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 a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;

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 a g e n c i e s .

A.2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting a response to this solicitation:

A.2.1. The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:

A.2.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;

A.2.1.2. 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.2.1.3. 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.2.1.4. 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.2.2. 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.3. 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.4. Legal Contract

A.4.1. Submitted bids are rendered as a legal offer and any bid, when accepted by the Central Purchasing Division, shall constitute a contract.

A.4.2. The Contract resulting from this solicitation may consist of the following documents in the following order of precedence:

A.4.2.1. Any Addendum to the Contract;

A.4.2.2. Purchase order, as amended by Change Order (if applicable);

A.4.2.3. Solicitation, as amended (if applicable); and

A.4.2.4. Successful bid (including required certifications), to the extent the bid does not conflict with the requirements of the solicitation or applicable law.

A.5 Negotiations

A.5.1. 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.5.2. 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.5.3. Negotiations may be conducted in person, in writing, or by telephone.

A.5.4. 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.5.5. 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.5.6. 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.6. Award of Contract

A.6.1. 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.6.2. Contract awards will be made to the lowest and best bidder(s) unless the solicitation specifies that best value criteria is being used.

A.6.3. 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.7. Contract Modification

A.7.1. 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.7.2. 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.8. Delivery, Inspection and Acceptance

A.8.1. 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.8.2. 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.9. Invoicing and Payment

A.9.1. 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.9.2. State Acquisitions are exempt from sales taxes and federal excise taxes.

A.9.3. Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.

A.9.4. 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.9.5. 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.10. Tax Exemption

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

A.11. Audit and Records Clause

A.11.1. 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.11.2. 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.12. 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.13. 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.14. 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.15. Termination for Cause

A.15.1. 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.15.2. 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.15.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.16. Termination for Convenience

A.16.1. 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.16.2. 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.17. 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.18. 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.19. 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.20. 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.

B. SPECIAL PROVISIONS

B.1. Contract Term, Renewal and Extension Option

B.1.1. The initial contract period shall begin on the effective date and shall extend through One (1) Year (the “Initial Term”) unless renewed, extended, or terminated in accordance with applicable contract provisions. The Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until so notified in writing of the approval of the contract. The authorized State representative is the only individual who can transmit that approval to the Supplier.

B.1.2. Under Oklahoma law, the State may not contract for a period longer than one (1) year (the “Initial Term”). By mutual consent of the parties hereto, it is intended that there shall be nine (9) options to renew, subject to the terms and conditions set forth herein, each for duration of one (1) year.

B.1.3. After the Initial Term, the Agreement may be renewed annually upon mutual written consent of the parties. Prior to each renewal, the State shall subjectively consider the value of this Contract to the State, the Supplier’s performance under the Contract and shall review certain other factors, including but not limited to the a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) then current products pricing and price discounts offered by Supplier; and c) then current products and support offered by Supplier.

B.1.4. If the State determines changes to a Contract Document are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment.

B.1.5. The State, at its sole option, may choose to exercise an extension for ninety (90) days beyond the final renewal option period, at the Contract pricing rate. If this option is exercised, the State shall notify the Suppler in writing prior to contract end date. The State, at its sole option, may choose to exercise subsequent ninety (90) day extensions, by mutual consent and at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

B.1.6. In the alternative, the State CIO reserves the right to extend any Contract awarded if it is determined to be in the best interest of the State.

B.2. Obligations of Permitted Subcontractor

B.2.1. If the Supplier is permitted to utilize subcontractors in support of this Contract, the Supplier shall remain solely responsible for its obligations under the terms of this Contract and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name and by employee name in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by the Supplier in connection with provision of the products, the Supplier shall obtain written approval of the State of such subcontractor and each employee of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such potential subcontractor is bound by and agrees to perform the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

B.2.2. All payments for products shall be made directly to the Supplier. No payments shall be made to the Supplier for any services performed pursuant to this Contract by unapproved or disapproved employees of the Supplier or a subcontractor.

B.3. Warrants

Supplier warrants and represents that products or deliverables specified and furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of a minimum of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. Defects in products or

deliverables specified and furnished by or through the Supplier shall be repaired or replaced by Supplier at no cost or expense to the State if such defect occurs during the warranty period.

B.4. Administrative Fee

The Supplier agrees to pay an administrative fee in the sum of 1% of the combined total annual expenditures, as evidenced by the aggregate amount of Acquisitions under this Contract. All products prices shall be inclusive of the administrative fee. Notwithstanding anything to the contrary herein, the State reserves the right to increase or decrease the administrative fee as long as the Supplier has an obligation under this Contract without further requirement for an Amendment and shall provide written notice of such change to the Supplier.

On behalf of OMES, Central Purchasing Division, the Bank will collect a 5% administrative fee of the annual total rebate due to each participating political subdivision from the proceeds of any rebate due to Political Subdivision. This administrative fee shall be used to defray the costs of CP operations and expenses that CP incurs to support the operation of the Statewide Contract #0200. This fee shall be reported separately and submitted annually to the Central Purchasing Division as otherwise required in this Agreement.

B.5. Web Site Requirements

The Supplier will provide a web page devoted to the products available under the terms of this Contract and such web page will be linked to a State website. The web page provided by the Supplier for this Contract will include the following:

a) A listing of the contact personnel of the Supplier and the pertinent contact numbers;

b) Ordering address of Supplier;

c) Remittance address of Supplier;

d) “How to Use” instruction for using the Supplier website;

e) Pertinent contract information detailing the required State contract numbers and applicable State commodity codes;

f) A complete listing of products including the retail price list with the applicable pricing under this Contract;

g) A general category grouping of products with an expanding tree of information for the products available in each category and the capability to select a general category that is linked to a product specific page detailing the information concerning such particular product;

h) The ability to print a quote page with quote number and/or quote date, which shall be valid for at least thirty (30) days; and

i) Other information required by the State to be included from time to time.

B.6. Authorized Users

During the term of this contract, any State Entity, or Interlocal Entity, as defined herein, may utilize this contract. Under this contract, the State of Oklahoma bears no liability for the State or Interlocal Entities actions and the privies of contract exist solely between the Supplier and the State or Interlocal Entity.

B.7. Manufacturer Accessibility VPAT Website

The Supplier may provide a URL link for a website maintained by the Supplier or product manufacturer which provides VPAT’s for all products offered through the Contract.

B.8. Commercial Off-The-Shelf (Cots) Software

In the event that Supplier specifies terms and conditions or clauses in an electronic license agreement notice that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

B.9. Type of Contract

This shall be a competitively awarded contract(s) that is available for use by all State Entities or Interlocal Entities, as applicable.

B.10. Supplier Services

The State of Oklahoma shall not guarantee any minimum or maximum amount of the Supplier services that may be required under this Contract.

B.11. Ordering

Any product furnished under this Contract shall be ordered by the issuance of a written purchase order or by the use of a valid State purchase card. There is no limit on the number of purchase orders that may be issued or purchase card transactions and delivery to multiple destinations may be required, as applicable, at no additional cost. All such issued purchase orders and purchase card transactions are subject to the terms and conditions of this Contract and other Contract Documents. Any issued purchase order or purchase card transaction dated prior to expiration or termination of this Contract shall be performed.