

CHAPTER 11. ACQUISITIONS AND CONSTRUCTION

SUBCHAPTER 1. GENERAL PROVISIONS

753:11-1-2. Definitions

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

"Acquisition" means all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which the Trust obtains for its use any materials, supplies, service, or equipment.

"Alternate bid" or **"Alternate"** means, for purposes of a construction contract, an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Architect" means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, 59 O.S. § 46.

"Architectural Design & Construction Team" or **"ADC"** means a team assembled within the Trust that may include an Architect, Project Manager, Superintendent, and/or other applicable member.

"Authority Having Jurisdiction" or **"AHJ"** means the University of Oklahoma employee who works on behalf of the Oklahoma State Fire Marshall, performing all building inspections and code review based on Oklahoma State Fire Marshall guidelines.

"Award" means when the Trust, the Chief Executive Officer, or other person authorized to make the acquisition, agrees on a suitable supplier for a bid and the successful supplier is notified.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Best value" means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the Trust, which may not be the lowest bidder.

"Bid" means a cost proposal submitted by a supplier in response to a request or solicitation for bids from the Trust.

"Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. Bidder is synonymous with a "supplier" responding to a solicitation.

"Certified Procurement Officer" or **"CPO"** means the Procurement Officer who has been OMES-certified.

"Chief Executive Officer" or **"CEO"** means the highest-ranking administrator of the Trust.

"Chief Financial Officer" or **"CFO"** means the Chief Financial Officer or comparable position who reports to the CEO on matters concerning the budget of the Trust.

"Chief Facilities Management Operating Officer" or **"CFMO"** **"COO"** means the Chief Facilities Management Operating Officer or comparable position who reports to the CEO and manages the day-to-day operations and maintenance of the Trust's facilities.

"Claim" means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"Code" means the minimum and applicable building code or codes provided by this rule.

"Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, disposing, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property.

"Construction Management" or **"CM"** means the project delivery method based on an agreement whereby the Trust acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

"Construction Management/At-Risk" means the project delivery method whereby the construction entity takes on the financial obligation to carry out construction under a specified cost agreement.

"Construction Manager" means a person who acts as an agent of the Trust for a construction project; who coordinates and manages the construction process; who is a member of the ADC; and who utilizes skills and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions; and who provides advice concerning construction, safety, and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost, or as may otherwise be specified in the solicitation issued by the state agency.

"Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.

"Contract" means the solicitation, supplier's response, negotiation document, and/or purchase order verifying an award and encumbering funds.

"Delivery system" means the approach used to develop and construct a project.

"Design-Bid-Build" means the delivery method used on construction projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. the Trust shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"Emergency condition" means an event or need that was not reasonably foreseeable but that is serious, unexpected, and potentially dangerous, and for which action must be taken before a bid can be prepared or put into action.

"Engineer" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, of Title 59 of the Oklahoma Statutes.

"Evaluation criteria" means that written criteria necessary to evaluate a supplier's or bidder's response to a solicitation which may include specialized experience, technical competence, capacity to perform, past performance, and other appropriate factors, as and where appropriate.

"Facility" means any building or improvement to real property.

"Federally funded project" means any acquisition funded wholly or in part with federal dollars.

"Fixed fee" means the type of fee which is expressed as a firm, fixed amount, for the services specified in the scope of work.

"FTE" means a full-time equivalent personnel position.

"Guaranteed Maximum Price" or **"GMP"** shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web.

"Interview committee" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available and when appropriate.

"Invitation to Bid" or **"ITB"** means a type of solicitation in which the Trust or its designee requests suppliers to submit a bid for an acquisition, i.e. suppliers are invited to bid.

"Minimal value" or **"no value"** means surplus property that has less value than the costs that the Trust may incur to sell, trade, or dispose of the property.

"Non-Collusion Certification" means a certification submitted by a supplier with any competitive bid or contract executed by the Trust for goods or services in accordance with 74 O.S. § 85.22.

"Notice to Proceed" means the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"OMES" means the Office of Management and Enterprise Services.

"Online bidding" means an electronic procurement process in which the Trust receives bids from suppliers for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event.

"OSFM" means the Oklahoma State Fire Marshal.

"Past performance rating" means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

"Percentage fee" means a fee to be paid which is based upon a negotiated percentage of a resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"Pre-Design services" means a formal planning process to establish function, scope, and cost of a future project.

"Procurement Officer" or **"PO"** means the individual with the authority to make purchases for goods and services on behalf of the Trust, such as the Human Resources and Business Systems Director and Comptroller or comparable position, with such authority and all necessary accompanying documentation clearly marked in the individual's file.

"Program" means the detailed description of the work and the scope of design services.

"Project" means the scope of services for which competitive proposals are requested from interested construction services suppliers.

"Project capability" means the ability of a supplier to perform the requested services based on understanding of the requirement and mastery of necessary technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

"Project" or **"Improvement"** means the collective act of design and construction of a new building, facility, or improvement, or the renovation of an existing building, facility, or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy.

"Request for Proposals" or **"RFP"** means a type of solicitation in which the Trust requests submission of proposals from suppliers.

"Request for Quotation" or **"RFQ"** means a simplified written or oral quote that the Trust or its designee requests from suppliers.

"Risk assessment" means identification of risks that the supplier does not control and the supplier's plan to minimize the risk.

"Screening committee" means a group of individuals designated by the CEO, CFO, CFMO COO, or other designee of the CEO which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available and when appropriate.

"Selection criteria" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"Short list" means a listing of consultants chosen during the screening process for detailed interview. When possible, this list shall contain at least three (3) consultants for a single project. If the process is selecting for more than one consultant contract, there should be two (2) consultants on the short list for every planned project.

"Solicitation" means the formal or informal manner in which the Trust determines the price of an acquisition from various suppliers.

"Supplier" means "bidder" as defined in this section.

"UHA" or **"Authority"** means University Hospitals Authority.

"UHAT" means University Hospitals Authority and Trust.

"UHT" or **"Trust"** means University Hospitals Trust.

"Value-added" means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.

753:11-1-3. General provisions

(a) Goods and services shall be acquired by one of the following methods:

(1) Acquisition of products and/or services through organized buying groups such as OMES state-wide contracts or through similar federal contracts.

(2) Direct purchase order for products and/or services to the supplier within the authorized dollar amounts and other limitations contained in Subchapter 2 of this Chapter authorized by the Trust's purchasing policies and procedures.

(3) Acquisition of products and/or services through contracts with its joint operator pursuant to 63 O.S. § 3226.

(4) Formal or informal competitive solicitation of products and services.

(5) Sole Source source acquisitions according to the procedure set forth in Subchapter 2 of this Chapter the Trust's purchasing policies and procedures.

(6) Donation.

(b) Goods and services shall meet the specifications required, and awards shall be based on lowest and best or Best Value criteria. Determinations shall be documented as specified in this Chapter the Trust's purchasing policies and procedures.

(c) Professional service contracts for personal services rendered by the following professionals are exempt from competitive bidding. [74 O.S. § 85.7 and 18 O.S. § 803]:

(1) Physician, surgeon or doctor of medicine;

(2) Osteopathic physician or surgeon;

(3) Chiropodist-podiatrist;

(4) Optometrist;

(5) Architect;

(6) Attorney;

(7) Dentist;

(8) Public Accountant;

(9) Psychologist;

(10) Physical Therapist;

(11) Registered Nurse;

(12) Professional Engineer;

(13) Land Surveyor;

(14) Occupational Therapist;

(15) Speech pathologist;

(16) Audiologist;

(17) Registered Pharmacist;

(18) Licensed Perfusionist;

(19) Licensed Professional Counselor;

(20) Licensed Marital and Family Therapist;

(21) Dietitian;

(22) Social Worker;

(23) Licensed Alcohol and Drug Counselor;

(24) Licensed Behavioral Practitioner, and

(25) Certified General Real Estate Appraiser.

(d) This list will be automatically amended to include or delete professional services as amended by the Legislature.

SUBCHAPTER 3. PURCHASING

753:11-3-1. Supplier selection and standard requirements

(a) Supplier List. Any supplier wishing to do business with the Trust should register on the Supplier List maintained by OMES. The Trust may send solicitations or make acquisitions from suppliers who are not on the Supplier List, but the supplier must be

registered with OMES prior to the awarding of a contract. The Trust shall develop and maintain purchasing policies and procedures that promote economy, short response time, appropriate competition, and efficient procurement practices. These policies shall include safeguards and recordkeeping requirements consistent with the standards set forth in 74 O.S. § 85.12(B)(5) and 63 O.S. § 3224.

(b) **State use.** The Trust shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the purchase price. [74 O.S. § 85.12(C); 74 O.S. § 3007] The Trust's purchasing policies and procedures shall be reviewed and submitted to the State Purchasing Director for approval in accordance with 74 O.S. § 85.39 and OAC 260:115-5-7(d). Upon approval by the State Purchasing Director, such purchasing policies shall govern all acquisitions and purchasing activity conducted by the Trust.

(c) **Oklahoma Correctional Industries (OCI).** The Trust may make acquisitions from OCI if an acquisition is not available from the State Use Committee pursuant to 74 O.S. § 3007(A) provided the conditions of 57 O.S. § 549.1 are satisfied. The purchasing policies approved by the State Purchasing Director shall supersede any previously adopted administrative rules to the extent of any conflict. The Trust shall revise or repeal any inconsistent administrative rules through the appropriate rulemaking process in accordance with the Oklahoma Administrative Procedures Act.

(d) **Statewide and Federal contracts.** The Trust may make acquisitions from statewide contracts. The Trust may also make acquisitions through General Service Administration contracts or other Federal contracts if: (a) allowed for under the terms of a federally funded project; (b) the acquisitions are not on a current statewide contract, or (c) if the terms of the Federal contract are more favorable than the terms of a statewide contract for the same products. [74 O.S. § 85.12(C); 74 O.S. § 84.12(B)(20)] The Trust shall conduct an internal review of its purchasing policies at least annually and shall resubmit its internal purchasing policies for re-approval by the State Purchasing Director at least once every two (2) years, or as otherwise required by law.

(e) **Agreements and cooperative ventures.** The Trust may make acquisitions through agreements and cooperative ventures with other health care providers entered into pursuant to 62 O.S. § 3210(A)(1), the purposes of which are to share services or to provide a benefit to the hospitals.

(f) **Split purchasing.** Acquisitions shall not be made nor orders split for the purpose of evading competitive bidding requirements. [74 O.S. § 85.7(A)(2)]

(g) **Non-Collusion Certification.** A Non-Collusion Certification shall be included with any competitive bids and/or contract submitted to the Trust for goods or services. The Certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions. [74 O.S. § 85.22]

(h) **Taxes.**

(1) Prior to the award of a contract, the Trust shall verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. A copy of a current sales tax permit or confirmation of the permit's status from the Oklahoma Tax Commission must be included in the acquisition file.

(2) The Trust acquisitions are exempt from sales tax and federal excise tax.

(i) **Travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. the Trust shall not pay travel expenses not specified by the successful solicitation response. [74 O.S. § 85.40]

(j) **Bonds.** The Trust may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid. The bond, where required, will be retained until successful completion of the purpose for which the bond was drawn.

(k) **Insurance.** A successful bidder shall provide proof of all insurance as and where needed and as required by the solicitation prior to contract award (e.g. workers compensation, general liability, etc.).

(l) **Verification of Registration with the Secretary of State.** Prior to the award of a contract, the Trust will verify that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §§ 1203-04.

753:11-3-2. Acquisitions [REVOKE]

(a) Only the CEO, CFO, PO, or State Purchasing Director may issue a purchase order for direct acquisitions. Requests for purchase orders shall describe why the acquisition is needed.

(b) All maintenance/construction related requests shall be reviewed and approved by the CFMO or comparable position before submittal to the CEO, CFO, or PO.

(c) When acquisitions will be financed using federal funding sources, the Code of Federal Regulations Title 2, Subtitle H part A § 200.320 will be referenced in conjunction with the following guidance.

(1) **Acquisitions Not Exceeding \$25,000 or Other Limit as Permitted for CPOs.** Acquisitions of \$25,000 or less, unless the CPO is permitted to make acquisitions of another higher limit, will be made on the open market using a fair and reasonable acquisition process and is conducted pursuant to this Subchapter.

(2) **Acquisitions Between \$25,000 and \$250,000.** Acquisitions between \$25,000 and \$250,000 require formal or informal competitive solicitation. Where possible, the Trust may solicit suppliers from the Supplier List maintained by OMES, with selection of suppliers rotated whenever there are more suppliers on the list than the necessary number of solicitations. For bids between \$25,000 and \$100,000, the Trust will solicit or otherwise obtain a minimum of three solicitations when possible. For bids between \$100,000 and \$250,000, the Trust will solicit or otherwise obtain a minimum of five solicitations when possible. If the requisite number of solicitations cannot be made, the CEO shall be informed of the reason why with such information documented in the acquisition file.

(3) **Acquisition above \$250,000.** Acquisitions above \$250,000 require a formal sealed competitive bidding process as outlined in this Subchapter.

753:11-3-3. Formal or Informal Competitive Solicitations (\$25,000 - \$250,000) [REVOKE]

(a) The Trust shall solicit or otherwise obtain prices and delivery dates by mail, telephone, facsimile, or by electronic commerce and shall prepare written evaluation criteria to be considered in selection of the supplier.

(b) The Trust shall provide the specifications, terms, and conditions for the acquisition to each supplier selected for notification.

(c) The Trust shall solicit bids in a manner that ensures minority businesses, women's business enterprises, and small businesses, and labor surplus are aware of solicitations and utilized when possible.

(d) All awards shall be based on lowest and best or Best Value criteria [74 O.S. § 85.2]. Documentation of prices, delivery dates, and the evaluation shall be placed in the acquisition file.

(e) Based on the complexity of the solicitation, the Trust may require a formal competitive solicitation, up to and including sealed solicitation.

753:11-3-4. Competitive sealed solicitations (\$250,000+) [REVOKE]

(a) **Solicitations generally.** Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal, or request for quotation. The solicitation shall include, at a minimum:

- (1) any information regarding limitations on contact between suppliers and the Trust personnel during the solicitation process;
- (2) whether the evaluation method will be lowest and best or Best Value;
- (3) specifications or a statement of work;
- (4) the closing date and time for acceptance of bids;
- (5) the location of bid opening;
- (6) general terms and conditions offered by the State Purchasing Director
- (7) whether preferential scoring will be given to organizations based in the United States of America, and/or small, minority and women business enterprise; and,
- (8) if applicable, identification of federal funding sources.

(b) **Solicitation Amendment.** If the Trust amends a solicitation, it shall notify each supplier sent the original solicitation of the amendment. In the event of an amendment, the supplier must acknowledge receipt of the amendment (1) in the supplier's bid or quotation for submission prior to the closing date and time, or (2) in an acknowledgment of receipt of the amendment sent prior to closing date and time if the supplier has already submitted a bid.

(c) **Preparation.** The bidder shall complete and submit all required forms as specified by the solicitation. The solicitation shall specify whether the Trust may award the contract (1) to more than one bidder and/or (2) to more than one bidder by item.

(d) **Evaluation.** Evaluation criteria contained in the solicitation shall be used as a scoring tool in considering submitted bids. Any evaluation scoring tool used shall be consistent with the evaluation criteria contained in the solicitation. Evaluation of the bids shall be documented and filed in the acquisition file. Criteria consistent with lowest and best or best value methodology, consistent with the methodology identified in the solicitation, shall be developed prior to receipt of proposals and consistently applied.

753:11-3-5. Bid submission [REVOKE]

(a) **Bid locations.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Electronic bids.** Bids submitted in response to a formal or informal competitive solicitation pursuant to this Subchapter may be submitted electronically. Electronic submission of bids, when allowed, must be submitted in such manner that the time and date of submission are electronically linked to the bid and cannot be changed.

(c) **Sealed bids.** Bids submitted in response to competitive sealed solicitations pursuant to this Subchapter, the Trust will clearly mark the receipt date and time on the outside of all bid envelopes or containers. Late bids shall not be considered responsive and shall not be evaluated. Late bids will be returned unopened in a timely manner if the bidder requests the return of the unopened bid.

(d) **Alternate Bids.** Unless the solicitation prohibits, a bidder may submit alternate bids, but an alternate bid cannot materially deviate from the original solicitation specifications. Alternate bids must also be complete bids and shall be clearly marked to identify them as an alternate bid.

(e) **All or Some.** If permitted to bid on less than all of a contract pursuant to the solicitation, the bidder may indicate on the bid whether it is for all or some, specifying what portions or items the supplier is willing to fulfill.

(f) **Delivery dates.** If the solicitation does not specify a delivery date for goods or services, the bidder shall specify a delivery date in the bid.

(g) **Clarification.** The Trust may solicit clarification from a bidder regarding the bid, but such clarification shall not allow a bidder the opportunity to alter or supplement bid pricing.

753:11-3-6. Bid changes and withdrawal [REVOKE]

(a) A bidder wishing to change a bid submitted to the Trust shall withdraw the submitted bid and submit another bid before the closing date and time.

(b) bidder desiring to withdraw a bid entirely shall submit to the Trust a written withdrawal request created on the bidder's company letterhead, signed by the bidder's authorized representative. The withdrawal request must specify the method for returning or disposing of the bid.

753:11-3-7. Non-responsive bids [REVOKE]

The Trust shall document in the acquisition file if a bid is non-responsive and should be rejected on that basis. A bid may be rejected for reasons including, but not limited, to the following:

- (1) Late bids received after the closing date and time;
- (2) Failure to meet the terms and conditions of the solicitation;
- (3) Missing forms or other required information;
- (4) Incomplete forms;
- (5) Illegible forms or forms not submitted in the proper format;
- (6) Alterations appearing without initials of the person making the alteration;
- (7) Use of an unauthorized signature when an authorized signature is required;
- (8) Absence of a notary seal when and if a form calls for same;
- (9) Missing bid bond or other surety;
- (10) Items and/or services offered are not suitable for the intended use;
- (11) Bid pricing does not meet the requirements of a solicitation or is determined by the evaluation committee to be excessive; and
- (12) Failure to acknowledge a solicitation amendment.

753:11-3-8. Contract negotiation and award [REVOKE]

(a) Bid Documents. Documents submitted by a bidder in response to a solicitation are public records and will be available for review upon request, unless otherwise deemed proprietary or confidential, but only after a supplier is selected and the contract is awarded. If the bidder submits information in a response to a solicitation that the bidder considers proprietary or confidential, the bidder shall:

- (1) submit such information separately;
- (2) specifically identify what information is proprietary or confidential upon each page containing proprietary or confidential information;
- (3) enumerate the specific reasons based on applicable law which support treatment of the material as exempt from disclosure; and
- (4) conspicuously mark on the bid or bid package that it contains proprietary or confidential information.

(b) The Trust will review the information and may or may not designate a bidder's information as proprietary or confidential. If the Trust does not agree that the information is proprietary or confidential, then the Trust will return and not evaluate that information. the Trust may or may not reject all requests to disclose proprietary or confidential information designated as such. [74 O.S. § 85.5(J) (9), 51 O.S. § 24A]

(c) The Trust shall make a contract award following bid opening and upon review of the following:

- (1) Bid evaluation and documentation of same;
- (2) Determination of lowest and best or Best Value bidder;
- (3) Verification of the requirements, where applicable, identified at 753:11-3-1.

(d) An evaluation tie will be decided by a coin toss, the procedure for which will be determined by the CEO.

(e) The Trust may negotiate a contract with one or more suppliers.

(f) The Trust shall notify the successful bidder within five (5) business days of the contract award.

(g) The Trust may elect not to award a contract based on a determination that:

- (1) No bid meets the requirements of the solicitation;
- (2) All bids exceed fair market value for the acquisition;
- (3) The bid price exceeds available funds;
- (4) The Trust no longer requires the acquisition either in whole or in the form or manner specified in the solicitation; or
- (5) Not awarding the contract is in the Trust's best interests.

753:11-3-9. Contract management [REVOKE]

(a) **Contract performance.** A supplier shall deliver acquisitions within time periods specified in the contract. The Trust shall inspect acquisitions within a reasonable time following supplier delivery. Nevertheless, the Trust may reject acquisitions from the supplier that do not meet specifications or other terms or conditions of the contract regardless of the timing of an inspection, and the supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service. Title to goods and services does not pass to the Trust until it has received, inspected, and accepted the goods and services. The Trust will place in the acquisition file the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

(b) **Change orders.** Contracts awarded through formal or informal competitive solicitations pursuant to this Subchapter cannot exceed \$50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of \$50,000. Contracts awarded through competitive sealed solicitation pursuant to this Subchapter may be increased by an amount that does not exceed 10 percent of the total acquisition purchase price. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. [See 74 O.S. § 85.7(A)(1)(b)]

(c) **Advance payment.** The Trust shall not pay for acquisitions a supplier has yet to deliver.

753:11-3-10. Acquisitions by facilities management and housekeeping contractor [REVOKE]

(a) The Trust may contract with suppliers to provide facilities management and/or housekeeping services. Contracts for these services may be cost plus, when applicable, and shall be competitively bid.

(b) Terms of the contracts shall detail purchasing authority and responsibilities of the supplier. All acquisitions requiring Trust reimbursement per terms of the contract must be preapproved by the CFMO or comparable position. At a minimum, the supplier shall be required to follow 753:11-3-2, with the supplier permitted to make acquisitions not exceeding \$25,000 on the open market. The Trust shall manage the acquisition process of any maintenance/construction project over \$250,000 and shall follow the competitive bidding rules as identified at 753:11-3-3. The Trust reserves the right to set internal policies for managing the acquisition process of any maintenance/construction project under \$250,000.

753:11-3-11. Professional service contracts [REVOKE]

(a) A standard format for all agreements will be on file and changes will be coordinated with the PO. All professional service contracts must be forwarded to the PO for retention after approval by the CEO. The PO shall retain a central file that will contain:

- (1) Official copy of the contract or purchase order
- (2) Amendments
- (3) Compliance audits or reviews
- (4) Historical supplier performance
- (5) The requisition
- (6) Other related documents

(b) The Trust shall administer, monitor, and audit the professional services contract.

(c) The Trust may not enter into a professional service contract with a person who has separated employment from the Trust within one (1) year of the termination date of the individual's employment. [74 O.S. § 85.42(A)]

(d) If the final product of the contract is a written proposal, report, or study, the Trust shall maintain such written documentation in the acquisition file. [See 74 O.S. § 85.41(C)]

(e) Professional service contracts shall include:

- (1) An audit clause which provides that all items of the supplier that relate to the services are subject to examination by the Trust, the State Auditor and Inspector, and the State Purchasing Director [74 O.S. § 85.41(E)];
- (2) An audit clause which provides that all items of the supplier that relate to the services purchased using federal funding sources are subject to examination by federal awarding agency representatives;
- (3) A statement certifying that no person who was involved in the development of the contract while employed by the Trust shall be employed to fulfill any of the services provided for under said contract [74 O.S. § 85.42(B)], and
- (4) A statement certifying that the supplier has not previously provided another state entity with a final written proposal, report, or study that is a substantial duplication of that which is prepared for the Trust.

753:11-3-12. Sole source contracts [REVOKE]

The Trust need not seek competitive bids and may enter into a single or sole source contract for goods and services when Trust personnel seeking the acquisition completes a certification prepared on a form approved by the PO which gives all the reasons why the specifications merit restriction of the goods or services to one person or business. The certification will then be reviewed by the PO and approved and signed by the CEO with such certification retained in the acquisition file. [See 75 O.S. § 85.44D.1] Falsely executed sole source contracts shall be grounds for discipline up to and including termination.

753:11-3-13. Emergency acquisitions [REVOKE]

In the event of an Emergency Condition, the Trust may make an acquisition without following this Subchapter. In that event, the Trust will select a supplier or a group of suppliers to notify by telephone, facsimile, or by electronic means. The Trust will nevertheless obtain necessary documentation as identified at 753:11-3-1. All emergency acquisitions will be reviewed by the CEO and CFO and will be signed by the CEO.

753:11-3-14. Credit/debit card [REVOKE]

(a) The PO is the only employee authorized to use a credit or debit card to make purchases on behalf of the Trust. The card shall not be loaned to another person. The PO shall immediately return said credit or debit card to the CFO upon separation of employment.

(b) The PO shall ensure that the card is kept in a secure manner and that the account number on the card is not posted or left in a conspicuous place.

(c) A receipt shall be obtained for all purchases regardless of order method. The receipt shall give an itemized and detailed description of the purchase and must include at a minimum:

- (1) name and location of supplier;
- (2) date of purchase;
- (3) description of product purchased;
- (4) unit price and quantity purchased; and
- (5) transaction total.

(d) Individual transactions shall not exceed \$2000 unless preapproved by the CFO. Monthly statements shall be submitted to and reviewed by the CFO and CEO.

753:11-3-15. Acquisitions requiring CEO approval [REMOVED]

(a) The Board grants authority to sign contractual documents in most instances to the CEO. Some contracts may also require Board member signature. The CEO may delegate such signature authority to appropriate Trust officers and directors. Unless the CEO specifically delegates this authority to an individual, they may not sign any document whatsoever that binds or has the appearance of binding the Trust; documents signed by an individual without signature authority shall be void, and the signatory shall be subject to discipline up to and including termination. Such documents include, but are not limited to, purchase orders, grants, contracts, sub-contracts, licenses, leases, funding documents, applications, extensions and renewals, letters and/or memoranda of understanding, sales orders, assurances, work orders, etc.

(b) Any acquisitions exceeding \$10,000 that are not related to maintenance or construction activities must be preapproved by the CEO.

(c) All invoices must be approved by the CEO and CFO or comparable position before supplier payment. Invoices shall not be submitted to the CEO and CFO for signature unless the requesting staff has verified that the acquisition met the required specifications.

SUBCHAPTER 5. DESIGN CONSULTANTS

753:11-5-2. Selection procedure

(a) The Trust shall develop a description of the project which shall include:

- (1) A narrative description of the work being planned.
- (2) The estimated cost and time schedule of the project.
- (3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.
- (4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) The Trust shall send a solicitation letter to each consultant on the list of registered consultants maintained by OMES. The solicitation letter will include the description identified at (a) of this Section and shall notify the consultants of the last day their letters may be received to be considered as a supplier for the project.

(c) The ~~EFMO COO~~ in conjunction with the ADC shall, where possible, select the three (3) best qualified consultants based upon internal selection criteria and other information that may be supplied by the consultants. If the selection is for more than one consultant contract, at least two (2) consultants for each project should be included in the short list.

753:11-5-3. Scheduling and performing interviews

(a) The ~~EFMO COO~~ and the ADC will convene an interview committee to interview each consultant based on evaluation criteria developed by the ~~EFMO COO~~ in consultation with the ADC, including for example the following criteria:

- (1) How will the consultant staff the proposed project?
- (2) What is the consultant's proposed management plan?
- (3) What is his previous experience for this project?
- (4) Where is he located? How will he reduce travel costs if he is not close to the proposed project?
- (5) What are his plans for project control?
- (6) What examples of similar projects has he completed within the last five years?
- (7) Has a judgment been paid by the consultant on his behalf for liability caused by professional errors and/or omissions in the past five years?
- (8) Can the consultant demonstrate financial stability?
- (9) Is the consultant properly insured?
- (10) Does the consultant labor under any conflicts of interest as addressed at 753:11-1-4?
- (11) Any other additional factors?

(b) Within thirty (30) days of the scheduled interviews, each consultant should be notified by letter informing him that he has been selected for an interview. The letter should contain:

- (1) Date, time, and place of interview. Interviews should be scheduled individually for each consultant.
- (2) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.
- (3) A copy of the interview criteria.
- (4) The number of the interview committee members.

(c) Consultants will be selected on the basis of qualifications only, and not on the basis of cost. Oklahoma statutes prohibit the release to a third party any information on fees. Any consultant who discloses his fee, or any indication thereof, prior to Negotiation of Contract, 753:11-3-8, shall be removed from consideration.

(d) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(e) At the conclusion of all interviews, the interview committee will rate each, documenting its rationale, and select a consultant. All criteria and procedures used by the committee shall be documented for the record.

753:11-5-4. Negotiation of contract

(a) Following the interview committee's work, the CFMO COO or designee will contact the selected consultant and negotiate a contract. This is the first time that a discussion regarding the negotiation of fees may take place.

(b) The CFMO COO will request a letter from the selected consultant detailing the cost proposal with a breakdown of costs.

(c) The consultant shall develop his fee proposal and return it to the CFMO COO. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed 15 percent.

(d) The fee will be expressed as a firm fixed price fee according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed" cap. After a fee has been determined, the consultant will be asked to modify the proposal to reflect the agreed upon scope of work and fee, which modified proposal shall then become part of the contract.

753:11-5-5. Award of contract

Contracts may be standard or non-standard depending on the project. Services may include all or any of the following depending on the size and type of project.

- (1) Program planning, which may include the following:
 - (A) Space plan.
 - (B) Written and/or graphic program document as specified.
 - (C) Circulation allowances.
 - (D) Cost estimate.
- (2) Schematic design, which may include the following:
 - (A) The line drawing and graphic representation of the floor plan, perspective drawings, and site orientation of the project.
 - (B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.
 - (C) Cost estimate.
- (3) Design development. A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:
 - (A) The site plan for parking, street and pedestrian access.
 - (B) Overall dimensions.
 - (C) Rooms and traffic circulation within the buildings.
 - (D) Types of materials.
 - (E) Building elevations.
 - (F) Building sections.
 - (G) Recommended structural systems.
 - (H) Recommended mechanical systems and equipment based upon life cycle studies.
 - (I) Cost estimate.
- (4) Construction phase services. The consultant may be required to perform specific construction phase services which include:
 - (A) Review and approval of shop drawings.
 - (B) Review and approval of pay requests.
- (5) All standard contracts shall include a reference to construction monitoring which is periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant to the construction site to determine that the contractor is following the intent of the construction contract.
- (6) Changes to the consultant's base contract may be approved by the CFMO COO as long as the scope of the change is generally included within the project description developed at 753:11-5-2(a) for which the consultant selection process was conducted. Changes must reference the correct contract and include the scope of the change, the fee for the change, and the source of the funding for the change. Changes to the consultant's base contract shall not result in fees that would exceed the caps set by 753:11-5-4(c)-(d).

753:11-5-6. Professional services contracts

As indicated at 753:11-1-3(c), engineers, architects, and land surveyors shall be based upon their professional expertise and qualifications with their fees being negotiated after selection, and shall not be required to bid their contracts. The CEO may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of UHAT.

SUBCHAPTER 7. CONSTRUCTION

753:11-7-3. Bid submittal

(a) **Bid preparation.** Bids must be prepared in accordance with any instructions provided in the solicitation.

(b) **Competitively-Bid Projects.** Competitive bids cannot be submitted by telephone or fax machine. Competitive bids may be delivered in person, electronically, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays. Each envelope or electronic submission shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. If electronically submitted, the subject line should contain the project number followed by the company name. The following information must be placed on the outside of each sealed bid envelope or, if electronically submitted, in the subject line of the submission:

- (1) Company name and address.
- (2) Description of project.
- (3) Project number and trade, i.e. 10 HVAC.
- (4) Closing date and time.

(c) **Non-Competitively Bid Projects.** For projects under between \$25,000 to \$100,000, written bids shall be received as indicated in the solicitation, which may permit the submission of bids electronically. Before a construction contract shall be awarded, the following must be assembled:

- (1) A properly signed requisition form.
- (2) Three (3) or more original written bids, when possible, including any declined bids, signed by the bidders.
- (3) Scope of work with detailed requirements.
- (4) Acceptance letter to award the contract.

753:11-7-5. Bid openings

The bids are opened by the ~~CFMO COO~~ or his designee at the date and time specified in the announcement in the following manner and recorded by an assistant. Bid openings are open to the public and to all bidders.

- (1) The bidder's name is announced.
- (2) The bid is checked for completeness and correctness. Any of the following deficiencies may be grounds for disqualifying the bid:
 - (A) The bid must be signed.
 - (B) The Non-Collusion Certification must be present; and signed, and properly notarized.
 - (C) If the total bid exceeds \$100,000 [61 O.S. § 1], a certified check, cashier's check, or bid bond for 5 percent (5%) of the base bid price and the price of all alternate bids must be present.
 - (D) All equipment lists, selected materials, or other information when required by the specifications must be present.

753:11-7-6. Bid review and evaluation

(a) At the conclusion of the bid opening, bids will be reviewed based upon the evaluation criteria and tabulated, and their contents verified. The following items are reviewed: Insurance carriers, bonding companies, and surety companies used to issue bonds and insurance must be registered to do business in Oklahoma and prequalified as good and sufficient by OMES.

- (1) Verification of bid contents.
- (2) When there is a variance between the amount in words and the figures, the amount in words shall govern.
- (3) Bids containing omissions, alterations, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.
- (4) The ADC may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Trust even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.
- (5) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.

(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. The Trust may require bidders to pre-qualify pursuant to 61 O.S. § 118 to determine the responsibility of bidders.

753:11-7-7. Contract award

(a) Contracts shall be awarded to the lowest responsible bidder on a lowest and best or Best Value criteria basis as indicated on the solicitation notice. If an award is made to other than the lowest bidder, the Trust shall prepare a statement setting forth the reason for its action and place that statement on file or its website, open to public inspection. [61 O.S. § 117] The Trust will provide a copy of the contract to the successful bidder who shall be given a specific period of time, as outlined in project specifications, but not to exceed sixty (60) days [61 O.S. § 113(A)], in which to execute the contract and obtain the necessary bonds and insurance.

(b) Projects over \$100,000 require three bonds. [61 O.S. § 113(B)] All bonds required by Title 61 of the Oklahoma Statutes shall be provided by insurance carriers, bonding companies, or surety companies that are prequalified by OMES as good and sufficient in accordance with criteria established by OMES. [61 O.S. § 134]

- (1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract.

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Trust against defective workmanship and materials for a period of one (1) year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in performance of the contract, and to protect the Trust against claims from subcontractors or suppliers for services or materials used in the project.

(4) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed, but each letter must be for the total value of the contract. Alternatively, a single irrevocable letter of credit may be substituted for the bonds listed.

(c) If no timely bid is received after bid notices have been published on any proposed public construction contract which does not exceed \$100,000, the Trust may negotiate the contract with a prospective contractor. The contract shall be executed within six (6) months after the date initially set for opening bids, and the work to be performed shall be as specified in the initial bidding documents. [61 O.S. § 119.1]

(d) Public liability and workers' compensation insurance in reasonable amounts shall be required for all projects, regardless of project size. ~~the~~ The Trust may require the contractor to name the Trust and its architects or engineers, or both, as an additional insured under the public liability insurance, which requirement, if made, shall be specified in the bid documents. [61 O.S. § 113(B)]

(4) (1) Proof of workers' compensation insurance shall be required for all projects exceeding \$50,000. The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(2) For projects less than \$50,000, a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance.

(3) Additional forms of insurance or increases in the insurance amounts may be required, including builder's risk, for certain projects. Any additions or increases shall be contained in the bid documents.

753:11-7-8. Pre-construction conference

Shortly after award of a contract, the Trust may, at its discretion, schedule a pre-construction conference. This meeting may include, when applicable, the Design Consultant, general contractor, a representative of the ADC and/or the ~~EFMO COO~~, and other interested parties. The ~~EFMO COO~~ or his representative shall chair the meeting. The purpose of the meeting shall be to discuss the requirements and responsibilities of the various parties involved with the objective of expeditious handling of the construction contract.

753:11-7-9. Construction conference

(a) A construction conference may be called periodically by, when applicable, the ~~EFMO COO~~ or his designee or the Design Consultant to discuss:

- (1) Project progress as it relates to schedule.
- (2) Payment requests and their status.
- (3) Change order requests and their status.
- (4) Special problems and remedial action required.
- (5) Results of previous remedial action.
- (6) Other subjects as required.

(b) The meeting shall be chaired by the ~~EFMO COO~~ or his designee or the Design Consultant. Minutes of the meeting shall be kept by a designee of the ~~EFMO COO~~, typed, and distributed to all applicable parties within five (5) working days.

753:11-7-12. Payment requests

(a) Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:

- (1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, and submit it to the ~~EFMO COO~~ or his designee for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the ~~EFMO COO~~ or his designee or Design Consultant.
- (2) The contractor should meet with the ~~EFMO COO~~ or his designee and/or Design Consultant when the rough draft of the pay request is prepared to agree on percentages of work completed and finalize the final form. The contractor should furnish the ~~EFMO COO~~ or his designee and/or Design Consultant with one (1) electronic copy of the pay request and all supporting documents.
- (3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable.
- (4) If the contractor deems it necessary, and the ~~EFMO COO~~ or his designee and/or Design Consultant recommend, the contractor may store material off-site. To do so, there must be a written agreement between the Trust and the contractor which provides:

- (A) proof of applicable insurance;
- (B) a written guarantee of delivery to the job site;
- (C) photos; and
- (D) written title to all materials covered by the request for payment, which shall pass to the Trust.
- (E) For particularly large projects, the Trust may require an on-site inspection of facilities by the CM or Design Consultant to verify the authenticity of quantities of stored materials.

(b) The Certificate of Contract Completion, Consent of Surety, Lien Release, and the Contractor's Warranties must be submitted with the final request for payment.

753:11-7-13. Change Orders and proposal requests

- (a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the CFMO COO or his designee and/or Design Consultant shall issue a Proposal Request to the contractor. The Proposal Request shall fully describe the scope of work explaining completely what each proposed Change Order. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials; unit cost, labor, equipment, profit and overhead and shall include any time extension involved; and other expense items. The CFMO COO, in consultation with the ADC, will consider the proposed Change Order and sign if approved. The proposed Change Order then becomes an official Change Order.
- (b) Miscellaneous Change Orders that occur during construction including missed items, unforeseen//existing conditions, etc., will be change ordered with the approval of the owner parties mentioned above.
- (c) Change Orders to public construction contracts of \$1,000,000 or less shall not exceed a fifteen percent (15%) cumulative increase in the approved construction budget [61 O.S. § 121].
- (d) Change Orders to public construction contracts of over \$1,000,000 shall not exceed the greater of \$150,000 or a ten percent (10%) cumulative increase in the approved construction budget [61 O.S. § 121].

753:11-7-14. Time extensions

The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by Change Order only. It is important that written notices of delay be submitted to the CFMO COO or his designee and/or Design Consultant within twenty (20) days of the delay. Time extensions for changes in the work must be included on the Change Order form authorizing such change.

753:11-7-15. Substantial completion inspection

- (a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner can occupy the building and/or use the facility for its intended use.
- (b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the CFMO COO or his designee and/or Design Consultant who shall send out written notification inviting the ADC and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the CFMO COO or his designee and/or Design Consultant. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the CFMO COO or his designee and/or Design Consultant. Two (2) copies of the form shall be provided to the Trust for signature.

753:11-7-16. Final inspection

This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The CFMO COO or his designee and/or Design Consultant shall send out formal notification inviting the ADC and other interested parties to attend.

753:11-7-17. Contract completion

A Certificate of Contract Completion shall be prepared by the CFMO COO or his designee and/or Design Consultant. The contractor shall complete the Contractor's Affidavit on all required copies of the Certificate of Contract Completion and return to the CFMO COO or his designee and/or Design Consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the CFMO COO or his designee and/or Design Consultant a completed and notarized signed Consent of Surety with the contractor's Certificate of Final Payment. All submittals, operating manuals, brochures, as-built drawings, keys, warranties, and all other requirements of the contract shall have been submitted to the CFMO COO or his designee and/or Design Consultant with signed receipts from the using agency for the items received by them, before final payment is made.

SUBCHAPTER 9. CONSTRUCTION MANAGEMENT/AT RISK

753:11-9-2. Project designation consideration

(a) The EFMO COO in consultation with the ADC shall consider the following three factors to determine whether a construction project merits consideration for use of the construction management delivery system:

(1) The project benefits the public. When considering designation, it shall be clearly evident that Construction Management will provide a public benefit, which may include:

- (A) early completion of work, allowing for beneficial public occupancy;
- (B) accommodating construction progress with phased funding;
- (C) enabling the project to be placed under contract prior to losing expiring funding source; or
- (D) other demonstrated public benefit.

(2) There is a need for cost control. When project requirements or technical components of a project are not fully defined, or options are available for building systems, the use of Construction Management would provide valuable input to the design process.

(3) The need exists for specialized or complex construction methods due to the unique nature of the project. Projects shall be considered specialized or complex when they involve sophisticated or complicated technical systems, renovation work, or work that must be completed on a critical time frame, or otherwise when a critical mission may be in jeopardy.

(4) Other factors may include:

- (A) **Time constraints on project completion.**
- (B) **The Trust's capabilities.** The capabilities of staff and whether staff has the ability and experience to effectively manage a project that utilizes construction management.
- (C) **Funding.** The Trust shall demonstrate whether it has adequate funding to pay for services of the construction management firm and construction services.
- (D) **Project components.** The construction execution could be enhanced by the services of a Construction Manager.

(b) Upon consideration of the identified factors and based on the recommendation of the EFMO COO, the CEO may designate the project delivery method as construction management.

753:11-9-4. Selection committee

(a) **Members.** Whenever a solicitation is issued requiring Best Value Methodology as described at Subchapter 6 of this Chapter to determine the successful bidder, the EFMO COO or designee will assemble the ADC to serve as a Selection Committee. Individuals may not serve as members of the selection committee if they are deemed to have a conflict of interest with firms submitting qualifications for consideration. Conflicts of interest are generally identified as an ownership interest or a close family member with an ownership interest in a submitting firm. The CEO, CFO, or COO may provide further clarification or determinations related to conflicts of interest.

(b) **Selection Monitor.** The EFMO COO will designate one member of the Selection Committee to serve as a Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:

- (1) schedule and preside over Committee meetings;
- (2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;
- (3) tabulation of the evaluation scores;
- (4) review the Committee's rating results for dominant information and/or inconsistencies;
- (5) discuss evaluations with Committee members to seek clarifications, if necessary;
- (6) prioritize the final rating scores;
- (7) assist the Committee in determining the highest ranked firms for further consideration in interviews;
- (8) assist the Committee in determining the apparent Best Value firm; and
- (9) assisting with the Clarification Period activities.

(c) **Construction management interviews.** The Selection Committee shall select a competitive number of the best qualified construction management firms for interviews. When possible, a minimum of three (3) firms constitute a competitive number.

753:11-9-6. Fee negotiation and contracts

(a) Once the highest-ranking construction management firm is selected, the Trust shall request a fee proposal from the firm.

(b) Upon receipt of the written fee proposal, the Trust shall negotiate a contract including fees.

(c) In establishing the construction management fee, the Trust shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services.

(d) In the event the Trust is unable to negotiate a satisfactory contract with the selected firm, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Trust may then undertake negotiations with the firm ranked second, beginning with a formal request for a fee proposal from that business. Failing accord with the second firm, the Trust shall formally terminate negotiations with that firm. This process may continue, with proposals received from and negotiations held with the next ranked firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(e) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.

(f) For Construction Management/At-Risk, there are essentially two phases of the contract:

(1) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the Construction Manager up to the point at which the design is far enough along for the Construction Manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the Construction Manager are the Construction Manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(2) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. The Trust will signal a move into Phase Two through issuance of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the Construction Manager and, if applicable, the Design Consultant. The Construction Manager will work in conjunction with the Design Consultant, if applicable, to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(g) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100 percent performance, payment, and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(h) Non-approval of the GMP allows the Trust to terminate the services of the Construction Manager or to renegotiate, as required.

(i) Application of competitive bidding to subcontractor packages. When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the Construction Manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with Subchapter 3 of this Chapter. Thus, in administering the construction contract, the Construction Manager will adhere to the competitive bidding requirements for advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(j) Self-Performance of subcontractor packages by Construction Manager. Because the Construction Manager is "at risk" for the total contract amount, the Construction Manager is permitted to self-perform portions of the work, provided that the work is competitively bid as a lump sum (each work package) under the same terms and conditions as the other bidders. The Trust must be notified of the Construction Manager's intent to bid a work package during each pre-bid meeting held to discuss outgoing bid packages or otherwise in writing to the ~~EFM~~ COO.

(k) When individual work packages are bid as a lump sum, the Construction Manager's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the Construction Manager's contract becomes all lump sum.

(l) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the Construction Manager and the Trust must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Trust may allow an adjustment to the GMP in order to allow the Construction Manager to award all work packages.

SUBCHAPTER 11. BEST VALUE METHODOLOGY

753:11-11-3. Clarification period

(a) The identified apparent Best Value supplier is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. The clarification period is not a contract negotiation. This period is the final "filter," and the invited firm may still lose the project. Once invited to the clarification period, the supplier is responsible for scheduling and management of the related activities. The objective is to:

- (1) ensure the supplier understands the project scope;
- (2) allow the supplier to clarify how they will deliver the project/service on time;
- (3) identify the accountabilities of other parties; and
- (4) explain how the supplier will mitigate and manage any risk the vendor does not control.

(b) The supplier is responsible for understanding the project requirements and expectations.

(c) To complete the clarification phase, the supplier conducts required meetings, identifies specific requirements and provides relevant documents, which may include but is not limited to, the following:

- (1) Executive Summary;
- (2) A critical milestone schedule that includes the clarification period, the award, project/service delivery, and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;
- (3) Identify all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how the Construction Manager will satisfy those concerns;
- (4) Make any additional investigations as warranted;
- (5) Provide a listing of major sub-supplier and suppliers. Ensure that any sub-suppliers have a complete understanding of the project and have no technical or non-technical questions or concerns;
- (6) Identify activities where the supplier will experience situations where there may be a lack of information, where unforeseen conditions may exist, and activities where the supplier has no control over other participants or required activities in the delivery of the service.

- (7) Identify and document in writing any value-added ideas the Trust has accepted or rejected, along with corresponding adjustments to the contract terms;
- (8) A project plan including any final clarification of the proposal and any omitted information and identification of value-added provisions accepted by the Trust;
- (9) Validation that the proposal is accurate and complete prior to submitting the final project scope;
- (10) Develop a Risk Report template to communicate accountabilities and deviations, beginning with the clarification period;
- (11) Develop a Risk Management Plan, which includes any risks the supplier does not control and how the supplier will mitigate or minimize those risks should they occur;
- (12) Identify a performance measurement plan to communicate to the Trust how the supplier is performing during the project duration; and
- (13) Provide assurances to satisfy any remaining project concerns that the Trust may have, including but not limited to adverse publicity; noncompliance with local, state, or federal law; safety and accident prevention or other risks within the control of the supplier that would cause unnecessary time-and-effort transactions by the Trust.

(d) If the bidder determines the proposal contains errors or the proposal is inaccurate, the bidder may withdraw the project proposal, but the bidder shall be prohibited from modifying the proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the EFMO COO.

(e) The supplier must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized, and suitable for attachment to a final negotiated contract.

- (1) The final clarification meeting is not a question and answer session.
- (2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Trust must be conducted prior to the clarification meeting.
- (3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.

(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Trust determines progress being made by the invited bidder is unsatisfactory, the Trust may terminate Clarification Phase activities with the invited bidder. The Trust may then commence a new Clarification Phase with the next highest ranked bidder.

753:11-11-4. Risk minimization and performance

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality, or project schedule caused by the supplier, the Trust, unforeseen conditions, or other parties. The Phase consists of, but is not limited to, a Risk Report detailing information provided by the Construction Manager, which may include:

- (1) all key contact information;
- (2) project milestone schedule;
- (3) risk sheet;
- (4) modification/deviation tracking;
- (5) Risk Management Plan;
- (6) any risks the Trust may require the supplier to document that could impact satisfaction; and
- (7) performance measurements.

(b) The Construction Manager shall submit a Risk Report for the project/service weekly throughout the contract, or as otherwise required by the EFMO COO.

753:11-11-5. Transparency and Best Value documentation

(a) To protect the integrity of the selection process and fairness to bidders, the following will remain confidential as stated:

- (1) Identities of individual bidders will not be revealed to voting members of a selection committee during evaluation of key submittals as identified in the solicitation until such time as the highest rated bidders are identified and advanced to the oral interview or award phase.
- (2) To preserve integrity in the event a re-bid is necessary, contents of the individual bidders' submittals shall not be open to public inspection until such time as the contract award is made.
- (3) A bidder shall clearly identify any information submitted in a response to a solicitation that the bidder considers confidential or proprietary and shall submit such clearly-identified information in a separate envelope. The EFMO COO shall review the information and may or may not designate the bidder's information as proprietary or confidential and may or may not reject requests to disclose the information so designated.

(b) Following the contract execution, all selection process documentation not otherwise protected will be available to the public for inspection.

753:11-11-6. Other requirements for contracts awarded using Best Value methodology

(a) 753:11-11-2 and 753:11-11-5 may apply to any contract awarded by the Trust using Best Value methodology to select the successful supplier.

(b) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.

(c) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the ~~EFMO~~ COO. Components of the plan must, at a minimum, include the following provisions:

- (1) Bid Notices: method of making uniform public notification to interested subcontractors and suppliers;
- (2) Availability of bid documents for inspection or acquisition by interested bidders;
- (3) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.
- (4) Method of evaluation of bid documents to determine final recommended contract awards.
- (5) Method of public access to pricing, scoring, and final award information.

SUBCHAPTER 13. SUPPLIER PROTESTS

753:11-13-1. Supplier notification

A supplier may protest a contract award to the CEO of the Authority by submitting written notice to the CEO within ten (10) business days of contract award. The supplier protest notice shall state with specificity all facts and reasons for the protest. The CEO shall forthwith notify the supplier awarded the contract of the protest. Any ex parte contact with the CEO by the supplier protesting the award and the supplier awarded the contract is prohibited while any matter relating to the protest is pending. The CEO may enter an order by letter, staying contract performance upon such terms and conditions as the CEO determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced. The CEO shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

753:11-13-5. Administrative procedure

Administrative hearings shall be conducted in accordance with the following procedures:

- (1) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest.
- (2) **Burden of proof.** The burden of proof shall be upon the protestant, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.
- (3) **Evidence.** The Administrative Law Judge shall give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by Oklahoma law for civil proceedings. Parties may conduct cross examination of witnesses required for a full and true disclosure of facts. Notice may be taken of judicially cognizable facts.
- (4) **Representation.** Parties may be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.
- (5) **Proper parties.** In addition to the supplier protesting the contract award, the supplier awarded the contract and the Trust may participate in the bid protest proceedings as proper parties.
- (6) **Discovery.** Discovery shall be permitted as determined by the Administrative Law Judge.
- (7) **Testimony.** All testimony, either at depositions or at a hearing, shall be under oath or affirmation.
- (8) **Official record.** The Trust shall employ a certified court reporter, whose for an official transcription or may use an electronic recording service. The transcription of the hearing and any related matters, together with all pleadings, motions, and other documents submitted or considered during the proceedings shall constitute the official record of the protest.
- (9) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:
 - (A) Establish a scheduling order;
 - (B) Establish reasonable procedures such as authorizing pleadings to be filed ~~by facsimile or electronic mail electronically;~~
 - (C) Rule on all interlocutory motions;
 - (D) Require briefing of any or all issues;
 - (E) Conduct hearings;
 - (F) Rule on the admissibility of all evidence;
 - (G) Question witnesses;
 - (H) Make proposed findings of facts, conclusions of law and a proposed order to the Chief Executive Officer; and
 - (I) Take other lawful actions necessary and proper in the interests of justice.

753:11-13-6. Remedies

The Administrative Law Judge may recommend in a proposed order that the ~~Chief Executive Officer~~ CEO deny the supplier's appeal, that the contract be awarded to the protesting supplier, that the contract award be cancelled and rebid, or for such other relief as the facts and law warrant.

753:11-13-7. Decision to be final

The CEO shall make a final determination as evidenced by a final order. Final orders are not subject to administrative appeal. If the CEO denies a supplier's appeal, the supplier may appeal pursuant to the provisions of 75 O.S. § 309 et seq.