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(2) Funding for assistance for graduate programs will be provided subject to full funding of assistance to eligible Guard members enrolled in undergraduate programs.

[OAR Docket #23-533; filed 6-12-23]

TITLE 752. UNIVERSITY HOSPITALS AUTHORITY CHAPTER 11. ACQUISITIONS AND CONSTRUCTION

[OAR Docket #23-534]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

752:11-1-2 [AMENDED]

752:11-1-3 [AMENDED]

752:11-1-4 [AMENDED]

752:11-1-5 [AMENDED]

752:11-1-6 [NEW]

752:11-1-7 [NEW]

Subchapter 3. Purchasing

752:11-3-1. [AMENDED]

752:11-3-2. [AMENDED]

752:11-3-3. [AMENDED]

752:11-3-4 [AMENDED]

752:11-3-8 [AMENDED]

752:11-3-9 [AMENDED]

752:11-3-10 [AMENDED]

752:11-3-11 [AMENDED]

752:11-3-12 [AMENDED]

752:11-3-15 [NEW]

Subchapter 5. Design

752:11-5-2 [AMENDED]

752:11-5-3 [AMENDED]

Subchapter 7. Construction

752:11-7-1 [AMENDED]

752:11-7-2 [AMENDED]

752:11-7-3 [AMENDED]

752:11-7-4 [AMENDED]

752:11-7-5 [AMENDED]

752:11-7-7 [AMENDED]

752:11-7-9 [AMENDED]

752:11-7-13 [AMENDED]

752:11-7-18 [NEW]

Subchapter 9. Construction Management/At Risk

752:11-9-1 [AMENDED]

752:11-9-3 [AMENDED]

752:11-9-4 [AMENDED]

752:11-9-6 [AMENDED]

752:11-9-9 [NEW]

Subchapter 11. Best Value Methodology

752:11-11-1 [AMENDED]

752:11-11-2 [AMENDED]

752:11-11-3 [AMENDED]

752:11-11-4 [AMENDED]

752:11-11-6 [AMENDED]

Subchapter 13. Supplier Protests

752:11-13-5 [AMENDED]

Subchapter 15. Inventory and Surplus Property [NEW]

752:11-15-1 [NEW]

752:11-15-2 [NEW]

752:11-15-3 [NEW]

AUTHORITY:

University Hospitals Authority Act; 63 O.S. § 3208(A)(1); 63 O.S. § 3208(A)(20); 63 O.S. § 3208(E); 63 O.S. § 3224(E).

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The adopted rules revise the acquisition and construction policies of the University Hospitals Authority ("Authority"). The adopted rules serve to conform the Authority's policies with those enacted by the Legislature in House Bill 4080 (2022) to the Public Competitive Bidding Act of 1974, and in Senate Bill 1422 (2020) to the Central Purchasing Act. The adopted rules include policies related to the Authority's inventory and handling of surplus property. Additionally, in anticipation of receipt of Federal funding for certain projects, the adopted rules account for conforming the Authority's policies to Federal requirements. Additionally, the proposed rules include policies related to inventory and surplus property.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

752:11-1-2. 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 Authority 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 Authority 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 Authority, the Chief Executive Officer, or other person authorized to make the acquisition, agrees on a suitable ~~vendor~~supplier for a bid and the successful ~~vendor~~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 Authority, which may not be the lowest bidder.

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

"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" or ~~"vendor"~~ 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 Authority.

"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 Authority.

"Chief Facilities Management Officer" or "CFMO" means the Chief Facilities Management Officer or comparable position who reports to the CEO and manages the day-to-day operations and maintenance of the Authority'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 Authority 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 Authority 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, ~~vendor's~~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 Authority 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" means the sum of the estimated cost of the work as defined in the contract

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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 Authority 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 Authority 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 Authority 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 Authority receives bids from ~~vendors~~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 Authority, such as the Human Resources and Business Systems Director 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 ~~vendors~~suppliers.

"Project capability" means the ability of a ~~vendor~~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 Authority requests submission of proposals from suppliers.

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

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

"Screening committee" means a group of individuals designated by the CEO, CFO, CFMO, 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 Authority determines the price of an acquisition from various ~~vendors~~suppliers.

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

"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.

~~"Vendor" means "bidder" as defined in this section.~~

752:11-1-3. 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 ~~vendor~~supplier within the authorized dollar amounts and other limitations contained in Subchapter 2 of this Chapter.

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

(4) Sole Source acquisitions according to the procedure set forth in Subchapter 2 of this Chapter.

(5) 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.

(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; ~~and~~
- (24) Licensed Behavioral Practitioner; ~~and~~
- (25) Certified General Real Estate Appraiser.

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

752:11-1-4. Ethics

(a) Employees of the Authority shall be subject to rules promulgated by the Oklahoma Ethics Commission concerning gifts from suppliers.

(b) One year limitation for certain contracts. Unless otherwise provided by law, the Authority shall not enter into a sole source or professional services contract or a contract for the services of any person who has terminated employment with or who has been terminated by the Authority for one (1) year after the termination date of the employee from the Authority. [74 O.S. § 85.42]

752:11-1-5. Online bidding [74 O.S. § 85.45r]

The Authority has determined that electronic or online bidding is often more advantageous than other procurement methods and thus may use online bidding to obtain bids for the purchase of goods, services, construction, and information services, where and as necessary. The Authority does not provide online bidding for bids and proposals that must be ~~let~~ bid competitively.

752:11-1-6. Transparency

The Authority purchases a substantial volume of goods and services while maintaining over 1,500,000 square feet of

hospital, clinical, academic, and office space. These goods and services should be acquired through an open and competitive process, which shall include:

- (1) Acquisitions and all other financial matters related to the Authority are subject to the provisions of the Open Records Act unless otherwise specified in Title 63.
- (2) The Authority will have an annual audit performed by a nationally-recognized auditing firm or the State Auditor and Inspector. Said audit will be provided to the Board, House of Representatives, Senate, Governor, OMES, and State Auditor and Inspector [63 O.S. § 3208(A)(13)].
- (3) Acquisition records shall be maintained for a minimum of seven (7) years following completion and/or termination of the acquisition provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the audit, litigation or action are resolved or until the end of the seven (7) year retention period, whichever is later. Acquisition files shall contain justification for the acquisition supporting documentation, copies of all contracts, if any, evaluations, and written reports if required by contract [74 O.S. § 85.39(C)]. Records relating to acquisitions using federal or restricted funding sources shall comply with retention requirements dictated by those sources if those requirements are in excess of statutory requirements [74 O.S. § 85.39(C)].
- (4) The Authority will provide a copy of its inventory to OMES in accordance with statute.

752:11-1-7. Statutory increases

Any monetary acquisition or construction threshold set forth in these Policies and Procedures will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 74 of the Oklahoma Statutes.

SUBCHAPTER 3. PURCHASING

752:11-3-1. Supplier selection and standard requirements

(a) ~~Vendor bidder list~~ **Supplier List.** Any ~~vendor~~ supplier wishing to do business with the Authority should register on the ~~vendor bidder list~~ **Supplier List** maintained by OMES. The Authority may send solicitations or make acquisitions from ~~vendors~~ suppliers who are not on the ~~vendor bidder list~~ **Supplier List**, but the supplier must be registered with OMES prior to the awarding of a contract.

(b) **State use.** The Authority 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]

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(c) **Oklahoma Correctional Industries (OCI).** The Authority 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.

(ed) **Statewide and Federal contracts.** The Authority may make acquisitions from statewide contracts. The Authority 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. § 85.12(C); 74 O.S. § 84.12(B)(20)]

(de) **Agreements and cooperative ventures.** The Authority 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.

(ef) **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)]~~[74 O.S. § 85.7(A)(4)]

(fg) **Non-Collusion Certification.** A Non-Collusion Certification shall be included with any competitive bids and/or contract submitted to the Authority 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]

(gh) **Taxes.**

(1) Prior to the award of a contract, the Authority 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 Authority acquisitions are exempt from sales tax and federal excise tax.

(3) ~~Purchases made by suppliers on behalf of the Authority are not exempt from sales or federal taxes.~~

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

(ij) **Bonds.** The Authority 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. ~~An irrevocable letter of credit may be submitted in lieu of any bond specified.~~

(jk) **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.).

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

752:11-3-2. Acquisitions

(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 II part A § 200.320 will be referenced in conjunction with the following guidance.

(1) **Acquisitions Not Exceeding \$5,000\$25,000 or Other Limit as Permitted for CPOs.** Acquisitions of \$5,000\$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 \$5,000 or Other Limit as Permitted for CPOs and \$50,000.\$25,000 and \$250,000.~~ Acquisitions between \$5,000 or Other Limit as Permitted for CPOs and \$50,000\$25,000 and \$250,000 require formal or informal competitive solicitation. Where possible, the Authority 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 \$5,000 or Other Limit as Permitted for CPOs and \$25,000,\$25,000 and \$100,000, the Authority will solicit or otherwise obtain a minimum of three solicitations when possible. For bids between \$25,000 and \$50,000,\$100,000 and \$250,000, the Authority 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 \$50,000.\$250,000.** Acquisitions above \$50,000\$250,000 require a formal sealed competitive bidding process as outlined in this Subchapter.

752:11-3-3. Formal or Informal Competitive Solicitations (\$5,000 – \$50,000) (\$25,000 - \$250,000)

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

(c) The Authority 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.

(ed) All awards shall be based on lowest and best or Best Value criteria ~~[74 O.S. § 85.7(B)]~~. [74 O.S. § 85.2]. Documentation of prices, delivery dates, and the evaluation shall be placed in the acquisition file.

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

752:11-3-4. Competitive sealed solicitations (\$50,000+)-(\$250,000+)

(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 Authority 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 Authority 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. ~~Any form requiring a bidder's signature shall have an authorized signature, such signature indicating that the supplier has read and understood the information contained within the solicitation.~~ The solicitation shall specify whether the Authority 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.

752:11-3-8. Contract negotiation and award

(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 Authority will review the information and may or may not designate a bidder's information as proprietary or confidential. If the Authority does not agree that the information is proprietary or confidential, then the Authority will return and not evaluate that information. the Authority may or may not reject all requests to disclose proprietary or confidential information designated as such. ~~[74 O.S. § 85-10; 51 O.S. § 24A]~~ [74 O.S. § 85.5(J)(9); 51 O.S. § 24A]

(c) The Authority 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 752:11-3-1.

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

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

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

(g) The Authority 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 Authority 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 Authority's best interests.

752:11-3-9. Contract management

(a) **Contract performance.** A supplier shall deliver acquisitions within time periods specified in the contract. The Authority shall inspect acquisitions within a reasonable time following supplier delivery. Nevertheless, the Authority 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 Authority until it has received, inspected, and accepted the goods and services. The Authority will place in the acquisition file the date of delivery, the name and address

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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)(2)(b)]~~ [See 74 O.S. § 85.7(A)(1)(b)]

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

752:11-3-10. Acquisitions by facilities management and housekeeping contractor

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

(b) Terms of the contracts shall detail purchasing authority and responsibilities of the ~~vendor~~supplier. All acquisitions requiring Authority reimbursement per terms of the contract must be preapproved by the CFMO or comparable position. At a minimum, the ~~vendor~~supplier shall be required to follow ~~752:11-2-2~~752:11-3-2, with the ~~vendor~~supplier permitted to make acquisitions not exceeding ~~\$5,000~~\$25,000 on the open market. The Authority shall manage the acquisition process of any maintenance/construction project over ~~\$50,000~~\$250,000 and shall follow the competitive bidding rules as identified at ~~752:11-3-4~~752:11-3-3. The Authority reserves the right to set internal policies for managing the acquisition process of any maintenance/construction project under \$250,000.

752:11-3-11. Professional service contracts

(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 ~~vendor~~supplier performance
- (5) The requisition
- (6) Other related documents

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

(c) The Authority may not enter into a professional service contract with a person who has separated employment from the Authority 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 Authority 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 Authority, 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;

(~~2~~3) A statement certifying that no person who was involved in the development of the contract while employed by the Authority shall be employed to fulfill any of the services provided for under said contract [74 O.S. § 85.42(B)]; and

(~~3~~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 Authority.

752:11-3-12. Sole source contracts

The Authority need not seek competitive bids and may enter into a single or sole source contract for goods and services when Authority personnel seeking the acquisition completes ~~an affidavit~~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 ~~affidavit~~certification will then be reviewed by the PO and approved and signed by the CEO with such ~~affidavit~~certification retained in the acquisition file. [~~See 74 O.S. § 85.45j(A)(2)~~75 O.S. § 85.44D.1] Falsely executed sole source contracts shall be grounds for discipline up to and including termination.

752:11-3-15. Acquisitions requiring CEO approval

(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 Authority 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 Authority; 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

752:11-5-2. Selection procedure

(a) The Authority 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 Authority 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 ~~vendor~~ supplier for the project.

~~(c) The Authority will request a copy of the information on file for each consultant that indicated interest in being considered for the announced project(s).~~

~~(d)~~ The CFMO in conjunction with the ADC shall, where possible, select the three (3) best qualified consultants based upon ~~the data in the files supplied by OMES~~ 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.

752:11-5-3. Scheduling and performing interviews

(a) The CFMO and the ADC will convene an interview committee to interview each consultant based on evaluation criteria developed by the CFMO 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 752:11-1-4?
- (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, 752:11-3-8, 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.

SUBCHAPTER 7. CONSTRUCTION

752:11-7-1. Bid solicitations

(a) ~~Construction projects over \$50,000-\$100,000.~~ Construction projects over ~~\$50,000~~ \$100,000 will be advertised in a newspaper of general circulation for two consecutive weekly issues of said newspaper with the first publication at least ~~twenty (20)~~ twenty-one (21) days prior to the day set for bid opening. Notice must also be provided to one in-state trade or construction publication ~~and/or electronic bid platform when ever the estimated cost of construction exceeds \$100,000,~~ with publication of that information left to the discretion of that publication. No work shall be commenced until a written contract is executed and all required bonds and insurances have been provided by the contractor. [61 O.S. § 104]

(b) ~~Construction projects under \$50,000 of \$25,000 to \$100,000.~~ Construction projects ~~under \$50,000 of \$25,000 to \$100,000~~ will not usually be advertised. The Authority shall develop a written, clearly defined scope of work with detailed requirements for the project. The Authority will then solicit bids by directly contacting three (3) or more contractors.

(c) **Minor Maintenance or Repair.** The Authority may award small projects below ~~\$5,000~~ \$25,000 to any qualified ~~vendor~~ supplier. A written contract and proof of insurance is required prior to issuing the ~~vendor~~ supplier a notice to proceed.

(d) **Emergency Projects.** When the CEO determines that an emergency situation exists, a contract may be awarded without competitively bidding it to correct the emergency condition.

(e) **Statutory Increases.** Any monetary threshold set forth in these rules will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 61 of the Oklahoma Statutes.

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752:11-7-2. Bid documents

- (a) **Solicitation notice.** The solicitation notice will contain:
- (1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.
 - (2) The location where a complete set of bidding documents may be obtained.
 - (3) The date and time for the MANDATORY site visit, if applicable. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.
 - (4) The location and time for the pre-bid conference if applicable. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.
 - (5) The date, time and place of the opening of bids.
 - (6) The name and address to whom competitive, sealed bids must be submitted.
 - (7) If applicable, any pre-qualification requirements pursuant to 61 O.S. § 118.
 - (8) Other information deemed of benefit to the public or prospective bidders.

(b) **Prequalification of Bidders.** In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work does not constitute a license. Prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

(b) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any other source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the ADC to all bidders of record.

752:11-7-3. 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, ~~email~~, 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, ~~and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled~~

~~bid opening at the time and day specified in the bid documents.~~ Each envelope or electronic submission shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. 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 ~~\$50,000~~, 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.

752:11-7-4. Modifications/withdrawal of bids

Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail, ~~or~~ delivered in person, or sent electronically. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented. A bid to be withdrawn shall not be opened and shall be returned upon request of the bidder at the conclusion of the bid opening.

752:11-7-5. Bid openings

The bids are opened by the CFMO 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, signed, and properly notarized.
 - (C) If the total bid exceeds ~~\$50,000~~, \$100,000 [61 O.S. § 1], a certified check, cashier's check, or bid bond or bid letter of credit 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.

752:11-7-7. Contract award

(a) ~~Bids are awarded~~ 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 Authority 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 Authority 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 ~~\$50,000~~ \$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 ~~and shall 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 the performance of the contract.~~

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Authority 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 Authority against claims or liens 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 ~~\$50,000~~ \$100,000, the Authority may negotiate the contract with a prospective contractor. The contract ~~will~~ 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 Authority may require the contractor to name the Authority 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.

752:11-7-9. Construction conference

(a) A construction conference may be called periodically by, when applicable, the CFMO 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 CFMO or his designee or the Design Consultant. Minutes of the meeting shall be kept by a designee of the CFMO, typed, and distributed to all applicable parties within five (5) working days.

752:11-7-13. ~~Change orders~~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 or his designee and/or Design Consultant shall issue a Proposal Request to the contractor. The Proposal Request ~~shall be completed by the contractor and~~ shall fully describe the scope of work explaining completely what each proposed Change Order item entails and the cost, credit, and time extension involved. 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, in consultation with the ADC, will consider the ~~completed Proposal Request and issue a Change Order if authorized.~~ proposed Change Order and sign if approved. The proposed Change Order then becomes an official Change Order.

(b) ~~When the Proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order. All information required on the form shall be included. The completed Change Order will be signed by the CFMO and/or Design Consultant.~~ 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) ~~When the change is less than \$10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in (a) of this Section~~

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~~is not required. 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) Awarded projects that have not been competitively bid 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. Cumulative change orders for awarded projects that have been competitively bid cannot exceed 10 percent of the original project bid amount. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total contract price. 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].~~

752:11-7-18. Project reporting for federally funded projects

Projects that are paid for with federal dollars may be subject to additional incremental reporting requirements. These requirements will be met in accordance with funding award documents and requests from federal awarding agencies.

SUBCHAPTER 9. CONSTRUCTION MANAGEMENT/AT RISK

752:11-9-1. Registration of Construction Managers

All Construction Managers desiring to perform services for the Authority must be registered with OMES. Any Construction Manager not registered with OMES at the time the Authority announces a project may register with OMES and submit a letter of interest to the Authority. All Construction Managers desiring to perform services for Authority that are funded using federal dollars must be registered with SAM.gov, obtain a Unique Entity Identifier, and shall not be on the federal debarred supplier listing.

752:11-9-3. Selection procedure

(a) **Description of the project.** The Authority shall develop a description of the project which shall include:

- (1) A narrative description of the work being planned, including various project components;
- (2) The estimated cost and time schedule of the project; and
- (3) The source of the funding.

(b) **Request list of Construction Management.** The Authority shall submit a written request to OMES for a list of construction management firms currently registered with the Department.

(c) **Announce project.** The Authority will send a Request for Qualifications (RFQ) to each construction management firm on the list provided by OMES which must include the description of the project and the deadline when letters must be received for consideration.

(d) **Special circumstances.** In special circumstances, the Authority may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management firms.

(e) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:

- (1) Procedures for submitting statements of qualification and procedures for making awards;
- (2) Evaluation factors to be considered by the selection committee;
- (3) A statement of work including the description of the project with any other summary information the Authority deems pertinent;
- (4) A schedule for planned commencement and completion of the contract;
- (5) Budget limits for construction of the project for which services are being sought; and
- (6) Requirements for construction management firms to have bonds and insurance;
- (7) If project is funded using federal funding sources;
- (8) Whether preferential scoring will be given to organizations based in the United State of America; and
- (9) Whether additional preferences are designated by federal awarding agencies.

752:11-9-4. 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 CFMO 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 CFMO 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 ~~score~~; 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.

752:11-9-6. Fee negotiation and contracts

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

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

(c) In establishing the construction management fee, the Authority 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 Authority 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 Authority ~~shall~~ 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 Authority shall formally terminate negotiations with that firm. This process ~~shall~~ 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 Authority 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 Authority 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 Authority 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 CFMO.

(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 Authority must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Authority may allow an adjustment to the GMP in order to allow the Construction Manager to award all work packages.

752:11-9-9. Statutory Increases

Any monetary threshold set forth in these rules will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 61 of the Oklahoma Statutes.

**SUBCHAPTER 11. BEST VALUE
METHODOLOGY**

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752:11-11-1. Best Value ~~vendor~~supplier selection

The Best Value ~~vendor~~supplier selection and project delivery process consists of three primary phases:

- (1) **Phase 1. ~~Vendor~~Supplier selection.**
- (2) **Phase 2.** Clarification period, which includes but may not be limited to:
 - (A) agreement on scope;
 - (B) description of services using performance measurements, if applicable; and,
 - (C) creation of contract requiring a Risk Report, Risk Management Plan, and all applicable legal terms and conditions.
- (3) **Phase 3.** Management, which requires:
 - (A) the ~~vendor~~supplier to manage and control the project system to make reports to the Authority; and
 - (B) the Authority to perform project quality assurance by ensuring the ~~vendor~~supplier is using a quality control plan and through periodic inspection.

752:11-11-2. ~~Vendor~~Supplier selection

Phase 1 uses a series of filters to identify which bidder provides the most value. For Construction Management/At Risk contracts, for example, Subchapters 752:11-9-1 through 752:11-9-5 reflect Phase I ~~vendor~~supplier selection and should be read in tandem with this Subchapter. On or before the date stated in the solicitation, ~~vendors~~suppliers submit documentation requested in the solicitation or bid documents information that will be evaluated, rated, and/or weighted, which may include, but is not limited to:

- (1) **Past performance information.** The ~~vendor~~supplier submits performance information collected from past customers about past projects/services the ~~vendor~~supplier has completed.
- (2) **Project capability.** The ~~vendor~~supplier submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, financial stability, proper insurance, the absence of any conflict of interest as such conflicts are addressed at 752:11-1-4, technical capability, documented performance measurements, ~~vendor's~~supplier's ability to provide additional value, and pricing information as required by the solicitation.
- (3) **Interviews.** The Selection Monitor will schedule interviews with representatives of selected firms as designated by the Selection Committee. The interview provides a forum for the ~~vendor~~supplier to discuss the project and answer questions concerning the ability to deliver the project/service.
- (4) **Prioritization.** After completion of (1) through (3) of this Section, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each ~~vendor~~supplier.
- (5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value ~~vendor~~supplier.

752:11-11-3. Clarification period

(a) The identified apparent Best Value ~~vendor~~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 ~~vendor~~supplier is responsible for scheduling and management of the related activities. The objective is to:

- (1) ensure the ~~vendor~~supplier understands the project scope;
 - (2) allow the ~~vendor~~supplier to clarify how they will deliver the project/service on time;
 - (3) identify the accountabilities of other parties; and
 - (4) explain how the ~~vendor~~supplier will mitigate and manage any risk the vendor does not control.
- (b) The ~~vendor~~supplier is responsible for understanding the project requirements and expectations.
- (c) To complete the clarification phase, the ~~vendor~~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-vendor~~sub-supplier and suppliers. Ensure that any ~~sub-vendor~~sub-suppliers have a complete understanding of the project and have no technical or non-technical questions or concerns;
- (6) Identify activities where the ~~vendor~~supplier will experience situations where there may be a lack of information, where un-foreseen conditions may exist, and activities where the ~~vendor~~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 Authority 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 Authority;
- (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 ~~vendor~~supplier does not control and how the ~~vendor~~supplier will mitigate or minimize those risks should they occur;

(12) Identify a performance measurement plan to communicate to the Authority how the ~~vendor~~supplier is performing during the project duration; and

(13) Provide assurances to satisfy any remaining project concerns that the Authority 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 ~~vendor~~supplier that would cause unnecessary time-and-effort transactions by the Authority.

(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 CFMO.

(e) The ~~vendor~~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 Authority 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 Authority determines progress being made by the invited bidder is unsatisfactory, the Authority may terminate Clarification Phase activities with the invited bidder. The Authority may then commence a new Clarification Phase with the next highest ranked bidder.

752:11-11-4. 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 ~~vendor~~supplier, the Authority, 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 Authority may require the ~~vendor~~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 CFMO.

752:11-11-6. Other requirements for contracts awarded using Best Value methodology

(a) 752: 11-11-2 and 752: 11-11-5 may apply to any contract awarded by the Authority using Best Value methodology to select the successful ~~vendor~~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 CFMO. 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

752:11-13-5. 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.** ~~Corporations~~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

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and the Authority 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 Authority shall employ a certified court reporter, whose 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;
- (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.

SUBCHAPTER 15. INVENTORY AND SURPLUS PROPERTY

752:11-15-1. Authority

(a) By operation of law, OMES does not have any authority or responsibility for property purchased for or under the management or control of the University Hospitals Authority except as expressly provided by law. [74 O.S. § 63(G)] State property law expressly provides that the Authority must provide an inventory to OMES [74 O.S. § 110.1], but no such express provision appears in the Oklahoma Surplus Property Act. That being so, OMES has no authority over property belonging to the Authority beyond that of serving as a repository for the Authority's inventory. [74 O.S. § 63(G)].

(b) These administrative rules have thus been implemented to fully comply with the spirit of laws applicable to state property [74 O.S. § 110.1] and the Oklahoma Surplus Property Act [74 O.S. § 62.1- 62.9] while reducing the risk of liability to the Authority for the transfer or disposal of surplus hospital property-property unique from other state property. These Policies and Procedures apply to University Hospitals Trust, in turn, which exists for the principal purpose of effectuating the purposes of the University Hospitals Authority as established in the University Hospitals Authority Act.

752:11-15-2. Inventory control

(a) Tangible assets shall be recorded in the Authority inventory system [74 O.S. § 110.1] which shall be maintained by the inventory control officer. In circumstances where unique assets or transactions are identified as not clearly covered by 74 O.S. § 110.1, the appropriate Authority personnel will document internal guidance in accordance with relevant industry and generally accepted accounting principles. Identification of the inventory control officer shall be provided in writing to OMES by January 15 of each year, with any change in identification of the inventory control officer submitted to OMES within thirty (30) days of the change.

(b) Tangible assets that are movable shall be tagged with a unique identifier of durable material in a location ensuring accessibility by an inventory control officer.

(c) If a movable tangible asset is transferred from one location to another, the transferring tenant shall report such movement to the appropriate Authority personnel and the new location shall be recorded in the system.

(d) Assets may be given or sold to the Joint Operator of the University Hospitals per Title 63, which donation in whatever form shall be recorded on the inventory system identified in these rules.

(e) The report generated from the inventory system shall be signed by the CFO, include tangible assets owned as of June 30 of the preceding year, and submitted to OMES by August 15. The report shall include for each asset:

(1) The name of the University Hospitals Authority or University Hospitals Trust, as the case may be;

(2) The tag number;

(3) The model and serial number, if any;

(4) The manufacturer;

(5) The description;

(6) Product name;

(7) Acquisition date and cost;

(8) Whether the asset is on loan;

(9) Whether a tag cannot be affixed to the asset;

(10) If the property was given or sold to the Joint Operator of the University Hospitals per Title 63, a designation of that fact; and

(11) If the property has been disposed of, a designation whether it was traded in, was transferred, reached the end of its useful life, or was otherwise disposed of in accordance with these rules.

(f) Inventory records for motor vehicles shall specifically include:

(1) A detailed description of each vehicle, including its original cost;

(2) The vehicle identification number;

(3) The license tag number;

(4) Mileage; and

(5) The make, model, and year of the vehicle [74 O.S. § 1103].

(g) Supporting documents identifying tangible assets shall be maintained. Such documents shall include acquisition, date, acquisition cost, digital photographs or images, or other documents that provide identification information. If federal funding sources are used in the acquisition of a tangible asset, the

asset shall be identified with a federal source code. Federal awarding agencies may impose additional requirements for asset tracking and disposal. These requirements shall be followed in accordance with funding award documents and the Code of Federal Regulations.

(h) Authority shall maintain a report of any assets that are missing, stolen, or destroyed by vandalism. Any notice reporting a loss to the insuring entity and any report to a law enforcement agency in the event of theft or vandalism shall be included in the report.

(i) For purposes of these rules, a tangible asset is one that meets the federal useful life and cost criteria specified in the Office of Management and Budget Circular A-21, as may be amended or superseded.

752:11-15-3. Surplus property

(a) The Authority shall maintain a current list of all surplus property held and disposed of. Such list shall include the location where surplus property

- (1) is maintained;
- (2) purchase price;
- (3) when sold and selling price;
- (4) if transferred, to which entity; and
- (5) if otherwise disposed of, the manner of disposal.
- (6) If any surplus property having minimal or no value or property carrying a risk of liability is disposed of, the list shall reflect that the property had minimal or no value or was otherwise disposed of because of such risk. Inclusion of assets on the surplus property list will coincide with removal of those items from the inventory system.

(b) The Authority may determine that its items, commodities, materials, supplies, equipment, or other like tangible assets are surplus when they:

- (1) are no longer required for the maintenance or operation of Authority facilities;
- (2) are no longer economical to operate, maintain or store, and do not provide a benefit;
- (3) can be converted to more liquid assets for other immediate needs or long-term requirements; or
- (4) have otherwise become excess, obsolete, antiquated, unused, or not needed.

(c) Assets may not be designated as surplus without the prior approval of the inventory control officer.

(d) While the Authority is exempt from the Surplus Property Act, it may nevertheless dispose of property in any manner set forth in the Act and may coordinate with OMES for disposal of surplus property. Other methods of disposal of surplus property are:

- (1) Transfer or sale to other state agencies or the Joint Operator of the University Hospitals.
- (2) Sealed bid. Sealed bids shall be received in accordance with these rules. Records of all surplus property sold through sealed bid shall be maintained and shall include the name of the buyer and the selling price.
- (3) Scrap metal.
- (4) Trade in.
- (5) Sell any property not exceeding \$25,000 with CEO approval. Property exceeding \$25,000 shall follow the

sealed bid procedures outlined in the Authority's administrative rules.

(6) Disposal in an appropriate waste facility, container, or with a waste service.

(e) Donations of Authority property to private individuals or Authority employees is strictly prohibited. The sale of Authority property to its employees must be at announced public sales or auctions and cannot be made through sealed bid.

(f) Payment by state entities shall be within forty-five (45) days of purchase and removal. Payment by other than state entities shall be at the time of purchase and prior to removal of property. Payment by state entities shall be by a state-approved purchase card. Payment by other than state entities may be in the form of certified funds, business check, money order, or cashier's check, except that a business check will not be accepted for an amount in excess of \$2500. A private business shall provide a business tax identification number. Sales tax shall be collected unless a tax-exempt certificate is presented. Not-for-profit, non-governmental entities shall provide a copy of the letter issued by the Internal Revenue Service granting its tax-exempt status. All payments received for the purchase of surplus property are nonrefundable.

(g) All surplus property, vehicles, and equipment are sold "as is" and are nonreturnable.

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**TITLE 753. UNIVERSITY HOSPITALS TRUST
CHAPTER 11. ACQUISITIONS AND CONSTRUCTION**

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