



Administrative Rules

Chapters 15 & 20

of the

Employees Benefits Council

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This document is designed to consolidate and reproduce the administrative rules that govern the Employees Benefits Council for the convenience of its members, staff, state employees, and the public. While every attempt has been made to ensure the accuracy of this document, no guarantee is made as to the accuracy of the information herein. No one shall be entitled to claim detrimental reliance on any information herein.

Readers should know that this document contains minor alterations from the official version of the rules to provide clarity and uniformity. Every effort has been made to avoid the alteration of meaning or context. The official administrative rules that govern the Employees Benefits Council can be found on file at the offices of the Oklahoma Secretary of State, 220 Will Rogers Building, 2401 N. Lincoln Boulevard, Oklahoma City, OK 73105. An electronic version of the rules can be found at www.sos.state.ok.us/oar/oar_welcome.htm.

Chapter 15. Competitive Bidding Criteria And Procedures For Contracts Awarded For Flexible Benefits Plans

87:15-1-1. Purpose

The purpose of this Chapter is to describe the rules governing the procurement requirements of the Oklahoma State Employees Benefits Council (Council) for contracts to provide flexible benefit plan choices for active State employees and their eligible dependents. Flexible benefit plans are purchased under guidelines approved by the Oklahoma State Employees Benefits Council in compliance with all applicable State statutes. This Chapter does not apply to any products or services required by the Council outside the scope of flexible benefits plans as defined in the Oklahoma State Employees Flexible Benefits Act (74 O.S.2001, § 1341 et seq.). Other products or services shall be procured in accordance with the Central Purchasing Act (74 O.S.2001, § 85.1 et seq.).

87:15-1-2. Definitions

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

"Audit Clause" means in accepting any contract with the Oklahoma State Employees Benefits Council, the Bidder must agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the service provider relevant to the contract are subject to examination by the Council, State Auditor and Inspector, or other designated entities.

"Award" or "Contract award" means when the Council votes to approve the acceptance of a proposal from a qualified Bidder meeting all requirements of the procurement as determined by the Council.

"Bidder" means any entity submitting a competitive proposal in response to a solicitation for flexible benefit plans issued under this Chapter.

"Bidder's List" means the list maintained by the Contracts Administrator setting out the names and

addresses of qualified suppliers of flexible benefit plans from whom proposals can be solicited.

"Business Day" means any day except Saturday, Sunday, or a legal holiday for State employees as proclaimed by the Governor.

"Competitive Negotiation" means the method by which the Council may contract with qualified Bidders for flexible benefits plans through best and final offer (BFO) process.

"Confidential Information" means information clearly designated in the RFP as being proprietary information and which shall be retained as confidential. All information included in or with a Bidder's proposal lacking such a designation shall be subject to the Oklahoma Open Records Act (51 O.S.2001, § 24(A)(1) et seq.).

"Contract" means when a Bidder submits a proposal, the proposal is submitted as a legal offer and any proposal, when accepted by the Council constitutes a contract (See Award).

"Contracts Administrator" means the Contracts Administrator employed by the Council.

"Council" means the Oklahoma State Employees Benefits Council.

"EEOC" means Equal Employment Opportunity Commission.

"Executive Director" means the Executive Director employed by the Council.

"Formal Proposal" means a proposal which must be submitted in a sealed envelope or container and in conformance with a prescribed format, to be opened at a specified time and specified place. (See also, Proposal.)

"HEDIS" means Health Plan Employer Data and Information Set.

"Ineligible Bidder" means a prospective service provider who, by reason of financial instability, unsatisfactory performance as documented by the Council or other deficiency, does not meet the qualifications for placement on the bidder list.

"Late Bid" or "Late Proposal" means a bid or proposal received at the place specified in the RFP after the date and time designated for all proposals to be received.

"Proposal" means the executed document submitted by a Bidder in response to a Request for Proposal (RFP) issued by the Council.

"Readiness Reviews" means the process by which the contracting authority makes scheduled on-site visits to the service provider for purposes of testing the readiness of the provider.

"Request for Proposal" or "RFP" means the solicitation document used for competitive sealed bidding.

"State" means the State of Oklahoma, acting by and through the Council or its/their designee.

"Vision Plan" means a company, organization, group, or person who owns, operates, and provides a health care benefit plan designed for the care of the eye or the correction or enhancement of one's eyesight.

87:15-1-3. General purchasing provisions

(a) The Council has the statutory authority to purchase flexible benefit plans for participants as defined by the Oklahoma State Employees Benefits Act. The Council reserves the right to cancel any given procurement of flexible benefit plans at any time for any reason.

(b) Except as otherwise specifically provided by this Chapter, all flexible benefit plan contracts required by the Council shall be acquired by competitive bidding pursuant to the terms of this Chapter. Contracts with qualified flexible benefits plans may be awarded on the basis of best and final offer (BFO) through competitive negotiation. The Council, at its own discretion, shall have the option of bidding and contracting any flexible benefit plan through the Department of Central Services, Central Purchasing Division.

87:15-1-4. Bidder registration

(a) Any Bidder which seeks to contract to provide flexible benefit plans to the Council must be on the Bidder's list prior to the public release of an RFP solicitation. A Bidder desiring to be on the Bidder

List must register with the Contracts Administrator to receive copies of RFP solicitations. Only those Bidders qualified under Oklahoma law to perform the services requested by the Council and who meet the Bidder registration requirements contained herein will be added to the Bidder's List.

(b) A Bidder has the burden of demonstrating that it has the capability to responsibly do business with the State of Oklahoma. In the interest of providing the highest level of quality to statewide active State employees and their eligible dependents for flexible benefit choices, Bidders seeking Bidder registration with the Council to provide flexible benefit choices in response to a benefit choice RFP solicitation must provide:

- (1) Proof that the benefit provider has been operational (licensed where applicable) and enrolling members within the State of Oklahoma for a period of not less than eighteen (18) months prior to the date proposals are due.
- (2) Audited financial statements for the most recent two (2) full years, and
- (3) Disclosure of all State and Federal regulatory actions taken against the Bidder in the preceding eighteen (18) months.

The Council can make exception to any of the aforementioned requirements in this subparagraph at its discretion when the Council determines doing so is in the best interest of the State and members.

(c) Bidders wishing to be added to the Bidder List must request in writing to receive a Bidder registration packet. Written requests must be addressed to: Oklahoma State Employees Benefits Council, Park Harvey Center, 200 North Harvey, Suite 1200, Oklahoma City, Oklahoma 73102-4003, Attention Contracts Administrator. Bidders shall be provided a packet with registration information and submission forms. All Bidders must renew registrations annually on a plan year basis.

(d) The Bidder shall complete the information requested in the Bidder registration packet and return the forms to the Contracts Administrator. The Bidder registration forms must be received by the Contracts Administrator not less than seven (7) business days before the issuance of the RFP. Upon receipt, Council shall review the Bidder registration forms for

completeness and qualification and determine prior to the public release of an RFP solicitation whether or not the Bidder shall be added to the Bidder's List. The Council shall return the Bidder registration forms in the event the forms have not been properly completed, and shall deny the registration where the form is incomplete and/or the applicant Bidder is not qualified to perform the flexible benefits plan requested in the RFP. Entities not registered as a bidder may receive copies of RFPs pursuant to the Open Records Act.

(a) The Oklahoma State and Education Employees Group Insurance Board is exempt from the Bidder registration requirement herein.

87:15-1-5. Bidder retention and removal from bidder list

(a) To ensure Bidders perform in the best interest of the State, it is necessary to address problems in a swift and equitable manner for all concerned. The Council has determined that Bidder misconduct can cause irreparable harm to the Council and its eligible participants. It is therefore recognized that penalties for poor Bidder performance and/or violation of State and Federal statutes must be addressed.

(b) The Council may remove any Bidder for any material infraction(s) as determined by the Council to be in the best interest of the State and members, including but not limited to the following. The amount of time a Bidder is removed from the Bidder's List shall be determined by the Council:

- (1) A Bidder which has contracted with the Council to provide flexible benefit plan(s) and which terminates its contract with the Council prior to the contract expiration date.
- (2) Financial insolvency.
- (3) A conviction or plea of guilty to a felony involving fraud, bribery or corruption to the State or to any of its political subdivisions.
- (4) Giving false or misleading information in an application for inclusion on the Bidder's List.
- (5) Certification by the Oklahoma Human Rights Commission that the Bidder is engaging in a discriminatory practice as defined in 25 O.S.2001, §§ 1505 and 1604.

(6) Failure on the part of the Bidder to meet EEOC and other requirements mandated by public legislation or EBC.

87:15-1-6. Submission of proposals

(a) The Bidder's proposal must be submitted in a sealed envelope or container with the name and address of the Bidder, the RFP number, and the date and time of the RFP closing clearly marked on the outside of the envelope or container. All proposals must be complete and in compliance with the instructions provided with the RFP. It is the Bidder's responsibility to read and understand the instructions, terms and conditions provided with the RFP. Failure to comply with the instructions and terms and conditions in the RFP in any material way shall disqualify the proposal as per OAC 87:15-1-9. Proposals are to be mailed or submitted in a sealed envelope or container to the offices of the Council. Faxed proposals shall not be accepted. Any questions regarding the RFP or contract related items shall be directed to the Contracts Administrator.

(b) If a registered Bidder does not wish to bid on the RFP, the Bidder may fill in the Bidder name, address, and write "No Bid" on the RFP form or cover letter and return the "No Bid" to the Contracts Administrator.

(c) It is the responsibility of the Bidder to ensure delivery of a proposal to the Council at or prior to the designated date and time on the RFP. The Council shall not be responsible for, and shall not accept, late proposals. Proposals received after the RFP closing date shall be returned unopened to the Bidder. The Council shall not accept proposals from an ineligible Bidder, pursuant to this Chapter.

87:15-1-7. Proposal openings

(a) All sealed proposals shall be stamped with the time and date upon receipt at the Council's offices. The proposals shall be placed in a secured bid room until time for the scheduled proposal opening. Access to the room is limited to the Executive Director, the Contracts Administrator, or their designees until the proposal opening.

(b) Proposals shall be opened at the designated date and time by the Contracts Administrator.

Information clearly designated in the RFP as being proprietary or confidential shall not be made public. A proposal opening record shall be completed and maintained in the proposal file.

(c) Public openings may be requested by a Bidder and/or interested parties prior to the proposal opening. The request may be oral or written and must include the RFP number and closing date.

(d) No award will be made at routine or public openings. Award recommendations shall be made in writing upon conclusion of the proposal evaluation. The process and procedures for each proposal evaluation shall be further described in the individual RFP.

87:15-1-8. Award of contract

(a) Contracts for health plans provided by qualified Bidder(s) may be awarded based on best and final offer BFO through competitive negotiation. In the sole discretion of the Council, a BFO process shall be conducted with qualified Bidders if it is considered by the Council to be in the best interest of the State. In the event the Council considers a BFO process to be in the best interest of the State, all qualified Bidders meeting the minimum requirements of the RFP shall be afforded an opportunity to negotiate a BFO with the Council. The Council shall issue a written request to all qualified Bidders for a BFO. Only qualified Bidders who satisfy the minimum bid requirements specified in the RFP shall be allowed to participate in any BFO negotiation process. The Council retains the right to accept or reject qualified Bidder(s) BFO. The Council shall retain as confidential information contained in the initial proposals submitted by qualified Bidder(s) as well as any subsequent bid offers made by qualified Bidder(s) prior to final contract award as part of the BFO negotiation process. The BFO negotiation process shall allow for modification and alteration of Bidder(s) proposal content and Bidder(s) proposal price after proposals are submitted and during the evaluation process. Upon request for a public bid opening, only the name(s) of the qualified Bidder(s) shall be revealed; neither price nor proposal content shall be revealed and made public until after the BFO process is complete and notice of intent to award is

announced by the Council. Only the final, agreed-upon price and final, agreed-upon proposal content shall be made public after the BFO process is complete and notice of intent to award is announced by the Council. Information clearly designated in the RFP as proprietary shall be held confidential pursuant to the Employees Benefits Act, 74 O.S.2001, § 1365(A)(11). After an initial proposal is received and opened by the Council following the bid closing date and time, the initial proposal offered by qualified Bidder(s) may be discussed for clarification and/or modification if the Council deems it advantageous to do so. In this context, "discussion" shall mean clarification, modification, and negotiation, or any of these. Discussion(s) with a qualified Bidder(s) during negotiation and/or clarification shall be conducted individually and privately with qualified Bidder(s) and may be tape recorded by the Council. The Council shall hold all tape recordings, transcripts and notes of discussion(s) confidential. Changes shall not be allowed in qualified Bidder(s) proposal or price after BFOs are received, unless the Council determines, in its sole discretion, that re-submission would be in the best interest of the State. The specific criteria of the BFO shall be specified in the RFP issued by the Council.

(b) All proposals shall be forwarded to the Contracts Administrator upon completion of the evaluation. The Contracts Administrator shall review the information to determine compliance with the RFP requirements and compliance with all Council rules, policies and procedures. The Council shall be the sole judge in reviewing proposals and awarding contracts.

(c) The Council shall identify and apply criteria within the RFP and the proposals for final selection and award of contracts. The evaluation process may allow for the selection of less than all of the responsive or qualifying proposals, as allowed by law and as determined to be in the best interest of the State.

(d) The Contracts Administrator has the right to waive minor deficiencies or informalities in a proposal provided that the best interest of the State would be served without prejudice to the rights of the other Bidders.

- (e) The Council reserves the right to bid and award contracts on an all or none basis, by item or groups of items, whichever is in the best interest of the State.
- (f) All awards shall be made under the terms and conditions as outlined in OAC 87:15-1-9 and any additional terms and conditions as described in the RFP.
- (g) All ethics rules and laws related to conflicts of interest and doing business with public officials apply to any contract with the Council.

87:15-1-9. Terms and conditions for acceptable proposals

- (a) All proposals submitted are subject to the Council's policies and procedures and/or any special conditions and specifications listed in this Subchapter or made part of the RFP.
- (b) Sealed proposals will be opened by the Council at the time and date set in the RFP.
- (c) Proposals received after the closing time will not be considered. Envelopes or containers must contain responses to only one RFP, be sealed, and the name and address of the Bidder inserted in the upper left-hand corner. The proposal number and closing date must appear on the face of the envelope or container.
- (d) The proposal shall be in strict conformity with the instructions to the Bidder and shall be submitted in the approved format. All required signatures must be original and written in ink.
- (e) Any questions pertaining to the clarification of the proposal shall be directed to the Contracts Administrator.
- (f) The Council may conduct scheduled on-site visits to the service provider for purposes of testing the readiness of the provider.
- (g) When submitting a proposal to the Council, the Bidder shall agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the Bidder relevant to the contract are subject to examination by the Council, the State Auditor and Inspector, and such other entities as may be specified in the RFP.
- (h) Failure to comply with the terms and conditions shall subject the proposal to disqualification.

87:15-1-10. Excessive Price

- (a) The Council shall have the authority to reject the bid, or to restrict enrollment in any benefits plan, for which the Council determines the benefit price to be excessive. The Council shall have the authority to reject any plan that does not meet the bid requirements. One way to restrict enrollment is to freeze enrollment in the plan's membership as determined to be in the best interests of the State and the members.
- (b) Factors considered by the Council in determining excessive price may include, but are not limited to utilization data and loss ratios on the State group business, a comparison to other carriers proposed prices and/or other employers' plans and prices, actuarial analyses or underwriting principles. The Council may at its discretion, solicit a multi-part RFP which shall be designated as such. As a condition to be eligible to bid on Part II of the RFP, the Council shall require Bidders to provide information requested in Part I of the RFP. In the event a Bidder fails to provide the information in Part I of the RFP, the Council shall not consider the Bidder's response to the Part II of the RFP. The Council shall retain as confidential, any proprietary information submitted by a Bidder pursuant to this paragraph.
- (c) Each year, the Council shall specify in the RFP issued by the Council all excessive price factors that shall be considered by the Council for that year's selection of benefit plan options. Benefits plans that bid on the RFP are deemed by the Council to have read and accepted all excessive price factors contained in the RFP.
- (d) Although the Council shall have the authority to reject the bid, or to restrict enrollment in any benefits plan, for which the Council determines the benefit price to be excessive, the Council shall have no duty to do so. Despite the fact that the Council may determine the benefit price to be excessive, the Council nevertheless may choose not to reject the bid or restrict enrollment for reasons the Council determines at that time to be in the best interests of the State and the members. The determining reasons will include, coverage areas where the number of other benefits plans are limited; total number of benefits plans offered; provider networks; employee

participation displacement; uniformity of choices for all eligible employee groups; and premiums charged by competing plans.

(e) The particular factors that are specified in the RFP issued by the Council for determining excessive price may vary from year to year. The specification of particular factors in prior year(s) shall serve as no precedent of the factors that may be specified in subsequent year(s). Similarly, the failure of the Council in prior year(s) to reject a bid or restrict enrollment in any benefits plan for which the Council determines the benefit price to be excessive, shall serve as no precedent as to the action the Council may take in subsequent year(s).

87:15-1-11. Challenge of award

(a) Any Bidder may challenge the award of a proposal. A challenge may be based on the following grounds:

- (1) The proposal of the successful Bidder(s) did not meet the RFP requirements in a material way;
- (2) The bidding procedure was done in violation of the Council's rules; or
- (3) Council acted outside the scope of its authority. In the event a Bidder raises this ground in an allegation, said Bidder shall specify the nature of the alleged act.

(b) After the award is made, the protesting Bidder will deliver a written explanation of the reason for the challenge to the office of the Contracts Administrator within seven (7) business days of the time the Council selects and announces a successful Bidder(s).

(c) The Contracts Administrator or a designee will review the protesting Bidder's challenge of award, as well as the Council's selection process, and rule on the challenge. The decision will be in writing and shall address each ground raised by the Bidder challenging the proposal, specifically referring to the facts and documents supporting the decision.

87:15-1-12. Administrative review

(a) If the protesting Bidder does not agree with the Contracts Administrator's decision on the challenge of award, the protesting Bidder may request an administrative review. Any protesting Bidder may

appeal a decision by the Contracts Administrator to the Executive Director. In order for the claim to be eligible for administrative review, the appeal must have been through the challenge of award process as per OAC 87:15-1-11.

(b) The protesting Bidder must file a notice of appeal with the Executive Director within seven (7) business days of the date of the letter notifying the Bidder of the decision by the Contracts Administrator of the challenge of award by the protesting Bidder, or the postmark of such letter, whichever is later. The letter shall contain the following:

- (1) The letter must state all the facts and arguments giving rise to the claim of controversy and the appeal.
- (2) The letter must also state clearly and separately the alleged error by the Contracts Administrator or other Council personnel and the relief sought with the appeal to the Executive Director.
- (3) The letter must clearly and separately state that the Bidder is requesting an opportunity to be heard in pursuit of the appeal.

(c) Upon receipt of a properly perfected notice of appeal, the Executive Director shall review the appeal or appoint a designee to conduct the administrative review. The Executive Director may appoint any officer of the Council or may appoint an attorney licensed to practice law to conduct the review. The person conducting the administrative review shall promptly set a time period in which a review will be conducted that will be not more than forty-five (45) days in length beginning from the date the notice is filed. The person conducting the administrative review will set a date in which the Bidder must produce or identify all the documents or other supporting data (verbal or written) which supports the appeal, which date must be within the forty-five (45) day time period above. The person conducting the administrative review may schedule a meeting with the Bidder to discuss the appeal and issues raised, and will examine all such documents and supporting data.

(d) Within twenty (20) business days after the administrative review period, the person conducting the administrative review shall notify the protesting Bidder by certified mail. The decision by the

person conducting the administrative review shall include findings of the facts and conclusions supporting the decision to uphold the award or set the award aside.

(e) The decision shall be final.

87:15-1-13. Confidentiality

The Council, with the cooperation of the Department of Central Services, shall be authorized to retain as confidential, any proprietary information submitted in response to the Council's RFP; provided, however, that any such information requested by the Council from the Bidders shall only be subject to the confidentiality provision of this paragraph if it is clearly designated in the RFP as being protected under this provision.

87:15-1-14. Vision Plan Participation

(a) A Vision Plan must notify the Council of its intention to participate in the flexible benefits plan no later than 4:45 p.m., Central Standard Time on the first day of July prior to the beginning of each Plan Year. Such notification must conform to the requirements this section. If the first day of July is a weekend day or other day when the offices of the Council are closed, notification of Vision Plan participation is due by 4:45 p.m., Central Time, on the next day the Council's offices are open.

(b) Notice of a vision plan's intent to participate in the flexible benefits plan is properly provided upon submission of all of the following:

- (1) A statement from the Vision Plan indicating Vision Plan's intent to participate;
- (2) A list of the providers in Vision Plan's network;
- (3) A document(s) indicating Vision Plan has operated in Oklahoma for at least five (5) years;
- (4) Either a license issued by the Oklahoma State Insurance Department, or a certificate issued by the Oklahoma State Department of Health;

(5) A list of the rates the Vision Plan will charge during the subsequent Plan Year. Rates must be listed independently for the following categories:

- (A) Employee Only,
- (B) Spouse Only,
- (C) One Child, and
- (D) Two or More Children;

(6) Accurate product information in a format not to exceed two pages.

(c) The Council may create forms to standardize and simplify the information required by 74 O.S. § 1374 and subsection (b) of this section. If a form(s) have been created, a Vision Plan must complete the form(s) to provide proper notification.

(d) The Council may require a Vision Plan to submit information in addition to that required in subsection (b) of this section from time to time if the Council deems such information is essential to ensure statutory compliance.

(e) Information a Vision Plan submits to the Council pursuant to 74 O.S. § 1374 shall be retained as confidential if such information is clearly designated as confidential when submitted.

(f) Vision Plans not eligible to be offered on a pretax basis as a part of an Internal Revenue Code Section 125 Cafeteria Plan must indicate so when the Vision Plan notifies the Council of its desire to participate in the Flexible Benefits Plan.

(g) Vision Plans which submit notification of intent to participate in the flexible benefits plan that conform to subsection (a) of this Section and the requirements of 74 O.S. § 1374 are obligated to:

- (1) Enroll employees and eligible dependents in their benefit plan, and
- (2) Offer their benefit plan during the entire subsequent plan year period as that period is defined by the Council.

(h) The Council may remove a Vision Plan from the Flexible Benefits Plan at any time if it fails to comply or remain in compliance with 74 O.S. § 1374.

End of Chapter 15

Chapter 20. Authorized Payroll Deduction Vendor Materials

87:20-1-1. Purpose

The purpose of this Chapter is to describe the rules governing the process by which materials from vendors that have an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes shall be placed in the annual benefit enrollment materials provided to state employees and their dependents. The provisions of this Chapter do not apply to vendors who do not have authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes.

87:20-1-2. Definitions

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

"Council" means the State of Oklahoma Employees Benefits Council

"Plan Year" means the period of time, established by the Council, for which benefits are offered to State employees and their eligible dependents.

"Vendor" means a product vendor that has been approved for an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes on or before the last calendar day of July prior to each Plan Year.

"Vendor Material" means a one page, front and back, eight and one-half inch by eleven inch document which, at a minimum, identifies the vendor, describes the product being offered, includes the vendor's contact information, and includes the premium or cost of the product. Vendor material must be printed on white paper with a weight equal to 50# offset or 20# bond copy paper.

87:20-1-3. General provisions

(a) A vendor must deliver its vendor material to the Employees Benefits Council no later than 4:45 p.m., Central Time, on the second Friday in August prior to the beginning of the benefits enrollment period announced by the Council.

(b) Vendor material must be designed, printed, and reproduced by the vendor at the vendor's expense.

(c) The Council will determine the number of copies of vendor material each vendor must supply. Such amount will be communicated to vendors each year.

(d) The Council will bind and distribute all timely and properly submitted vendor material at its own expense.

(e) The Council may create forms to standardize and simplify the information required by this section. If a form(s) have been created, a vendor must complete the form(s) to provide proper delivery.

End of Chapter 20