



Solicitation Cover Page

1. Solicitation #: 0900000385 for SW0762

2. Solicitation Issue Date: 06/24/19

3. Brief Description of Requirement:

Solicitation to establish the SW0762 Statewide Contract for Safety Barrier Barrels and Replacement Parts.

RFP NOTICE: Please note that on an RFP no pricing shall be released at the time of opening. Should a public opening be requested the only information to be released will be a list of bidders without pricing.

4. Response Due Date¹: July 23, 2019

Time: 3:00 PM CST/CDT

5. Issued By and **RETURN SEALED BID TO**²:

U.S. Postal Delivery Address: OMES – Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105

Common Carrier Delivery Address: OMES – Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105

Electronic Submission Address: _____

6. Solicitation Type (type "X" at one below):

- ☐ Invitation to Bid
☒ Request for Proposal
☐ Request for Quote

7. Contracting Officer:

Name: Linda Lechtenberg

Phone: 405-522-0436

Email: Linda.Lechtenberg@omes.ok.gov

¹ Amendments to solicitation may change the Response Due Date (read GENERAL PROVISIONS, section 3, "Solicitation Amendments")

² If "U.S. Postal Delivery" differs from "Carrier Delivery", use "Carrier Delivery" for courier or personal deliveries



Responding Bidder Information

*"Certification for Competitive Bid and Contract" **MUST** be submitted along with the response to the Solicitation.*

1. **RE: Solicitation #** 0900000385 for SW0762

2. Bidder General Information:

FEI / SSN : _____ Supplier ID: _____

Company Name: _____

3. Bidder Contact Information:

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ Fax #: _____

Email: _____ Website: _____

4. Oklahoma Sales Tax Permit¹:

☐ YES – Permit #: _____

☐ NO – Exempt pursuant to Oklahoma Laws or Rules – Attach an explanation of exemption

5. Registration with the Oklahoma Secretary of State:

☐ YES - Filing Number: _____

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

6. Workers' Compensation Insurance Coverage:

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

☐ YES – Include with the bid a certificate of insurance.

☐ NO – Exempt from the Workers' Compensation Act pursuant to 85A O.S. § 2(18)(b)(1-11) – Attach a written, signed, and dated statement on letterhead stating the reason for the exempt status.²

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <https://www.ok.gov/tax/Businesses/index.html>

² For frequently asked questions concerning workers' compensation insurance, see <https://www.ok.gov/wcc/Insurance/index.html>

7. Disabled Veteran Business Enterprise Act

- ☐ YES – I am a service-disabled veteran business as defined in 74 O.S. §85.44E. Include with the bid response 1) certification of service-disabled veteran status as verified by the appropriate federal agency, and 2) verification of not less than 51% ownership by one or more service-disabled veterans, and 3) verification of the control of the management and daily business operations by one or more service-disabled veterans.
- ☐ NO – Do not meet the criteria as a service-disabled veteran business.

Authorized Signature

Date

Printed Name

Title



**Certification for Competitive
Bid and/or Contract
(Non-Collusion Certification)**

NOTE: A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Agency Name: OMES, Central Purchasing Agency Number: 090

Solicitation or Purchase Order #: 0900000385 for SW0762

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.

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

SECTION II [74 O.S. § 85.42]:

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

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

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

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number

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A. GENERAL PROVISIONS

A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1. "Acquisition" means items, products, materials, supplies, services, and equipment an entity acquires by purchase, lease purchase, lease with option to purchase, or rental;
- A.1.2. "Addendum" means a written restatement of or modification to a Contract Document executed by the Supplier and State.
- A.1.3. "Bid" means an offer in the form of a bid, proposal, or quote a bidder submits in response to a solicitation;
- A.1.4. "Bidder" means an individual or business entity that submits a bid in response to a solicitation;
- A.1.5. "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation; and
- A.1.6. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

A.2. Bid Submission

- A.2.1. Submitted bids shall be in strict conformity with the instructions to bidders and shall be submitted with a completed Responding Bidder Information, OMES-FORM-CP-076, and any other forms required by the solicitation.
- A.2.2. Bids shall be submitted to the Central Purchasing Division in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.
- A.2.3. The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OMES-FORM-CP-004, must be made out in the name of the bidder and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.
- A.2.4. All bids shall be legible and completed in ink or with electronic printer or other similar office equipment. Any corrections to bids shall be identified and initialed in ink by the bidder. Penciled bids and penciled corrections shall NOT be accepted and will be rejected as non-responsive. In addition to a hard copy submittal, the bidder will also be required to submit an electronic copy. Electronic responses must be submitted in the identical format contained in the solicitation (for example Microsoft Word, Microsoft Excel, but not Adobe PDF). In the event the hard copy of the price worksheets and electronic copy of the price worksheets do not agree, the electronic copy will prevail.
- A.2.5. All bids submitted shall be subject to the Oklahoma Central Purchasing Act, Central Purchasing Rules, and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein—all of which are made part of this solicitation.

A.3. Solicitation Amendments

- A.3.1. If an "Amendment of Solicitation", OMES-FORM-CP-011, is issued, the bidder shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the bid or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The Central Purchasing Division must receive the amendment acknowledgement(s) by the response due

date and time specified for receipt of bids for the bid to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.

- A.3.2. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the Central Purchasing Division.
- A.3.3. It is the bidder's responsibility to check the OMES/Central Purchasing Division website frequently for any possible amendments that may be issued. The Central Purchasing Division is not responsible for a bidder's failure to download any amendment documents required to complete a solicitation.

A.4. Bid Change

If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the Central Purchasing Division with the following statement "This bid supersedes the bid previously submitted" in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting a response to this solicitation:

- A.5.1. The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
 - A.5.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - A.5.1.2. Have not within a three-year period preceding this proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - A.5.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.5.1.2. of this certification; and
 - A.5.1.4. Have not within a three-year period preceding this application/proposal had one or more public (Federal, State, or local) contracts terminated for cause or default.
- A.5.2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

A.6. Bid Opening

Sealed bids shall be opened by the Central Purchasing Division at 5005 N. Lincoln Blvd. Suite 300, Oklahoma City, Oklahoma, 73105 at the time and date specified in the solicitation as Response Due Date and Time.

A.7. Open Bid / Open Record

Pursuant to the Oklahoma Public Open Records Act, a public bid opening does not make the bid(s) immediately accessible to the public. The procurement or contracting agency shall keep the bid(s) confidential, and provide prompt and reasonable access to the records only after a contract is awarded or the solicitation is cancelled. This practice protects the integrity of the competitive bid process and prevents excessive disruption to the procurement process. The interest of achieving the best value for the State of Oklahoma outweighs the interest of vendors immediately knowing the contents of competitor's bids. [51 O.S. § 24A.5(5)]

Additionally, financial or proprietary information submitted by a bidder may be designated by the Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. (2012) § 34.11.1(H)(2) and 74 O.S. (2011) § 85.10. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §

85.10. Otherwise, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure after contract award or the solicitation is cancelled.

A.8. Late Bids

Bids received by the Central Purchasing Division after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

A.9. Legal Contract

- A.9.1. Submitted bids are rendered as a legal offer and any bid, when accepted by the Central Purchasing Division, shall constitute a contract.
- A.9.2. The Contract resulting from this solicitation may consist of the following documents in the following order of precedence:
 - A.9.2.1. Any Addendum to the Contract;
 - A.9.2.2. Purchase order, as amended by Change Order (if applicable);
 - A.9.2.3. Solicitation, as amended (if applicable); and
 - A.9.2.4. Successful bid (including required certifications), to the extent the bid does not conflict with the requirements of the solicitation or applicable law.
- A.9.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

A.10. Pricing

- A.10.1. Bids shall remain firm for a minimum of sixty (60) days from the solicitation closing date.
- A.10.2. Bidders guarantee unit prices to be correct.
- A.10.3. In accordance with 74 O.S. §85.40, ALL travel expenses to be incurred by the supplier in performance of the Contract shall be included in the total bid price/contract amount.

A.11. Manufacturers' Name and Approved Equivalents

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, and which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

A.12. Clarification of Solicitation

- A.12.1. Clarification pertaining to the contents of this solicitation shall be directed in writing to the Central Purchasing Contracting Officer specified in the solicitation, and must be prior to the closing date of the solicitation.
- A.12.2. If a bidder fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the bidder, or that reasonably should have been known by the bidder, the bidder shall submit a bid at its own risk; and if awarded the contract, the bidder shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a bidder takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.
- A.12.3. Bidders who believe proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a written request for administrative review to the contracting officer listed on the solicitation. This request must be made prior to the closing date of the solicitation.

A.13. Negotiations

- A.13.1. In accordance with Title 74 §85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the vendors responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks. The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more vendors, for any and all items in the vendor's offer.
- A.13.2. Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:
- A.13.3. Negotiations may be conducted in person, in writing, or by telephone.
- A.13.4. Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.
- A.13.5. Terms, conditions, prices, methodology, or other features of the bidders offer may be subject to negotiations and subsequent revision. As part of the negotiations, the bidder may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the offer.
- A.13.6. The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

A.14. Rejection of Bid

The State reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid may be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability to the State. Other possible reasons for rejection of bids are listed in OAC 260:115-7-32.

A.15. Award of Contract

- A.15.1. The State Purchasing Director may award the Contract to more than one bidder by awarding the Contract(s) by item or groups of items, or may award the Contract on an ALL OR NONE basis, whichever is deemed by the State Purchasing Director to be in the best interest of the State of Oklahoma.
- A.15.2. Contract awards will be made to the lowest and best bidder(s) unless the solicitation specifies that best value criteria is being used.
- A.15.3. In order to receive an award or payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>.

A.16. Contract Modification

- A.16.1. The Contract is issued under the authority of the State Purchasing Director who signs the Contract. The Contract may be modified only through a written Addendum, signed by the State Purchasing Director and the supplier.
- A.16.2. Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Central Purchasing Division in writing, or made unilaterally by the supplier, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Addendums, shall be void and without effect, and the supplier shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

A.17. Delivery, Inspection and Acceptance

- A.17.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The supplier(s) awarded the Contract shall prepay all packaging, handling,

shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

- A.17.2. Supplier(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Central Purchasing Division.

A.18. Invoicing and Payment

- A.18.1. Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law. Invoices shall contain the purchase order number, a description of the products delivered or services provided, and the dates of such delivery or provision of services. An invoice is considered proper if sent to the proper recipient and goods or services have been received.
- A.18.2. State Acquisitions are exempt from sales taxes and federal excise taxes.
- A.18.3. Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.18.4. Payment terms will be net 45. Interest on late payments made by the State of Oklahoma is governed by 62 O.S. § 34.72.
- A.18.5. Additional terms which provide discounts for earlier payment may be evaluated when making an award. Any such additional terms shall be no less than ten (10) days increasing in five (5) day increments up to thirty (30) days. The date from which the discount time is calculated shall be the date of a proper invoice.

A.19. Tax Exemption

State agency acquisitions are exempt from sales taxes and federal excise taxes. Bidders shall not include these taxes in price quotes.

A.20. Audit and Records Clause

- A.20.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.20.2. The successful supplier(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

A.21. Non-Appropriation Clause

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

A.22. Choice of Law

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

A.23. Choice of Venue

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

A.24. Termination for Cause

- A.24.1. The supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.24.2. The State may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance.
- A.24.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.25. Termination for Convenience

- A.25.1. The State may terminate the Contract, in whole or in part, for convenience if the State Purchasing Director determines that termination is in the State's best interest. The State Purchasing Director shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State Purchasing Director.
- A.25.2. If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

A.26. Insurance

The successful supplier(s) awarded the Contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The supplier awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division and the procuring agency with evidence of such insurance and renewals.

A.27. Employment Relationship

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or the procuring agency. The supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

A.28. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007

By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. 1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at www.dhs.gov/E-Verify.

A.29. Compliance with Applicable Laws

The products and services supplied under the Contract shall comply with all applicable Federal, State, and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

A.30. Special Provisions

Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

B. SPECIAL PROVISIONS

B.1. Contract Period

- B.1.1.** The contract period is for a 12 month period, commencing Date of award through one year. This contract may be renewed for up to three additional one year periods.

B.2. Agreement Period

- B.2.1.** The Agreement Period is the Date of Award through the end of the final renewal period. Renewal options shall be at the sole discretion of the State of Oklahoma.

B.3. Extension of Contract

- B.3.1.** The State may extend the term of this contract up to 180 days if mutually agreed upon in writing by both parties.

B.4. Type of Contract.

- B.4.1.** This is a firm fixed price contract for indefinite delivery and indefinite quantity for the supplies specified.

B.5. Mandatory Contract

- B.5.1.** This contract will be a mandatory statewide contract that is available to all state agencies. Other government entities may avail themselves of this contract.
- B.5.2.** All state agencies must use the contract for the products specified herein, unless the Ordering Agency has received a written exception from the contracting officer. The State of Oklahoma reserves the right to conduct separate procurement process(s) to establish contract(s) for the same or similar services for any agency's specific project
- B.5.3.** The State of Oklahoma shall not guarantee any minimum or maximum total amount of the Supplier services that may be required under this contract. The Supplier will be expected to ship to any point within the state.

B.6. Authorized Users.

- B.6.1.** This Contract shall be made available to all State Departments, Boards, Commissions, Agencies and Institutions. The Oklahoma Statutes state that Counties, School Districts, Universities, and Municipalities may avail themselves of the contract.
- B.6.2.** Authorized Users have no authority to amend, modify or change any terms and conditions of this contract.

B.7. Ordering.

- B.7.1.** Any supplies and/or services to be furnished under this contract shall be ordered by issuance of written purchase orders, or with the State purchase card, by state agencies and authorized entities. There is no limit on the number that may be issued. Delivery to multiple destinations may be required. All orders are subject to the terms and conditions of this contract. Any order dated prior to expiration of this contract shall be performed. In the event of conflict between a purchase order and this contract, the contract shall have precedence. Each purchasing entity will place orders directly with the winning Supplier(s).

B.8. Prompt Payment Discounts.

- B.8.1.** Please review A.18 for information concerning prompt payment discounts.

B.9. Notice of Award

- B.9.1.** Notice of award resulting from this solicitation will be furnished to each successful respondent and shall result in a binding contract without further action by either party. It shall be the successful respondent's responsibility to reproduce and distribute copies to all authorized dealers listed in your solicitation response. No additions, deletions or changes of any kind shall be made to this contract without prior approval of Central Purchasing.

B.10. Travel

- B.10.1.** No reimbursable travel is contemplated under the terms of this contract.

B.11. Conformity

- B.11.1.** By submitting a response to this solicitation, the Supplier attests that the supplies or services conform to specified contract requirements.

B.12. Gratuities

- B.12.1.** The right of the successful respondent to perform under this contract may be terminated by written notice if the Contracting Officer determines that the successful respondent, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of Central Purchasing.

B.13. Warranty

- B.13.1.** The successful Supplier(s) agree the products furnished under this contract shall be covered by the most favorable commercial warranties the Supplier gives to any customer for such products; and, rights and remedies provided herein are in addition to and do not limit any rights afforded to the State of Oklahoma by any other clause of this contract.

B.14. Contract Usage Reporting Requirements

- B.14.1.** Reports shall provide the total dollar amounts sold to all political entities that include but are not limited to State Agencies, Counties, Cities, Schools, hospitals and Municipalities.
- B.14.2.** Reports shall be submitted quarterly regardless of quantity. Failure to report sales may be cause for termination of
- B.14.3.** Usage Reports shall be delivered to Central Purchasing within 45 calendar days upon completion of performance quarter period cited in B.14.4 of this contract provision. Usage Reports may be delivered to the Central Purchasing Strategic Sourcing Group via the following addresses:

B.14.3.1. Email – strategic.sourcing@omes.ok.gov

B.14.3.2. Physical Address:

OMES – Central Purchasing
Frates Building
5005 N. Lincoln, Suite 300
Oklahoma City, Ok 73105

B.14.4. Contract quarterly reporting periods shall be:

B.14.4.1. January 1 through March 31.

B.14.4.2. April 1 through June 30.

B.14.4.3. July 1 through September 30.

B.14.4.4. October 1 through December 31.

B.14.5. Failure to provide usage reports shall result in cancellation or suspension of contract.

B.14.6. Usage Reports shall be submitted in the Excel form listed as Attachment "B".

B.15. Contract Management Fee

- B.15.1.** As provided by Oklahoma State Statute 74 O. S., §85.33A, the Office of Management and Enterprise Services assesses an Administrative Fee in the sum of 1% on all sales transacted by any entity under this contract. The Oklahoma Administrative Fee shall not be reflected as a separate line item in the Supplier's billing to participating State Agencies and Authorized Users.
- B.15.2.** Supplier agrees to annotate the resultant amount on the quarterly "Contract Usage Report" as listed in Section B.14.6 and make payment by company check to OMES – Central Purchasing within forty five (45) calendar days from the completion of the quarterly reporting period as listed in Section B.14.4. To ensure the payment is credited properly, the Supplier must identify the check as a "Contract Management Fee" and include the following information with the payment: List the SW# and Contract Title, the report amount, and the reporting period covered. The Contract Management Fee shall be mailed to:

OMES – Accounting and Reporting
5005 N. Lincoln Blvd., Suite 200
Oklahoma City, OK 73105

B.15.3. Failure to remit the fee quarterly may result in the cancellation of the contract. The State Contract Management Fee is non-refundable when an item is rejected, returned or declined due to the Supplier's failure to perform or comply with specifications or requirements of the contract.

B.16. Conflict of Interest

- B.16.1.** A Request for Proposal is subject to the provisions of the Oklahoma Statutes. All Suppliers must disclose with their response the name of any officer, director or agency who is also an employee of the State of Oklahoma or any of its agencies. Further, all Suppliers must disclose the name of any State Employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Suppliers firm or any of its branches.

B.17. Patents and Royalties

- B.17.1.** The Supplier, without exception, shall indemnify and save harmless the State of Oklahoma and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the State of Oklahoma. If the Supplier uses any design, device or materials covered by letters, patent or

copyright, it is mutually agreed and understood without exception that the solicitation prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

B.18. Disclosures Regarding Lobbyists

- B.18.1.** A Supplier may not reimburse itself within its state contract pricing for its costs and expenses of lobbyists.
- B.18.2.** Any Supplier using the services of a lobbyist to assist in obtaining a contract shall (1) disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract (2) not bill or otherwise charge the State for such and (3) certify that no such costs were billed to the State.
- B.18.3.** The name and address of each lobbyist or agent of the Supplier or subSupplier who communicated with a State employee about a solicitation or potential solicitation must be disclosed with the solicitation response.

B.19. Inventory

- B.19.1.** The Supplier shall maintain inventory to ensure compliance with delivery requirements set forth in this contract.

B.20. Supplier Invoices

- B.20.1.** The Supplier shall be paid upon submission of proper certified invoices to the ordering agency/authorized user at the prices stipulated on the contract. Invoices shall contain the contract number and purchase order number. Failure to follow these instructions may result in delay of processing invoices for payment. The Company or Corporation submitting a proposal shall be the only office authorized to receive orders, invoice, and receive payment. If the Supplier wishes to ship or provide service from a point other than the address listed on the face of the solicitation, the Supplier will furnish a list of these locations. No ordering or invoicing will be done at these locations.
 - B.20.1.1.** Invoicing shall be made in accordance with the instructions of the agency/division/authorized user issuing the purchase order.
 - B.20.1.2.** If you are paid more than 45 days after submitting a proper invoice, you may be entitled to claim an interest penalty. Contact the Office of Management and Enterprise Services for a copy of the regulations.
 - B.20.1.3.** In cases of partial delivery the state agency may make partial payment, dependent on the dollar value, or hold all invoices for final delivery to be completed.
 - B.20.1.4.** See A.18 for further invoicing information.

B.21. State Purchase Care (P-Card)

- B.21.1.** **SUPPLIERS PLEASE NOTE – IN ORDER TO BE CONSIDERED FOR AWARD, SUCCESSFUL SUPPLIERS ARE TO ACCEPT THE STATE OF OKLAHOMA PURCHASE CARE (P-CARD). FAILURE TO ACCEPT THE P-CARD MAY BE CAUSE FOR REJECTION OF YOUR PROPOSAL.**
- B.21.2.** **SIGNATURE OF ACCEPTANCE:** _____ **DATE:** _____.

B.22. State and Federal Taxes

- B.22.1.** Purchases by the State of Oklahoma are not subject to any sales tax or Federal Excise tax. Exemption certificates will be furnished upon request.

B.23. Technical Documentation (Brochures/Specifications)

- B.23.1.** All products proposed must meet or exceed all provisions and specifications of the solicitation. **Technical documentation (brochures/specifications) is required by this solicitation.** Its purpose is to demonstrate compliance of the product proposal with applicable technical requirements of the solicitation and allow a proper evaluation of the product.
- B.23.2.** Failure to provide the required documentation with the proposal may render the Supplier's response non-responsive.
- B.23.3.** All technical documentation are to be marked with the Supplier's name, address, solicitation number, and complete item number.

B.24. Price Adjustments

- B.24.1.** Prices are to remain firm during the first 12 months of the contract. After that date, if there has been an industry-wide price increase, Suppliers may request an increase in prices. Price increases may be requested only once each year. Pricing changes must be submitted 30 days prior to the date of the effective change and must be approved by the contracting officer. Documentation and a detailed item listing with price change suggestions must be submitted. Any increase will not affect any orders issued prior to the effective approval date of any price changes. Supplier's failures to promptly notify the State of any price decreases shall result in the cancellation of their contract. No price reduction may be offered to an agency unless that reduction is offered to all agencies.

- B.24.2.** Any requests for price increases must be supported by price index increases and reports on the industry changes that cause the increase in prices. Increases will not affect any orders issued prior to the approved price changes. The State will have 30 days to implement any approved price increase. The State reserves the right to reject any request price adjustment if deemed excessive by the OMES, Central Purchasing Division. To request a price increase, the Supplier(s) must submit a request in writing to the Contracting Officer listed on this solicitation.
- B.24.3.** Price decreases are expected to be passed on to the State as Supplier(s) receive them from the Manufacturer. Supplier(s) are to notify the Contracting Officer in writing regarding price decreases, including a list of all line items with their new prices. The State will have 30 days to implement any request for price decreases.

B.25. Volume Discounts

- B.25.1.** Suppliers are to list any type of volume discount offered with their solicitation response.

B.26. Oral Agreements

- B.26.1.** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the RFP or the resultant contract. All modifications to the contract must be made in writing by Central Purchasing.

B.27. Delivery

- B.27.1.** Delivery shall be made within 30 calendar days after receipt of order by the successful respondent. Supplier must contact ordering entity's purchasing entity a minimum of 24 hours prior to shipping.
- B.27.2.** MSDS Sheets (if applicable) are to be supplied for products with delivery of products to requesting agency.

B.28. Minor Deficiencies or Minor Informalities

- B.28.1.** "Minor deficiency" or "minor informality" means an immaterial defect in a proposal or variation in a proposal from the exact requirements of a solicitation that may be corrected or waived without prejudice to other Suppliers. A minor deficiency or informality does not affect the price, quantity, quality, delivery, or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.
- B.28.2.** The State Purchasing Director may waive minor deficiencies or informalities in a proposal if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other Suppliers, or are not a cause for proposal rejection.

B.29. Electronic Submission

- B.29.1.** All submissions should be submitted to Central Purchasing on electronic media in accordance with Section E.1 of the solicitation. Submissions will not be accepted via email. Hard copies of the responses are not needed. This term overrides any terms in Section A requiring submission of hard copy.

B.30. Tobacco Use Prohibited

- B.30.1.** The use of tobacco products is prohibited throughout all indoor and outdoor areas of property owned, leased, loaned, or under the control of the State of Oklahoma, including parking lots owned or under the control of the State of Oklahoma.

B.31. Civil Rights Act of 1964

- B.31.1.** The Supplier agrees to comply with Title VI of the Civil Rights Act of 1964, 78 O.S. 252, 42 U.S.C. 2000d et Seq, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21 – "Nondiscrimination in federally assisted programs of the Department of Transportation – effectuation of Title VI of the Civil Rights Act of 1964".

B.32. Equal Employment Opportunity

- B.32.1.** In connection with the execution of this contract, the Supplier shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The Supplier shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

C. SOLICITATION SPECIFICATIONS

C.1. Source of Specifications

- C.1.1.** ODOT (Oklahoma Department of Transportation) 2009 Standard Specifications for Highway Construction. Section 870.01-870.05 Sand Filled Impact attenuation modules.

C.2. Scope

- C.2.1. This solicitation is to establish a Statewide Contract for Safety Barrier Barrels and Replacement Parts. A module as used in these Specifications is defined as one free standing, frangible unit within the impact attenuation system.

C.3. Module, General

- C.3.1. Sand filled impact attenuation modules shall meet the current test requirements, procedures and results as prescribed in the latest "National Cooperative Highway Research Program" (NCHRP) Report 350, Test Level III, or the latest edition of the Manual for Assessing Safety Hardware (MASH) Test Level III and approved by the Federal Highway Administration (FHWA).
- C.3.2. Each module shall consist of three basic components consisting of an outer container, an inner container system, and a lid. The module shall be made of high density thermoplastic materials as specified herein, designated and constructed to shatter under impact.
- C.3.3. The module shall be designed to support a sand mass of 200, 400, 700, 1400, and 2100 pounds (90, 180, 320, 640, and 960 kg) as specified at a height to insure that the center of gravity of each module is at the proper elevation to control the attitude of impacting vehicles so as to prevent ramping.
- C.3.4. Each module shall be specifically designed for proper distribution of the specified sand mass without spontaneous rupture of the outer container or collapse of the inner core.
- C.3.5. The outer container shall be yellow colored, conforming to the standard highway color code requirement of the Manual on Uniform Traffic Control Devices for Streets and Highways.

C.4. Module Types

- C.4.1. Type A Module – Seamed Outer Container. The outer container shall consist of two identical cylinder halves made of high density polypropylene with an ultraviolet stabilizer that is durable and weatherproof, each half having shear carrying tongue and groove joints and assembled into one cylinder. The assembled outer container shall be cylindrical in shape 35 inches to 37 inches (885 to 945 mm) in diameter by 36 inches to 38 ¼ inches (910 to 975 mm) high and shall have a wall thickness of 7/32 and 9/32 inch (5 to 7 mm).
- C.4.2. Type A Module-Inner Container. The inner container support system shall consist of an inner core, disc and seal. The inner core shall be of one piece design of molded expanded polystyrene. The disc shall be a die cut piece of plastic sheeting at least 100 mils (2.5 mm) thick. The seal shall be a die cut piece of plastic sheeting of surlyn ionomer, or equivalent, at least 35 mils (0.10 mm) thick. The inner core, disc and seal system shall be designed to prevent leakage of the sand mass contained therein.
- C.4.3. Type A Module-Lid. The lid shall clamp or snap fit over the top of the outer container and securely seal the module. The lid shall be of molded plastic with an ultraviolet stabilizer, producing a finished part satisfying durability and shape retention characteristics and having a thickness of 9/32 to 11/32 (7 to 9 mm).
- C.4.4. Type B Module – Seamless Outer Container. The outer container shall be of high density polyethylene material with ultraviolet stabilizer that is durable and weatherproof, manufactured in one piece with an integral bottom. The outer container shall be cylindrical in shape 35 inches (885 to 945 mm) in diameter and may taper to not less than 30 ½ inches (700 mm) at the bottom. The wall thickness shall be 3/16 to 5/16 inch (5 to 8 mm). The container shall be 35 ¾ to 45 ¼ inch (915 to 1150 mm) in height.
- C.4.5. Type B Module – Inner Container. The inner container support system shall consist of an inner core manufactured of molded polyethylene material. The inner core shall be designed to prevent leakage of the sand mass contained therein. The inner container support system will not be required for the 2100 pounds (960 kg) module or the 1400 pound (640 kg) module when the outer container is specifically designed for proper distribution of the sand mass.
- C.4.6. Type B Module-Lid. The lid shall be manufactured from a polyethylene material. The lid shall clamp or pressfit over the outer container and securely seal the module. The lid shall be 1/8 inch to 3/8 inch (3 to 9 mm) thick.

C.5. Certification

- C.5.1. Type D Manufacturer prepared certification stating that the material meets the contract requirements, specifically according to the acceptance guidelines of the NCHRP Report 350, Test Level III or MASH Test Level III.

C.6. Product Acceptability

- C.6.1. OMES, Central Purchasing and the Oklahoma Department of Transportation reserves the right to make field tests of material prior to award to determine its suitability for application.

C.7. Product Availability

- C.7.1. Product proposed must be a current product and available for general marketing purposes at the opening of this solicitation.

D. EVALUATION

D.1. Evaluation Criteria

- D.1.1. Evaluation Criteria will consist of the following best value criteria:
 - D.1.1.1. Cost,
 - D.1.1.2. Compliance with the specifications listed in Section C, and
 - D.1.1.3. Responses required in Section E.

E. INSTRUCTIONS TO BIDDER

E.1. Response Format

- E.1.1. Supplier is to submit two (2) complete copies of their response on USB Flash Drive/Thumb Drives which include the completed proposal including the scanned images of the required OMES signed forms, and any other required documents listed in this RFP. Original hard copies are not required. Faxed or emailed responses will not be accepted. Please mark the USB Flash Drive/Thumb Drives with the company name, solicitation number, and closing date. This requirement supersedes the hard copy requirement listed in A.2.4.
- E.1.2. Supplier is to submit their response copies to the OMES, Central Purchasing address listed on the front page of this solicitation.
- E.1.3. Please ensure that your USB Flash Drive/Thumb Drives or CDs are marked clearly with the RFP Number.
- E.1.4. PDF is an acceptable format for solicitation responses. This overrides requirements of A.2.4.

E.2. Response Instructions

- E.2.1. Suppliers are to complete the Responding Bidder Information Form and supply any required information listed in that form.
- E.2.2. Suppliers are to complete the Non-Collusion Form.
- E.2.3. Suppliers are to provide their signature and date on B.21.
- E.2.4. Brand name, manufacturer number and respondent's part number must be completed on each line item (See Attachment A – Pricing Matrix).
- E.2.5. If you have received an FHWA Acceptance Letter CC-97 for your product, please submit it with your solicitation documents. Acceptance Letter submitted? Yes _____ No _____. If no, why?

- E.2.6. Supplier's impact attenuation modules meet the requirements listed in C.3. Module, General: Yes _____ No _____. If no, what are the differences?

- E.2.7. Supplier's impact attenuation modules meet the requirements listed in C.4. Module Types: Yes _____ No _____. If no, what are the differences?

- E.2.8. Supplier's impact attenuation module materials meet the certification requirements listed in C.5. Certification: Yes _____ No _____. If no, what are the differences?

- E.2.9. Supplier understands and acknowledges the Product Acceptability requirement listed in C.6. Yes _____ No _____. If no, what don't you understand or acknowledge?

- E.2.10. Supplier understands and acknowledges the Product Availability requirement listed in C.7. Yes _____ No _____. If no, what don't you understand or acknowledge?

F. CHECKLIST

- F.1. Responding Bidder Information Form. _____
- F.2. Non-Collusion Form. _____
- F.3. Signature and Date on B.21. _____
- F.4. Response to Section E Requirements. _____
- F.5. Completion of the Excel Spreadsheet Pricing Matrix. _____
- F.6. Brochures/Specifications of Products Bid. _____

G. OTHER

G.1. Question Submittal

- G.1.1. All questions regarding this solicitation must be submitted in writing and are to be emailed no later than **July 11, 2019 at 11:00 a.m.** Central Standard Time. Questions are to be emailed to Linda.Lechtenberg@omes.ok.gov. Questions received after this date will not be answered. If any questions are received, an amendment to this Solicitation will be posted on our website after this deadline listing all questions received and their answers. In addition, suppliers will be notified the amendment is on our website. Any communication regarding this RFP must be sent to the Contracting Officer listed above. Failure to do so (contacting agency personnel directly), may result in your proposal being deemed as non-responsive. Please be sure to reference the RFP number when emailing questions.

G.2. Attachments

- G.2.1. Attachment A - Excel Spreadsheet Pricing Matrix
- G.2.2. Attachment B – Usage Report Template

H. PRICE AND COST

H.1. Pricing

- H.1.1. Completion of the Attachment A - Excel Spreadsheet Pricing Matrix.