

## CHAPTER 65. CONSTRUCTION AND PROPERTIES

[Authority:61 O.S., § 209]

[Source:Codified 9-12-14]

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### SUBCHAPTER 1. CONSTRUCTION CONTRACTING

#### 260:65-1-1. Purpose

(a) The Construction, Planning and Real Estate Department, Office of Management and Enterprise Services is responsible for assisting and advising the using state agency, other departments and divisions of state government, in planning, programming, arranging and contracting for the services of professionals for the planning, design and construction of assigned projects and contracting for construction. The Department is also responsible for implementing the Public Competitive Bid Act, 61 O.S., Sections 101 through 139. These rules are provided to assist concerned parties in the bidding of projects for construction, renovation or maintenance of state facilities.

(b) The State of Oklahoma does not discriminate in its hiring practices and expects its contractors to abide by all Federal rules and regulations on non-discrimination. All bidders shall acknowledge in the bidding documents they are Equal Employment Opportunity employers.

(c) The State of Oklahoma adheres to a policy which provides a drug free workplace to all of its employees. All contractors working on a state facility shall comply with the policies of the state agency controlling that facility.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### 260:65-1-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

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

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

**"Bid"** means the cost proposal submitted by a construction firm in response to a request or solicitation for bids from the Department for a construction project described in plans and/or specifications provided by the State.

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

**"Consultant"** means an *individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

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

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-1-3. Bid solicitations**

The manner in which bids are solicited shall be determined by the estimated cost of the project. There are three categories, projects over the amount established by statute in 61 O.S., Section 102(6), projects under the statutory amount and minor maintenance or repair projects exempt from bidding pursuant to 61 O.S., Section 103.C.

(1) **Projects over statutory amount.** Projects over the statutory amount established in 61 O.S., Section 102(6) are advertised in a newspaper of general circulation and published in the county where the work, or a major part of it, is to be done. The notice is published in two consecutive weekly issues of the said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Information is also provided to various bid assistance centers and to trade. The State does not control how the trade publications handle the publishing of the information. For state agencies subject to the Public Facilities Act (61 O.S. Section 201-214), projects are advertised and awarded by the Department.

(2) **Projects under statutory amount.** Projects under the statutory amount established in 61 O.S., Section 102(6) are not usually advertised. The state agency shall develop a written, clearly defined scope of work and detailed requirements for the project. For state agencies subject to the Public Facilities Act (61 O.S. Section 201-214), the Director shall assess the ability of a state agency to prepare a bid package and solicit for bids under the statutory amount. [61 O.S., Section 209(3)] The state agency may adopt written procedures developed by the Department or internal procedures approved by the Director. The written procedures for soliciting bids shall include:

(A) Direct mail or email solicitations are made by the state agency to three or more contractors whose place of business is preferably located in the general vicinity of the proposed construction.

(B) The state agency shall use procedures, forms and contracts developed by the Department.

(3) **Minor Maintenance or Repair.** Minor projects below the amount stipulated in 61 O.S., Section 103.C. may be awarded by the state agency to any qualified vendor. A written contract and proof of insurance is required prior to issuing the vendor a notice to proceed.

(4) **Emergency Projects.** When an emergency situation is declared to exist by the chief administrative officer or governing body of a state agency, the Department may award a contract without competitive bids to correct the emergency condition.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-1-4. Bid documents**

(a) **Solicitation notice.** [61 O.S., Section 105] The solicitation notice shall contain:

(1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.

(2) The location where a complete set of bidding documents may be obtained.

(3) The date and time for the MANDATORY site visit, if required. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.

(4) The location and time for the pre-bid conference if one is to be held. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.

(5) The date, time and place of the opening of bids.

(6) The name and address to whom the sealed bids must be submitted.

(7) If applicable, any pre qualification requirements.

(8) Other information deemed of benefit to the public or prospective bidders.

(b) **Bidding documents.** At least twenty days prior to the bid opening, a complete set of bidding documents shall be available to prospective bidders at the location shown in the bid notice.

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

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-1-5. Bid submittal**

(a) **Advertised projects.** Bids must be prepared on forms provided by the Office and in accordance with the instructions provided in the bid package. Instructions on obtaining the bid packages are in the solicitation notices. Bids cannot be submitted by telephone or fax machine or. Bids may be delivered through the established bidding platform.

(b) **Equal opportunity employment requirements.** The State of Oklahoma is an Equal Opportunity Employer.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-1-6. Modifications/withdrawal of bids**

(a) **Withdrawal of bids.** Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented to the Director or his authorized designee. A bid to be withdrawn shall not be opened.

(b) **Bid modifications.** A sealed bid modification shall be submitted by registered mail or delivered in person. The modification must state the amount of change, either additive or deductive, from the previously submitted sealed bid and shall not reveal the actual, new, modified bid amount. Upon acceptance of a bid modification, the Director or his authorized representative shall open the original bid, then open the sealed modification, add or subtract to compute the new bid amount, and publicly announce the resultant legal bid. The same bid modification procedures shall be used to submit, compute and announce any other modified bid items such as days to complete the work or unit prices.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-1-7. Bid openings**

(a) The public is invited to all bid openings which are held as specified in the solicitation notice. The bids are opened by the Director or his designee in the following manner and recorded by an assistant. Bids may be examined by the public after the bid opening on request to the Director. [61 O.S., Section 110]

(1) The bidder's name and city are announced.

(2) The bid is checked for completeness and correctness. Any of these deficiencies shall be grounds for disqualifying the bid:

(A) Addenda must be acknowledged. This may be waived in those cases where the addenda has no direct effect on the proposal cost.

(B) The bid must be signed.

(C) The affidavits required by the bid documents must be present, signed and properly notarized. [61 O.S., Section 108]

(D) If the total bid including alternates exceeds the amount specified in 61 O.S., Section 107, a certified check, cashier's check, bid bond or bid letter of credit for 5% of the base bid price and the price of all alternate bids must be present. [61 O.S., Section 107]

(E) All equipment lists, selected materials, or other information when required by the specifications must be present.

(F) The price is read aloud.

(b) Projects for which only a single bid is received shall not be opened until the state agency has been notified and permission has been received from the state agency to open the single bid.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-1-8. Prequalification of bidders**

(a) **Scope.** The Department may require prospective bidders, construction managers, design-builders, general contractors, subcontractors and material suppliers to prequalify prior to submitting bids on a public construction contract to determine the responsibility of bidders.

(b) **Notice.** The solicitation notice for specific projects described in 260:65-1-4 (a), shall contain the requirements for prequalification, if any, and the availability of forms to be submitted to the Department.

(c) **Prequalification Form.** When indicated on the solicitation notice, prospective bidders, construction managers, design-builders, general contractors, subcontractors and material suppliers must submit a prequalification form, prescribed by the Director, to the Department which may include the following information:

- (1) Company organization type;
- (2) Type of work or classification of work;
- (3) Organization information;
- (4) Licensing and registration information;
- (5) Experience on current projects;
- (6) Experience on projects completed within last five years;
- (7) Experience of key personnel;
- (8) Specialized experience for specific building types, subsystems or materials;
- (9) References from construction trades, bank and surety company;
- (10) Current financial statement, which according to statute shall remain confidential;
- (11) Any other business information that will enable the Department to evaluate the responsibility of prospective bidders.

(d) **Evaluation.** The Department shall evaluate the information contained in the prequalification form and designate the qualification status as:

- (1) "Approved" for a firm that demonstrates verifiable experience and that has successfully completed contract work with the State; or,
- (2) "Approved/Conditional" for a firm that demonstrates verifiable experience but does not have a record of contract work with the State; or
- (3) "Unsatisfactory" for a firm that:
  - (A) Does not demonstrate verifiable experience;
  - (B) Does not demonstrate verifiable size and scope experience required for a specific project;
  - (C) Does not have a verifiable record of successfully completed contract work with the State;
  - (D) Has an unsatisfactory record of contract work for the State due to any of the following:
    - (i) Unsatisfactory performance evaluations on past projects;
    - (ii) Failure to complete a State construction contract;
    - (iii) Demonstrated history of noncompliance with plans and specifications;
    - (iv) Quality of past work does not meet minimum industry standards;
    - (v) Failure to complete work in the specified contract time;
    - (vi) Uncooperative and/or unprofessional work manner of the company owner(s) or key personnel;
    - (vii) History of assigning unsatisfactory personnel to projects;
    - (viii) Failure to coordinate and manage subcontracts; or
    - (ix) Failure to maintain and provide accurate documentation of project records.
  - (E) Financial information does not indicate financial ability to complete a State contract.
- (4) "Incomplete Submittal" for submittals that:
  - (A) Are incomplete;
  - (B) Do not contain the information requested in the solicitation notice.

(e) **Required status prior to bid.** Bidders, general contractors, subcontractors and material suppliers shall have "Approved" or "Approved/Conditional" status prior to submitting a bid on a public construction contract when prequalification is required in the solicitation notice or if the Department requires prequalification on all public construction contracts.

(f) **Additional requirements.** The Department may request additional information from an existing prequalified company whenever a solicitation notice requires prequalification for specific experience for specific project types, subsystems or materials.

(g) **Due date.** If prequalification is required, prequalification forms shall be due by the date stated on the solicitation notice. The Director may elect to accept prequalification forms annually according to a written public procedure in order to eliminate duplicate submission for each individual project.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

## **260:65-1-9. Prequalification of insurance carriers, bonding companies and surety companies**

(a) Pursuant to 61 O.S., Section 204A.(11), the Department shall prequalify as good and sufficient insurance carriers, bonding companies and surety companies using the following criteria:

(1) The insurance carrier, bonding company or surety company must be licensed to do business in the State of Oklahoma pursuant to 61 O.S., Section 134.

(2) The insurance carrier, bonding company or surety company must have prior experience with insuring or bonding construction projects within the State of Oklahoma.

(3) The insurance carrier, bonding company or surety company cannot have been deemed in default by the State of Oklahoma in connection with prior construction insurance or bonds on State construction projects.

(4) The insurance carrier, bonding company or surety company shall not have a prior history of committing the following unfair claims settlement practices:

(A) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims or demands submitted in which liability has become reasonably clear.

(B) Compelling claimants or obligees, without just cause, to institute suits to recover amounts due under the insurance policy, insurance contract or bond by offering substantially less than the amounts ultimately recovered in suits brought by them or refusing to make an offer, when such claimants or obligees have made claims for amounts reasonably similar to the amounts ultimately recovered.

(C) Failing to fully disclose to claimants or obligees benefits, coverages, or other provisions of any insurance policy, insurance contract or bond, when such benefits, coverages or other provisions are pertinent to a claim.

(D) Knowingly misrepresenting to claimants or obligees pertinent facts, policy or bond provisions relating to the coverages at issue.

(E) Failing to adopt and implement reasonable standards for prompt investigations of claims or demands on bonds arising under its insurance policy, insurance contract or bonds.

(F) Except where there is a time limit specified in the policy or bond, making statements, written or otherwise, which require a claimant or obligee to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's or bonding company's rights.

(G) Requesting a claimant or obligee to sign a release that extends beyond the subject matter that gave rise to the claim or demand payment.

(H) Failing to promptly pay claims that have no reasonably apparent defect or impropriety.

(I) Failing to notify the insured or obligee in writing within 30 calendar days of receipt of claim or demand that the claim is defective and/or lacks substantiating documentation, providing the insured or obligee reasons or basis for the determination.

(J) Issuing checks or drafts in partial settlement of a claim or demand with language which releases an insurer, surety company, or bonding company from its total liability.

(K) Colluding in any way with other parties to a construction claim or dispute in an effort to jointly steer a decision against the State, including but not limited to sharing legal counsel with the Contractor.

(5) An insurance carrier that has received a notice to cease and desist from the Oklahoma Insurance Department within the previous five years shall not be eligible.

- (6) A bonding company shall demonstrate an "A" rating as determined by an insurance bond rating company acceptable to the Director.
- (b) The Department may periodically, in its discretion, reevaluate an insurance carrier, bonding company or surety company utilizing the criteria established in this section.
- (c) The Department may adjust or revoke the prequalification status of an insurance carrier, bonding company or surety company if a reevaluation determines the company fails to meet criteria established in this section.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

## **260:65-1-10. Bid review and evaluation**

(a) At the conclusion of the bid opening, the bid tabulation is forwarded to the state agency for review and evaluation, concurrently with the review and evaluation by the Department. The following items are reviewed:

- (1) **Surety companies.** Surety companies used to issue bonds must be registered to do business in Oklahoma and prequalified as good and sufficient by the Department pursuant to 260:65-1-9. When a bid bond is required and the bond submitted is from a company not registered in Oklahoma or prequalified by the Department as good and sufficient, the bid shall be disqualified. [61 O.S., Section 134 and Section 204(A)(11)]
- (2) **Verification of bid contents.**
  - (A) Extensions on unit price calculations shall be checked. In case of an error, the unit price shall govern.
  - (B) When there is a variance between the amount in words and the figures, the amount in words shall govern.
  - (C) Bid forms containing omissions, alteration of form, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.
  - (D) The Department may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Owner even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.
  - (E) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.

(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. [61 O.S., Section 118] Any of the following may be grounds for disqualifying the bidder.

- (1) More than one bid for the same work from an individual, firm, partnership, joint venture or corporation under the same or different names.
- (2) Evidence of collusion among bidders, subcontractors or material suppliers. [61 O.S., Section 115]
- (3) Lack of responsibility as shown by past work for the State of Oklahoma judged from the standpoint of workmanship and progress.
- (4) Uncompleted work under any contract with the State of Oklahoma or any party which might hinder or prevent the prompt completion of the contract, if awarded.
- (5) For being in arrears on existing contracts with the State of Oklahoma or having defaulted on a previous contract or failure to comply with any other just and reasonable cause.
- (6) Certificate by the Oklahoma Human Rights Commission that the bidder has engaged or is engaging in a discriminatory practice as defined in 25 O.S., Section 1505 or Section 1604.
- (7) Any violation of 260:65-1 or other information indicating that the bidder is no longer responsible nor qualified to do business with the State.

(c) The review/evaluation shall be completed within the amount of time specified by 61 O.S., Section 111 after the bid opening.

(d) Decisions leading to the contract award may be appealed in writing within five working days of notice of the decision to the Director, Office of Management and Enterprise Services.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-1-11. Contract award**

(a) Bids are awarded to the lowest responsible bidder as determined by the review of the bids pursuant to 260:65-1-10. Approximately 15 to 20 days after the bid opening, the successful bidder shall be notified by the Department of his selection and shall be provided copies of the contract to execute. The contractor shall be given a specific period of time, not to exceed sixty days, in which to execute the contract and obtain the necessary bonds and insurance. [61 O.S., Section 113(A)]

(b) The notice to proceed, or WORK ORDER, shall not be issued until the contract has been executed by all parties. Work shall not commence until the WORK ORDER has been received by the contractor.

(c) Projects over the amount set in 61 O.S., Section 113(B) require three bonds. The bonds shall be prepared on the forms provided by the Department. All bonds required by Title 61 shall be provided by insurance carriers, bonding companies or surety companies that are prequalified by the Department as good and sufficient in accordance with criteria established in 260:65-1-9(a). [61 O.S., Section 204A(11)]

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material and repair of and parts for equipment as are used and consumed in the performance of the contract.

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

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against claims or liens from subcontractors or suppliers for services or materials used in the project.

(d)

Insurance. Minimum insurance requirements on all state projects are as follows:

(1) General liability insurance of not less than \$1,000,000/5,000,000,

(2) Property damage insurance of not less than \$1,000,000/5,000,000,

(3) Automobile liability insurance of not less than \$1,000,000/5,000,000,

(4) Builder's risk as stated in the bid documents, and

(5) Excess umbrella insurance of \$5,000,000 .

(6) Proof of workers' compensation insurance shall be required for all projects exceeding the amount stated in 61 O.S., Section 113(B). The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(7) For projects less than the amount stated in 61 O.S., Section 113(B), a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance. The sworn affidavit shall be executed on a form prescribed by the Administrator.

(e) Additional insurance. Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

### **260:65-1-12. Bid protests**

A bidder may protest a contract award by a state agency or the Construction, Planning and Real Estate Department to the Department. All remedies available to bidders through the sealed bid process pursuant to the Public Building Construction and Planning Act are also available to online bidders in an online bidding process.

(1) **Bidder notification.** A bidder shall submit written notice to the Department of a protest of an award of contract by a state agency or the Department within ten (10) business days of contract

award. The protest notice shall state bidder facts and reasons for protest.

(2) **Department review and determination.** The Department shall review the bidder's protest and contract award documents. Written notice of the decision by the Department to sustain or deny the protest will be sent to the bidder within ten (10) business days of receipt of the protest.

(3) **Bidder appeal of Department denial.** The bidder may appeal a denial of protest by the Department to the Director of OMES. The bidder shall file a written appeal within ten (10) business days of the date of the notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the protest, assign the protest to an attorney employed by the Department, or assign the bidder's appeal to an administrative law judge OMES retains.

(A) If the protest is assigned to an attorney employed by the OMES or to an administrative law judge, the delegated party administrative law judge shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party administrative law judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director.

(B) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(C) The Director shall send written notice of the decision to sustain or deny final order sustaining or denying the contractor's appeal to the contractor parties.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the bidder in its initial protest to the Department.

(B) **Burden of proof.** The burden of proof shall be upon the bidder, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the bidder protesting the contract award and the Office of Management and Enterprise Services, the bidder awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S., Section 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(i) Establish a scheduling order;

(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(iii) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(iv) Require briefing of any or all issues;

(v) Conduct hearings;

(vi) Rule on the admissibility of all evidence;

(vii) Question witnesses; and

(viii) Make proposed findings of facts and conclusions of law to the Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the Director deny the bidder's appeal or that the contract award be cancelled and rebid.

(6) **Contractor appeal of Director denial.** If the Director denies a bidder's appeal, the bidder may appeal pursuant to provisions of 75 O.S., Section 309 et seq.



**260:65-1-13. Pre-construction conference**

Shortly after award of a contract, the design consultant or agency may schedule a pre-construction conference. This meeting shall include the design consultant, general contractor, agency representative, a representative from the Department and other interested parties. The Department representative shall chair the meeting. The purpose of the meeting shall be to discuss the requirements and responsibilities of the various parties involved with the objective of expeditious handling of the construction contract.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-1-14. Construction conferences**

(a) A construction conference may be called periodically by the design consultant or state agency which shall include essential information as follows:

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

(b) The meeting shall be chaired by the design consultant or state agency. Minutes of the meeting shall be kept, typed and distributed to all attendees within five (5) working days.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-1-15. Payment requests**

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

- (1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, using a format similar to the one found in the Application for Partial Payment form, and submitting it to the design consultant and the Department for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the design consultant.
- (2) The contractor should meet with the design consultant when the rough draft of the pay request is prepared. Then all can agree on percentages of work completed prior to typing the final form. The contractor should furnish the design consultant with five copies of the pay request and all supporting documents.
- (3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable. If the contractor deems it necessary, and it is recommended by both the design consultant and Office of Management and Enterprise Services representative, the contractor may store material off-site if there is a written agreement between the owner and the contractor. This agreement must provide the following:
  - (A) Proof of applicable insurance.
  - (B) A written guarantee of delivery to the job site.
  - (C) A written title to all materials covered by the request for payment, which shall pass to the owner.
  - (D) An on-site inspection of facilities by the design consultant to verify the authenticity of quantities of stored materials with the contractor responsible for reimbursing the design consultant for all incurred expenses resulting from each inspection.
- (4) All pay requests are submitted to the Department.
- (5) All partial payments are subject to retainage as specified in 61 O.S., Section 113.1.

(b) **Final pay request.** The Certificate of Contract Completion, Consent of Surety, Lien Release and the Contractor's Warranties must be submitted with the final request for pay to the state agency.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-1-16. Change orders**

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the design consultant shall issue a Proposal Request to the contractor. The Proposal Request shall be completed by the contractor and shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials, unit cost, labor, equipment, profit and overhead, and other expense items. The design consultant shall transmit the completed Proposal Request through the using agency to the Department of the Office of Management and Enterprise Services. The change in work scope described in the Proposal Request is not authorized until it has been incorporated into a Change Order and issued by the Department of the Office of Management and Enterprise Services.

[61 O.S., Section 121]

(b) When the proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order using the form prescribed by the Department. All information required on the form shall be included. The completed Change order form shall be routed to the Consultant and using Agency for signature, and then to the Department for approval and signature.

(c) When the change is less than \$10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in subsection (a) of this Section is not required.

(d) Projects under the statutory amount and not advertised according to 260:65-1-3(1), that are awarded on a unit price or basis cannot exceed the statutory amount with cumulative change orders without advertising for bids on that part of the contract.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-1-17. Time extensions**

The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by Change Order only. It is important that written notices of delay be submitted to the design consultant within twenty days of the delay. Time extensions for changes in the work must be included on the Change Order form authorizing such change.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-1-18. Substantial completion inspection**

(a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner can occupy the building and/or use the facility for its intended use. [61 O.S., Section 124]

(b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the design consultant who shall send out written notification inviting the using state agency, the Director and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the design consultant. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the Consultant and the Owner. Five copies of the form shall be provided to the Director for signature.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-1-19. Final inspection**

This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The design

consultant shall send out formal notification inviting the using state agency, the Department and other interested parties to attend. [61 O.S., Section 124]

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-1-20. Contract completion**

A Certificate of Contract Completion shall be prepared by the design consultant using the form prescribed by the Department. The contractor shall complete the Certificate of Contract Completion and return to the design consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the design consultant a completed and notarized Consent of Surety with the contractor's Certificate of Final Payment.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-1-21. Termination of unperformed contracts**

Any contract under which no work has been performed or no formal claim or litigation has been pending within a period of twenty-four months shall be terminated by the agency. After termination, any amount owed to the contractor shall be determined and payment made. This shall release the agency from further liability to the contractor or surety company. If the contractor cannot be located, the payment shall be held in the care of the State Treasurer for the contractor for a period not to exceed thirty-six months at which time the payment shall be deposited in the General Revenue Fund. This shall release the State from any further liability to the contractor or surety company. [61 O.S., Section 137]

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-1-22. Contractor appeals process**

(a) If a contractor's claim has not been resolved after consideration by the consultant in accordance with the General Conditions for Construction Contracts, the claim shall be submitted in writing to the owner. The owner will render to the parties the owner's written decision relative to the claim, including any change in the contract sum or contract time or both within ten (10) calendar days.

(b) The contractor may appeal the owner's decision by submitting written notice of a protest to the Director of the Office of Management and Enterprise Services within ten (10) calendar days of receiving the owner's decision.

(c) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the OMES retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the appeal for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide proposed findings of fact and conclusions of law to the Director.

(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(d) The Director shall send written notice to the contractor of the final decision sustaining or denying the contractor's appeal.

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.

(2) The burden of proof shall be upon the contractor, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

- (4) In addition to the contractor and the Office of Management and Enterprise Services, the state agency for which the bid was let may participate in the protest proceedings as a proper party.
- (5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.
- (6) The Administrative Law Judge may:
  - (A) Establish a scheduling order;
  - (B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
  - (C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;
  - (D) Require briefing of any or all issues;
  - (E) Conduct hearings;
  - (F) Rule on the admissibility of all evidence;
  - (G) Question witnesses; and
  - (H) Make proposed findings of fact and conclusions of law to the Director.
- (7) The Administrative Law Judge may recommend that the Director deny or sustain the contractor's appeal, and may further recommend a change in the contract sum or contract time or both. If the appeal is in regard to a contractor suspension, the Director may deny the appeal and allow the suspension to stand, or sustain the appeal and end the suspension or shorten the time of the suspension.
- (f) If the Director denies a contractor's appeal, the contractor may appeal to district court pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

### **260:65-1-23. Consultant appeals process**

- (a) The owner and consultant shall endeavor to resolve claims, disputes and other matters in question between them by participating in a meeting to obtain a mutual agreement. If an agreement cannot be attained, the consultant may appeal by submitting written notice of a protest to the Director of the Office of Management and Enterprise Services within twenty-one (21) days of the settlement meeting immediately preceding the protest.
- (b) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.
  - (1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction.
  - (2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide proposed findings of fact and conclusions of law to the Director.
  - (3) If the appeal is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.
- (c) The Director shall send written notice to the consultant of the final order sustaining or denying the consultant's appeal.
- (d) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:
  - (1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.
  - (2) The burden of proof shall be upon the consultant, who must prove his case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.
  - (3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.
  - (4) In addition to the contractor and the Office of Management and Enterprise Services, the consultant awarded the contract and the state agency for which the bid was let may participate in

the bid protest proceedings as a proper party.

(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.

(6) The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses; and

(H) Make proposed findings of fact and conclusions of law to the Director.

(7) The Administrative Law Judge may recommend that the Director deny the consultant's appeal or that remedies be imposed.

(e) If the Director denies a consultant's appeal, the consultant may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

## **260:65-1-24. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## **260:65-1-25. Contractor suspension**

(a) **Suspension.** The Department may suspend a contractor in accordance with this provision for a period of not less than six (6) months and not exceeding five (5) years. Suspension shall mean that the contractor is not permitted to bid on state construction projects and is not eligible to be awarded state contracts during the period of suspension.

(b) **Cause for suspension.** Cause for suspension shall be any of the following reasons:

(1) a contractor fails to post or allows to expire a bid bond, performance bond, payment bond, or insurance required by 260:65-1-11;

(2) a contractor fails to perform pursuant to the contract;

(3) a contractor provides the Department with false, misleading, inaccurate, or materially deficient information;

(7) a contractor fails to keep a bid firm, for the period specified, after the solicitation closing date;

(8) a contractor fails to resolve a dispute with a state agency;

(9) upon the final decision by the appropriate regulatory authority or court of competent jurisdiction that a contractor engaged in discriminatory practices;

(10) a contractor misrepresents, fails to provide, or allows to expire a professional certification required by a contract with the Department;

(11) a contractor colludes with other contractors to restrain competitive bidding;

(12) a contractor provides a state employee or state official with a kickback;

(13) the Department determines, in its sole discretion, that a contractor is no longer responsible or qualified to do business with the State of Oklahoma;

(14) a contractor violates any provision of the Public Competitive Bidding Act of 1974;

(15) any other reason the Department determines appropriate; or

(16) violation of applicable ethics rules or laws.

(c) **Suspension notice.** The Department shall send written notice of suspension to a contractor designating the suspension period, which shall begin three (3) business days from the date of the notice and shall expire no later than the end of the period specified in the notice.

- (d) **Contractor suspension appeal.** A contractor may appeal a suspension in writing to the Director within ten (10) business days of receipt of the suspension notice; pursuant to 75 O.S. § 309 and the provisions of 260:65-1-22; however, the contractor shall be suspended pending a determination of the appeal.
- (e) **Contractor request for reinstatement.** A suspended contractor may request reinstatement from the Director prior to the end of the contractor's suspension period. The Director may consider reinstating the contractor upon submission by the contractor of documents that indicate a change of conditions.
- (f) **Contractor reinstatement.** If the Director reasonably believes that the contractor demonstrates the ability to satisfy requirements for performance of state contracts, the Director shall send written notice of reinstatement to the contractor.

[Source: Added at 41 Ok Reg, Number 22, effective 8-11-24]

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  - (4) a contractor fails to keep a bid firm, for the period specified, after the solicitation closing date;
  - (5) a contractor fails to resolve a dispute with a state agency;
  - (6) upon the final decision by the appropriate regulatory authority or court of competent jurisdiction that a contractor engaged in discriminatory practices;
  - (7) a contractor misrepresents, fails to provide, or allows to expire a professional certification required by a contract with the Department;
  - (8) a contractor colludes with other contractors to restrain competitive bidding;
  - (9) a contractor provides a state employee or state official with a kickback;
  - (10) the Department determines, in its sole discretion, that a contractor is no longer responsible or qualified to do business with the State of Oklahoma;
  - (11) a contractor violates any provision of the Public Competitive Bidding Act of 1974;
  - (12) any other reason the Department determines appropriate; or
  - (13) violation of applicable ethics rules or laws.
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[Source: Added at 41 Ok Reg, Number 22, effective 8-11-24]

## **SUBCHAPTER 3. SELECTION OF ARCHITECTS, ENGINEERS, AND OTHER DESIGN CONSULTANTS**

**260:65-3-1. Purpose**

The purpose of these rules is to provide information to consultant firms desiring to do business with the State of Oklahoma. It is also to serve as a guide to agencies and political subdivisions of the State of Oklahoma in the selection of architects, engineers, and other design consultants for the purpose of providing design documents for the construction or renovation of state facilities. These procedures implement the provisions 61 O.S., Sections 60 through 65, titled "State Consultants".

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-3-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, registered land surveying, certified appraisal, land title, or abstract services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Department"** means the Construction, Planning, and Real Estate Services of the Office of Management and Enterprise Services, State of Oklahoma.

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

**"Fixed fee"** means the type of fee to a consultant which is expressed as a firm, fixed amount, for the services specified in the scope of work. This fee is not determined by the amount of a construction contract.

**"Interview committee"** means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available.

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

**"Program"** means the detailed description of the work scope of the design services. This program is written by the state agency, or may be developed by the consultant as part of his contract.

**"Screening committee"** means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available.

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

**"Short list"** means a listing of consultants chosen during the screening process for detailed interview. This list shall contain no less than three nor more than five consultants for a single project. If the process is selecting for more than one consultant contract, there should be two consultants on the short list for every planned project.

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-3-3. Registration of consultants**

(a) All consultants desiring to perform services for the State of Oklahoma must register with the Department by requesting and completing a Consultant Registration Questionnaire (DCS/CAP-Form 254) prescribed by the Director and submitting it to the Department. [61 O.S., Section 62] The Consultant Registration Questionnaire can be found on the Department's website or may be obtained by calling or writing the Department.

(b) The Director shall review a Consultant Registration Questionnaire submitted to the Department, determine whether the consultant qualifies for registration and notify the consultant of its registration status within twenty (20) days.

- (c) Registrations are valid for one year from the date of receipt by the Department.
- (d) Consultants shall not be solicited for projects with the State until the date the Consultant Registration Questionnaire is received by the Department. A consultant may register with the Department any time prior to the deadline for project consideration.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-3-4. Selection procedure**

(a) **Define project.** The state agency shall develop a description of the project which shall include: [61 O.S., Section 62(C)]

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

(b) **Request list of consultants.** The state agency shall forward a request to the Department for a listing of consultants currently listed with the Department in the form of a letter which includes the description of the project developed in (a) of this Section. A draft of the solicitation letter described in (c) of this Section shall also be included with a request for a list of consultants. The Department shall review the request and solicitation letter and if approved, shall provide the list, including contact information for the consultants, to the state agency.

(c) **Announce project.** The state agency shall send the approved solicitation letter to each consultant on the list which includes the description developed in (a) of this Section and shall notify them of the last day their letters may be received to be considered. Any consultant not registered with the Department at the time the list is prepared, may register with the Department pursuant to this Section and submit a letter of interest to the state agency. The Consultant Registration Questionnaire (DCS/CAP-Form 254) must be received by the Department at least six (6) business days, excluding state holidays, prior to the solicitation deadline, to allow the Director time to evaluate and complete the review process. If the registration form requires revisions and resubmission, the Department is under no further obligation to process and approve a consultant's registration within the ten-day time period. [61 O.S., Section 62(C)]

(d) **Screen the files to select the "short list".** The chief administrative officer or governing board of the state agency shall designate a screening committee of three or more persons to select the three to five best qualified consultants based upon information that may be supplied by the consultants. The screening committee should include licensed architects or engineers if they are available. If the selection is for more than one consultant contract, at least two consultants for each project should be included in the short list. The selection criteria is listed in 260:65-3-6. [61 O.S., Section 62(E)]

(e) **Scheduling and performing interviews.**

- (1) The chief administrative officer or governing board of the state agency shall designate an interview committee. All members of the interview committee shall participate in all interviews of each consultant.
- (2) An evaluation criteria list shall be developed to ensure that all interviews are conducted consistently. The interview committee should consider the criteria listed in 260:65-3-7.
- (3) Each consultant should be notified by letter informing him that he has been selected for interview. The letter should contain:
  - (A) Date, time and place of interview. Interviews should be scheduled individually for each consultant.
  - (B) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.
  - (C) A copy of the interview criteria.
  - (D) Names of the interview committee members.



(E) The letter should contain any other information which shall help the committee to obtain information needed for them to properly evaluate the consultant.

(F) Oklahoma Statutes prohibit the requesting of any information on fees. Any consultant who discloses its fee, or any indication thereof, prior to subsection (j) of this Section, Negotiation of Contract, shall be removed from the request list or short list and receive no further consideration for the project. Consultants must be selected on the basis of qualifications and not on a bid basis.

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

(5) At the conclusion of all interviews, the committee shall then rate each consultant in a manner as to recommend to the state agency the relative ranking of each consultant. This document does not attempt to designate the exact procedure the committee shall use to make their selections. All criteria and procedures used by the committee shall be documented for the record.

**(f) Forwarding of recommendations.** The recommendations are forwarded to the state agency for the final selection.

**(g) Preparation of report to the Department.**

(1) The state agency shall prepare a chronological report detailing the steps in the procedure actually followed by the state agency in making its selection. This report shall include the criteria used in the screening process as well as the interviews and the ratings of all firms considered. A copy of the approved minutes of any board action affecting the selection process shall be included.

(2) The report is submitted to the Department for the independent review of the entire process. Upon approval of the report by the Department, the state agency shall be notified that fee negotiations with the first ranked firm may begin.

**(h) Negotiation of Contract.**

(1) The negotiation of fees is the first time a discussion of costs is permitted. There are no defined procedures for negotiating. The Department shall open negotiations by designating a negotiator and by defining the detailed scope of work and forwarding that scope to the consultant in a letter formally requesting the cost proposal. The letter should require a detailed breakdown of costs to enable the Department to understand the cost items and have a basis for negotiation. The consultant should also be provided a copy of the proposed contract format. Copies of the approved contract formats may be obtained from the Department.

(2) The consultant shall develop his fee proposal and return it to the Department. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed fifteen per cent (15%). The Director may establish a standard format for estimating and itemizing the costs submitted with a fee proposal.

(3) The Department shall then set up a meeting to negotiate and agree to the fee, or may authorize the state agency to begin fee discussions. The fee is expressed as a firm fixed price fee according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed" cap. The choice is up to the Department. Attached as Appendix A is a table which may be used as an aid in evaluating a fee proposal. After a fee has been determined, the consultant is asked to modify the proposal to reflect the agreed upon scope of work and fee. This modified proposal shall become part of the contract. [61 O.S., Section 62(G)]

(4) The state agency then forwards an agency requisition to the Department.

**(i) Award of contract.**

(1) The contract is processed for award by the Department. After the contracts have been signed by all parties, copies shall be provided to the state agency and the consultant.

(2) Changes to the consultant's base contract may be approved by the Director as long as the scope of the change is generally included within the scope of work developed in (1) of this subsection for which the consultant selection process was conducted. Changes may be requested by the state agency in writing to the Department and must reference the correct contract, and include the scope of the change, the fee for the change and the source of the funding for the change.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-3-5. Consultant contracts**

(a) Contracts are written by the Department in standard formats as required by 61 O.S. The Department may be contacted for development of special requirements to be included in contracts. Non-standard contracts for specialized projects may be proposed by the state agency and approved by the Director for use on a specific project.

(b) Phases of services may involve all or any of the following depending on the size and type of project:

(1) **Program planning.** Program planning may include the following:

- (A) Space plan.
- (B) Written and/or graphic program document as specified.
- (C) Circulation allowances.
- (D) Cost estimate.
- (E) Specific additional features as required in the agencies request for proposal.

(2) **Schematic Design.** Schematic design may include the following:

- (A) The line drawing and graphic representation of the floor plan, perspective drawings and site orientation of the project.
- (B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.
- (C) Cost estimate.

(3) **Design Development.** A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:

- (A) The site plan for parking, street and pedestrian access.
- (B) Overall dimensions.
- (C) Rooms and traffic circulation within the buildings.
- (D) Types of materials.
- (E) Building elevations.
- (F) Building sections.
- (G) Recommended structural systems.
- (H) Recommended mechanical systems and equipment based upon life cycle studies.
- (I) Cost estimate.

(4) **Construction Documents.** Construction documents may include those items necessary for a construction contractor to properly bid and construct the project. They include:

- (A) Working drawings.
- (B) Specifications.
- (C) Project manuals.
- (D) Any other item specifically required by the contract.
- (E) Cost estimate.

(5) **Construction phase services.** The consultant may be required to perform specific construction phase services which include:

- (A) Review and approval of shop drawings.
- (B) Review and approval of pay requests.
- (C) All standard contracts include a reference to construction monitoring which are periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant and sub-consultants to the construction site to determine that the contractor is following the intent of the construction contract documents. When more frequent monitoring is needed, the Department shall include this in the criteria package and negotiate this increased cost service.
- (D) The primary responsibility for the administration of the construction contract lies with the consultant.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-3-6. Screening criteria****260:65-3-6.<sup>1</sup> Screening criteria**

(a) The screening process is the examination of each consultant that has indicated interest in the project proposed by the state agency. Files on each consultant are provided by the Department for this purpose. Prior to beginning the review, a specific list of criteria must be developed and should include, but not be limited to the following:

- (1) Specialized experience related to the proposed project.
- (2) Similar experience on comparable projects.
- (3) Technical qualifications of the design team.

(b) State agencies shall use the Consultant Screening Evaluation Form prescribed by the Director. The form may be modified for a specific project with prior approval of the Director.

(c) A screening evaluation sheet should be prepared listing each consultant considered with a rating for each criteria listed as in the Consultant Screening Evaluation Form. After all consultants are evaluated, the ratings are compared and the top three to five consultants are identified for interview. If multiple projects are being considered, two consultants for each project are selected for interview. [61 O.S., Section 62(E)]

(d) A copy of the evaluation sheets shall be included in the report to the Department.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23 <sup>1</sup>]

**EDITOR'S NOTE:** <sup>1</sup>This rule was incorrectly numbered as 260:35-3-6 when published in the Oklahoma Register [see 31 Ok Reg 1435]. It was editorially renumbered to this number (260:65-3-6) prior to its publication in the 2014 OAC Supplement. See also Editor's Note1 at 260:35-3-6.

### **260:65-3-7. Interview criteria**

(a) The interview is the most important step in the selection process. Each consultant must be evaluated against a clearly established list of criteria which is provided to the consultant within seven days in advance of the interview. State agencies shall use the Consultant Interview Evaluation Form prescribed by the Director. The form may be modified for a specific project with prior approval of the Director.

Information should be sought during the interview which shall answer these questions:

- (1) How will the consultant staff the proposed project?
- (2) What is the consultant's proposed management plan?
- (3) What is their previous experience for this project?
- (4) Where are they located? How will they reduce travel costs if they are not close to the proposed project?
- (5) What are their plans for project control?
- (6) What is their proposed approach to the design of this project?
- (7) What are examples of the similar projects they have completed?
- (8) What are their experiences in value engineering, life cycle costs analyses, critical path method of scheduling, energy conservation, new energy resources, environmental assessments or other specialized experience, if required?
- (9) Has a judgement been paid by the consultant or on their behalf for liability caused by professional errors and/or omissions in the past five years?
- (10) Any other additional factors?

(b) Questions concerning fees may not be asked. Engineers, architects, and land surveyors are prohibited from being required to bid by Oklahoma Statutes. They are to be selected based upon their professional expertise and qualifications with their fees being negotiated after selection, as described in 260:65-3-6.

(c) Copies of the completed evaluation sheets shall be included in the report to the Department.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-3-8. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## **SUBCHAPTER 5. MINIMUM CODES FOR STATE CONSTRUCTION**

**260:65-5-1. Purpose; application**

To comply with the requirements of 61 O.S., Section 209, the following rules contained in 260:65-5 are promulgated by the Office of Management and Enterprise Services and shall apply to all facilities constructed for state use.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-5-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"ADA" means the Americans with Disabilities Act

"ASHRAE" means the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.

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

"Department" means the Construction, Planning, and Real Estate Services of the Office of Management and Enterprise Services, an agency of the State of Oklahoma.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of 61 O.S. This definition shall apply also to construction of real property that the state shall lease.

"IES" means the Illuminating Engineering Society.

"NFPA" means the National Fire Protection Association.

"OSFM" means the Oklahoma State Fire Marshal.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-5-3. Construction requirements; reviews and permits**

(a) Each facility shall be constructed or improved in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well-being for all occupants.

(b) Building construction and renovation will require formal code review and a building permit, unless otherwise determined by the Department. When required by the Department, construction plans and specifications shall be reviewed by the agency with applicable code jurisdiction according to policy prescribed by the Director.

(c) Plans and specifications for State construction projects shall be reviewed and approved by the OSFM, who shall issue a permit upon approval. When directed by the Department, said plans shall also be reviewed by the Risk Management Department of the Office of Management and Enterprise Services. No project shall be let for public bids until such prescribed reviews are concluded and a building permit is issued by OSFM. Fees for plan review and permits shall be paid from the agency project funds.

(d) When a State construction project requiring a permit from OSFM is located within a local code enforcement jurisdiction, the Department encourages obtaining an additional building permit from the local jurisdiction or arrangement of cooperative inspections. The Department, or its agent, may invite a cooperative review between OSFM and the local jurisdiction and authorize payment for a local permit from the project funds.

(e) The Department may require certain building inspections whenever it determines that such inspections are in the best interests of the State. The Department will notify the Using Agency of any required inspections as early in the project as possible. Costs of such inspections shall be paid by the Using Agency.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

**260:65-5-4. Adopted codes**

(a) **Codes.** State construction projects shall comply with all applicable codes adopted by the Oklahoma State Fire Marshal, current at the time the project is initiated.

(b) **Additional Building Codes.** The Department may require compliance with additional codes not currently adopted by OSFM, including but not limited to:

- (1) International Energy Conservation Code, latest edition;
- (2) Americans with Disabilities Act and related standards, latest edition.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-5-5. Adopted design standards**

The following standards are adopted by reference:

- (1) **ASHRAE Standards.**
  - (A) Standard #55. Thermal and Environmental Conditions for Human Occupancy.
  - (B) Standard #62. Ventilation for Acceptable Indoor Air Quality.
  - (C) Standard #90.1 Energy Efficient Design of New Buildings.
- (2) **ASME Standards.**
  - (A) Standard A17.1. Safety Code for Elevators and Escalators
  - (B) Standard A17.3 Safety Code for Existing Elevators
- (3) **IES Standards.** Illuminating Engineering Society Lighting Handbook Reference and Application Volumes.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-5-6. Sources for codes and standards**

- (a) A copy of all codes adopted by reference in this subchapter are on file and available for public inspection at the following address: Construction, Planning and Real Estate Department, Office of Management and Enterprise Services, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 106, Oklahoma City, OK 73105, (405)-521-2111.
- (b) Listed below are sources for the codes and standards referred to in this Subchapter:
  - (1) International Code Council: 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401; Telephone: 1.703.931.4533
  - (2) NFPA: National Fire Protection Association, Batterymarch Park, Quincy, MA 02169
  - (3) ASHRAE: ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329
  - (4) ASME: 22 Law Drive, Box 2300, Fairfield, NJ 07007-2300
  - (5) IES: Illuminating Engineering Society, 345 East 47th Street, New York City, NY 10017
  - (6) Oklahoma State Fire Marshal, 2401 N.W. 23rd Street, Oklahoma City, OK 73107; [www.firemar.state.ok.us](http://www.firemar.state.ok.us)

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

## **SUBCHAPTER 7. PROCEDURES FOR AGENCIES TO PERFORM RESPONSIBILITIES EXERCISED BY THE CONSTRUCTION, PLANNING AND REAL ESTATE DEPARTMENT**

### **260:65-7-1. Purpose**

The rules contained in this Subchapter are promulgated by the Office of Management and Enterprise Services to comply with the requirements of Section 209(3), Title 61, Oklahoma Statutes and shall apply to all agencies subject to the provisions of Title 61, Oklahoma Statutes.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-7-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Architect"** means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, registered land surveying, certified appraisals, land title, or abstract*

*services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

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

**"Facility"** means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes.

**"FTE"** means a full time equivalent personnel position authorized the state agency by current legislative authority.

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-7-3. Requirements of law; agency responsibility**

(a) Each facility shall be constructed, renovated or repaired in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well being for all occupants.

(b) Delegations of the statutory requirements stated in Title 61 of the Oklahoma Statutes which are permitted by the rules contained in this subchapter shall be set forth in the documents granting the exception or delegation. The requirements of law are not lessened and the agency to which the delegation of authority is granted shall be wholly responsible for the required compliance.

(c) No delegation of authority may be granted for Sections 1 through 51, sections 101 through 136, and sections 151 through 157 of Title 61 of the Oklahoma Statutes.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-7-4. Requesting services of consultants**

All agencies requesting the services of consultants are hereby delegated the following responsibilities of Section 62 as modified by Sections 208(A) and (B), Title 61:

- (1) Provide all of the information required by Section 62(C), Title 61, Oklahoma Statutes.
- (2) Prepare the letter of solicitation as required by Section 62(C).
- (3) Receive the replies of interested consultants and submit a list of the interested parties to the Director.
- (4) Conduct the selection as described in Section 62 (E) and (F).
- (5) Submit a requisition to the Director from which the Department shall prepare and execute a contract.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-7-5. Request for delegation of authority to agencies**

(a) Agencies wanting to perform the responsibilities of Title 61 Oklahoma Statutes assigned to the Office of Management and Enterprise Services must make a request in writing to the Director, Office of Management and Enterprise Services. Such request must contain all of the following information:

- (1) Specific reference to the section and paragraph of Title 61 to be delegated to the state agency.
- (2) Complete justification for the request. Effect on FTE, appropriations and state Agency mission should be included.
- (3) Complete listing of engineers and architects available to the state agency to perform the duties for which delegation of authority is requested.
- (4) Any additional information which shall assist the Director to properly evaluate the request.

(b) A request in 260:65-7-5(a) may be for either a limited or indefinite period. The request should indicate what period is being requested.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-7-6. Evaluation of requests**

All requests made pursuant to 260:65-7-5 shall be evaluated according to the following criteria:

- (1) There must be a significant advantage to the State for cost savings.
- (2) The exception cannot require the use of non-FTE personnel. Only existing FTEs may be considered.
- (3) If an emergency condition exists, as defined by Section 130, Title 61, Oklahoma Statutes, a request for temporary delegation of authority may be granted.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-7-7. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## **SUBCHAPTER 9. FULL-TIME EMPLOYMENT BY AGENCIES FOR MINOR CONSTRUCTION PROJECTS**

### **260:65-9-1. Purpose**

The rules contained in 260:65-9 are promulgated by the Office of Management and Enterprise Services to comply with the requirements of Section 209(1), Title 61, Oklahoma Statutes and shall apply to all agencies subject to the provisions of Title 61, Oklahoma Statutes.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-9-2. Definitions**

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Architect"** means a person legally qualified to practice the profession of Architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

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

**"Facility"** means any building or improvement to real property constructed for State use subject to the provisions of Title 61, Oklahoma Statutes.

**"FTE"** means a full time equivalent personnel position authorized the state agency by current legislative authority.

**"Minor Construction"** means any construction which does not require the person performing the construction to have an occupational license.

**"State Agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in O.S., Section 61.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-9-3. General construction and licensing provisions; application of rules and law**

- (a) Each facility shall be constructed, renovated or repaired in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well being for all occupants.
- (b) Agencies to which authority is given to hire full-time employees for minor construction under this rule shall insure that all requirements of licensing, code compliance and construction administration shall conform to existing law and rules and regulations.
- (c) Agencies which had full-time employees for the purpose of performing minor construction projects on the date of promulgation of this rule are exempted from requesting authority for those employees.
- (d) Nothing in 260:65-9 shall replace the statutory procedures for obtaining FTE positions. The legislature in its appropriations bills control the authorized FTE positions.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-9-4. Requests to hire employees for minor construction**

Agencies wanting to hire employees to perform minor construction projects shall make a request in writing to the Director, Office of Management and Enterprise Services. Such request must contain all of the following information:

- (1) A complete description of the types of projects for which the authority is requested must be shown.
- (2) Complete justification for the request must be included. Number and description of positions that shall be filled must be included. All positions must be identified by a position code assigned by the Office of Personnel Management.
- (3) A complete listing of engineers, architects, and consultants available to the agency to perform the duties of code compliance and observation of the project for which the authority is requested must be included.
- (4) Any additional information which shall assist the Director to properly evaluate the request.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-9-5. Evaluation of requests**

All requests shall be evaluated according to the following criteria:

- (1) There must be a significant advantage to the State for cost savings.
- (2) The request, if granted, cannot require the use of non-FTE personnel. Existing FTEs only may be considered.
- (3) If an emergency condition exists, as defined by Section 130, Title 61, Oklahoma Statutes, a request for authority may be approved if the emergency can only be remedied by using temporary employees.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **SUBCHAPTER 11. LIFE CYCLE COSTING FOR STATE FACILITIES**

#### **260:65-11-1. Purpose**

The Oklahoma State Agencies are required by Oklahoma Statutes to perform Life Cycle Cost Analysis for alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in state facilities. The following guidelines are promulgated by the Construction and Properties Department of the Office of Management and Enterprise Services in compliance with the provisions of Sections 209 and 211 of Title 61 of the Oklahoma Statutes. Guidelines in this Subchapter are to be used in performing the required analysis.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-11-2. Definitions**



The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"A" means the amount of money after n years in future.

"a" means annually recurring costs.

"**Annually recurring costs**" means those costs which are incurred each year, usually in an equal amounts, throughout the study period.

"**Base year**" means the year in which the Life Cycle Cost analysis is conducted.

"**Base year price**" means the price of goods or services as of the beginning of the base year.

"**Cash flow**" means the stream of costs and benefits resulting from a project investment.

"**Cost escalation rate**" means the rate by which an annual expense is assumed to escalate per year.

"**Discounting**" means a technique for converting cash flows occurring over time to time-equivalent values, adjusting for the Time Value of Money.

"E" means energy costs.

"**Economic life**" means the period of time over which a facility or a piece of equipment is considered to have the lowest total cost.

"I" means investment costs.

"i" means the interest rate per year.

"**Investment costs**" means the initial costs of design, engineering, purchase and installation, all of which are assumed to occur as lump sum at the beginning of the base year for purposes of making the Life Cycle Cost analysis.

"j" means the cost escalation rate per year.

"LCC" means life cycle costing.

"**Life cycle costing**" means a method of economic evaluation that sums discounted dollar costs of initial investment, operations, maintenance, repair and replacement less salvage value of state facility or equipment over the study period.

"M" means maintenance and non-fuel operating costs.

"n" means the number of years in the study period.

"**Nonfuel operation and maintenance costs**" means labor and material costs required for routine upkeep and operation, exclusive of energy costs.

"P" means present worth.

"**Present worth**" means the time-equivalent value of past, present or future cash flows as of the beginning of the base year.

"**Present worth factor**" means a factor by which annually recurring amounts may be multiplied to find their equivalent Present Worth (see Appendix B of this Chapter).

"**Present worth escalating factor**" means a factor by which a non-uniform annual expense, such as energy or labor costs, may be multiplied to find its equivalent present worth (see Appendix B of this Chapter).

"PWEF" means the present worth escalating factor.

"PWF" means the present worth factor.

"R" means the replacement cost.

"**Replacement costs**" means the future costs to replace equipment usually at the end of their economic life.

"S" means the salvage value.

"**Salvage values**" means the estimate of future salvage values of items sold as used equipment or scrap usually at the end of their economic life.

"**Single present worth**" means a factor by which a single future amount, such as replacement cost or salvage value, may be multiplied to find its equivalent present worth (see Appendix B of this Chapter).

"SPW" means single present worth.

"**State facilities**" means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes. This rule shall apply also to property leased or being prepared for lease by the state.

"**Study period**" means the length of time period covered by the economic evaluation. Typically it is equal to the economic life of the evaluation subject.

**"Time value of money"** means the time-dependent value of money. The adjustment of cash flows to a common time basis is necessary to take into account the real earning potential of investment over time.

**"TLCC"** means total life cycle cost.

**"Total life cycle cost"** means the total discounted dollar cost of owning, operating and maintaining a state facility or equipment over the study period.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-11-3. Evaluation steps

The recommended steps in the economic evaluation are:

- (1) **Objective.** Every economic evaluation should have a statement clearly defining the specific objective to be accomplished by the evaluation. Examples of objectives are: To determine which design or equipment of what size is economically preferable.
- (2) **Constraints.** There could be technical, physical, budgetary or code constraints. Any of these can reduce the number of candidate strategies for which an economic evaluation must be performed.
- (3) **Data, estimates and assumptions.**
  - (A) **Data.** The types of data that are needed are: investments costs (**I**), energy costs (**E**), maintenance and nonfuel operating costs (**M**), replacement costs (**R**), salvage value (**S**), interest rate (**i**) and escalating rates (**j**)
  - (B) **Estimates.** The economic life of the project has to be estimated. Appendix C of this Chapter includes the suggested economic life for a number of equipment.
  - (C) **Assumptions.** To simplify the cash flow calculations, the investment costs are assumed to occur in a lump sum at the beginning of the base year. All other costs occur in lump sums at the end of the respective years in which they occur.
- (4) **Evaluation.** The general equation for calculating the total life cycle cost is set forth in Appendix D.
- (5) **Sensitivity analysis.** Sensitivity analysis technique is performed by repeating an evaluation using different input values. By testing the percentage change in the output corresponding to specified percentage changes in input values, the most critical parameters can be identified. The technique is also used to produce an upper and lower boundaries for the output based on maximum and minimum estimated values for the input parameters. In some cases, expressing the answer in terms of upper and lower boundaries gives a clearer picture than a single point estimate. Although performing sensitivity analysis is not required under the TLCC rule, it is a useful technique especially where there is uncertainty about the data and estimates.
- (6) **Non-quantified factors.** In many projects, some parameters with significant consequences are not adequately captured in the numerical evaluation. These parameters should be presented in descriptive terms during the decision making process. For example, replacing a window with an insulated wall will save energy, however, the effect of a windowless room on the occupants should be taken into consideration.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-11-4. Results

- (a) The Construction and Properties Department of the Office of Management and Enterprise Services shall sponsor training workshops for Oklahoma State agencies purchasing personnel in the use and/or verification of the Life Cycle Cost Analysis. Until such a time as sufficient expertise is developed in state agencies, the results of the analysis, along with the input data should be submitted by the contractors, vendors or consultants to the Construction and Properties Department of the Office of Management and Enterprise Services for verification.
- (b) The suggested ranges for applying the Life Cycle Cost Analysis to conduct the analysis without the escalation factors for projects having total costs of more than \$7,500, but less than \$40,000 (i.e., equations 3.2. and 3.4 in 260:65-11-3(4)). For projects costing more than \$40,000, where more accurate estimates are needed, escalation factors are included in the analysis (i.e., equations 3.3 and 3.5 in 360:65-11-3(4)).

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## SUBCHAPTER 15. ENERGY SERVICES CONTRACTS

### 260:65-15-1. Purpose

Pursuant to Section 210 of Title 61 of the Oklahoma Statutes, the following rules contained in OAC 260:65-15 are promulgated by the Office of Management and Enterprise Services and shall apply to energy services contracts for State Agencies. These rules are to aid state agencies in obtaining more efficient energy saving equipment and methods without significant capital expenditure by utilizing the services of an energy service company.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-15-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services, State of Oklahoma.

**"Energy audit"** means to review facilities and systems, to identify existing operating and utility costs, to specify areas of potential savings, and to quantify those savings.

**"Energy service company"** means the company responsible for the installation of energy conservation measures and the guarantee of energy savings.

**"Energy service contract"** means a contract signed by a state agency and an energy service company which conforms to the provisions of this chapter.

**"ESC"** means energy service company.

**"Equipment portion"** means the portion of the energy service contract which deals with the purchase of equipment and its installation.

**"Guaranteed savings"** means the amount of money per year guaranteed by the ESC that shall be saved by the state agency on present utility costs.

**"Service portion"** means the portion of the energy service contract which deals with guaranteed savings, period of guaranteed savings, training, and bonds.

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### 260:65-15-3. Description of the program

Guaranteed savings program is a program whereby the agency selects and contracts with an energy service company to reduce its energy costs. The goal of this contract is energy cost savings through acquisition of energy efficient equipment, services and methods. The ESC guarantees the amount of savings from the program over a specified period of time. Since the contract is paid from the energy savings realized, the agency does not need to have the large amount of capital which would be otherwise necessary to purchase such services and equipment.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-15-4. Request for energy services

(a) Any agency which believes that it could benefit from participation from an energy service contract should contact the Department. The Department shall meet with representatives of the Agency to determine if an energy service contract would be beneficial.

(b) Criteria used to determine possible benefit of an energy service contract may include but not be limited to the following:

- (1) Urgency of equipment replacement (i.e., the time frame until the equipment fails and is no longer repairable).
- (2) Repair vs. replacement utility (i.e., the amount necessary to carry-on necessary repairs as opposed to the cost of replacing of the equipment).
- (3) Prioritization of available capital (i.e., of the available capital in an agency, the demands of that capital relative to the need of the equipment).
- (4) Projected use and life expectancy of the equipment or its replacement.
- (5) Results of an energy audit of the facility in question which indicates potential energy savings.

(c) When practical, new equipment should be purchased outright as opposed to an energy service contract.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-15-5. Bid documents**

(a) Bid documents shall be made available to all prospective ESC's. The Department may require a deposit for the documentation. [OAC 260:65-1-4(b)]

(b) Bid documents may include, but shall not be limited to the following:

- (1) Information regarding applicable administrative rules, including the rules of this chapter. Refer to OAC 260:65-1-4 and 5.
- (2) Scope of the work to be performed.
- (3) Energy audit, if performed by a state agency or consultant.
- (4) Requirements for an energy audit if performed by the ESC. [OAC 260:65-15-6(a)]
- (5) Energy usage by the agency at the facility in question.
  - (A) All utility bills and records for a relevant period;
  - (B) Current demand charges;
  - (C) Other energy usage information.
- (6) Minimum environmental requirements of the agency (e.g., ambient air temperature, lighting levels, etc.)
- (7) Building and site plans needed to both assess equipment installation and energy efficiency.
- (8) Proposed evaluation criteria developed by the agency in cooperation with the Department.
- (9) Sample of all contract documents.
- (10) Any other information deemed necessary by the Department so that ESC's may prepare an accurate submittal on the project.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-15-6. Energy audit**

(a) An energy audit shall be conducted for each project for which an energy service contract is sought. An energy audit is used to gain more in-depth knowledge of the agency's facility and its energy usage. The requirements for an energy audit are outlined in the bid documents.

(b) The energy audit may be conducted by one or more of the following as determined by the agency with approval of the Department:

- (1) A state agency with the technical expertise to conduct the audit. This could include the Department of the Office of Management and Enterprise Services.
- (2) A contracted consultant selected consistent with Title 61 of the Oklahoma Statutes and the provisions of Subchapter 3 of this Chapter with the technical expertise to perform the energy audit.
- (3) One or more ESC's consistent with the provisions of this section.

(c) If the energy audit is conducted by a state agency or a contracted consultant, the results of such audit shall be made available to all ESC's in the project bid documents. If the energy audit is conducted by one or more ESC's, the results of such audit must be included in any project submittal of the ESC.

(d) ESC's may schedule with the agency inspections of facilities and equipment in order to conduct an energy audit or to gain a greater understanding of the facility and its energy use.

- (e) Any fees from a state agency or a contracted consultant incurred as a result of the energy audit must be paid outright by the agency.
- (f) A contracted consultant may be selected to provide a complete set of bid documents, evaluate all bids submitted, provide construction administration, related performance contracting methods and perform energy savings reconciliation for the Department or agency. Any fees charged by the consultant must be paid outright by the agency.
- (g) The Department may perform any of the services described in 260:65-15-6(f), and may levy and collect a reasonable fee for the agency for said services.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-15-7. Bid submittals**

Reference OAC 260:65-1-5 for bid submittal information.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-15-8. Bid review and evaluation**

- (a) When all of the bid submittals have been opened, they are forwarded for review and evaluation by the agency, the Department or consultant if applicable.
- (b) A selection committee shall be formed composed of members of the agency and the Department to review and evaluate the bids submitted. After the review and evaluation of the bids by the review committee, the best submission shall be selected for the award of the energy service contract.
- (c) Criteria used to select the ESC to perform the energy service contract may include but shall not be limited to the following:
  - (1) Cost
  - (2) Amount of guaranteed savings offered by the ESC
  - (3) Proposed list of equipment to be installed
  - (4) Length, flexibility, options and extent of the maintenance contract
  - (5) Experience and qualifications of the ESC in performance of similar types of projects as described in the bid documentation.
  - (6) Quality and depth of the energy audit if performed by the ESC
  - (7) Installation schedule of the equipment
  - (8) Quality and extent of the training program offered by the ESC
  - (9) Relative fiscal capacity and stability of the ESC
  - (10) Duration of the entire contract including both equipment and service portions.
  - (11) Methodology of savings calculations

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-15-9. Energy service contract**

The energy service contract shall consist of, but not be limited to the following:

- (1) The duration of the equipment portion of the contract shall be equal to or less than the term of the lease purchase agreement.
- (2) Service portion of the contract:
  - (A) The ESC shall guarantee savings for at least each year of the lease-purchase agreement, but may guarantee savings beyond the completion of the lease purchase agreement.
  - (B) The ESC shall provide sufficient training to maintenance, custodial, and other such personnel as have need to know regarding the proper use and maintenance for the efficient operation of equipment contained in the equipment portion of the contract.
  - (C) ESC shall be responsible for maintaining the equipment for the duration of the lease-purchase agreement but may provide maintenance for a greater duration as may be defined in the energy service contract if the State does not elect to otherwise contract for maintenance services. [61 O.S. Section 210(A)(5)]
- (3) Required bonds:

- (A) ESC shall provide a declining balance surety performance bond in an amount not less than 25% of the balance of agency's total financial obligation.
- (B) ESC shall provide a performance bond in an amount determined by the agency to guarantee the restoration of the facility in the event of default. [61 O.S. Section 210(A)(3)]
- (4) ESC shall purchase public liability insurance, property damage insurance, and workers' compensation insurance or as specified in the bid documents.
- (5) All modifications to any contract or agreement which the State is requested to execute must be submitted to the Department's legal counsel for approval at least ten days prior to submitting to the Department for execution.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-15-10. Payment of contract**

- (a) Lease-purchase agreements shall be competitively bid through the Purchasing Department of the Office of Management and Enterprise Services unless determined by the Executive and Legislative Bond Oversight Commissions to be more cost effective if financed through negotiated sales.
  - (1) If the sale is to be executed on a negotiated basis, such financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, §695.1 et seq.
  - (2) If the sale is to be competitively bid, such financing shall be processed through the Purchasing Department of the Office of Management and Enterprise Services. [74 O.S. Supplement 1993, Section 85.4(G.2)]
- (b) The term of the lease purchasing financing shall be in conformance with and governed by 74 O.S. Section 85.4(I)(4).

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-15-11. Guaranteed savings**

- (a) All identified savings must be fully reimbursable.
- (b) ESC shall reimburse the agency for any shortfall below the yearly guaranteed amount contained in the contract.
- (c) Excess savings realized above the amount guaranteed by the ESC within a single year shall not be used to cover deficiencies in savings from other years.
- (d) Should there be three consecutive months of short-fall on the amount guaranteed, the ESC shall investigate and report the cause to the agency.
- (e) Guaranteed savings identified by the ESC shall include only energy savings that can be quantified and documented. Savings identified shall not include savings realized from changes in operational efficiency, cost avoidance, or adjustments in environmental levels below the minimum established by the agency.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-15-12. Change orders**

Reference OAC 260:65-1-14 for change orders

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-15-13. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **SUBCHAPTER 17. CONSTRUCTION MANAGEMENT PROCEDURES AND REQUIREMENTS**

#### **260:65-17-1. Purpose**

This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide construction management services on state construction projects that utilize the construction management delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## 260:65-17-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

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

(A) **"Construction Management/Agency"**(CMA) whereby the construction entity applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the state without taking on financial risks for the execution of the actual construction. CMA services could include a range of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.

(B) **"Construction Management/At-Risk"**(CMR) whereby the construction entity, after providing construction management/agency services listed in during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement.

**"Construction Manager"** means a person, properly certified in accordance with 20-17-3, who acts as an agent of the state for a construction project; who coordinates and manages the construction process; who is a member of the construction team, design professional and other consultants that may be required for the project; and who utilizes skill and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions and provides advice concerning construction, safety and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the solicitation issued by the state agency.

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

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

**"GMP Amendment Exhibit"** shall be the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

## 260:65-17-3. Qualifications

(a) **General.** An individual or business entity that desires to provide or provides construction management services to the state must meet minimum qualifications established in this Section.

(b) **Construction management certification.** An individual or business entity that desires to provide construction management services to the state shall possess certification that demonstrates the individual's or business entity's capability to provide the services.

(c) **Certification sources.** An educational program that provides certification of an individual as capable to provide construction management services shall include industry recognized standards for knowledge of construction, construction management and project management. An individual certified by one of the following sources may qualify to provide construction management services to the state.

(1) **Certified Construction Manager.** An individual certified by the Construction Management Association of America as a certified construction manager.

(2) **Certified Professional Constructor.** An individual certified by the American Institute of Constructors as a Certified Professional Constructor.

(3) **Certified Construction Contract Administrator.** An individual certified by the Construction Specifications Institute as a Certified Construction Contract Administrator.

(d) **Other professional certification recognition.** If an individual presents professional certification from other than a professional entity this subsection specifies, the Director shall determine whether the individual may provide construction management services to the state.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-17-4. Construction Management registration**

(a) **General.** An individual that possesses the qualifications established in 65-17-3 shall register with the Department to provide construction management services.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Director to the Department to request consideration for registration as a construction management firm. Registration application forms are available upon request to the Department.

(c) **Review and notification.** The Director shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Director shall send written notification of the acceptance to the individual or business entity; or,

(2) **Grant conditional registration.** The Director may consider other certification sources and grant to the applicant a one-year probationary approval of the registration application. Renewal for subsequent years shall not be approved unless the applicant submits proof of certification issued by one of the certification sources listed in 260:65-17-3(C).

(3) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Director shall send written notification of the rejection to the individual or business entity. The Director shall specify reasons for rejection in the notice; or,

(4) **Incomplete registration.** If the review determines the application is incomplete, the Director may advise the individual or business entity to submit additional information to the Director.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered construction managers maintained by the Department. Registration shall be effective for one (1) calendar year from the date of registration approval and renewed annually on or before the registration anniversary date of each succeeding year.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-17-5. Project designation consideration**

(a) **General.** The Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the construction management delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for construction management. [61 O.S., §202.1]

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

(A) early completion of work, allowing for beneficial public occupancy;

(B) accommodating construction progress with phased funding;



(C) enabling the project to be placed under contract prior to losing expiring funding source; or,

(D) other demonstrated public benefit.

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

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

(4) Other consideration factors may include:

(A) **Time constraints.** The time period the state agency desires for project completion.

(B) **State agency capabilities.** The capabilities of the state agency staff and whether the staff has the ability and experience to effectively manage a project that utilizes construction management.

(C) **State agency funding.** The state agency shall demonstrate whether the agency has adequate funding to pay for services of the construction management firm, design consultant and construction services.

(D) **Project components.** The project complexity is sufficient to benefit from advisory consulting services during design or if the construction execution could be enhanced by the services of a construction manager. Such services during design might include, but are not limited to: independent preparation of cost estimates, independent design review, evaluation of alternate construction bid strategies and constructability evaluations. Services during construction that a construction manager might perform include, but are not limited to: certain elements of construction administration desired by the state agency that are outside the normal scope of the design consultant and overall coordination of multiphase, complex projects where one or more contractors may be involved in executing the work.

(c) **State agency request.** A state agency shall submit a written request for consideration of formal designation of a state construction project for the construction management delivery method to the Director after careful review of the factors in (b) of this section. The request shall specify reasons the state agency believes the project merits consideration for construction management and the funding amount the state agency has available for the project.

(d) **Director consideration.** Upon receipt of a state agency request for construction management services for a project, the Director shall consider whether the project merits designation for construction management and whether the state agency has adequate funds for the project.

(e) **Notification.** Upon completion of the consideration of the state agency request, pursuant to Subsection 6, the Director shall forward the official response to the requesting state agency which states reasons for the determination and whether the project has been determined to reasonably merit official designation for construction management.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

## **260:65-17-6. Project designation**

(a) **General.** After consideration of factors in 260:65-17-5, the Director may designate the project delivery method as construction management.

(b) **Construction management type.** The Director shall determine the construction management type as:

(1) Construction Management/Agency (CMA) (See 260:65-17-2); or

(2) Construction Management/At-Risk (CMAR) (See 260:65-17-2).

(c) **Actions.** Upon review, the Department shall determine whether the information in the written request is complete and shall apply the applicable project delivery method to the project, and sign and submit the prescribed project designation form to the Director.

(1) **Director approval.** If the Director approves, the Department shall acquire construction services pursuant to the provisions of this subchapter.

(2) Director denial. If the Director denies the designation, the Department shall acquire design consultant and construction services pursuant to the provisions of subchapters 1 and 3 of this chapter.

(d) **State agency notification.** The Department shall provide the state agency written notice of the final designated project delivery method.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-17-7. Project requisition**

(a) **State agency requisition preparation.** Upon receipt of the notice of project designation as construction management from the Department, the state agency shall complete a requisition form which must state on the form that the project delivery method is construction management and indicate the construction management type.

(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Director.

(c) **Review.** The Director shall review the requisition form to ensure the form contains the required information.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-17-8. Selection procedures for construction management services**

Selection of construction management firms shall be in accordance with Subchapter 21 of this Chapter and the procedures maintained by the Department.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-17-9. Fee negotiation and contracts**

(a) In accordance with the qualifications-based ranking of firms to perform construction management services in 260:65-21, the Department shall request a fee proposal from the highest ranking firm.

(b) Upon receipt of the written fee proposal, the Department shall hold fee negotiations in a manner consistent with the selection criteria.

(1) The Department shall negotiate a contract with the highest qualified firm at compensation determined in writing to be fair and reasonable.

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

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

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

(5) For Construction Management/At-Risk (CMAR), there are essentially two phases of the contract.

(A) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the construction manager up to the point at which the design is far enough along for the construction manager to establish a Guaranteed Maximum Price (GMP), this should be at 95% completion of drawings and

specifications. The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the construction manager are the construction manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction.

(B) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. This is accomplished through issuance by the Department of the executed GMP Amendment Exhibit, which shall also serve as the Notice to Proceed.

(i) Accompanying the GMP Amendment Exhibit, the Construction Manager/At-Risk will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(ii) Non approval of the GMP allows the Department to terminate the services of the construction manager or to renegotiate, as required.

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

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

(8) In administering the construction contract, the construction manager will adhere to Oklahoma public bidding laws in advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(9) Because the construction manager is "at risk" for the total contract amount, they are permitted to self-perform portions of the work, provided that they competitively bid the work as a lump sum (each work package) under the same terms and conditions as the other bidders. If the construction manager decides to bid a work package, they must declare this intent during the pre-bid meeting held by the Department.

(10) In the award of subcontracts, the construction manager will award to the lowest responsible bidder. To be considered a "responsible bidder" the offeror must meet the minimum pre-qualification requirements, if any, that may be defined in the contract bid documents. An offeror shall meet the minimum pre-qualification requirements and complete the qualifications form that will be included as part of the bid package.

(11) Procurement of project components costing less than the statutory amount established in 61 O.S., Section 103 may be accomplished by receipt of written bids pursuant to 61 O.S., Section 103. The Department may approve and direct the Construction Manager to prepare written bid solicitation for such items and furnish to at least three known suppliers. The solicitation shall clearly state the requirements for products delivery and installation, if applicable, and shall require the written quotes to be returned to the Department or the Department's agent by a specified date and time.

(c) **Award of contract.** The construction management contract is written and processed for award by the Department. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.

(d) **Changes to base contract.** Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.

(e) **Construction Management contracts.** Contracts are written by the Department in standard formats as required by 61 O.S. Section 62.1. The Department may be contacted for development of special requirements to be included in the contracts.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

## 260:65-17-10. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## SUBCHAPTER 19. DESIGN-BUILD PROCEDURES AND REQUIREMENTS

### 260:65-19-1. Purpose

This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide design-build services on state construction projects that utilize the design-build delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 213 titled "Public Facilities Act."

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-19-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.*[61 O.S., §202]

**"Delivery System"** is the approach used to develop and construct a project where Design-Build or Design-Bid-Build are typical approaches.

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

**"Design-Build"** (DB) is the project delivery method in which the Department procures both design and construction services in the same contract from a single, legal entity referred to as the design-builder. The method uses Request for Qualifications (RFQ)/Request for Proposal (RFP) procedures rather than the DBB Invitation for Bids (IFB) procedures. The design-build entity is liable for all design and construction costs and must provide a firm fixed price in its proposal.

**"Design-Build Contract"** shall be a contract between the Department and a design-builder to furnish the labor, materials and other services for both the design and construction for the same public project.

**"Design-Builder"** shall be the entity that proposes to design and construct any public project governed by the procedures of Title 61 and this Chapter.

**"Director"** means the Director of the Office of Management and Enterprise Services or his designee.

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

**"Evaluation Criteria"** shall be the requirements for the both phases of the selection process Prices shall be considered only in the second phase of the selection process.

**"Final Selection Board"** means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the proposals with the Technical Review Committee of the short-listed firms for the purpose of receiving the recommendation from the Technical Review Committee to ultimately select the firm to be awarded the project. The board shall be proctored by a representative of the Department. The board should include licensed architects or engineers, if available. These professionals can be from another state agency.

**"Proposal"** shall be the technical and price offer, submitted by the design-builder, to enter into a design-build contract, as further defined in this subchapter.

**"Request for Proposals"** (RFP) shall be the document the state agency sends to each of the design-build firms on the "short list". The RFP shall contain the "Request for Proposals" (RFP) elements as

described in OAC 260:65-19-11.

**"Request for Qualifications"** (RFQ) shall be the document or publication whereby a state agency solicits for qualified design-build firms.

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

**"Technical Review Committee"** means the group of individuals originating from the design consultant (OAC 260:65-19-8) which evaluates the proposals from short-listed firms for the purpose of recommending a firm to the state agency and Department. This committee shall be supervised by a representative of the Department. The group is to consist of the licensed/registered professionals that authored the RFP.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-19-3. Design-build qualifications**

(a) **General.** An individual or business entity that desires to provide design-build services to the state shall possess the construction experience that demonstrates the individual's or business entity's capability to provide the service.

(b) **Design-builder Prequalification.** The builder of the design-build team shall be authorized to do business in the state and shall be registered with the Department as a design-builder.

(c) **Architect of Record.** The Architect-of Record of the design build team, for a specific project, shall be licensed and authorized to do business in the state.

(d) **Certification Sources.** An education program that provides certification of an individual as capable to provide design-build services shall include industry-recognized standards of knowledge or construction, design-build and project management. An individual certified by one of the following sources may qualify to provide design-build services to the state:

(1) **Designated Design-build Professional.** An individual with experience as a design-builder.

(2) **Other professional certification.** If an individual presents professional certification from other than a professional entity this subsection specifies, the Director shall determine whether the individual may provide design-building services to the state.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-19-4. Registration**

(a) **General.** An individual that desires to provide design-build services to the state shall prequalify with the Department pursuant to Section 260:65-1-8.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Director to the Department to request consideration for registration as a design-build firm. Registration application forms are available on the Department website.

(c) **Notification.** The Director shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Director shall send written notification of the acceptance to the individual or business entity.

(2) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Director shall send written notification of the rejection to the individual or business entity. The Director may specify reasons for rejection in the notice.

(3) **Incomplete registration.** If the review determines the application is incomplete, the Director may advise the individual or business entity to submit additional information to the Director.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered design-build firms maintained by the Department. Registration shall be effective for one (1) calendar year and renewed annually on or before January 31st of each succeeding year.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-19-5. Project designation consideration**

(a) **General.** The Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the design-build delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for use of the design-build delivery system (61 O.S. Section 202-1).

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

- (A) Single source of complete accountability;
- (B) Cost reductions;
- (C) Higher quality;
- (D) Emphasis on collaboration and innovation; or
- (E) Other demonstrated public benefit.

(2) **Specialized methods required.** The need exists for specialized or complex construction methods due to the unique nature of the project. Or the project involves sophisticated or complicated technical systems.

(3) **Other factors.** Other factors include:

- (A) **Time constraints.** The time period the state agency desires for project completion.
- (B) **Department capabilities.** The capabilities of the state agency staff and whether the staff has the ability and experience to effectively manage a project that utilizes design-build.
- (C) **State agency funding.** The state agency can demonstrate it has adequate funding to pay for services of the design-build firm, a design consultant and construction services.
- (D) **Project components.** The features of the project merit nomination of the project for execution using the design-build delivery approach.

(i) Project features that are compatible with using the design-build delivery method include:

- (I) Projects for which the definitive space program and functional building requirements can be clearly defined by the state agency prior to the selection of the design-build team, with low likelihood of these requirements changing during the design phase.
- (II) Projects with certain unique factors that require special knowledge or experience to produce the least cost design.
- (III) Performance based projects.

(ii) Projects features that are incompatible with using the design-build delivery method include:

- (I) Projects where the cost to prepare the Request For Proposal (RFP) and the cost to respond to the RFP by the design-build firms are not justified relative to the anticipated benefits.
- (II) Projects where the state agency or the Department desires to be closely involved during the design process to exercise discretionary control over the completed project.

(c) **State agency request.** A state agency shall issue a written request for consideration of formal designation of a state construction project for the design-build delivery method to the Director after careful review of the factors in (b) of this Section. The request shall specify reasons the state agency believes the project merits consideration for design-build delivery system, the funding amount the state agency has available for the project, and the staff and experience level in design-build.

(d) **Director consideration.** Upon receipt of a state agency request for design-build services for a project, the Director shall consider whether the project merits designation for a delivery-build system and whether the state agency has adequate funds for the project. The Director may request the Director to consider whether a project merits designation for a design-build delivery system.

(e) **Director notification.** Upon completion of the consideration of the state agency request, the Director shall forward the official response to the requesting state agency.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-19-6. Project designation**

(a) **Project designation.** The Director shall apply the applicable project delivery method to the project as follows:

- (1) **Director signs designation form.** If the Director approves the request, the Department shall acquire construction services pursuant to provisions of this subchapter.
- (2) **Director does not sign designation form.** If the Director does not sign the designation form, the Department shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-19-7. Project requisition**

(a) **State agency requisition preparation.** Upon receipt from the Director of the notice of project designation as design-build, the state agency shall complete a requisition form which must state that the project delivery method is design-build on the form.

(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Director.

(c) **Director review.** The Director shall review the requisition form to ensure the form contains the required information.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-19-8. Selection Procedure for design consultant for design-build**

(a) The state agency shall select a design consultant pursuant to provisions of Subchapter 3 of this Chapter.

(b) The state agency shall develop, with the assistance of the design consultant, a comprehensive scope of work statement and design criteria package that defines the project. This package will be issued to competing design-build teams, enabling the design-builders to submit proposals that meet the state agency's needs.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-19-9. Selection Procedures for design-build**

Selection of design-build firms shall be in accordance with Subchapter 21 of this Chapter, the specific design-build procedures outlined below, and the procedures maintained by the Department.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

**260:65-19-10. Requests for proposals and contracts**

(a) Following the qualifications-based ranking of firms to perform design-build in accordance with 260:65-21, the state agency shall solicit competitive Request for Proposals (RFP) from three (3) to five (5) most highly qualified firms.

(b) The Request for Proposals (RFP) shall contain, at a minimum, the following elements:

- (1) The procedures to be followed for submitting proposals and the procedures for making the selection decision, including a reference to the requirements of this Chapter and the regulations of the state agency.
- (2) A copy of the proposed design-build contract including other relevant contracting documents.
- (3) The evaluation factors and their relative weights.
- (4) The statement of work/design criteria package.
- (5) Provision for the design-builder to offer comments, enhancements or other appropriate value engineering recommendations provided by the state agency in the RFP.
- (6) A stipend is required to be paid to each design-build firm to develop design drawings as part of the submission. The RFP must describe the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable.

- (A) The stipend should be sufficient to cover the cost to develop drawings, specifications or other technical narratives in response to the RFP.
- (B) The RFP should state that in return for the stipend, the State will retain ownership of the plans submitted by the competing design-build teams.
- (7) A schedule for commencement and completion of the design-build contract.
- (8) Budget limits for the design-build contract.
- (9) Requirements for design-builders to have bonds and insurance.
- (10) Any other information that the state agency in its discretion chooses to supply, including without limitation, surveys, drawings or models of existing structures, environmental studies, photographs, or references to public records.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-19-11. Evaluation factors**

- (a) The state agency, in consultation with the design consultant, shall determine the scope and level of detail required for the evaluation factors and shall submit the factors to the Department for approval. The evaluation factors should be detailed enough to permit qualified design-builders to submit proposals in accordance with the solicitation, without having to perform additional design services to meet the requirements of the RFP.
- (b) The design consultant who consults in the development of the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional who developed the evaluation factors.
- (c) The design consultant who develops the evaluation factors shall be either a full time employee of the state agency or shall be engaged in compliance with Title 61 of Oklahoma Statutes, and to the extent allowed by law may delegate the development of specific aspects of the design criteria to other consultants.
- (d) Evaluation factors shall include:
  - (1) Program compliance narrative;
  - (2) Proposed energy performance narrative;
  - (3) Proposed quality of building systems and materials;
  - (4) Proposed site design narrative;
  - (5) Proposed subcontractors/trade partners and any teaming agreements, including any modifications to the RFQ team;
  - (6) Proposed contract duration and milestone schedule;
  - (7) Proposed costs;
  - (8) Proposed technical approach including design submittals; and
  - (9) Any other factors relevant to project.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-19-12. Proposals**

- (a) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the RFP.
- (b) Upon expiration of the time established for making proposals as set forth in the RFP, all proposals received shall be submitted to and evaluated by the Technical Review Committee in conjunction with the Final Selection Board.
- (c) Clarifications may be required to ensure conformance of proposals with the evaluation factors. Clarifications may require revised price and/or technical proposals.
- (d) No proposal for a design-build contract may be accepted unless the Technical Review Committee determines that there was adequate competition for such contract.
- (e) Proposals shall establish a cost of the design-build contract. The maximum project cost shall be provided to the teams in the RFQ.
- (f) Proposals are expected to identify subcontractors to whom the design-builder proposes to delegate obligations under the design-build contract. Entities so identified will not be replaced without the approval



of the state agency, or the award may be revoked.

(g) Each design-build team must include licensed architects and engineers independent from the state agency's design professional. The design-build team's licensed architects and engineers must be maintained from the RFQ or further identified as a replacement with reasonable justification and qualifications in the proposal submitted to the state agency.

(h) The state agency shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of this Chapter. The state agency may thereafter solicit new proposals using the same or different evaluation factors, budget constraints, or qualifications.

(i) The state agency shall maintain the secrecy and confidentiality of all proposals and all information contained in the proposals, and shall not disclose the proposals or the information contained therein to the design-builder's competitors or the public. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications, and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.

(j) When a design-builder receives notification from a state agency that its proposal has not been accepted, the design-builder may, within seven (7) days, submit a written request for a written explanation of the selection process to the state agency.

(k) Proposals may be withdrawn for any reason at any time prior to the deadline.

(l) Written notice of the acceptance or rejection of a proposal shall be communicated to the design-builders.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-19-13. Design-build contracts**

(a) A design-build contract is written and processed for award by the Department. Prior to issuance of the Notice to Proceed, the design-builder will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum, and proof of worker's compensation, all risk, property and general liability insurance. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.

(b) Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work evaluated during the selection process. All changes shall be in writing and signed by all parties to the contract.

(c) Contracts are written by the Department in standard formats as required by 61 O.S. The Department may be contacted for development of special requirements to be included in the contracts.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-19-14. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## **SUBCHAPTER 21. SELECTION OF CONSTRUCTION MANAGEMENT AND DESIGN-BUILD FIRMS**

### **260:65-21-1. Purpose**

The purpose of this subchapter is to provide procedures and information to construction management or design-build firms desiring to do business with the State of Oklahoma; and, to assist state agencies and political subdivisions of the state with the selection of construction management or design-build firms for the purpose of construction or renovation of state facilities. These procedures implement the provisions of 61 O.S., Sections 201 through 213 titled "Public Facilities Act."

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-21-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

**"Fixed Fee"** means a fee to be paid to a firm which is expressed as a firm, fixed amount for the services specified in the scope of work.

**"Interview committee"** means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview construction management or design-build firms for the purpose of selecting such a firm for a planned project. The interview committee shall include a representative from the Department. This group should include licensed architects or engineers, when available. For design-build projects, the interview committee should include the individuals on the Technical Review Committee (260:65-19-2).

**"Percentage fee"** means a fee to be paid a firm which is based upon a negotiated percentage of the resultant construction contract.

**"Program"** means the detailed description of the work and the scope of the design services. This program is written by the state agency or a Design Consultant.

**"Request for Qualifications (RFQ)"** shall be the document or publication whereby a state agency solicits for qualified construction management or design-build firms. [Reference 20-21-4 (d)]

**"Screening committee"** means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the qualifications of interested firms for the purpose of selecting a short list of firms to be interviewed. The screening committee shall include a representative of the Department. The group should include licensed architects or engineers, when available.

**"Selection criteria"** means a list of the considerations and requirements used to evaluate each prospective construction management or design-build firm.

**"Short list"** means a list of construction management or design-build firms chosen during the screening process for a to move on to the next step. This list shall contain no less than three (3) nor more than five (5) firms for a single project. If the screening process is selecting for more than one construction management or design-build contract, there should be two firms on the short list for every planned project.

**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-21-3. Registration of construction management and design-build firms**

(a) All construction management or design-build firms desiring to perform services for the State of Oklahoma must register with the Department by delivering a completed registration application form to the Department.

(b) A registration is valid for one (1) calendar year and must be renewed annually on or before the anniversary date of the previous year's registration.

(c) A construction management or design-build firm may register any time up to ten (10) days prior to the deadline for project consideration.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-21-4. Selection procedure**

(a) **Define project.** A state agency shall develop a description of the project which shall include:

- (1) A narrative description of the work being planned.
- (2) The estimated cost and time schedule of the project.

(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding.

(b) **Request list of construction management or design build firms.** A state agency shall submit a written request to the Department for a list of construction management or design-build firms currently registered with the Department. The request must include the description of the project developed pursuant to (a) of this Section. The Department shall deliver to the state agency a list in response to the request.

(c) **Announce project.** The state agency shall:

- (1) advertise in a newspaper of general circulation and published in the county where the work, or a major part of it, is to be done. The notice is published in two consecutive weekly issues of said newspaper with the first publication at least thirty (30) days prior to the deadline of the RFQ, and
- (2) send a Request for Qualifications (RFQ) to each consultant management or design-build firm on the list which must include the description developed in (a) of this Section and the deadline when letters must be received for consideration. In special circumstances, the Director may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management or design-build firms, whichever is applicable.

(d) **Request for Qualifications (RFQ) Contents.** An RFQ must contain, at a minimum, the following elements:

- (1) Identity of the state agency that will select the construction management or design-build firm.
- (2) Procedures for submitting statements of qualification and procedures for making awards, including a reference to the requirements of this Chapter and the regulations of the Department.
- (3) Evaluation factors to be considered by the screening committee.
- (4) A statement of work including a summary description of the project.
- (5) A schedule for planned commencement and completion of the contract.
- (6) Budget limits for construction of the project for which services are being sought.
- (7) Requirements for Construction Management or Design-Build firms to have bonds and insurance.

(e) **Request and review files.** The state agency shall send a list of construction management or design-build firms that submitted Letters of Interest (LOI)/Statement of Qualifications (SOQ) for the announced project(s) to the Department. Upon receipt of the list, the Department will assemble and deliver a copy of any information on file for each firm on the list to the state agency.

(f) **Selection of the "short list".** The screening committee shall select no less than three (3) and no more than five (5) of the best qualified construction management or design-build firms based upon the data supplied by the Department and other information which may be submitted by the construction management or design-build firms in response to the RFQ.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

## **260:65-21-5. Screen criteria**

(a) The screening process is the examination of each construction management or design-build firm that has submitted a Letter of Interest (LOI)/State of Qualifications (SOQ) for the project proposed by the state agency. A specific list of evaluation criteria shall include, but need not be limited to the following:

- (1) Specialized experience related to the proposed project.
- (2) Capacity of the firm to complete the project in the time available.
- (3) Past performance in similar projects.
- (4) Any other criteria deemed pertinent by the requesting state agency.

(b) Each firm considered shall be rated by the Screening Committee for each criterion established by (a) of this Section and additional criteria established by the state agency or Department, if any. Written ratings for each firm shall be documented on a screening evaluation form prescribed by the Department which lists all criteria developed for the selection process. After all firms are evaluated, the ratings are ranked and the top three (3) to five (5) firms are identified for interview.

(c) A copy of all screening evaluation forms shall be included in the report to the Department as required by Subsection 8.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-21-6. Scheduling and performing interviews**

- (a) All members of the interview committee shall participate in all interviews of each firm.
- (b) For construction management, an evaluation criteria list shall be developed to ensure that all interviews are conducted identically. The interview committee shall use the criteria listed in 260:65-21-7.
- (c) Each firm shall be notified by letter of the selection for interview. The letter shall contain:
  - (1) Date, time and place of interview. Interviews should be scheduled individually for each firm.
  - (2) Period of time permitted for the interview. Indicate how much time the firm shall be permitted for the presentation and how much time shall be reserved for questions by the committee.
  - (3) A copy of the interview evaluation criteria.
  - (4) The letter should contain any other information which would help the committee to obtain information needed for them to properly evaluate the firm.
  - (5) Oklahoma Statutes prohibit the requesting of any information on fees. Any firm who discloses its fee, or any indication thereof, shall be removed from the request list or short list and receive no further consideration for the project. Construction management firms must be selected on the basis of qualifications and not on a bid basis. Design-build firms must be selected on the basis of qualifications and technical response and not on a bid basis.
- (d) Interviews must be conducted privately with each firm.
- (e) At the conclusion of all construction management interviews, the committee shall rate each firm in a manner so as to recommend to the state agency the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record. The recommendations are forwarded to the state agency for the final selection.
- (f) At the conclusion of all design-build interviews, the firms continue with the RFP phase.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-21-7. Construction Management interview criteria**

- (a) The interview is an important step in the selection process. Each firm must be evaluated against a clearly established list of criteria which is provided to the firm at least seven days prior to the interview.
- (b) The state agency shall use the interview evaluation form, prescribed by the Director, which includes, but is not limited to the following criteria:
  - (1) Specialized experience and technical competence of the firm regarding the type of services required.
  - (2) Capacity and capability of the firm, including any consultants, to perform the work, including any specialized services, within the stated time limitations of the project.
  - (3) Past record of performance on contracts with government agencies or private industry with respect to control of costs, quality of work and ability to meet schedules.
  - (4) Proximity to or familiarity with the area in which the project is located.
  - (5) The volume of work previously awarded by the state to the firm.
  - (6) Any other factors that are relevant to the project as determined by the Department.
- (c) Questions concerning fees shall not be asked.
- (d) Design-build interviews are for the purpose of providing feedback on the firm's proposed solutions and ensuring they are compliant with the RFP. These interviews are not evaluated.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-21-8. Report to Department**

- (a) **Contents.** The state agency shall prepare a chronological report detailing the specific steps used by the state agency during its selection process. This report shall include:
  - (1) the criteria used in the screening process;
  - (2) the interviews and the ratings of all firms considered;
  - (3) a copy of the approved minutes of any board action affecting the selection process, if applicable; and
  - (4) If an out-of-state firm is selected, the report must include the justification for the selection.

(b) **Delivery to Department.** The report must be submitted to the Department for an independent review of the complete selection process.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-21-9. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **SUBCHAPTER 23. FEES FOR SERVICES**

#### **260:65-23-1. Purpose**

The Department may collect reasonable fees for the purpose of providing or contracting for architectural, engineering, and land surveying, planning, real estate and related services to state agencies; from persons requesting plans and notification of solicitations issued by the Department; and, for contract management for a construction project. [Title 61, Section 208.1] The purpose of this subchapter is to establish a methodology by which a schedule of reasonable fees for services provided by the Department will be determined and maintained.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

#### **260:65-23-2. Fees for services**

(a) **General Provisions.** Upon requesting specific services, a state agency shall submit a requisition or request form prescribed by the Director which states the service requested and verifies the corresponding fee from the schedule provided published by the Department. When required by the fee schedule, the Agency shall attach a purchase order for the specified fee amount, listing the Department as the vendor. The Department will invoice the Agency for the specified fee upon completion of the service. The fee is for a service provided by the Department and is fulfilled by the specified action by the Department. The fee is not contingent on the performance of an outside vendor retained as a result of the service rendered by the Department.

(b) **Establishment of fees.** The Department shall establish a fee schedule for services provided by the Department. The fee schedule shall be published on the OMES website and shall not become effective earlier than the 31<sup>st</sup> day following such publication. Services covered by the fee schedule shall include but not be limited to providing or contracting for architectural, engineering, land surveying, planning, real estate, contract management, notification of solicitations, and related services. The Department shall not increase fees more than once per fiscal year. Prior to adopting an increase in fees, the Department shall notify the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The Department may decrease fees at any time without prior notification.

(c) **Methodology.** Fees shall be established according to the Department's best calculation or approximation of its cost for providing each service, taking into account the project size, complexity, and management time and effort required by the Department for that category of services.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 41 Ok Reg, Number 22, effective 8-11-24]

#### **260:65-23-3. Deposits of fees**

All fees collected in accordance with the provisions of this section shall be deposited in the Department's revolving fund created by Title 61, Section 208.2.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-23-4. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## SUBCHAPTER 25. PRE-CONSTRUCTION PLANNING

### 260:65-25-1. Purpose

This subchapter defines the process for state agencies to follow when planning a construction project, and apply to both new construction and major renovation. [O.S.61 §209(12)]

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-25-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Consultant"** means either the architectural/engineering firm or other professional consultant under contract to the Department or a representative of the Construction, Planning and Real Estate Department used for the planning, design or construction monitoring of the construction project.

**"Director"** means the Director of the Office of Management and Enterprise Services or his designee.

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services.

**"Intent"** means the point in time that a State Agency decides to pursue a project, either by incorporation into the agency's long range plan, by budget action or by action to obtain future funding.

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

**"Project or Improvement"** means the collective act of design and construction of a new State building, facility or improvement, or the renovation of an existing State building, facility or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy by the State, where the construction and/or renovation cost is reasonably anticipated to exceed \$158,000.00.

**"State agency"** means *an agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions.* [61 O.S., §202]

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### 260:65-25-3. Project inception

When a state agency establishes intent to pursue a Project, the agency shall notify the Department in writing. The agency shall provide information specified by the Department, including but not limited to: project name, description, location, intended purpose, new construction or renovation, anticipated cost, desired completion date and description of funding sources. The notification may be used by the Department to maintain data on projected State construction pursuant to 61 O.S., §204(A)(1).

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### 260:65-25-4. Determination of a need for pre-design services

Upon review of the notice of intent submitted by the agency, the Director will consult with the agency and determine the specific project planning requirements. The Director shall determine a need for pre-design services based on the following factors:

- (1) Building type;
- (2) Project complexity;
- (3) Project schedule;
- (4) Funding sources or funding constraints; and,

(5) Other factors unique to the project.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-25-5. Pre-Design Services**

When the Director determines pre-design services are required, the Director shall advise the agency of the anticipated cost of the service, and the procurement methods available to the agency. To initiate pre-design services, the agency shall submit a requisition to the Department and the Department shall procure the pre-design services on behalf of the agency.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **260:65-25-6. Applicability**

The requirements of sections 260:65-25-4 and 260:65-25-5 are not mandatory for state agencies employing licensed architects pursuant to 61 O.S., §207.2.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-25-7. Waivers**

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## **SUBCHAPTER 27. USE OF BEST VALUE COMPETITIVE PROPOSALS TO AWARD A CONTRACT**

### **260:65-27-1. Purpose**

The purpose of this Subchapter is to provide information and procedures to issue competitive solicitations and award contracts using Best Value methodology. The rules implement the provisions of 61 O.S. §103(E) of the Public Competitive Bidding Act of 1974, which authorizes use of Best Value competitive proposals as an alternative to strictly price or qualification-based competition. The rules ensure fair and consistent contracting processes that satisfy the needs of the state. All vendors and state agencies are responsible for knowing the requirements of this Subchapter. These rules are administered by the Department to provide direction and ensure compliance with the Oklahoma Public Competitive Bidding Act, and other state laws and rules applicable to state construction acquisitions. These rules have been promulgated in accordance with the Administrative Procedures Act and pursuant to the authority of 61 O.S. §103(E) and 61 O.S. §209.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-2. Definitions**

The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Best Value"** means *an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state.* [61 O.S. §103(E)]

**"Department"** means the Construction, Planning and Real Estate Department of the Office of Management and Enterprise Services, State of Oklahoma.

**"Director"** means the Director of the Office of Management and Enterprise Services or a designee.

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

**"Project"** means the scope of services for which the Department requests competitive proposals from interested construction services vendors by issuance of a Solicitation or Request for Proposal.

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

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

**"Selection Committee"** means a group of state representatives, designated by the Director, assembled to evaluate and rank proposal submittals by vendors.

**"Selection Monitor"** means the Director or his/her appointed representative placed in the role of presiding over a Selection Committee.

**"State agency"** means an *agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions.* [61 O.S., §202]

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

**"Vendor"** means any service provider competing for a contract or performing work under a contract awarded by the Department. The term "Vendor" is interchangeable with Contractor, Construction Manager, Consultant, Design-Builder or other service provider. Vendor is used interchangeably with Bidder, Proposer and Offeror in context with the immediate topic herein.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-3. Components of Best Value vendor selection and project delivery**

(a) **Goal.** The goal of using the Best Value contract solicitation method is, for each service delivery, to identify the construction vendor that is an expert, is efficient, can pre-plan the work and deliver the service with minimal deviation in the owner's expectations (cost, schedule and quality) and thereby provide the owner the greatest value for the lowest price.

(b) **Principles.** The intent of the Best Value solicitation process is to promote:

- (1) efficiency;
- (2) transparency;
- (3) accountability;
- (4) measurements;
- (5) alignment;
- (6) expertise;
- (7) dominant information;
- (8) risk minimization;
- (9) reduced need for decision making;
- (10) reduced transactions; and,
- (11) win-win-win outcome (owner, vendor, customer).

(c) **Phases.** The Best Value vendor selection and project delivery process consists of three (3) primary phases:

- (1) **Phase 1.** Vendor selection
- (2) **Phase 2.** Clarification period, which includes but may not be limited to:
  - (A) agreement on scope;
  - (B) description of services using performance measurements, if applicable; and,
  - (C) creation of contract requiring a Weekly Risk Report (WRR), Risk Management Plan (RMP), and all applicable legal terms and conditions.
- (3) **Phase 3.** Management by Risk Minimization, which requires:
  - (A) the vendor to manage and control the project using a weekly risk report and risk management plan (WRR/RMP); and,
  - (B) the Department to perform project quality assurance by ensuring the vendor is using a quality control plan (WRR/RMP). The Department's quality assurance personnel are not limited to quality assurance and may inspect the project on a periodic basis.



[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-5. Selection committee**

(a) **Members.** Whenever a solicitation is issued requiring Best Value methodology to determine the successful bidder, the Director or Department designee will appoint members to a Selection Committee. The Committee will consist of three to five individuals with at least one representing the Department. The balance may consist of state agency representatives.

(b) **Selection Monitor.** One Committee member, which may be the Director or his/her appointed representative, is designated as the Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:

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

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-7. Vendor selection**

The Best Value Selection Phase uses a series of filters to identify which bidder provides the most value (lowest cost and highest performance) to the State. On or before the date stated in the solicitation, vendors submit documentation requested in the solicitation or bid documents information that will be evaluated, rated and/or weighted, and include, but are not limited to:

- (1) **Past performance information.** On forms specified by the Administrator, the vendor submits performance information collected from past customers about past projects/services the vendor has completed. The selection committee does not evaluate this information and does not see the past performance scores until the selection process enters the Prioritization filter.
- (2) **Project capability.** Using forms or formats specified by the Administrator, the vendor submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, technical capability and documented performance measurements, vendor's ability to provide additional value to the State, and pricing as information required by the solicitation.
- (3) **Interviews.** The Selection Monitor will schedule interviews with representatives of short-listed organization as designated by the Committee. The interview provides a forum for the vendor to discuss the project and answer questions concerning their ability to deliver the project/service to the State.
- (4) **Prioritization.** After completion of (1) through (3) of this subsection by the Selection Committee, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each vendor.
- (5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value vendor. The Selection Monitor evaluates all information to ensure that the prioritization is justifiable and there is no evidence warranting adjustment of the prioritization and ratings in any way. If the committee's ratings are not balanced, supporting past performance information is absent or pricing is not competitive or justified, the Selection Monitor may override the prioritization by providing written justification of the actions taken.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

**260:65-27-9. Clarification Period**

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

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

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

(c) To complete the Clarification Phase, the vendor conducts required meetings, identifies specific requirements and provides relevant documents, including but not limited to, the following:

- (1) Executive Summary;
- (2) A critical milestone schedule that includes the clarification period, the award, project/service delivery and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;
- (3) Identify (ask questions) all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how they will satisfy those concerns; make any additional investigations as warranted;
- (4) Provide a listing of major sub-vendor and suppliers. Ensure that any sub-vendors have a complete understanding of the project and have no technical or non-technical questions or concerns;
- (5) Identify activities where the vendor will experience situations where there may be a lack of information, where un-foreseen conditions may exist and activities where the vendor has no control over other participants or required activities in the delivery of the service.
- (6) Identify and document in writing any value-added ideas the Department has accepted or rejected, along with corresponding adjustments to the contract terms;
- (7) A project plan including any final clarification of their proposal and any omitted information and identification of value added provisions accepted by the owner;
- (8) Validation that the proposal is accurate and complete prior to submitting their final project scope;
- (9) Develop a weekly risk report template to communicate accountabilities and deviations, beginning with the clarification period;
- (10) Develop a risk management plan, which includes any risks the vendor does not control and how the vendor will mitigate or minimize those risks should they occur;
- (11) Identify a performance measurement plan to communicate to the Department how the vendor is performing during the project duration; and
- (12) Provide assurances to satisfy any remaining project concerns that the Department may have, including but not limited to adverse publicity, noncompliance with local, State or Federal law, Safety and accident prevention or other risks within the control of the vendor that would cause unnecessary time-and-effort transactions by the Department.

(d) If the bidder determines their proposal contains errors or their proposal is inaccurate, the bidder may withdraw the project proposal without incurring a penalty. The bidder shall be prohibited from modifying their proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the Director.

(e) The vendor must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized and suitable for attachment to the Department's owner-vendor agreement.

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

Phase.

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

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-11. Risk minimization and performance**

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality or project schedule caused by the vendor, the State, unforeseen conditions or other parties. The Phase consists of, but is not limited to:

(b) **Weekly Risk Report System (WRR).** The WRR is a project requirement and tool the vendor must use to manage and document all risks that occur throughout a project. The WRR is a standardized format prescribed by the Director, which may include:

- (1) all key contact information;
- (2) project milestone schedule;
- (3) risk sheet;
- (4) modification/deviation tracking;
- (5) risk management plan (RMP);
- (6) any risks the Department may require the vendor to document that could impact the customer or the Department's satisfaction.
- (7) performance measurements

(c) The vendor shall submit a risk report for the project/service weekly throughout their contract, or as otherwise required by the Director.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-13. State transparency and Best Value documentation**

(a) For successful outcomes, the Best Value operating environment must be transparent to all stakeholders. The following key components are critical to the integrity of Best Value methodology:

- (1) A solicitation must clearly state submittal requirements.
- (2) A solicitation must clearly define the solicitation/acquisition schedule, which may include a Pre-Bid Education meeting to review Best Value concepts, process and submittal requirements
- (3) Following a contract award, the Department will provide a debriefing meeting to bidders, upon request. Alternatively, if scheduled by the solicitation, the Department will provide a debriefing review for all participants.

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

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

(c) Following the contract execution, all selection process documentation not otherwise protected will be available to the public for inspection. The following shall be posted on the Department's website:

- (1) Tabulation of bid evaluation scores, and
- (2) Tabulation of bid pricing, and
- (3) Identification of Awardee and awarded price.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-15. Post project vendor performance rating**

- (a) Upon completion of a project, the Director, in consultation with the customer agency, will conduct a performance review of the vendor.
- (b) The final vendor project performance review will replace previous performance evaluations for use in future contract award evaluations.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-17. Other requirements for contracts awarded using Best Value methodology**

Rules of this section apply to any contract awarded by the Department using Best Value methodology to select the successful vendor.

- (1) When otherwise prohibited by state law, fee proposals shall not be requested by a solicitation or considered by the selection committee prior to commencement of the Clarification Period (ie. Consultant or Construction Manager solicitations).
- (2) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.
- (3) Solicitations for on-call, indefinite delivery and statewide specialty service contracts resulting in multiple contract awards may include the following provisions:
  - (A) Top ranked vendors may receive awards as set forth by the solicitation and determined by the selection committee.
  - (B) Multiple vendors may be invited to the clarification period to facilitate multiple awards. Multiple vendors must not be placed in competition with one another during this period.
  - (C) Ranking, price schedule and performance information for awardees will be published by the Department as information to potential end users.
  - (D) Authorized end users may utilize the available contracts according to procedures established by the Department for issuing proposal requests, making requisition and issuance of work orders.
  - (E) Following completion of a work order assignment, the vendor's performance will be documented and added to the published performance line for consideration by future customers.
- (4) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the Director. Components of the plan must, as a minimum, include the following provisions:
  - (A) Bid Notices: Method of making uniform public notification to interested subcontractors and suppliers;
  - (B) Availability of Bid Documents for inspection or acquisition by interested bidders;
  - (C) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.
  - (D) Method of evaluation of bid documents to determine final recommended contract awards.
  - (E) Method of public publication of pricing, scoring and final award information.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

### **260:65-27-19. Industry Advisory Committee**

- (a) **Committee.** In order to maintain a balanced approach among stakeholders, the Director may establish an advisory committee comprised of volunteers from organizational stakeholders of the state construction program.
- (b) **Purpose.** The purpose of the Committee is to assist with procedures, review case studies, recommend implementation strategies, promote education and promote continual improvement. The Director may ask the committee to review complaints or concerns from stakeholders and recommend resolution thereof.

(c) **Membership.** Committee membership is comprised of delegates from organizations representing general construction contracting; specialty contracting, suppliers, consultants and customers.

(d) **Meetings.** The Director or designee is the Committee Chairperson and has responsibility for scheduling meetings.

[Source: Amended at 40 Ok Reg 2108, eff 9-11-23; Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-27-21. Third party oversight**

The Director may arrange for program oversight by an independent research organization or university. Services provided by the third party may include:

- (1) auditing the selection and project delivery processes;
- (2) preparing case study documentation;
- (3) ensure correct application of Best Value principles and processes; and,
- (4) provide educational support on theory, principles, application and updates to Best Value best practices.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

#### **260:65-27-23. State Best Value methodology training**

(a) The Department will provide training opportunities for vendors, which may include:

- (1) educational information at Best Value pre-bid meetings;
- (2) additional educational opportunity(s) to vendors when solicitations are for services exceeding ten million dollars (\$10,000,000.00);
- (3) periodic or annual Best Value training for the customer and vendor community to review Best Value theory, application, selection process, case studies, and updates to the Department's adopted processes; and,
- (4) additional training for vendor and customer groups, upon request and subject to availability.

(b) The Department will publish or otherwise make education materials available to parties interested in additional Best Value training.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-27-27. Bid protests**

A bidder may protest a contract awarded pursuant to this subchapter in accordance with OAC

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

#### **260:65-27-29. Waivers**

The Director may waive or modify any provision or requirement of this subchapter when such waiver is in the best interest of the State.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14; Amended at 40 Ok Reg 2108, eff 9-11-23]

### **APPENDIX A. Guidelines for Determining Consultant Fees**

Figure 1

The following information is provided as a guide, only, and must be tempered with informed judgment during the negotiation process.

**BASIC FEES EXPRESSED AS A PERCENTAGE OF THE PROGRAMMED  
COST OF CONSTRUCTION**

**CONSTRUCTION COST**

0	to	50,000	Negotiated	-	-	-	-
50,000	to	100,000	\$6,000	plus	9.0%	over	\$50,000
100,000	to	200,000	\$10,000	plus	8.0%	over	\$100,000
200,000	to	300,000	\$18,500	plus	7.5%	over	\$200,000
300,000	to	400,000	\$26,000	plus	7.0%	over	\$300,000
400,000	to	500,000	\$33,000	plus	6.5%	over	\$400,000
500,000	to	600,000	\$39,500	plus	6.0%	over	\$500,000
600,000	to	700,000	\$45,500	plus	5.9%	over	\$600,000
700,000	to	800,000	\$51,400	plus	5.8%	over	\$700,000
800,000	to	900,000	\$57,200	plus	5.7%	over	\$800,000
900,000	to	1,000,000	\$62,900	plus	5.6%	over	\$900,000
1,000,000	and	over	\$68,500	plus	5.5%	over	\$1,000,000

The following multipliers may be used to adjust for the nature and complexity of the work in the specific contract. They should be adjusted based upon the users knowledge of the specific project.

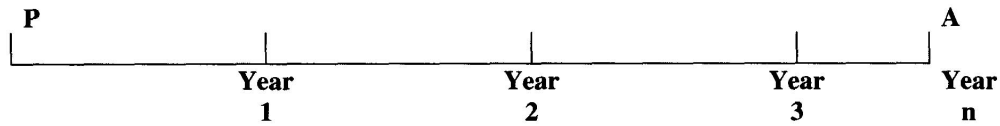
New work of average complexity	1.00
New work, below average complexity	0.95
New work, above average complexity	1.05
Renovation, average complexity, record drawings of existing facility available	1.20
Renovation, average complexity, record drawings of existing facility not available	1.25
Renovation, below average complexity, record drawings of existing facility available	1.20
Renovation, below average complexity, record drawings of existing facility not available	1.35
Renovation, above average complexity, record drawings of existing facility available	1.45
Renovation, above average complexity, record drawings of existing facility not available	1.55

These fees assume that the consultant is to provide all of the services required by the basic consultant contract written by the Department.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

**APPENDIX B. Formulas for Determining Single Present Worth, Present Worth Factor, and Present Worth Escalating Factor**

Figure 1

**I. Single Present Worth (SPW)**

To convert a single future amount **A** to an equivalent present worth **P** use the single present worth (**SPW**).

$$P = A \times (\text{SPW})$$

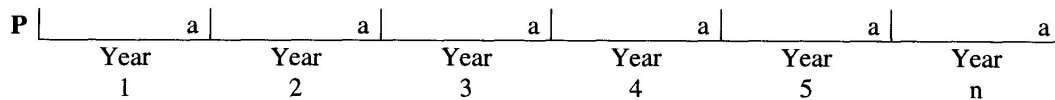
$$(\text{SPW}) = \frac{1}{(1+i)^n}$$

where

**i** is the interest rate per year.

**n** is the number of years.

$$P = \frac{A}{(1+i)^n} \quad (\text{A.1})$$

**II. Present Worth Factor (PWF)**

To convert an annual recurring amount (**a**) to an equivalent present worth **P** use the Present Worth Factor (**PWF**).

$$P = A \times (\text{PWF})$$

$$(\text{PWF}) = \frac{(1+i)^n - 1}{i(1+i)^n}$$

Figure 2

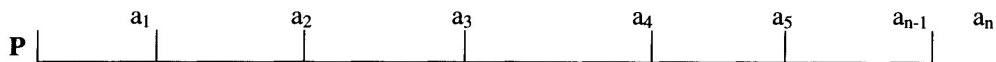
where

**i** is the interest rate per year.

**n** is the number of years.

$$P = a \left( \frac{(1+i)^n - 1}{i(1+i)^n} \right) \quad (\text{A.2})$$

### III. Present Worth Escalating Factor (PWEF)



To convert a non-uniform, escalating annual amounts ( $a_1, a_2, \dots, a_n$ ) to an equivalent present worth **P** use the Present Worth Escalating Factor (**PWEF**).

$$(\text{PWEF}) = \left( \frac{1+j}{1-i} \right) \left( 1 - \left( \frac{1+j}{1-i} \right)^n \right)$$

$$P = a_1 \times (\text{PWEF})$$

where

**i** is the interest rate per year.

**j** is the escalating factor per year.

**n** is the number of years.

$$P = a_1 \left( \frac{1+j}{1-i} \right) \left( 1 - \left( \frac{1+j}{1-i} \right)^n \right) \quad (\text{A.3})$$

If **j** = 0, then (**PWEF**) becomes equal to (**PWF**) and equation (A.3) becomes similar to (A.2).

If **j** = 1 then (**PWEF**) = **n** and **P** = **a<sub>1</sub> × n**

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

## APPENDIX C. Suggested Equipment Life



Figure 1

EQUIPMENT	LIFE	EQUIPMENT	LIFE
<b>Air conditioners:</b>	-	<b>Fans:</b>	-
• Window Unit	20	• Centrifugal	25
• Residential single or split level	14	• Axial	20
• Commercial through-the-wall	15	• Propeller	15
• Water-cooled package	15	<b>Coils:</b>	-
<b>Heat pumps:</b>	-	• DX, water, or steam	20
• Residential air-to-air	15	• Electric	15
• Commercial air-to-air	-	<b>Heat Exchangers:</b>	-
• Commercial water-to-air	15	• Shell-and-tube	24
<b>Roof-top air conditioner:</b>	-	• Reciprocating compressor	20
• Single-zone	15	<b>Package Chillers:</b>	-
• Multizone	15	• Reciprocating	20
<b>Boilers, hot water:</b>	-	• Centrifugal	25
• Steel, hot water tube	24	• Absorption	23
• Steel fire-tube	24	<b>Cooling Towers:</b>	-
• Cast iron	30	• Galvanized metal	20
• Electric	30	• Wood	20
• Burners	21	• Ceramic	34
<b>Boiler, steam:</b>	-	• Air-cooled condensers	20
• Steel water-tube	30	• Evaporative condensers	20
• Steel fire-tube	25	<b>Insulation:</b>	-
• Cast iron	30	• Molded	20
• Electric	30	• Blanket	24
• Burners	21	<b>Pumps:</b>	-
<b>Furnaces:</b>	-	• Base-mounted	20
• Gas or oil-fired	18	• Pipe-mounted	10
<b>Unit heaters:</b>		• Sump and well	10
• Gas or electric	13	• Condensate	15
• Hot water or steam	20	<b>Reciprocating engines</b>	20
<b>Radiant heaters:</b>	-	<b>Steam turbines</b>	30
• Electric	10	<b>Electric motors</b>	18
• Hot water or steam	25	<b>Motor starters</b>	17
<b>Air terminals:</b>	-	<b>Electric transformers</b>	30
• Diffusers, grilles and registers	27	<b>Controls:</b>	-
• Induction and fan-coil units	20	• Pneumatic	20
<b>VAV and double-duct box</b>	20	• Electric	16
<b>Air washers</b>	17	• Electronic	15
<b>Duct work</b>	30	<b>Valve actuators:</b>	-
<b>Dampers</b>	20	• Hydraulic	15

Figure 2

-	-	• Pneumatic	20
-	-	• Self-contained	10

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]

Figure 1

**APPENDIX D. Evaluation of Total Life Cycle Cost**

The general equation for calculating the total life cycle cost is:

$$\underline{\text{TLCC} = \text{I} + \text{E} + \text{M} + \text{R} - \text{S}} \quad (3.1)$$

where:

TLCC is the total life cycle cost.

I is the investment costs, assumed to be in a lump sum at the beginning of the base year.

E is the total amount of energy costs during the study period, converted to an equivalent present work.

For constant energy costs, equation (A.2) in Appendix B of this Chapter is used to calculate the equivalent value of E.

$$\underline{\text{E} = \frac{(\text{1} + \text{i})^{\text{n}} - 1}{\text{i}(\text{1} + \text{i})^{\text{n}}}} \quad (3.2)$$

where:

e is the annual energy costs, assumed to be in a lump sum at the end of the year.

i is the interest rate per year.

n is the number of years in the study period.

If energy costs are escalating, then equation (A.3) in Appendix I of this Chapter should be used to calculate the equivalent value of E.

$$\underline{\text{E} = \text{e}_1}$$

where:

e<sub>1</sub> is the energy cost during the first year, assumed to be in a lump sum at the end of the first year.

j is the energy escalating rate per year.

If j = 0 the equation (3.3) is the same as equation (3.2).

If j = i then P = e<sub>1</sub>n.

Figure 2

**M** is the maintenance and nonfuel operating costs, assumed to be in a lump sum at the beginning of the first year.

For constant labor costs, equation (A.2) in Appendix B of this Chapter is used to calculate the equivalent value of **M**.

$$\underline{\underline{M = m \frac{(1 + i)^n - 1}{i (1 + i)^n}}} \quad (3.4)$$

where:

**m** is the annual maintenance and non-fuel operating costs, assumed to be in a lump sum at the end of the year.

If labor costs are escalating, then equation (A.3) in Appendix B of this Chapter should be used to calculate the equivalent value of **M**.

$$\underline{\underline{M = m_1}}$$

where:

**m<sub>1</sub>** is the maintenance and nonfuel operating costs during the first year, assumed to be in a lump sum at the end of the first year.

**j** is the labor escalating costs per year.

If **j** = 0 then equation (3.5) becomes similar to equation (3.4).

If **j** = 1 then **M** = **m<sub>1</sub>n**.

**R** is the replacement costs converted to an equivalent present worth. Equation (A.1) in Appendix B of this Chapter is used to calculate **R**.

$$\underline{\underline{R = \frac{R'}{(1 + i)^n}}} \quad (3.6)$$

where:

**R'** is the actual replacement costs at the end of the study period.

**S** is the salvage value converted to an equivalent present worth. Equation (A.1) in Appendix B of this Chapter is used to calculate **S**.

$$\underline{\underline{S = \frac{S'}{(1 + i)^n}}} \quad (3.7)$$

Figure 3

where:

S' is the actual salvage value at the end of the study period.

[Source: Added at 31 Ok Reg 1423, eff 9-12-14]