OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION

Solicitation Cover Page / Bidder Instructions

Solicitation Cover Page

DATE OF SOLICITATION made as of the **23rd** day of November in the year 20**26**.

Solicitation Information:

Solicitation Number: **003D**

Project Name: Helicopter Services – Reef Ball Deployment

Address: Eufaula Lake, OK – See attached Scope of Work

City ZIP: McIntosh County, OK

Bids Due: **Tuesday, December 8, 2026** at **3:00 PM. CST**

Agency Information:

Agency Name: **Oklahoma Dept. of Wildlife Conservation**

Contracting Officer: Darla Harvey

Mailing Address: **P.O. Box 53465**

City, ST Zip: **Oklahoma City, OK 73152**

Delivery Address: **1801 North Lincoln Blvd.**

City, ST Zip: **Oklahoma City, OK 73105**

Phone: **405-522-6144**

Email: Darla.harvey@odwc.ok.gov

The **Oklahoma Department of Wildlife Conservation** is inviting written bids for the project briefly described below:

The proposed contract is to move 100 concrete reef balls approximately 1.75 miles from a staging location on the shoreline of Eufaula Lake, to a deployment location, by helicopter, where an artificial aquatic reef will be created for fisheries habitat enhancement.

See attached Scope of Work.

Method of Responding to this Solicitation: Bids will be accepted by mail, email or hand delivered to the Agency Contracting Officer specified above.

Requirements: The requirements of the proposed contract are listed and described within this Solicitation and will become a part of any resultant Contract. The issuance of this Solicitation does not guarantee that the State of Oklahoma will enter into an agreement, and the State reserves the right to reject any and all bids.

In preparing a bid, please review the attached documents for compliance. Bid submission certifies that you have read, understand, and agree to the terms and conditions listed below:

- Solicitation Cover Page / Bidder Instructions
- ODWC Scope of Work
- CP 149 - State of Oklahoma Award Agreement (Note: This document will be fully executed by ODWC upon award decision)
- Attachment B - State of Oklahoma General Terms
- Certificate of Insurance and Workers' Compensation or statement of exemption from Workers' Compensation Act Affidavit. See requirements outlined in Section 8.1 of Attachment B - General Terms. ☐ N/A
- Attachment G - State of Oklahoma Federal Funding Terms - Note: If the purchase does not exceed $100,000 signatures are not required. ☐ N/A
- CP004 - State of Oklahoma Certification for Competitive Bid and/or Contract (Non-Collusion Certification)
- CP076 - State of Oklahoma Responding Bidder Information
- Build America, Buy America Act (BABA) (Note: Only for infrastructure) ☒ N/A
- ODWC Bid Form

A **Mandatory** Pre-bid conference and walk-through will be required: ☐ Yes ☒ No

If yes: Location:
Date:
Time:

If the Bidder has any questions about this Solicitation, please contact the Agency Contracting Officer specified above.

Bidder Instructions

1. **Introduction.** These Bidder Instructions are not part of the contract; however, compliance with these instructions is material to the determination of whether a bid is responsive. Failure to comply may result in rejection of a bid. Bid requirements are altered only by written amendment; verbal communications from any source are of no effect. In no event shall the bidder's failure to read and understand a term, condition or requirement in any of the documents provided by the State of Oklahoma constitute grounds for a claim after award of the contract. *A submitted bid is rendered as a legal offer and is required to be in strict conformity with these Bidder Instructions.*
2. **Definitions**. The following terms, when used in these Bidder Instructions, shall have the following meanings:
   - **2.1** **Amendment** means a written change, addition, correction or revision to solicitation documents and their terms, conditions or requirements by the State of Oklahoma.
   - **2.2** **Bid** means an offer a bidder submits in response to the solicitation.
   - **2.3** **Bidder** means an individual or business entity that submits a bid in response.
   - **2.4** **Bid packet** means the order described in these Bidder Instructions in which all bidders shall insert the relevant sections of a bid and which shall be the format for all submitted bids.
   - **2.5** **Mandatory provision** means whenever the terms "shall," "must," "will," or "is required" are used.
   - **2.6** **Permissible provision** means whenever the terms "can," "may," or "should" are used.
   - **2.7** **OAC** means the Oklahoma Administrative Code.
   - **2.8** **Value-added** means any goods and/or services that a bidder provides to other customers that a bidder wishes to offer to the State of Oklahoma that are in addition to those required on the Bid Form.
3. **Communication and questions.**
   - **3.1** The agency contracting officer listed on the Solicitation Cover Page is the only individual the bidder should contact or communicate with regarding any questions or issues with the acquisition. *Communication with any other stakeholders at the State of Oklahoma may result in disqualification.*
   - **3.2** General questions from bidders should be concise, identify the relevant document, include specific section references and avoid use of tables or special formatting (use simple lists).
   - **3.3** **Method for submission of questions.** Bidder should submit general questions concerning contract or bid specifications or requirements via email to the agency contracting officer listed on the Solicitation Cover Page. Questions received via any other means will not be addressed. Questions may be submitted as soon as the solicitation is posted. You are encouraged to submit your questions as soon as possible to allow adequate time for answers.
   - **3.4** **Clarification questions from the State of Oklahoma.** The State of Oklahoma reserves the right to request clarifications of bid information or to conduct discussions for the purpose of clarification with any or all bidders. The purpose of any such discussion shall be to ensure full understanding of the bid. If clarifications are made because of such discussion, the bidder shall submit such clarifications in writing to the agency contracting officer. Bidder answers that are outside scope of the clarification questions shall be disregarded. Oral explanations or instructions provided to a potential bidder are not binding.
4. **Bidder request for administrative review.**
   - **4.1** A bidder that believes the contract or bid requirements or specifications, or bid response due date, are unnecessarily restrictive or limit competition may email a request for administrative review to the agency contracting officer. A request received via any other means will not be addressed. The State of Oklahoma shall promptly respond in writing to each written administrative review request and, where appropriate, issue a revision, substitution or clarification through an amendment. Requests for administrative review shall include the reason for the request, supported by information, and any proposed changes.
   - **4.2** If a bidder fails to notify the agency contracting officer of an ambiguity, conflict, discrepancy, omission or other error in any of the documents provided by the State of Oklahoma that is known to bidder or that reasonably should be known by bidder, the bidder accepts the risk of submitting a bid and, if awarded the contract, shall not be entitled to additional compensation, relief or time by reason of the error or its later correction.
5. **Amendments to the solicitation.**
   - **5.1** Any amendment, OMES-FORM-CP-011, shall be set forth at the same online link as the solicitation: https://wildlifedepartment.com/bids-solicitations. **The bidder shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the bid or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date.**
   - **5.2** It is the bidder's responsibility to check the Oklahoma Department of Wildlife website frequently for any possible amendments that may be issued. The State of Oklahoma is not responsible for the bidder's failure to review any amendment documents required to complete a bid. None of the parties hereto shall assign, sublet or transfer any interest in this contract without the written consent of the other party.
6. **Preparation of the bid.**
   - **6.1** The bid must be structured in separate, labelled and easily identifiable sections using the bid packet format provided below. A bid submitted using any other format may not be accepted. The bid packet should not contain duplicative content amongst multiple sections. Any section of the bid packet that is not applicable to the bidder shall contain a page that reads "Not Applicable," "N/A" or similar notation.
   - **6.2** Reference to literature submitted with a previous bid shall not satisfy a specification or requirement associated with the present bid. Any previous solicitation or resultant contract shall not be depended upon, perceived or interpreted to have any relevance to the present bid.
   - **6.3** All costs incurred by the bidder for bid preparation and participation shall be the sole responsibility of the bidder and the bidder shall not be reimbursed for any such costs. By submitting a bid, the bidder agrees not to make any claims for damages or have any rights to damages in connection with the bid.

6.4 For consistency of contract structure, certain State of Oklahoma terms may be marked, "Intentionally Omitted." If so, no response is expected.

7. Required bid format.

7.1 Section 1: Required Forms, Certifications and Disclosures.

7.1.1 Completed Responding Bidder Information (Form CP076) set forth and accompanying required documentation.

7.1.2 Completed Certification for Competitive Bid and/or Contract (Non-Collusion Form CP004).

7.1.3 Signed amendments to the solicitation (if any).

7.1.4 Disclosure of the following:

a. Any public contract terminated by a governmental entity or suits or claims against the bidder for failure to perform in connection with a public contract (including any company which a bidder has merged with or acquired that will be performing services or providing products if awarded the contract).

b. Any contractual relationship or any other relevant contact with any State of Oklahoma personnel or another bidder or supplier involved in the development of a bidder's response to the solicitation.

c. The name of any officer, director or agent of the bidder who is also an employee of the State of Oklahoma or any of its agencies.

d. The name of any state employee who owns, directly or indirectly, an interest of 5% or more in the bidder firm or any of its branches.

e. Any activity or interest that conflicts or may conflict with the best interest of the State of Oklahoma, including but not limited to any person or entity currently under contract with or seeking to do business with the State of Oklahoma, its employees or any other third-party individual or entity awarded a contract with the State of Oklahoma. Any conflict of interest shall, in the sole discretion of the State of Oklahoma, be grounds for rejection of the bid or partial or whole termination of the contract.

7.1.5 Bidder's Certificate of Insurance to the standards set forth in Attachment B, Section 8, of the State General Terms.

7.2 Section 2: Bid Portions Requested to be Held Confidential.

7.2.1 All material submitted by a bidder becomes the property of the State of Oklahoma. No portion of a bid shall be considered confidential after award of the contract except pursuant to 74 O.S. § 85.5. Any portion of the bid requested to be held confidential shall be listed in this section for review. Do not duplicate listed documents in this section, simply provide a list of documents or sections of documents requested to be confidential.

7.2.2 For each portion of the bid listed as considered confidential, the bidder must identify the specific information considered confidential and fully comply with OAC 260:115-3-9 in Oklahoma Administrative Rules, which additionally requires a bidder to enumerate the specific grounds, based on applicable laws which support treatment of the information as exempt from disclosure and explain why disclosure is not in the best interest of the public.

7.2.3 A bid marked in total as proprietary and/or confidential will not be considered confidential.

7.2.4 **Any information marked as confidential and embodied elsewhere in a bid rather than listed in this section of the bid packet will not be considered confidential and will be subject to disclosure without further review. The State of Oklahoma has no responsibility to independently review an entire bid for a confidentiality claim. Likewise, confidentiality claims of a bidder will not be considered if a bid does not comply with requirements of OAC 260:115-3-9, and the information will be subject to disclosure pursuant to state law.**

7.2.5 Certain items will never be deemed confidential under the Oklahoma Open Records Act. The following is a non-exhaustive list of items that are not confidential:

a. Price.

b. References.

c. Individual's names.

7.3 Section 3: Requested Exceptions to Terms.

7.3.1 Any requested exception or revision to terms or conditions provided by the State of Oklahoma shall be redlined in Word format using track changes. If no exceptions or revisions are requested, the bid should reflect that by inserting a page to denote this section is not applicable.

7.3.2 The State of Oklahoma will not accept any exceptions or revision to the language found in the Bid Form, this language is designated as non-negotiable.

7.3.3 A clarification question is not an exception, and any clarification included in this section will be disregarded.

7.3.4 Requested exceptions should not be excessive, specifically not more than 10% of the terms and conditions provided by the State of Oklahoma in the solicitation. This may factor into the evaluation.

7.3.5 **The State of Oklahoma has no responsibility to independently review an entire bid for exceptions and any exception embodied in another section of the bid or in a format other than track changes in Word format will not be considered. Likewise, an exception expressing only general disagreement with a term or a general exception to any state terms or conditions, without suggested alternative wording or identifying that the term should be intentionally omitted, will not be considered.**

7.4 Section 4: Additional Bidder Terms.

7.4.1 Any additional terms that the bidder requests to be applicable to the contract shall be submitted in this section and shall be provided in Word format. The bidder must review terms before submitting to make changes that contradict the terms and conditions included in the solicitation. If the bidder desires any contradicting terms to govern, such changes must be memorialized in the Requested Exceptions in Section 4. Failure to provide Additional Bidder Terms that have not been harmonized to NOT conflict with the terms

and conditions in the solicitation without a documented exception request may result in disqualification from receiving an award.

7.4.2 **The State of Oklahoma has no responsibility to independently review an entire bid for additional terms and any such terms not submitted in this section of the bid shall not be considered.** Should a bidder be awarded a contract, neither the State of Oklahoma nor a customer shall be required to execute additional documents not included in a bid. For example, if a bidder typically uses an ordering document in connection with an acquisition, the ordering document template shall be included in the bid. The State of Oklahoma expressly rejects any terms found in documents not attached to the bid including but not limited to terms and conditions located at provided hyperlinks.

7.5 **Section 5: Response to Specifications and Requirements.**

7.5.1 The portion of the bid to be submitted in this section shows the ability of the bidder to meet or exceed any acquisition specifications and requirements found in Bid Form. Please include timelines for deliverables when applicable.

7.5.2 Unless otherwise specified in the solicitation, (i) manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for informational purposes and not intended to limit competition; and (ii) a bidder may offer any brand for which it is an authorized representative that meets or exceeds the specification for any item.

7.5.3 The bidder shall offer new items of current design and technology unless the State of Oklahoma specifies older models or versions or used, reconditioned or remanufactured products as acceptable. Warranties in either case should be the same. The bid is required to state the manufacturer's name and number. The bid shall also explain in detail how a proposed equivalent will meet the specifications and should not be considered an exception.

7.5.4 If an information technology VPAT is required, the URL link to the bidder's VPAT shall be submitted in the General Questions section of the online event referencing the VPAT.

7.5.5 **For all IT solicitations, bidders are required to submit an Authority to Operate (ATO) or confirmation that an ATO has been requested using the steps below with their response.** To request an ATO, bidders must complete Central Purchasing's ATO Request form through the OMES Service Desk in ServiceNow. Follow steps below to access and submit the form:

7.5.5.1 Access the Oklahoma Government Service Portal.

7.5.5.2 Register as a constituent – If you have not previously registered, select the option to register as a constituent. Once registered, log in to the portal using your credentials.

7.5.5.3 Access the ATO Request Form and complete all the required fields to initiate your ATO request.

7.5.5.4 Important note: If you attempt to access the form before logging in, you will receive an error message.

7.5.5.5 For problems or assistance with registration, contact the OMES Service Desk at 405-521-2444 or 405-521-2930.

7.5.5.6 A copy of the ATO or confirmation of submission must be included in the bidder's response. Do not submit the form with the response.

7.5.5.7 Oklahoma's Third-Party Risk team will reach out if they need additional information to complete their review. Once the Third-Party Risk team has reviewed the submission, they will provide via the registered email an executed ATO or notice that an ATO cannot be granted.

7.5.5.8 Bidders should submit the required form and documentation before the solicitation closes. Failure to provide the required ATO documentation may result in the bidder's proposal being deemed nonresponsive.

7.5.6 Bidder may submit the Standardized Information Gathering (SIG), Consensus Assessment Initiative Questionnaire (CAIQ), FedRamp and/or State Ramp Certifications to the Government Service Portal and should not submit this documentation in their bid.

7.5.7 If service level agreements are required, the proposed service level agreements shall be submitted in the General Questions section of the online event referencing the proposed service level agreements.

7.5.8 If a Statement of Work is required, the proposed draft shall be submitted in the General Questions section of the online event referencing the proposed statement of work.

7.6 **Section 6: Pricing (will not be held confidential).** Template – Bid Form.

7.6.1 Pricing associated with the bid shall be submitted in this section using Template – Bid Form.

7.6.2 In accordance with 74 O.S. § 85.40, all travel expenses to be incurred by the supplier in performance of the contract shall be included in the total bid price. Travel expenses include but are not limited to transportation, lodging and meals. Examples of other miscellaneous travel expenses are referenced in §10.14 of the Statewide Accounting Manual.

7.6.3 A bid containing early payment discounts may be evaluated when making an award. If a bidder wishes to offer an early payment discount, the bid must include available discount percentages for no less than 10 days' payment, increasing in five-day increments up to 30 days. The discount percentages shall be expressed in a half or whole percentage, with the minimum discount percentage being 0.5%. The State of Oklahoma is not obligated to utilize any discount offered.

7.6.4 Bids shall remain a firm offer for a minimum of 120 days after the bid response due date. Any usage amounts provided by the State of Oklahoma are estimates and are not guaranteed to be purchased.

7.6.5 Unless specified otherwise, a bidder shall submit a firm, fixed price for the term, including optional renewal terms, of the contract. The bidder guarantees unit prices to be correct

7.7 **Section 7: Offer of Value-Added Products and/or Services.** Template – Bid Form. If a bid includes an offer of value-added products and/or services, such offer shall be submitted in this section and include associated pricing and any other information relevant to such value-added offer. However, the State of Oklahoma is not obligated to purchase value-added products or services.

Bidder Instructions

7.8 **Section 8: Third-Party Supplier Information.** Template – Bid Form: Third-Party Supplier Information. If a third-party supplier or subcontractor is included as part of a submitted bid, the following information is required to be included in the bid for each such third-party supplier:

7.8.1 Company history.

7.8.2 Relationship to bidder.

7.8.3 Clients for which the two entities have worked together.

7.8.4 Products and/or services proposed to be provided by the third-party supplier and how those products and/or services interface with the bidder's solution.

8. **Submission of bid.**

8.1 A bid shall be submitted by mail, email or hand delivered to the agency contracting officer listed on the Solicitation Cover Page. The entire bid must be submitted by the bid response due date and time. Receipt of the bid by the State of Oklahoma is the responsibility of the bidder.

8.2 All bids shall be firm representations that the responding bidder has carefully investigated and will comply with all State of Oklahoma terms and conditions relating to the contract. Upon award of a contract, such terms and conditions, as may be amended by the bid after negotiation, shall become contractual obligations between the parties.

8.3 Bids received by the procuring agency after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

8.4 **Bid Change:** If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the agency contracting officer with the following statement "This bid supersedes the bid previously submitted."

9. **Contract Award Notice.** Once the evaluation process is complete and a contract has been awarded, suppliers can find the award information on the https://wildlifedepartment.com/bids-solicitations.

10. **Questions regarding Supplier Registration/Event Portal Access.** Bidders are encouraged to register as a state supplier via the OMES Supplier Portal: https://oklahoma.gov/omes/divisions/central-purchasing/suppliers-and-payees/supplier-portal.html to eliminate unnecessary delays in contract award.
For questions regarding Supplier Registration, contact OMES Supplier Registration team 9 a.m.-4 p.m., Monday-Thursday, at 405-521-2930 or oksuppliers@omes.ok.gov.

ODWC SCOPE OF WORK

Eufaula Lake Habitat Enhancement Project FY27

Services – Helicopter Lifting Services, Reef Ball Deployment

Eufaula Lake, Oklahoma (35.2921416, -95.570872)
Located in McIntosh County, Oklahoma

The proposed contract is to move 100 concrete reef balls approximately 1.75 miles from a staging location on the shoreline of Eufaula Lake, to a deployment location, by helicopter, where an artificial aquatic reef will be created for fisheries habitat enhancement.

Reef Ball Deployment.

- 50 Goliath Balls
    - Average weight 5,000 lbs.
    - Height 4'10", Diameter 6'
    - See attached picture.
- 50 Supra Balls
    - Average weight 4,200 lbs.
    - Height 4' 3'', Diameter 5'5"
    - See attached picture.
- Staging Site- 35.2921416, -95.570872
    - Staging site will have a minimum of 150' clearance on all sides for helicopter landing.
- Deployment Site-35.317175, -95.582961
    - All 100 reef balls will be deployed within a .5-mile radius of deployment site coordinates.
    - GPS Coordinates will be provided for more precise deployment of individual groupings of structures.
    - Structures may be lowered to water surface then released for deployment or lowered through the water and released upon setting on the lakebed. Water depths vary from 10'-60'.
- Vendor is to provide all rigging materials needed for transport and deployment of reef balls from staging location to deployment location.
- Vendor is required to provide rigger(s) to attach structures for transport.
- Timeline-
    - No earlier than Feb.1st, 2027
    - No later than March 31st, 2027
    - Preferred operations to occur Feb 22nd -26th, 2027.

ODWC personnel will provide traffic control (people, boats, vehicles) to ensure flight path is clear during operations.

Vendor is to provide all needed equipment.to complete the work as required, including rigging, and riggers. ODWC Personnel **will not** assist with attachment of rigging to structures or to helicopter.

ODWC reserves the right to make any inquiries to ensure that the lowest bidder Is able to complete the work in a satisfactory manner.

Scheduling: Provide Agency Representative with proposed work schedule prior to beginning work.

*****End of Scope of Work*****

Oklahoma Department of Wildlife Conservation CONTRACT WITH SUPPLIER LEGAL NAME

This State of Oklahoma Contract is entered into between the State of Oklahoma by and through the Oklahoma Department of Wildlife Conservation and SUPPLIER LEGAL NAME ("Supplier") and is effective as of the effective date set forth on a properly issued purchase order or, if no effective date is listed, the date of last signature ("Effective date"). The term of the Contract is ONE year(s) with the option to renew for NO additional years.

Purpose

The State of Oklahoma is awarding the Contract to Supplier for the provision of Helicopter Services – Reef Ball Deployment, as more particularly described in certain Contract Documents. This Contract Document memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

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

1. Supplier shall not commence performance, incur costs, or obligate the State until an authorized purchase order or other lawful encumbrance document has been issued.

2. The following Contract Documents are attached hereto and incorporated herein (check N/A if not applicable for Attachments C, D, E and/or G):

- **2.1.** Attachment A: Scope of Work and/or Pricing document
- **2.2.** Attachment B: The State of Oklahoma General Terms
- **2.3.** Attachment C: Any agency-specific terms – ☑ N/A
- **2.4.** Attachment D: The State of Oklahoma Information Technology Terms and Artificial Intelligence ("AI") Addendum – ☑ N/A
- **2.5.** Attachment E: Additional Supplier terms – ☑ N/A
- **2.6.** Attachment G: State of Oklahoma Federal Funding Terms – ☐ N/A

3. The parties additionally agree:

- **3.1.** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- **3.2.** To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State of Oklahoma or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
- **3.3.** The Contract may be subject to statutory subcontractor reporting, contract transparency, and contract performance assessment requirements under the Oklahoma Central Purchasing Act.

4. Payment obligations rest solely with the Oklahoma Department of Wildlife Conservation.

Contact: Michael Hollie, Fisheries Biologist, Phone:(405)-380-7808,
Email: Michael.hollie@odwc.ok.gov

5. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

SIGNATURES

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

Oklahoma Department of Wildlife Conservation

Signature	Date
X	Click or tap to enter a date.
Name	Title
Click or tap here to enter text.	Click or tap here to enter text.

SUPPLIER LEGAL NAME

Signature	Date
X	Click or tap to enter a date.
Name	Title
Click or tap here to enter text.	Click or tap here to enter text.

ATTACHMENT B

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

In addition to other terms contained in an applicable contract document, supplier and state agree to the following General Terms:

1 Scope and Contract Renewal

1.1 Supplier may not add products or services to its offerings under the contract without the state's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the contract, supplier shall contact the state.

1.2 At no time during the performance of the contract shall the supplier have the authority to obligate any customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded contract amount. Likewise, supplier is not entitled to compensation for a product or service provided by or on behalf of supplier that is neither requested nor accepted as satisfactory.

1.3 If applicable, prior to any contract renewal, the state shall subjectively consider the value of the contract to the state, the supplier's performance under the contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of contract documents to determine validity with current state and other applicable statutes and rules; b) current pricing and discounts offered by supplier; and c) current products, services and support offered by supplier. If the state determines changes to the contract are required as a condition precedent to renewal, the state and supplier will cooperate in good faith to evidence such required changes in an amendment.

1.4 The state may extend the contract for 90 days beyond a final renewal term at the contract compensation rate for the extended period. If the state exercises such option to extend 90 days, the state shall notify the supplier in writing prior to contract end date. The state, at its sole option and to the extent allowable by law, may choose to exercise subsequent 90-day extensions at the contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new supplier.

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

2 Contract Effectiveness and Order of Priority

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

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

A. Any amendment.

B. Terms contained in this contract document.

C. Any contract-specific state terms that include, without limitation, information technology terms and terms specific to a statewide contract or a state agency contract.

D. Any applicable solicitation.

E. Any successful bid as may be amended through negotiation and to the extent the bid does not otherwise conflict with the solicitation or applicable law.

F. Any statement of work, work order or other mutually agreed contract documents.

2.3 If there is a conflict between the terms contained in this contract document or in contract-specific terms and an agreement provided by or on behalf of supplier including but not limited to linked or supplemental documents which alter or diminish the rights of customer or the state, the conflicting terms provided by supplier shall not take priority over this contract document or acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an amendment.

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

3 Modification of contract Terms and contract documents

3.1 The contract may only be modified, amended, or expanded by an amendment. Any change to the contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the supplier, is a material breach of the contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written contract modification, shall be void and without effect and the supplier shall not be entitled to any claim under the contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the contract.

3.2 Any additional terms on an ordering document provided by supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the supplier or by a customer other than OMES in connection with an acquisition.

3.3 Except for information deemed confidential by the state pursuant to applicable law, rule, regulation, or policy, the parties agree contract terms and information are not confidential and are disclosable without further approval of or notice to supplier.

3.4 Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, no contract document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this contract or expand the state's or customer's liability or reduce the rights of customer or the state. If supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.

3.5 To the extent any term or condition in any contract document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United states law or regulation, such term or condition is void and unenforceable. By executing any contract document which contains a conflicting term or condition, the state or customer makes no representation or warranty regarding the enforceability of such term or condition and the state or customer does not waive the applicable Oklahoma and/or United states law or regulation which conflicts with the term or condition.

4 Definitions

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

4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by

purchase, lease purchase, lease with option to purchase, value provided or rental under the contract.

4.2 **Amendment** means a mutually executed, written modification to a contract document.

4.3 **Bid** means an offer a bidder submits in response to the solicitation.

4.4 **Bidder** means an individual or business entity that submits a bid in response to the solicitation.

4.5 **Contract** means the written, mutually agreed and binding legal relationship resulting from the contract documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the contract.

4.6 **Customer** means the governmental entity receiving goods or services contemplated by the contract.

4.7 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the state and may also result in cancellation of existing contracts with the state.

4.8 **Destination** means delivered to the receiving dock or other point specified in the applicable contract document.

4.9 **Governmental entity** means any governmental entity specified as a political subdivision of the state pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.

4.10 **Indemnified parties** means the state and customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.

4.11 **Inspection** means examining and testing an acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the acquisition meets contract requirements.

4.12 **Moral rights** means any and all rights of paternity or integrity of the work product and the right to object to any modification, translation or use of the work product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

4.13 **OAC** means the Oklahoma Administrative Code.

4.14 **OMES** means the Office of Management and Enterprise Services.

4.15 **Solicitation** means the document inviting bids for the acquisition referenced in the contract and any amendments thereto.

4.16 **State** means the government of the State of Oklahoma, its employees and authorized representatives, including without limitation any department, agency or other unit of the government of the State of Oklahoma.

4.17 **Supplier** means the bidder with whom the state enters into the contract awarded pursuant to the solicitation or the business entity or individual that is a party to the contract with the state.

4.18 **Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a supplier from inclusion on the supplier list; be eligible to submit bids to state agencies and be awarded a contract by a state agency subject to the Oklahoma Central Purchasing Act.

4.19 **Supplier confidential information** means certain confidential and proprietary information of supplier that is clearly marked as confidential and agreed by the state purchasing director or customer, as applicable, but does not include information excluded from confidentiality in provisions of the contract or the Oklahoma Open Records Act.

4.20 **Work product** means any and all deliverables produced by supplier under a statement of work or

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

5 Pricing

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

5.2 Pursuant to 74 0. S. § 85.40, all travel expenses of supplier must be included in the total acquisition price.

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

6 Ordering, Inspection and Acceptance

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

6.2 Services will be performed in accordance with industry best practices and are subject to acceptance by the customer. Notwithstanding any other provision in the contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service. Supplier warrants and represents that a product or deliverable furnished by or through the supplier shall individually, and where specified by supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of 90 days from the

date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the supplier shall be repaired or replaced by supplier at no additional cost or expense to the customer if such defect occurs during the warranty period.
Any product to be delivered pursuant to the contract shall be subject to final inspection and acceptance by the customer at destination. The customer assumes no responsibility for a product until accepted by the customer. Title and risk of loss or damage to a product shall be the responsibility of the supplier until accepted. The supplier shall be responsible for filing, processing and collecting any and all damage claims accruing prior to acceptance.
Pursuant to OAC 260:115-9-1, payment for an acquisition does not constitute final acceptance of the acquisition. If subsequent inspection affirms that the acquisition does not meet or exceed the specifications of the order or that the acquisition has a latent defect, the supplier shall be notified as soon as is reasonably practicable. The supplier shall retrieve and replace the acquisition at supplier's expense or, if unable to replace, shall issue a refund to customer. Refund under this section shall not be an exclusive remedy.

6.3 Supplier shall deliver products and services on or before the required date specified in a contract document. Failure to deliver timely may result in liquidated damages as set forth in the applicable contract document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, supplier shall provide staff who are sufficiently experienced and able to perform with respect to any transitional services provided by supplier in connection with termination or expiration of the contract.

6.4 Product warranty and return policies and terms provided under any contract document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

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

A. An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.

B. Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.

C. Payment of all fees under the contract shall be due net 45 days. Payment and interest on late payments are governed by 62 O.S. § 34.72. Such interest is the sole and exclusive remedy for late payments by a state agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.

D. The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.

E. If an overpayment or underpayment has been made to supplier any subsequent payments to supplier under the contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to supplier.

F. Supplier shall have no right of set off.

G. Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six months after the end of

the fiscal year in which the goods are provided or services performed.

H. The supplier shall accept payment by purchase card as allowed by Oklahoma law.

8 Maintenance of lnsurance, Payment of Taxes, and Workers' Compensation

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

A. Workers' compensation and employer's liability insurance in accordance with and to the extent required by applicable law.

B. Commercial general liability insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than 2,000,000 per occurrence.

C. Automobile liability insurance with limits of liability of not less than $2,000,000 combined single limit each accident.

D. If the supplier will access, process or store state data, then security and privacy liability insurance, including coverage for failure to protect confidential information and failure of the security of supplier's computer systems that results in unauthorized access to customer data with a limit of not less than $5,000,000 per occurrence.

E. Additional coverage required in writing in connection with a particular acquisition.

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

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

9 Compliance With Applicable Laws

9.1 As long as supplier has an obligation under the terms of the contract and in connection with performance of its obligations, the supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, state and local laws, rules, regulations,

ordinances and orders, as amended, including but not limited to the following:

A. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.

B. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans.

C. Prospective participant requirements set at 2 CFR part 376 in connection with Debarment, Suspension and other responsibility matters.

D. 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990.

E. Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 CFR Part 93.

F. Requirements of IRS Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein).

G. Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F § 200.500 et seq. with approval and work paper examination rights of the applicable procuring entity.

H. Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System, defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at e-verify.gov.

I. Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act.

J. Be registered as a business entity licensed to do business in the state, have obtained a sales tax permit, and be current on franchise tax payments to the state, as applicable.

9.2 The supplier's employees, agents and subcontractors shall adhere to applicable customer policies including but not limited to acceptable use of internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the supplier shall adhere to the State of Oklahoma Information Security Policy, Procedures and Guidelines set forth at e-verify.gov. Supplier is responsible for reviewing and relaying such policies covering the above to the supplier's employees, agents and subcontractors.

9.3 At no additional cost to customer, the supplier shall maintain all applicable licenses and permits required in association with its obligations under the contract.

9.4 In addition to compliance under subsection 9.1 above, supplier shall have a continuing obligation to comply with applicable customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.

9.5 The supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the contract of the supplier's obligations under the contract and supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the contract. At the request of the state, supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the contract.

9.6 As applicable, supplier agrees to comply with the governor's executive orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the state, including but not limited to all buildings, land and vehicles

owned, leased, or contracted for use by agencies or instrumentalities of the state.

9.7 The execution, delivery and performance of the contract and any ancillary documents by supplier will not, to the best of supplier's knowledge, violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of any written contract or other instrument between supplier and any third party.

9.8 Supplier represents that it can pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.

9.9 Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving supplier has been disclosed in writing to the state and supplier is not aware of any other litigation, claim or threat thereof.

9.10 If services provided by supplier include delivery of an electronic communication, supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with state standards regarding accessibility. Should any communication or associated support documents be noncompliant, supplier shall correct and redeliver such communication immediately upon discovery or notice, at no additional cost to the state. Additionally, as part of compliance with accessibility requirements where documents are only provided in nonelectronic format, supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the state.

10 Audits and Records Clause

10.1 As used in this clause and pursuant to 67 O.S. § 203, "record" includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form. Supplier agrees any pertinent federal or state agency or governing entity of a customer shall have the right to examine and audit, at no additional cost to a customer, all records relevant to the execution and performance of the contract except, unless otherwise agreed, costs of supplier that comprise pricing under the contract.

10.2 The supplier is required to retain records relating to the contract for the duration of the contract and for a period of seven years following completion or termination of an acquisition unless otherwise indicated in the contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two years from the date that all issues arising out of the action are resolved or until the end of the seven-year retention period, whichever is later.

10.3 Pursuant to 74 O.S. § 85.41, if professional services are provided hereunder, all items of the supplier that relate to professional services are subject to examination by the state agency, state auditor and inspector, and the state purchasing director.

11 Confidentiality

11.1 The supplier shall maintain strict security of all state and citizen data and records entrusted to it or to which the supplier gains access, in accordance with and subject to applicable federal and state laws, rules, regulations, and policies and shall use any such data and records only as necessary for supplier to perform its obligations under the contract. The supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. The supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns,

subcontractors, independent contractors, successor or any other persons or entities without customer's prior express written permission. Supplier shall instruct all such persons and entities that confidential information shall not be disclosed or used without the customer's prior express written approval except as necessary for supplier to render services under the contract. The supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

11.2 Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to state and citizen data and records to fulfill supplier's duties and obligations under the contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any state or citizen data or records except as required by law or allowed by written prior approval of the customer.

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

11.4 Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of state or citizen data and records.

11.5 Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any state data or records to others may cause immediate and irreparable harm to the customer and certain beneficiaries and may violate state or federal laws and regulations. If the supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the contract, the customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The supplier shall immediately forward to the state purchasing director, and any other applicable person listed in the Notices section of the contract, any request by a third party for data or records in the possession of the supplier or any subcontractor or to which the supplier or subcontractor has access and supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to supplier's confidential information. State agencies are subject to the Oklahoma Open Records Act and supplier acknowledges information marked confidential will be disclosed to the extent permitted under the Open Records Act and in accordance with this contract.

11.8 Except for information deemed confidential by the state pursuant to applicable law, rule,

regulation or policy, the parties agree contract terms and information are not confidential and are disclosable without further approval of or notice to the supplier.

12 Conflict of Interest

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

13 Assignment and Permitted Subcontractors

13.1 Supplier's obligations under the contract may not be assigned or transferred to any other person or entity without the prior written consent of the state which may be withheld at the state's sole discretion. Should supplier assign its rights to payment, in whole or in part, under the contract, supplier shall provide the state and all affected customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected customers to perform payment obligations without any delay caused by the assignment.

13.2 Notwithstanding the foregoing, the contract may be assigned by supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the supplier, or a sale of all or substantially all of the assets of the supplier to which the contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the supplier as fully as if it had been originally made a party to the contract. Supplier shall give the state and all affected customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

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

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

13.5 Rights and obligations of the state or a customer under the terms of this contract may be assigned or transferred, at no additional cost, to other customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the state in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the state. The costs of additional background checks beyond supplier's normal hiring practices shall be the responsibility of the customer unless such additional background checks are required solely because supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, supplier shall pay for the additional background checks. Supplier will coordinate with the state and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the supplier who will be providing services under the contract not be acceptable as a result of the background check or criminal history investigation, the customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or service.

15 Patents and Copyrights

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

16 Indemnification

16.1 State Shall Not Indemnify

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the state shall not be given, pledged or loaned to any individual, company, corporation, association, municipality or political subdivision of the state pursuant to Okla. Const. art. 10, § 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

16.2 Acts or Omissions

A. Supplier shall defend and indemnify the indemnified parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of or resulting from any action or claim for bodily injury, death or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the supplier or its agents, employees, or subcontractors in the execution or performance of the contract.

B. To the extent supplier is found liable for loss, damage or destruction of any property of customer due to negligence, misconduct, wrongful act or omission on the part of the

supplier, its employees, agents, representatives or subcontractors, the supplier and customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to and is payable by supplier 60 days after the date of supplier's receipt of an invoice for the negotiated settlement amount.

16.3 Infringement

Supplier shall indemnify the indemnified parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with supplier's breach of its representations and warranties in the contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) customer's or user's content; (b) modifications by customer or third party to a product delivered under the contract or combinations of the product with any nonsupplier-provided services or products unless supplier recommended or participated in such modification or combination; (c) use of a product or service by customer in violation of the contract unless done so at the direction of supplier, or (d) nonsupplier product that has not been provided to the state by, through or on behalf of supplier as opposed to its combination with products supplier provides to or develops for the state or customer as a system.

16.4 Notice and Cooperation

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

16.5 Coordination of Defense

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

16.6 Limitation of Liability

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

B. Notwithstanding anything to the contrary in the contract, no provision shall limit damages,

expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of supplier or its employees, agents or subcontractors.

C. The limitation of liability and disclaimers set forth in the contract will apply regardless of whether customer has accepted a product or service. The parties agree that supplier has set its fees and entered into the contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

17.1 Notwithstanding anything to the contrary in any contract document, the state may terminate the contract in whole or in part if funds sufficient to pay obligations under the contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, supplier will be provided at least 15-day written notice of termination. Any partial termination of the contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the contract that are not terminated. The determination by the state of insufficient funding shall be accepted by, and shall be final and binding on, the supplier.

17.2 Upon receipt of notice of a termination, supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to supplier in the form of prepaid fees that are unused when the contract or certain obligations are terminated shall be refunded.

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

18 Termination for Cause

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

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

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

18.4 Upon receipt of notice of a termination, supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to supplier in the form of prepaid fees that are unused when the contract or certain obligations are terminated shall be refunded. Termination of the contract under this section, in whole or in part, shall not relieve the supplier of liability for claims arising under the contract.

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

19 Termination for Convenience

19.1 The state may terminate the contract, in whole or in part, for convenience if it is determined that termination is in the state's best interest. In the event of a termination for convenience, supplier will be provided at least a 30-day written notice of termination. Any partial termination of the contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the contract that remain in effect.

19.2 Upon receipt of notice of such termination, supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory nor to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to supplier in the form of prepaid fees that are unused when the contract or certain obligations are terminated shall be refunded. Termination of the contract under this section, in whole or in part, shall not relieve the supplier of liability for claims arising under the contract.

20 Suspension of Supplier

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

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

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

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by supplier with respect to debarment, suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the contract. A determination that supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the contract for supplier's default. Additionally, supplier shall promptly provide written notice to the state purchasing director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding state Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the supplier certifies that no person materially involved in any manner in the development, approval or negotiation of the contract, including change orders, extensions, renewals or amendments, while employed by the state shall be employed or given anything of value in consideration of receiving the contract to fulfill any services provided under the contract.

23 Force Majeure

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

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

23.3 Notwithstanding the foregoing or any other provision in the contract, (i) the following are not a force

majeure event under the contract: (a) shutdowns, disruptions or malfunctions in supplier's system or any of supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to supplier's systems or (b) the delay or failure of supplier or subcontractor personnel to perform any obligation of supplier hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (ii) no force majeure event modifies or excuses supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with supplier's performance under the contract, supplier may have access to customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment and other property of customer.

Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of customer property in its possession, regardless of cause. If supplier fails to comply with customer's security requirements, supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

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

If sent to the state:

OMES Central Purchasing, Attn: State Purchasing Director
2401 N. Lincoln Blvd., Oklahoma City, OK 73105

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

OMES Central Purchasing, Attn: Deputy General Counsel
2401 N. Lincoln Blvd., Oklahoma City, OK 73105

26 Miscellaneous

26.1 Choice of Law and Venue

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

26.2 Employment Relationship

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

26.3 Transition Services

If transition services are needed at the time of contract expiration or termination, supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed

rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of supplier.

26.4 Publicity

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

26.5 Open Records Act

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

26.6 Failure to Enforce

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

26.7 Mutual Responsibilities

- **A.** No party to the contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without express written consent by the other party.
- **B.** The contract is a nonexclusive contract, and each party is free to enter into similar agreements with others.
- **C.** The customer and supplier each grant the other only the licenses and rights specified in the contract and all other rights and interests are expressly reserved.
- **D.** The customer and supplier shall reasonably cooperate with each other and any supplier to

which the provision of a product and/or service under the contract may be transitioned after termination or expiration of the contract.

E. Except as otherwise set forth herein, where approval, acceptance, consent or similar action by a party is required under the contract, such action shall not be unreasonably delayed or withheld.

26.8 Invalid Term or Condition

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

26.9 Severability

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

26.10 Section Headings

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

26.11 Sovereign Immunity

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

26.12 Survival

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

26.13 Entire Agreement

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

26.14 Gratuities

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

26.15 Import/Export Controls

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

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	☐ POLICY ☐ PRO-JECT ☐ LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	☐ **UMBRELLA LIAB** ☐ OCCUR						EACH OCCURRENCE	$
	☐ **EXCESS LIAB** ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ WC STATU-TORY LIMITS ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N / A **(Mandatory in NH)**						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

Oklahoma Department of Wildlife Conservation
1801 N Lincoln Blvd.
Oklahoma City, Oklahoma 73105

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

SAMPLE

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ATTACHMENT G

OKLAHOMA
Office of Management
& Enterprise Services

STATE OF OKLAHOMA
FEDERAL FUNDING TERMS

This State of Oklahoma Federal Funding Terms is a contract document in connection with a contract awarded by and through the State of Oklahoma Office of Management and Enterprise Services, with a vendor, supplier or contractor ("supplier"). Supplier acknowledges that acquisitions under this contract may use federal assistance for purposes of funding the acquisition. When procuring property and services using federal financial assistance, the state must follow the same policies it uses for procurements from its nonfederal funds along with all other requirements of the 2 U.S.C. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). In addition, the state and supplier ("parties") must agree to the standards identified in 2 CFR §§ 200.321-200.323 regulations and ensure purchase orders, contracts or subcontracts include clauses required by 2 CFR § 200.327.

The terms and conditions provided in this Attachment are general federal award requirements. Additional terms, conditions, or exceptions may be required that are specific to the federal financial assistance used in each procurement transaction. Any additional terms, conditions, or exceptions shall be incorporated into a purchase order, contract, or subcontract to ensure compliance with the federal financial assistance attached to this contract.

In addition to the terms contained in applicable contract documents and the requirements mentioned above, the Parties agree to the following Federal Funding Terms.

1 AFFIRMATIVE STEPS FOR CONTRACTING

1.1 Parties acknowledge that any nonfederal entity included in this contract must take affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. In addition to and in conjunction with 74 O.S. §§ 85.45-85.45i., those affirmative steps must include:

- **a.** Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- **b.** Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- **c.** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- **d.** Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- **e.** Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- **f.** Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a.) through (e.) of this section.

2 INFORMATION SUBMITTED. Supplier acknowledges that all information, reports and other documents and data submitted to the state and its representatives in connection with this contract were, at the time they were (or will be) furnished, and are, as of the date hereof (or will be as of the date they are furnished), true, correct and complete in all material respects.

3 COMPETITIVE BIDDING. All funds received by the supplier herein are subject to the Oklahoma Purchasing Act and the procurement standards found in 2 CFR §§ 200.321-200.323, and 2 CFR § 200.327. The supplier acknowledges and agrees that these funds were to the best of supplier's knowledge competitively bid or covered by an exemption as described therein.

4 AUDITING AND MONITORING REQUIREMENTS. Supplier acknowledges that the funds used in this transaction are subject to the requirements found in Sections 2 CFR §§ 200.500-200.520; and therefore, the state is subject to audit by federal and state entities.

4.1 The supplier agrees to provide the State of Oklahoma, the U.S. Department of Treasury, the comptroller general of the United States or any of their authorized representatives access to any books, documents, papers and records of the supplier which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The supplier agrees to permit any of the foregoing parties to copy or reproduce, by any means, excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests. All records related to this transaction must be kept for five years after the completion of this contract.

4.2 If applicable, the supplier agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4.3 No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the comptroller general of the United States.

4.4 The supplier further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5 BUYING PREFERENCES.

5.1 Domestic preferences for procurements, 2 CFR § 200.322. Supplier should, to the greatest extent practicable under the scope of this contract, provide a preference for the purchase, acquisition or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this contract. For purposes of this section:

a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

b. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

c. Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth below.

5.2 Buy America preferences for infrastructure projects, 2 CFR Part 184. Applies to federal awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the federal award. Must be included in all subawards, contracts and purchase orders for the work performed or products supplied under the federal award. Infrastructure encompasses public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways and bridges; public transportation; dams, ports, harbors and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities and equipment that generate, transport and distribute energy including electric vehicle (EV) charging.

6 STATUTES AND REGULATIONS PROHIBITING DISCRIMINATION.

6.1 Executive Order 11246, Equal Employment Opportunity, as amended by EO 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by 41 CFR Part 60 regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. Applies to any construction work and subcontract work or modification thereof, which is paid for in whole or in part with funds obtained from the federal government, unless otherwise exempted.

Federally assisted construction contracts 41 CFR § 60-1.4(b). During the performance of this contract, the contractor agrees as follows:

- **a.** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include but not be limited to employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- **b.** The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. which includes that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
- **c.** The contractor will not discharge or discriminate against any employee or applicant for employment because they inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant. This does not apply to instances in which an employee who has access to the compensation as part of the employee's essential job function discloses the compensation to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- **d.** The contractor will send to each labor union or representative of workers with which a collective bargaining agreement is in place or other contract or understanding, a notice to be provided advising the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.2 **Title VI of the Civil Rights Act of 1964** (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 CFR Part 22, which prohibits discrimination based on race, color or national origin under programs or activities receiving federal financial assistance.

6.3 **Fair Housing Act, Title VIII of the Civil Rights Act of 1968** (42 U.S.C. §§ 3601 et seq.*),* which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status or disability.

6.4 **Section 504 of the Rehabilitation Act of 1973,** as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

6.5 **Age Discrimination Act of 1975,** as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations of 31 CFR Part 23, which prohibit discrimination based on age in programs or activities receiving federal financial assistance.

6.6 **Title II of the Americans with Disabilities Act of 1990,** as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination based on disability under programs, activities and services provided or made available by state and local governments or instrumentalities or agencies thereto.

6.7 **Protections for whistleblowers.** In accordance with 41 U.S.C. § 4712, the parties may not discharge, demote or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The list of persons and entities referenced includes the following:

a. A member of Congress or a representative of a committee of Congress.
b. An inspector general.
c. The Government Accountability Office.
d. A Treasury employee responsible for contract or grant oversight or management.
e. An authorized official of the Department of Justice or other law enforcement agency.
f. A court or grand jury.
g. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

7 CONTRACT AND SUBCONTRACT LEVEL REQUIREMENTS.

In addition to state procurement regulations, the following federal regulations apply.

7.1 Contracts and purchases in excess of $2,000. The following applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works, and requires that supplier must comply with two sets of regulations:

a. Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). When applicable, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The nonfederal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The nonfederal entity must report all suspected or reported violations to the federal awarding agency.

b. Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The nonfederal entity must report all suspected or reported violations to the federal awarding agency.

7.2 Contracts and purchases in excess of $10,000

a. Recovered materials. Any state agency or agency of a political subdivision of a state and its suppliers or contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

7.3 Contracts and subcontracts for $25,000 and above

a. Suspension and debarment. Restricts awards, subawards, contracts and subcontracts with suppliers that are debarred, suspended or otherwise excluded or declared ineligible for participation in federal assistance programs and activities. This contract is a covered transaction for purposes of 2 CFR Part 180 and Part 3000. As such, the supplier is required to verify that none of supplier's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935). The supplier must comply with 2 CFR Part 180 Subpart C and 2 CFR Part 3000 Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters. This certification is a material representation of fact relied upon

by the State of Oklahoma. If it is later determined that the supplier did not comply with 2 CFR Part 180 Subpart C and 2 CFR Part 3000 Subpart C, in addition to remedies available to the state, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

7.4 Contracts and purchases of $100,000 and above

a. **Contract Work Hours and Safety Standards Act,** 40 U.S.C. §§ 3701-3708. Applies to all contracts and subcontracts of more than $100,000 that involve the employment of mechanics or laborers. Under Section 3702 of the act, contractors and subcontractors shall be required to compute the wages of every mechanic and laborer (including guards and watchmen) based on a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. *These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence*.

b. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended.** Supplier certifies that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. This supplier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award and require any entities receiving subawards or contracts to do the same. Such disclosures are forwarded from tier-to-tier up to the recipient who in tum will forward the certification(s) to the awarding agency. (**Contractors must sign the attached certification.)**

7.5 Contracts and purchases of $150,000 and above

a. **Clean Air Act (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.** Supplier agrees to comply with, and require all subcontractors to comply with, all applicable standards, orders, or regulations issued pursuant to these acts. Supplier agrees to report each violation to the state entity that is party to this contract and understands and agrees that the state entity will, in tum, report each violation as required to assure notification to the appropriate Environmental Protection agency.

7.6 Contracts and purchases of $250,000 and above

a. **Remedies.** Contracts for more than the simplified acqms1t10n threshold, currently set at $250,000, must address administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

8 OTHER APPLICABLE LAWS

8.1 **Increasing seat belt use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (April 18, 1997), supplier is encouraged to adopt and enforce on-the-job seat belt policies and programs for employees when operating company-owned, rented or personally owned vehicles.

8.2 **Reducing text messaging while driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), supplier is encouraged to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.

8.3 **Publications.** Any publications produced with funds from a federal award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury.”

8.4 **Rights to inventions made under a contract or agreement.** If the federal award meets the definition of funding agreement under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements) and any implementing regulations issued by the awarding agency.

- The term ***funding agreement*** means any contract, grant or cooperative agreement entered into between any federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties or subcontract of any type entered into for the performance of experimental, developmental or research work under a funding agreement as defined in the first sentence of this paragraph.

8.5 **2 CFR § 200.216 – Prohibition on certain telecommunications and video surveillance services or equipment**

a. Parties agree that no federal funds may be obligated or expended in any contract or subcontract that includes obtaining any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.

- As described in Public Law 115-232, section 889, *Covered telecommunications equipment* is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

b. This prohibition does not prevent parties to this contract or subcontractors from using covered telecommunications equipment and services for their own purposes, provided the covered telecommunications equipment or services are not procured with federal funds.

c. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

8.6 **Termination for cause and convenience** - Provisions under Attachment B apply.

CERTIFICATION REGARDING LOBBYING

This form is required for purchases of $100,000 and above.

Required by 31 CFR Part 21

The undersigned certifies to the best of their knowledge and belief that:

I. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement.

II. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL (Disclosure of Lobbying Activities) in accordance with its instructions.

III. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subawards and contracts under grants, loans and cooperative agreements) and that all suppliers shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Supplier certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the supplier understands and agrees that the remedies found in 31 U.S. C. Subtitle III Chapter 38 applies to this certification and disclosure.

Name	Title
Signature of supplier's authorized official	Date

OKLAHOMA
Office of Management
& Enterprise Services

CERTIFICATION FOR COMPETITIVE BID AND/OR CONTRACT (NON-COLLUSION CERTIFICATION)

Note: A certification shall be included with any competitive bid and/or contract exceeding $25,000.00 submitted to the state for goods or services.

GENERAL INFORMATION

Agency name:	Agency #
Oklahoma Department of Wildlife Conservation	320
Supplier or bidder legal name	Solicitation # or purchase order #
	003D

Section 1 74 O.S. § 85.22

A. For purposes of any competitive bid or contract executed by the state for an acquisition in excess of the fair and reasonable acquisition threshold amount, I certify:

1. I am the duly authorized agent of the above-named supplier or bidder for the purpose of certifying the facts pertaining to the existence of collusion among and between bidders and suppliers and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in connection with the prospective acquisition.
2. I am fully aware of the facts and circumstances surrounding the acquisition or making of the bid to which this statement relates and have been personally and directly involved in the events leading to the acquisition or submission of such bid.
3. Neither the business entity that I represent in this certification nor anyone subject to the business entity's direction or control has been a party to:
   a. Any collusion among bidders or suppliers in restraint of freedom of competition by agreement to bid or contract at a fixed price or to refrain from bidding or contracting.
   b. Any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract.
   c. Any discussions between bidders or suppliers and any state official concerning exchange of money or other thing of value for special consideration in connection with the prospective contract.

B. I certify, if awarded the contract, whether competitively bid or not, neither the business entity I represent nor anyone subject to the business entity's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of this state any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement relates.

Section 2 74 O.S. § 85.42

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

Section 3 74 O.S. § 582

For the purpose of a contract for goods or services, the supplier also certifies it is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the state.

Section 4 74 O.S. § 12005

For the purpose of a contract for goods or services, the supplier also certifies it is not currently engaged in a boycott of energy companies and will not boycott energy companies during the term of the contract.

Section 5 DEBARMENT, SUSPENSION OR OTHER RESPONSIBILITY MATTERS

For the purpose of a contract for goods or services, the supplier certifies any debarment, suspension, indictments, convictions, civil judgments and terminated public contracts have been disclosed to the state purchasing director.

Section 6 74.O.S. § 85.5

For the purposes of a contract for the physical performance of services, the supplier also certifies it is in compliance with the provisions of Section 1313 of Title 25 of the Oklahoma Statutes requiring all suppliers to register and participate in the Status Verification System to verify the work eligibility status of all new employees.

Section 7 21 O.S. § 1289.31

For the purpose of a contract for goods or services, the supplier also certifies it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against a firearm entity or firearm trade association during the term of the contract.

Section 8 74.O.S. § 85.22C

List of all known business or familial relationships that currently exist or which existed within one year prior to the date on this form between any officer or director of the supplier and any officer or employee of the state agency listed on Page 1. State the names of persons with such relationships, their position within the organization, and the nature of such relationships.

1.

2.

3.

If no such relationships exist, check the box below:

☐ There are no known business or familial relationships that currently exist or which existed within one year prior to the date on this form between any officer or director of the supplier and any officer or employee of the state agency stated above.

Section 9 74 O.S. § 85.42(B)

Pursuant to 74 O.S. § 85.42(B), the supplier certifies that no person involved in any manner in the development, approval or negotiation of the contract, including change orders, extensions, renewals or amendments, while employed by the State of Oklahoma shall be employed or given anything of value to fulfill any services provided under the contract, including change orders, extensions, renewals or amendments.

SIGNATURE

By signing below, the undersigned duly authorized agent for the above-named bidder or supplier acknowledges this certification statement is executed for the purposes of one of the following:

☐ The competitive bid attached herewith and contract, if awarded to said supplier.

☐ The contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma Statutes.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Supplier authorized signature	Certified this date	
Name	Email	
Title	Phone	Fax

OKLAHOMA
Office of Management & Enterprise Services

Central Purchasing

RESPONDING BIDDER INFORMATION

You must submit a Certification for Competitive Bid and Contract along with the response to the solicitation.

1. SOLICITATION

Solicitation #
003D

2. BIDDER GENERAL INFORMATION

FEIN/SSN	Supplier ID
Company name	

3. BIDDER CONTACT INFORMATION

Address

Contact name		Title	
Email	Phone	Website	Fax

4. BIDDER IS ENGAGED IN BOYCOTT OF GOODS OR SERVICES FROM ISRAEL

☐ *Yes* ☐ *No*

5. REGISTRATION WITH THE OKLAHOMA SECRETARY OF STATE

☐ *Yes* *Filing number:* _____

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

6. WORKERS' COMPENSATION INSURANCE COVERAGE

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

☐ *Yes* *Include a certificate of insurance with the bid.*

☐ *No* *Exempt from the Administrative Workers' Compensation Act pursuant to 85A O.S. § 2(18)(b)(1-11). (Attach a written, signed and dated statement on letterhead stating the reason for the exempt status. For frequently asked questions concerning workers' compensation insurance, visit wcc.ok.gov.)*

7. DISABLED VETERAN BUSINESS ENTERPRISE ACT

☐ *Yes* *I am a service-disabled veteran business as defined in 74 O.S. § 85.44E.*
Include the following with the bid response:

1. *Certification of service-disabled veteran status as verified by the appropriate federal agency.*
2. *Verification of not less than 51% ownership by one or more service-disabled veterans.*
3. *Verification of the control of the management and daily business operations by one or more service-disabled veterans.*

☐ *No* *I do not meet the criteria as a service-disabled veteran business.*

8. SIGNATURE

Authorized signature	Date
Name	Title

OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION (ODWC)

SUPPLEMENT TO GENERAL CONDITIONS OF THE CONTRACT

DOMESTIC PROCUREMENT REQUIREMENTS FOR INFRASTRUCTURE PROJECTS THAT ARE FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS UNDER BUY AMERICA BUILD AMERICA

As required by Section 70914 of the Infrastructure Investment and Jobs Act (BUY AMERICA BUILD AMERICA ACT Pub. L. 117-58) and related statutes and regulations, on or after May 14, 2022, the funds under a federal award for infrastructure projects must not be obligated unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. If any part of the project is funded by a federal award, then the entire project must meet the Buy America Build America provisions. This requirement is hereby expressly and formally incorporated into ODWC's *General Conditions of the Contract*, any contract that ODWC is party hereto and into all ODWC subawards under this program, including all contracts and purchase orders for work or products.

I. REQUIRED USE.

A. Steel and Iron Products:

All iron and steel used in the project must be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, must have occurred in the United States. This includes the processes of epoxy coating, galvanizing, painting, or applying any other coating that protects or enhances the value of the coated material and that are permanently incorporated into the completed project. The Contractor shall provide certification that the steel/iron is domestically produced.

B. Manufactured Projects:

All manufactured products used in the projects must be produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The Contractor shall provide certification that the construction materials defined under BABA are domestically produced.

C. Construction Materials:

All construction materials used in the project must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. This includes the components of the manufactured product, which must also be mined, produced, or manufactured in the United States.

II. BIDDER/OFFEROR AND CONTRACTOR OBLIGATIONS.

A. Required Certifications:

At the outset, the Bidder or Offeror must submit a certification of assurance of compliance with BABA, attached hereto as Exhibit A. After work is completed on the project, the Contractor must

submit an additional certification to ODWC with the following information, also reflected in Exhibit B:

"I hereby certify that all construction materials furnished to the Oklahoma Department of Wildlife Conservation for the construction of the above referenced project that are required to be compliant with the Build America Buy America Act have been produced in the United States of America as defined by §70912 "Definitions" of the Infrastructure and Investment Jobs Act (IIJA) (Public Law 117-58 - Nov. 15, 2021). I further certify that all supporting documentation is on file and will be maintained for a period of five (5) years after project completion."

B. Assumption of Risk:

The Contractor assumes the risk of including any foreign materials that are not exempt from this requirement, including iron or steel. ODWC may request to review the Contractor's supporting documentation to verify compliance with BABA at any time. The Contractor shall provide the supporting documentation within five (5) business days of the request. The burden of proof to meet the BABA provisions rests on the Contractor. If the supporting documentation does not undeniably demonstrate to ODWC that the iron or steel, manufactured products, or construction materials identified in the Certificates of Compliance were produced in the United States of America, then such iron, steel, manufactured products or construction materials may be considered unacceptable and must be replaced by the Contractor at no cost to ODWC. The Contractor shall not anticipate that any BABA preference provisions will be waived.

C. Removal Due to Non-Compliance:

The Contractor has the obligation to remove and replace non-BABA compliant material unless a waiver is granted for the use. No claims for contract adjustment (additional time, money, or both) will be made because of the non-compliant material. The Contractor shall provide certification that all materials defined under BABA are domestically produced.

More information on BABA requirements may be found here: BABA - Federal Financial Assistance.

More information on BABA requirements for projects funded directly under the DOI may be found here: USFWS Award Terms and Conditions May 14, 2022 and "Buy America" Domestic Sourcing Guidance and Waiver Process for DOI Financial Assistance Agreements | U.S. Department of the Interior.

Attachment A

BUY AMERICA BUILD AMERICA CERTIFICATION

Procurement of Steel, Iron, or Manufactured Products, and Construction Materials

Instructions: BIDDER or OFFEROR shall complete the Buy America Certification below. BIDDER or OFFEROR shall certify that it will either comply or that it cannot comply with requirements (only sign one, not both). This Certification MUST BE submitted with the Bidder's or Offeror's response.

PROJECT: _____

Certificate of <u>Compliance</u> with Buy America Requirements

The BIDDER or OFFEROR certifies that it will comply with the requirements of ODWC's Supplement to General Conditions of the Contract, Public Law 117-58 and related statutes and regulations:

Date_____

Signature_____

Company_____

Name_____

Title_____

Certificate of <u>Non-Compliance</u> with Buy America Requirements

The BIDDER or OFFEROR certifies that it cannot comply with the requirements ODWC's Supplement to General Conditions of the Contract, Public Law 117-58 and related statutes and regulations:

Date_____

Signature_____

Company_____

Name_____

Title_____

Attachment B

BUY AMERICA BUILD AMERICA CERTIFICATION

Procurement of Steel, Iron, or Manufactured Products, and Construction Materials

Instructions: CONTRACTOR shall complete the Buy America Certification below.

PROJECT: _____

I hereby certify that all construction materials furnished to the Oklahoma Department of Wildlife Conservation for the construction of the above referenced project that are required to be compliant with the Build America Buy America Act have been produced in the United States of America as defined by §70912 "Definitions" of the Infrastructure and Investment Jobs Act (IIJA) (Public Law 117-58 - Nov. 15, 2021). I further certify that all supporting documentation is on file and will be maintained for a period of five (5) years after project completion.

I fully acknowledge that I have the obligation to remove and replace non-BABA compliant material unless a waiver is granted for the use. I further acknowledge that no claims for contract adjustment (additional time, money, or both) will be made because of the non-compliant material. It is my obligation to provide certification that all materials defined under BABA are domestically produced.

Date_____

Signature_____

Company_____

Name_____

Title_____

OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION

Bid Form

Solicitation Information

Solicitation Number:	003D
Project Name:	Helicopter Services – Reef Ball Deployment
Address:	Eufaula Lake, Oklahoma (35.2921416,-95.570872) – See attached Scope of Work
City, State, Zip:	McIntosh County, Oklahoma

Bidder Information

Company Name:	
Contact Name:	
Address:	
City, State, Zip:	
Phone:	
Email:	

PURPOSE

The proposed contract is to move 100 concrete reef balls approximately 1.75 miles from a staging location on the shoreline of Eufaula Lake, to a deployment location, by helicopter, where an artificial aquatic reef will be constructed for fisheries habitat enhancement.

1. **Solicitation Criterion:** The bid will be evaluated using a best-value/lowest and best criterion, based on the following:
   1.1. Price.
   1.2. Past performance.
   1.3. Ability to supply products.
   1.4. Product acceptability.
   1.5. Insert any other criterion included on the evaluation tool.
   1.6. Business References. Upon request, bidder will provide three business references from clients for whom the bidder has provided similar services to establish a successful implementation experience. Business references must include customer contact information including email and phone number. The State of Oklahoma is not responsible for references that do not respond.
2. **Bid Proposal:** To furnish all necessary Project Management, labor, machinery, equipment, tools, materials, and supplies to complete all the Work upon which is written in the ODWC Scope of Work and these Contract Documents.
3. **Base Bid:**

Fill out the requested rates and apply that rate to the estimated quantities to establish a comparative basis for contract award. The quantities are estimates only and may not reflect actual contract usage. The State will only assign work based upon need and makes no warranty or guarantee as to any minimum amount that may be authorized under the contract.

Category	Rate	Estimated Quantity	Subtotal Amount (Rate x Est. Qty.)
Goliath Balls – Average weight 5,000 lbs.	$	50	$
Supra Balls – Average weight 4,200 lbs	$	50	$

Total cost and basis of award: $ _____

(Insert amount using numbers)

_____ Dollars

(Insert amount using words)

4. **Value Added:** If a bid includes an offer of value-added products and/or services, such offer shall be submitted in this section and include associated pricing and any other information relevant to such value-added offer. However, the State of Oklahoma is not obligated to purchase value-added products or services.