce the likelihood of their protesting the final award of the contract.

DETAILS

We determined from OAC 580:15-4 and 74 O.S. § 85 which sections would be applicable. We then applied procedures to the RFP to determine if the following items were included:

- **OAC 580:15-4-5(d) requires the RFP to indicate whether the bid award criterion is lowest and best, or best value.**

The DCS buyer's (buyer) opinion is that the RFP, Section 10.1—*Offerors Evaluation Process* indicates the bid award criterion is "best value". This section states: "The Evaluation Team is charged with reviewing the deliverables Exhibits C, D, and E and where applicable rate the responses from zero (0) to the highest numeric value applied to the exhibit being evaluated for each category the offeror is proposing."

⁴ The terms bidder, supplier, offeror, and vendor are synonymous throughout this report.

The buyer also felt “best value” was implied by the language and elements required for Attachments C, D, and E. While certain portions of the requirements defined in 74 O.S. § 85.2(2) for “best value” are present, the criterion is not directly stated in the RFP as required by OAC 580:15-4-5(d).

- **OAC 580:15-4-5(c)(5) requires all suppliers to be notified of an amendment to the RFP.**

It appears to be common practice for DCS to include the following language on each RFP homepage: *“It is the Vendor's responsibility to check the website frequently for any possible addendums that may be issued. Central Purchasing is not responsible for a vendor's failure to download any addendum documents required to complete an ITB.”* (Emphasis added.) We reviewed the DCS website, the RFP, and the invitation to bid (ITB) to determine whether all suppliers were notified of amendments to this contract. Due to the timing of our procedures, we could not determine whether this statement was included on the RFP homepage for contract 60715, and management could not remember whether it was included. We observed a snapshot of the DCS website when the RFP was originally posted and the statement was not included. However, the language was incorporated into the ITB. Therefore, suppliers were notified of their responsibility to check the DCS website for any information regarding the RFP.

- **OAC 580:15-4-5(f) requires the terms and conditions for the acquisition to be included in the solicitation (for example: copyrights, remedies, rejection of all bids.)**

The RFP, Section 11—*Terms and Conditions* states the terms and conditions of the contract.

- **OAC 580:15-4-5(g) requires the completion and submission of a non-collusion affidavit as part of the RFP.**

The “original signed and notarized RFP” form contains the non-collusion affidavit statement. This form is required to be submitted with the supplier’s proposal. Therefore, it appears the non-collusion affidavit statement was included in the solicitation.

- **OAC 580:15-4-5(i) requires the RFP to address the issue of a pre-bid conference and indicate whether the suppliers’ attendance is mandatory or optional.**

The issue of a pre-bid conference was not addressed in the RFP. We recommend DCS state in the solicitation whether there will be a pre-bid conference and whether the suppliers’ attendance is mandatory.

- **OAC 580:15-4-5(k) requires the RFP to indicate the closing date, time and bid opening.**

The RFP, Section 1.2—*Point of Contact* and Section 2.2—*RFP Closing Date* provided notice to suppliers of the closing date, time and location of a bid opening.

- **OAC 580:15-4-5(m) requires the bidder to submit information (such as résumés) for subcontractors, if the solicitation allows the use of subcontractors in acquiring the contract.**

We reviewed both the RFP and *Amendment #1 - Questions and Answers* to determine whether either specified that the use of subcontractors was permissible in acquiring the contract. DCS's intentions for the use of subcontractors were not apparent in the RFP or the amendment. The instructions for Attachment D of the RFP state:

To be effective, solicitations must contain all information required for preparation and submission of responsive offer(s) by the offeror(s).

DCS CPO Manual, 17-1

3) Proposed Experience and Expertise Descriptions - The qualifications of the offeror's proposed consultants are a consideration in the evaluation process. Therefore, the offeror should submit detailed information in the form of a resume related to the experience, education, and qualifications of the proposed consultants, by proposed category or categories. The resumes provided are to be for actual current employees of the organization. (Emphasis added.)

Amendment 1 - Questions and Answers states the following:

5. QUESTION: Are teaming arrangements acceptable in regard to Section 5.3 (Attachment D, Item 3) which states that "...resumes provided are to be for actual current employees of the organization..." and if so will it cause any evaluation degradation, to utilize our team's combined resources and experience in response to the third (3rd) deliverable, Experience, Expertise, and Reliability of Organization and Staff and fourth (4th) deliverable, Proposed Method of Performance required by the RFP?

ANSWER: The contract allows for subcontracting, with approval from the Department of Central Services, Central Purchasing Division. However, the contract is with the offeror not with its subcontractors.

26. QUESTION: Are the creation of teams encouraged or discouraged? Meaning if we add sub-consultants to the team to fulfill additional skill sets is that acceptable or not? If so, is there a preference on how to present this information in the submittal.

ANSWER: The RFP allows the contractor to use subcontractors; however, the contract is with the contractor not the contractor's subcontractors.

Attachment D—*Organization Experience, Expertise, and Reliability* instructions stated the offeror's proposed consultants are to be actual current employees of the organization and will be a consideration in the evaluation process. In *Amendment 1 - Questions and Answers*, questions were posed seeking clarification on whether subcontractors could be considered "current employees" for purposes of this bid; however, DCS's responses do not directly address this question. Therefore, the use of subcontractors was not reasonably explained in the RFP and *Amendment 1 - Questions and Answers*. DCS's CPO⁵ Manual, Tab 12, page 2 states, "Wording needs to be precise. Ambiguous language will lead to disputes and can result in lawsuits. Ambiguity in a contract means – a clause or wording that is capable of more than one meaning, or written in a confusing

⁵ CPO is an acronym for certified procurement officer.

way... Rule of thumb: If people can find different meaning from a word, clause, or between two clauses in a contract, then it is ambiguous.” We recommend DCS use specific language in the RFP regarding its requirements for subcontractors and how that information will be evaluated.

- **OAC 580:15-4-6(a) states: “A bid a supplier submits to the Purchasing Director shall agree to all terms and conditions the solicitation specifies.”**

The RFP could be interpreted as including language implying the suppliers’ proposals shall agree to all terms and conditions the solicitation specifies. The RFP, Section 2.7—*Proposal Compliance* states, “The State of Oklahoma reserves the right to reject any proposal that does not comply with the requirements and specifications of the RFP. A proposal shall be rejected when the offeror imposes terms or conditions that would modify the requirements of the RFP or limit the offeror’s liability to the State of Oklahoma.” We recommend a statement be added to the signature page to ensure the supplier acknowledges agreement to comply with the specifications of the RFP.

- **OAC 580:15-4-6(b) states that the RFP must include all forms the bidder is required to submit with his or her proposal.**

DCS posts all forms and the RFP on its website. Shortly after the bidding process for this RFP closed, this information was removed. Based on a review of other RFPs currently posted on the website and the 28 proposals submitted (many bidders submitted most of the required forms, while some included all forms), it appears the forms were made available.

- **OAC 580:15-4-6(c)(1)(A) requires the RFP to indicate all information the supplier must submit with the bid.**

The RFP, Section 9—*Offeror’s Instructions and Requirements* indicates all information and forms the supplier shall submit with his/her bid.

- **OAC 580:15-4-6(f) requires the RFP to specify that prices submitted should include travel.**

The RFP, Section 5 - *Deliverables* states travel expenses should be included in prices submitted.

- **OAC 580:15-4-6(g) requires the RFP to address that state agencies are not subject to sales tax.**

The RFP, Section 11.14—*State and Federal Taxes* addressed this issue.

- **OAC 580:15-4-6(h) requires the RFP to address that suppliers shall not consider a payment late until 45 days after receipt of the invoice.**

The RFP, Section 11.15—*Invoices*, subparagraph 3 addressed this issue.

QUESTION # 2

Were the submitted bids in compliance with applicable sections of the Oklahoma Administrative Code and the RFP?

FINDINGS

Based on the procedures performed, we noted the following:

- OAC 580:15-4-5(c)(5) requires a bidder to acknowledge receipt of an amendment. The signed amendment acknowledgment form for three bidders could not be located.
- OAC 580:15-4-6(a) requires the supplier's bid⁶ to agree to all terms and conditions the solicitation specifies. Three bidders submitted proposals that attempted to alter the terms and conditions of the RFP. However, DCS did not consider them non-responsive⁷ as required by OAC 580:15-4-11 (c) (1). There is no documentation to support DCS's methodology for making this determination.
- OAC 580:15-4-11(b) states: The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid. We found one bidder who:
 - Assumed an 80 hour assignment with a 40 hour work week in the bid's pricing scale;
 - Was informed by the DCS buyer via e-mail that this qualified the bid by putting limits on its use and that the bid would be considered non-responsive; and
 - Was then allowed to agree to the original terms of the RFP.

The supporting documentation related to this event is incomplete. Based on review of the available documentation, it appears the buyer needed clarification from the bidder and initiated the contact. However, by allowing the bidder to make a material change to the bid, it appears DCS violated OAC 580:15-4-11(b), which states that the "clarification shall not alter or supplement the bid", and OAC 580:15-4-11(c)(1), which states "a bid that does not meet the terms and conditions of the solicitation shall be considered non-responsive." There is no documentation to support DCS's decision.

- OAC 580:15-4-6(b) requires all forms in the solicitation to be submitted in the bid. Seven bidders did not submit all the required forms.
- OAC 580:15-4-6(f) requires a bid to include travel expenses the bidder will incur in performance of the contract. Four bidders did not include travel in their hourly prices; one of these bidders was subsequently awarded a category. This appears to be a violation of OAC 580:15-4-6(f) and, according to OAC 580:15-4-11(c)(1), the bids should have been considered non-responsive.
- OAC 580:15-4-11(c)(16) states: If the Purchasing Director has received complaints on a supplier, the supplier may be found not responsible. There was no documentation of DCS' personnel researching their files for previous complaints.

⁶ Bid refers to the bidder's proposal.

⁷ Non-responsive means the bid does not conform to the essential requirements of the RFP.

- The RFP, Section 11.20—*Insurance and Indemnification* stated proof of liability insurance should be provided upon request; however, the information was never requested by DCS. DCS management stated it was up to the agencies to perform this verification; however, agency personnel from the Department of Human Services and the Office of State Finance felt it was DCS's responsibility since this was a mandatory statewide contract. As a result, it appears verification of liability insurance was not performed by either party.

SUMMARY

As stated in a 1997 performance audit report issued by the State Auditor and Inspector on DCS's Central Purchasing Division, "...it was noted that there was not any consistency in the specification formats and terms and conditions ...The information presented to the bidders varied widely and with the result that it was difficult to locate basic information in either the Request for Proposal or the vendor response." Purchase file documentation should reflect the complete status of a purchase transaction. The persons involved in the transaction may not always be available; therefore, the file must stand on its own. This issue was emphasized during Certified Procurement Officer training attended by SA&I personnel in which the course instructor stated "If it is not in the file, it did not happen." We recommend DCS develop detailed policies and procedures for buyers to follow when performing an initial evaluation on a bid. The policies should include but not be limited to:

- Policies regarding retention of supporting documentation, including a timeline of key events.
- Specific procedures to ensure the bids are in compliance with the Central Purchasing Act, the OAC, and the RFP. These should include specifics on determining a bid's status as responsive or non-responsive.

Additionally, we recommend RFPs for mandatory statewide contracts include a requirement for bidders to provide proof of the appropriate insurance upon submission of their bids.

DETAILS

We determined from OAC 580:15-4-6 and the RFP which sections were applicable. We then applied procedures to determine whether the following items were included in the 28 bids:

- **OAC 580: 15-4-5(c)(5) requires a bidder to acknowledge receipt of an amendment.**

The signed amendment acknowledgment form for three bidders (Vendors E, F, and M) was not present.

- **OAC 580:15-4-6(a) requires the supplier's bid to agree to all terms and conditions the solicitation specifies.**
- **OAC 580:15-4-11(b) states: "The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid."**

The following three vendors did not meet the requirements of OAC 580:15-4-6 (a):

- Vendor A proposed changes in certain legal sections of the RFP. The buyer corresponded with this vendor regarding the proposed changes; the vendor agreed to the original terms. Vendor A was awarded no categories.
- Vendor B assumed an 80 hour assignment with a 40 hour work week in the bid's pricing scale. The buyer informed the vendor via email on January 6, 2006 that their bid would be considered non-responsive unless the original terms were accepted. Vendor B agreed on January 10, 2006, via email to the original terms⁸ of the RFP and subsequently was awarded five categories. (The supporting documentation related to this event is incomplete; but based on review of the available documentation, it appears the buyer sought clarification from the bidder.)

The National Association of State Procurement Officers' (NASPO) *State and Local Government Purchasing Principles and Practices*⁹ states:

The essential rule is that no change or correction be permitted that would prejudice the interest of the public or would be unfair to other bidders....After the bids are opened, but before award, a mistake may be corrected only if it is minor and the intent of the bid is obvious; that is only if the bid is in substantial compliance and the correction does not improve the bidder's competitive position. "Substantial compliance" refers to deviation or errors that are not material and do not invalidate the legitimacy of the bid. A defect in form, but not substance may be waived. An obvious error in multiplication may be corrected in the extension of a price. ...Written rules and procedures are necessary to protect the public interest and the integrity of the competitive bidding process. The rules and procedures should be based on legal principle that, in public contracting, equity has precedence over securing an advantage in prices or other factors.

- Vendor C proposed changes in certain legal sections of the RFP. There was no documentation of discussions with Vendor C regarding these proposed changes; however, the bid was not considered non-responsive. Vendor C was awarded no categories.

Again, these three bids were not considered non-responsive by DCS, as required by OAC 580:15-4-11(c)(1). Also, by allowing Vendor B to make a material change to the bid, it appears DCS violated the OAC 580:15-4-11(b), which states that the "clarification shall not alter or supplement the bid". There is no documentation to support DCS's methodology for determining these bids were responsive.

According to management, terms and conditions were not discussed with any vendor until after the evaluations were complete, and then only with the top three vendors. However, we noted terms and conditions were discussed via

⁸ According to section 7.1.3 of the RFP, "The contractor shall provide all services on an as needed basis".

⁹ National Association of State and Local Procurement Officials' State and Local Government Purchasing Principles and Practices, The National Association of State Procurement Officials, Lexington, Kentucky, 1997, 5th Edition, page 57.

email with Vendor A prior to the completion of his/her evaluation, even though Vendor A was not one of the top three vendors in any category. (The e-mails were dated between December 5, 2005, and December 12, 2005; the evaluation was not complete until December 22, 2005.)

- **OAC 580:15-4-6(b) requires all forms in the solicitation to be submitted in the bid.**

We reviewed the proposals to determine if all forms required in the solicitation were submitted. (We did not review the content of the forms in detail.) The required forms were:

- notarized signature page,
- non-collusion affidavit,
- packing slip with date stamp,
- a statement accepting/denying usage by entities other than state agencies,
- a statement as to whether MasterCard is accepted,
- Attachment C – Pricing,
- Attachment D- Organization Experience, Expertise, and Reliability, and
- Attachment E – Proposed Method of Performance.

We found that seven bidders did not submit the required forms and should have been considered non-responsive; three additional vendors should have been considered non-responsive in certain categories. See below:

- The RFP instructions for Attachment D require the bidder to submit three references for each category. However:
 - ◆ Vendor D submitted two references for each category;
 - ◆ Vendors E, G, H, and C submitted no more than two references for each category;
 - ◆ Vendor K submitted one reference for category 2;
 - ◆ Vendor L did not provide references for categories 2 and 3; and
 - ◆ Vendor Q did not provide three references for categories 8 and 9.
- Vendor J did not submit Attachment E as required by the RFP, Section 5.4—*Proposed Method of Performance*.

None of the vendors mentioned were awarded a category except Vendor K which was awarded category 2. Additionally, we noted Vendor F used the same four references for all categories. It appears unusual to have the same four references for all nine categories.

- **OAC 580:15-4-6(f) requires a bid to include travel expenses for the bidder to perform the contract.**

Four bidders (vendors I, O, P, and M) specifically excluded travel from their hourly prices and one of the bidders (vendor O) was subsequently awarded a category. These bidders appear to have violated OAC 580:15-4-6(f). Also, according to OAC 580:15-4-11(c)(1), DCS should have considered the four bidders non-responsive.

- **OAC 580:15-4-6(g) requires a bid not to include sales and federal excise taxes in their price quotes since state agencies are exempt.**

No bids indicated taxes were included in their price quotes.

- **OAC 580:15-4-7(a) and (e) require bids to be submitted to the location specified in the RFP and that all signatures required on any bid document be original.**

The bids were sent to the location specified in the RFP and contained original signatures.

- **OAC 580:15-4-11(c)(16) suggests DCS personnel review their complaint files to ensure no complaints on a supplier have been received. If complaints have been received, the supplier may be found not responsible¹⁰.**

Based on review of the proposals as well as supporting documentation, there was no indication DCS personnel reviewed complaint files to verify whether complaints on the suppliers had been received.

- **OAC 580:15-4-11 (c)(18) requires a supplier to hold liability insurance in accordance with 51 O.S. § 151 if applicable to the solicitation.**

In the RFP, Section 11.20—*Insurance and Indemnification*, DCS stated proof of insurance should be provided upon request; however, the information was never requested by DCS. Management stated it is an agency's responsibility to ask for insurance verification. However, various state agency personnel indicated they were under the impression DCS would verify this information since it is a statewide contract. We recommend RFPs for mandatory statewide contracts require bidders to provide proof of the appropriate insurance upon submission of their bid.

¹⁰ "Not responsible" is defined as a supplier who can not demonstrate capabilities in all respects to fully perform the requirements of a contract that may include, but not be limited to, finances, credit history, experience, etc, which will ensure a good faith performance.

QUESTION 3

Were the bids evaluated in compliance with applicable sections of the Oklahoma Administrative Code and best practices?

**FINDINGS
AND DETAILS**

We began our procedures by reviewing:

- The proposals submitted by the six bidders who were awarded a category or categories, plus one additional bidder's proposal who was not awarded a category;
- OAC 580:15-4-11(a), which requires DCS to develop criteria under which to evaluate the proposal against; and
- The evaluations for each proposal mentioned above.

Based on this review, we have the following comments:

- We recommend the scoring scale have a minimum of five increments (0,1,2,3,4,5; 0,2,4,6,8,10; or 0,3,6,9,12,15, etc.) for the evaluator to award for each element that is subject to a rating score. Certain portions of the evaluation form used by the evaluation team had scoring scales of 0-5-10 or 0-15 which could lead to artificially large gaps in the scoring.
- We recommend more objective and measurable requirements be used in the evaluation criteria. For example, the term "Working knowledge" is very subjective where "2 years experience" is much less subjective. Additionally, the bidder was to complete a table regarding applicable experience which was accompanied by a somewhat contradictory explanation on how to complete it. It appears some bidders may have been under the impression the evaluator would be calling the references for a detailed description of the services provided. However, the evaluator assigned points based on the "brief description of services" comments provided by the bidder. One bidder's interpretation of "brief" may be different than another.
- We recommend DCS use an alternative method for awarding points on price. The prices should not be totaled across the skill sets and averaged because each skill set is unique. Each rate should be evaluated separately, and then the evaluations should be aggregated. For example, do not use the lowest average price per hour, use the lowest rate for each skill as the baseline, and separate the points evenly. Table 1 on the next page explains how the model was used in the scoring of contract 60715 while Table 2 is a suggested model:

**DEPARTMENT OF CENTRAL SERVICES
STATEWIDE CONTRACT 60715
SPECIAL AUDIT REPORT**

Table 1 – Price Scoring Model Used for SW Contract 60715			
Skill Set	Vendor 1	Vendor 2	Vendor 3
Technology Strategy Consultant	\$80	\$85	\$160.45
Project Manager	\$69	\$102	\$82.25
IT Project Logistics Support	\$51	\$50	\$26.10
Business Analyst	\$64	\$75	\$65.55
Average Hourly Rate	\$66	\$78	\$83.59
Maximum Points Available	30	30	30
Points Awarded	30	25.38	23.69

Assume Vendor 1 had the lowest average hourly rate at \$66 and was awarded the maximum amount of 30 points. To determine the points for vendors 2 and 3, the \$66 from Vendor 1 was divided by the average hourly rate for vendors 2 and 3, which were \$78 and \$83.59 and then multiplied by 30. Vendor 2 was awarded 25.38 points while Vendor 3 was awarded 23.69 points.

Table 2 – Suggested Price Scoring Model for SW Contract 60715			
Skill Set	Vendor 1	Vendor 2	Vendor 3
Technology Strategy Consultant	\$80	\$85	\$160.45
Points Awarded	7.5	7.06	3.74
Project Manager	\$69	\$102	\$82.25
Points Awarded	7.5	5.07	6.29
IT Project Logistics Support	\$51	\$50	\$26.10
Points Awarded	3.84	3.92	7.5
Business Analyst	\$64	\$75	\$65.55
Points Awarded	7.5	6.4	7.32
Total Points	26.34	22.45	24.85

NOTE: Assume a maximum of 7.5 points is available for each skill set.

Assume Vendor 1 had the lowest rate at \$80 for the first skill and was awarded the maximum of 7.5. To determine points for vendors 2 and 3, the \$80 rate from Vendor 1 is divided by Vendor 2's rate of \$85 and Vendor 3's rate of \$160.45 and multiplied by 7.5. Vendor 2 was awarded 7.06 points for this skill set while Vendor 3 was awarded 3.74 points. This process is continued for the remaining skill sets. Each vendor's points per skill set are totaled to determine the vendor with the most points for the category.

- We recommend a more stringent review of resumes be performed prior to the group evaluations to verify coverage of all skill sets in a category. According to the buyer, this was done early in the process to eliminate unqualified bidders. However, it does not appear to have been done in a consistent and thorough manner. If all skill sets are not covered, the bid should be deemed non-responsive in accordance with OAC 580:15-4-11(c) (1).

- We recommend discontinuing the use of “quantity discounts” for services¹¹. Price should stand alone. Under the scoring model designed by DCS, a bidder could have the cheapest overall prices (i.e. more than 10% cheaper than the next cheapest vendor), and still not have scored as high as the bidder who offers a 10% discount after \$1,000,000 is expended. This unfairly rewards those who did not bid competitively, but offered a larger discount percentage. Currently, DCS does not have a mechanism in place for monitoring the amount expended by agencies with a particular vendor. The current process in place involves DCS’ running an Office of State Finance CORE report indicating purchase order amounts obligated with a particular vendor. This report is created annually and does not provide actual expenditures. Therefore, a bidder received extra points for offering a discount while no one is ensuring the discount is applied at the appropriate intervals or applied at all. We recommend asking for the best price, and ranking based on that alone for this part of the scoring. This implementation would be simple, clean and transparent to the submitters and evaluators. The National Association of State Procurement Officials’ (NASPO) *State and Local Government Purchasing Principles and Practices* states: “A discount based on consumption under an indefinite quantity contract should not be a factor in evaluation, but the discount can be claimed during the course of the contract if the volume is realized.”¹² See the following example as to how the current model was scored:

Table 3 – Example of Discount Model Used in Scoring SW Contract 60715		
	Vendor 1	Vendor 2
Example Rate (assuming \$64 is the lowest)	\$64	\$96
Points Awarded (assuming 30 max.)	30	20
Discount Points (assuming 10 max.)	0	10
Final Points Awarded	30	30
Effective Price (assuming 3/4 discount is applied)	\$64	\$88.80
Additional State Expense per Hour	\$0	\$24.80

If the pricing model rewarded the lowest total cost to the state, a graph indicating the scores and the prices should show a consistent, climbing price as the scores descend. Chart 1 indicates actual results from the price and discount points for category 1 sorted by points awarded. Chart 2 indicates what the results look like when sorted by price to the state. If the pricing model used by DCS were accurate, both graphs would be the same.

¹¹ Section 5.2 of the RFP requested offerors to indicate a percentage rate reduction to be applied to the next quarter’s hourly rates based on the previous quarter’s combined total dollar expenditures against the contract.

¹² National Association of State and Local Procurement Officials’ State and Local Government Purchasing Principles and Practices, The National Association of State Procurement Officials, Lexington, Kentucky, 1997, 5th Edition, page 70.

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Chart 1 - Category 1 Scores and Prices

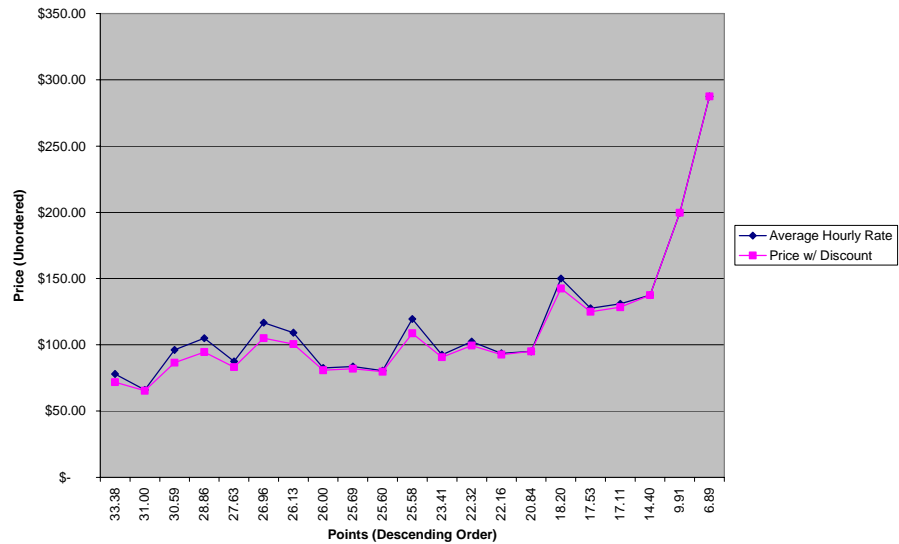
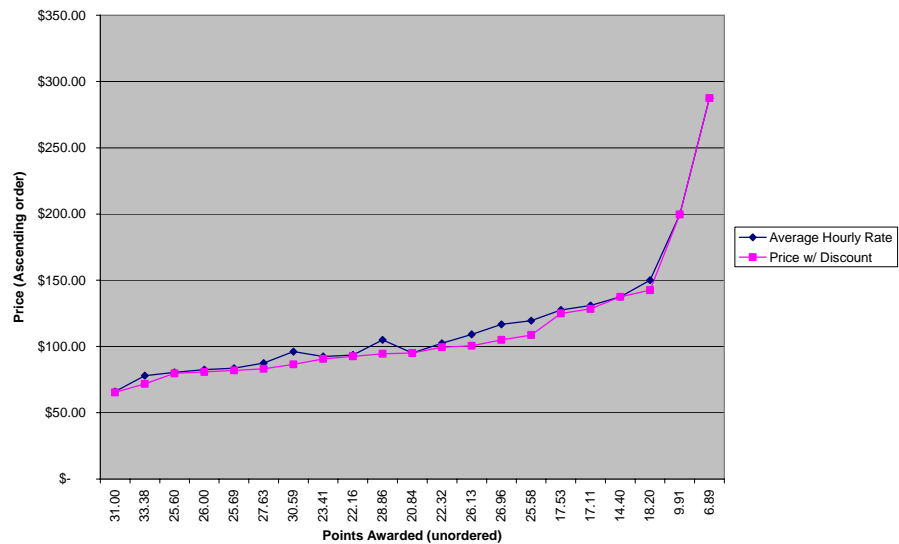


Chart 2 - Category 1 Scores and Prices



If vendors must be scored on a discount model, DCS should identify the price levels to be addressed. If DCS chooses to address the \$1,000,000 mark, then that data should be available in the RFP. *Amendment 1-Questions and Answers, Question 31* is misleading as it states, “QUESTION: Regarding rate reductions Section 5.2, is there any specific % (min/max) rate of reduction the State is expecting from the vendors for each quarter based on the previous quarters expenditures? ANSWER: No”. Based on this statement, there is no specific discount amount that is desired; however, the buyer graded that section against a specific amount-percentage discount chart.

- We recommend grading the document in the order in which it was requested. For example, grade all of category 1 together including

references, resumes, etc., then grade all of category 2 together. If the evaluation documents were organized as the RFP specifies for submissions, it would significantly smooth the work flow for this task.

- We recommend using an evaluation method where at least 60% of the evaluation team evaluates each bid. The evaluations were divided among four information systems professionals from the Office of State Finance and the Department of Human Services (2 from each), as well as the DCS buyer. There was one exception to this; one bid was evaluated by the group¹³ and consequently received an award in all nine categories. Conversations with all of the evaluators and the buyer indicated the evaluations were to be completed in a very short time period. Given the length of the bids and the criteria for scoring them, it was decided they would be divided among the team for evaluation. However, by dividing the evaluations among the team and scoring them based on one person's opinion including their possible prejudices, inexperience, lack of knowledge, etc., a potential unfair advantage was provided to certain bidders.

OBSERVATION

The RFP, Section 7.4—*Added Value* provides “added value” points if the offeror agrees to accept state purchase cards (3 points) as well as provide services to all state entities (2 points). The points awarded each of the 28 vendors were traced to the buyer's latest evaluator worksheet which he used in summarizing the scores. The results of this procedure were:

- Vendor E should have received an additional 2 points in the “value added” section. However, the additional points would not have changed the award.
- Vendor O received 2 points in error in the “value added” section. This error appears to have resulted in the bidder receiving the award when another bidder should have received it.

¹³ Although all the evaluators, including the buyer, stated this bidder was evaluated as a group, the supporting documentation related to the bidder's evaluation indicates it was completed by only one evaluator.

OTHER ITEMS NOTED

The following items are issues that came to our attention during the course of the audit and were not addressed in the previous sections:

- OAC 580:15-2-7(d) states: Agency staff shall not announce or reveal their decision regarding supplier evaluation or recommendation for award to Central Purchasing in any public manner or forum, including board meetings, until Central Purchasing has issued the award of contract. It was brought to our attention the winning vendors were notified of their award prior to the contract being awarded. It is difficult to verify whether the buyer did or did not reveal the results of the evaluations prior to the award of contract since the notifications were done over the phone and there were no supporting notes maintained by the buyer regarding these conversations.
- OAC 580:15-4-12(e) allows DCS to notify only the bidders who won. The unsuccessful bidders did not know the results until they contacted the buyer. We recommend DCS consider modifying the OAC to notify all vendors of the results of the award either by email or by posting it on their website prior to discussing the contract with vendors.
- 74 O.S. § 85.33(B) grants DCS the authority to "...award contracts that provide a contract management fee, levy or rebate to the Department of Central Services..." The RFP, Section 6—*Rebates* states in part "...the offeror agrees to pay a rebate in the sum of ½ of 1% of the combined total quarterly expenditures under this contract...The rebate check should be mailed to....Attention: Buyer (name omitted)." Effective internal controls provide relevant job duties for a position; receipting funds received in connection with rebates associated with contracts he/she has awarded is not a relevant job duty for a buyer in the purchasing division. We recommend the funds be mailed to the DCS mailroom, logged, endorsed, and forwarded to the accounting department for deposit into the appropriate fund.

As previously discussed, DCS is not monitoring expenditures charged against this contract. Therefore, the agency may not be receiving all funds to which it is entitled. We recommend DCS develop procedures to monitor expenditures against this contract and to claim appropriate rebates.

- OAC 580:15-4-19 gives the State Purchasing Director the authority to debar¹⁴ a supplier from the suppliers list or from submitting bids to the Purchasing Division. The possible reasons for debarment are outlined in this section of the OAC. However, based on review of OAC 580:15-4-11 (c), there is not a step in place for the buyer to ensure a bidder who has submitted a bid has not been debarred. Management stated this step was performed for this contract; however, no supporting documentation was maintained. We recommend DCS consider including a procedure which would ensure the file reflects a procedure which would ensure whether or not a bidder has been debarred.

¹⁴ Exclusion of a vendor for cause

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- Attachment D of the RFP instructed the bidder to provide three references for each category they were bidding. Based on review of the “offeror’s reference checklist” form for the six bidders which were awarded categories, there is no consistency in the number of references that were checked. For example, only one reference was verified for each of the categories awarded to vendors B and S while five references were verified on the one category awarded to vendor O. While it may not be reasonable to call all references for each category, it appears the current method is haphazard. We recommend the buyer and/or his assistant develop a more standardized approach to verifying references and documenting the methodology used.

CONCLUSION

As noted in the report above, several items cause this office concern, including:

- Portions of the Request for Proposal (RFP) were not in compliance with applicable sections of the Oklahoma Administrative Code (OAC) and the Central Purchasing Act.
- Bids determined to be responsive were not in compliance with applicable sections of the OAC and the RFP.
- Bids were not evaluated in compliance with applicable sections of the OAC and best practices.
- Expenditures charged to contract were not monitored to ensure quantity discounts are being received by state agencies utilizing the contract.
- References provide in the bids were not consistently checked for all bids.

In light of these concerns, it appears to be in the best interest of the State to rebid statewide contract 60715.

APPENDIX A

OAC 580:15-4-5. Bid solicitation

(a) **General.** The Purchasing Division shall comply with provisions of the Oklahoma Central Purchasing Act and rules the Department promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers. When a purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodity classes for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director may notify suppliers a state agency recommends for a solicitation.

(3) **Emergency notification.** For an emergency acquisition pursuant to 74 O.S. §85.7(4), the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the State Purchasing Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce.

(5) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) **Bid award criteria.** The State Purchasing Director shall indicate in the solicitation whether the bid award criteria is lowest and best, or best value.

(e) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(f) **Terms and Conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition.

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any and all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(g) **Affidavit.** The Purchasing Director shall include a noncollusion affidavit form in a solicitation. The noncollusion affidavit shall be submitted to the Division with any bid or proposal. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

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- (h) **High technology systems.** The State Purchasing Director shall state in a solicitation if the acquisition is a high technology system.
 - (i) **Pre-bid conference.** The State Purchasing Director shall state in a solicitation if the State Purchasing Director shall hold a supplier pre-bid conference and shall state whether supplier attendance is mandatory or optional.
 - (j) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.
 - (k) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the Director of Central Services may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.
 - (l) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.
 - (1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.
 - (2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.
 - (3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.
 - (4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.
 - (5) **Sample tests.** The State Purchasing Director shall use standard testing procedures to determine the quality of a sample a bidder submits.
 - (6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.
 - (7) **Unsuccessful bidder samples.**
 - (A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.
 - (B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.
 - (C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.
 - (8) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.
 - (m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.
- [Source: Added at 16 Ok Reg 966, eff 12-14-98 (emergency); Added at 16 Ok Reg 3055, eff 7-12-99; Amended at 18 Ok Reg 3225, eff 7-26-01; Amended at 20 Ok Reg 2503, eff 7-11-03; Amended at 21 Ok Reg 2853, eff 7-11-04; Amended at 22 Ok Reg 2614, eff 7-11-05]

OAC 580:15-4-6 Bid preparation

- (a) **General.** A bid a supplier submits to the Purchasing Director shall agree to all terms and conditions the solicitation specifies.
- (b) **Forms the Purchasing Director requires suppliers to submit.** The Purchasing Director shall include forms in the solicitation suppliers shall submit with the supplier's bid.
- (c) **Additional form requirements.**
 - (1) **Data the supplier submits.**
 - (A) The solicitation shall indicate all information the supplier shall submit with the supplier's bid.
 - (B) All form information entries shall be in ink.

- (C) Information the supplier submits shall be legibly hand written, typewritten or printed and shall meet all terms and conditions of the solicitation.
- (D) Should the supplier alter form or bid information, the supplier shall initial each alteration.
- (2) **Authorized signature.** A form a supplier submits with the supplier's bid to the Purchasing Division shall bear an authorized signature.
- (3) **Notary seal.** If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner state laws of the bidder's state specify.
- (d) **Entire contract.** The entire contract the Purchasing Director awards pursuant to a solicitation shall consist of the invitation to bid, request for proposal, or request for quotation, Purchasing Division attachments, the supplier's bid or quotation with attachments, and the purchase order the Purchasing Director issues. A contract the Purchasing Director awards shall incorporate by reference all provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.
- (e) **Firm bid for sixty (60) days.** The Purchasing Director shall consider a supplier's bid a firm bid for sixty (60) days following the bid closing date.
- (f) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. The state shall not pay travel expenses the bid price does not include.
- (g) **Tax exemptions.** State agency acquisitions are exempt from sales taxes [68:1365] and federal excise taxes [Chapter #.32, Internal Revenue Code #73-73-016-3K]. Bidders shall not include these taxes in price quotes. The Purchasing Director shall supply tax exemption certificates to bidders if the bidder requests.
- (h) **Payment terms.** State agencies shall pay suppliers pursuant to 62 O.S., Section 41.4a, et seq. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.
- (i) **Bonds.** The solicitation may require bidders to submit a bid, performance or surety bond with the bid.
- (1) **Form of bond.** The bid, performance or surety bond shall be a certified check, cashiers check, bid bond or annual performance bond.
- (2) **Bond return.** When the Purchasing Director specifies that a bid contain a bid, performance or surety bond, the Purchasing Director shall retain the bond until the successful completion of the purpose for which the bond was drawn.
- (j) **Used or new products.** A bid shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.
- (k) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.
- (l) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall not refer to information in the primary or any other alternate bid. The alternate bid shall be a complete bid. The bidder shall indicate an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.
- (m) **All or none bid.**
- (1) **Award to more than one bidder.** If the solicitation specifies that the Purchasing Director may award a contract to more than one bidder, the bidder may indicate on the bid that terms and conditions of the bid are all or none.
- (2) **Award by item.** If the solicitation indicates that the Purchasing Director may award the bid to more than one bidder by item, the bidder may indicate that the terms and conditions of the bid are all or none.
- (n) **High technology systems.**
- (1) **New high technology system.** The Purchasing Director shall not evaluate a bid for a high technology system unless the bid meets the requirements of this paragraph.
- (A) **Bidder system upgrade schedule.** Bidders shall provide documentation of the projected schedule of recommended or required system upgrades to the high technology system for the three (3) year period following the target purchase date.
- (B) **Bidder plans no system upgrades.** If the bidder does not plan recommended or projected system upgrades, the bidder shall provide documentation in the bid that the bidder plans no system upgrades to the high technology system for the three (3) year period following the target purchase date.

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(2) **High technology system upgrades.** The Purchasing Director shall not evaluate a bid for an upgrade to a high technology system unless the bid meets the specifications of this subparagraph.

(A) **Bidders statement regarding state agency duties.** If the intent of the high technology system upgrade is to enhance the state agency's performance, the bidder shall provide documentation that the upgrade shall enhance or is necessary for performance of the state agency's duties and responsibilities.

(B) **Bidder statement regarding bidder, assistance.** If the bidder does not intend to assist the state agency to maintain a high technology system, the bidder shall provide documentation that the bidder will no longer assist the state agency to maintain the high technology system.

(C) **State agency statement.** The state agency shall supply documentation to the Purchasing Director that the functions the high technology system performs are necessary for the performance of state agency duties and responsibilities.

(D) **Additional system upgrade requirements.** A supplier may agree to a provision of this subparagraph.

(i) The supplier agrees to provide the upgrade at no expense to the state.

(ii) The supplier agreed in a previous contract to provide the upgrade at no additional expense to the state.

(o) **Bidder delivery.** A solicitation shall specify a delivery date or allow the bidder to specify a firm delivery date. If the solicitation does not specify a delivery date, the bidder shall specify the delivery date in the bid.

(p) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the Purchasing Director.

(1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.

(2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.

(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the Purchasing Director.

(4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.

(5) **Sample tests.** The Purchasing Director shall use standard testing procedures to determine the quality of a sample a bidder submits.

(6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.

(7) **Unsuccessful bidder samples.**

(A) **Bidder requests sample return.** Bidders may request that the Purchasing Director return samples examination does not destroy.

(B) **Purchasing Director retains sample.** The Purchasing Director may retain samples that bidders submit that examination does not destroy.

(C) **Purchasing Director returns sample.** The Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.

(8) **Successful bidder samples.** The Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(q) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

[Source: Added at 16 Ok Reg 966, eff 12-14-98 (emergency); Added at 16 Ok Reg 3055, eff 7-12-99]

OAC 580: 15-4-11. Bid evaluation

(a) **Evaluation document.** The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.

(b) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(c) **Reasons for bid rejection.** The State Purchasing Director shall indicate in the solicitation file if a bid is non-responsive. The State Purchasing Director may reject a bid that is non-responsive or a bid from a nonresponsible bidder for reasons that include, but are not limited to the following:

- (1) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation shall be considered non-responsive.
 - (2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered non-responsive.
 - (3) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered non-responsive.
 - (4) **Form entries improper.** If information provided in the solicitation documents is not in ink, legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered non-responsive.
 - (5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered non-responsive.
 - (6) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid shall be considered non-responsive.
 - (7) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding suppliers' state of residence, the bid shall be considered non-responsive.
 - (8) **Bid does not contain bid bond.** If a bidder fails to include a bid bond specified as a requirement by a solicitation, the bid shall be considered non-responsive.
 - (9) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered non-responsive.
 - (10) **Bid non-responsive.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered non-responsive.
 - (11) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid shall be considered non-responsive.
 - (12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the Purchasing Director issues to a solicitation, the bid may be considered non-responsive.
 - (13) **Bidder not responsible.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.
 - (14) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered non-responsive.
 - (15) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid shall be considered non-responsive.
 - (16) **Past performance.** If the Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.
 - (17) **Signatures on solicitation documents.** If a facsimile or photocopy signature appears in any solicitation document that requires an original signature [Reference 580:15-4-7.(e)], the bid shall be considered non-responsive. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.
 - (18) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.
- (e) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities. The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.
- (f) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

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(g) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid.

(h) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bid.

(i) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(j) **Other factors in determination of award.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director reasonably determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(k) **Proof of insurance.** A vendor who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

[Source: Added at 16 Ok Reg 966, eff 12-14-98 (emergency); Added at 16 Ok Reg 3055, eff 7-12-99; Amended at 18 Ok Reg 3225, eff 7-26-01; Amended at 20 Ok Reg 2503, eff 7-11-03; Amended at 21 Ok Reg 2853, eff 7-11-04; Amended at 22 Ok Reg 2614, eff 7-11-05]

OAC 580:15-4-12. Contract award

(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The award shall be made upon:

- (1) completion of bid evaluation;
- (2) completion of the evaluation document;
- (3) determination of the lowest and best or best value bidder;
- (4) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to Title 68, Sections 1203 and 1204, whenever the contract amount is Twenty-five Thousand Dollars (\$25,000.00) or greater;
- (5) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to Title 68, Section 1364 if such entity is required to do so;
- (6) coordination of award with the requisitioning state agency, if necessary; and
- (7) completion of any administrative tasks.

(b) **Award by item.** If a solicitation does not specify an all or none bid, the Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.

(c) **No contract award.** A contract may not be awarded when:

- (1) The Purchasing Director determines no bid meets the requirements of the solicitation.
- (2) The Purchasing Director determines that all bids exceed fair market value for the acquisition.
- (3) The state agency determines that bid price exceeds available state agency funds.
- (4) The state agency determines that it no longer requires the acquisition in the form or manner the solicitation specifies.

(d) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.

(e) **Notification of successful bidder.** The Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

[Source: Added at 16 Ok Reg 966, eff 12-14-98 (emergency); Added at 16 Ok Reg 3055, eff 7-12-99; Amended at 20 Ok Reg 2503, eff 7-11-03; Amended at 21 Ok Reg 2853, eff 7-11-04]

**SUMMARY OF DEDICATED FUNDS BY VENDOR
AS OF MARCH 8, 2007 - APPENDIX B**

<u>Contract ID #</u>	<u>Vendor</u>	<u>PO Amount</u>
760	K	\$ 1,258,870.66
761	B	\$ 56,760.00
763	N	\$ 2,197,348.15
764	R	\$ 682,537.32
765	S	\$ 2,759,015.00
Total amount dedicated to contract:		\$ 6,954,531.13

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