

ENGROSSED HOUSE
BILL NO. 1637

BY: GISH, BATES and MONKS

AN ACT RELATING TO STATE GOVERNMENT; AMENDING 74 O.S. 1981, SECTIONS 85.2, AS AMENDED BY SECTION 1, CHAPTER 173, O.S.L. 1986, 85.7, AS LAST AMENDED BY SECTION 19, CHAPTER 337, O.S.L. 1990 AND SECTION 5 CHAPTER 173, O.S.L. 1986 (74 O.S. SUPP. 1990, SECTIONS 85.2, 85.7 AND 85.40), WHICH RELATE TO THE OKLAHOMA CENTRAL PURCHASING ACT; AMENDING SECTION 31, CHAPTER 207, O.S.L. 1986 (74 O.S. SUPP. 1990, SECTION 5025), WHICH RELATES TO THE OKLAHOMA DEPARTMENT OF COMMERCE; INCREASING CERTAIN EXPENDITURE LIMITATIONS; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1981, Section 85.2, as amended by Section 1, Chapter 173, O.S.L. 1986 (74 O.S. Supp. 1990, Section 85.2), is amended to read as follows:

Section 85.2 As used in the Oklahoma Central Purchasing Act the following terms, in addition to their usual definitions, shall have the meanings ascribed to them in this section unless context otherwise requires:

1. "State agency" or "agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit,

division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only municipalities, counties and other governmental subdivisions of the state.

2. "Business entity" includes individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm, group or concern which functions as a separate entity for business purposes;

3. "Acquisition" includes all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which a state agency obtains for its use any materials, supplies, service or equipment covered by this act, except those specifically excluded in this act;

4. "Materials" or "supplies" includes all property except real property acquired by a state agency for its use or consumption, except equipment;

5. "Equipment" means all personal property acquired by a state agency for its use which is in the nature of a tool, device or machine and shall be deemed to include all personal property used or consumed by a state agency and not included within the category of materials and supplies;

6. "Item" or "product" means some quantity or kind of such supplies, materials and equipment;

7. "Services" or "contractual services" includes any type of personal or professional service, employment or undertaking, including such services as utilities, pest control, maintenance and repairs, except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly used;

8. "Purchasing director" includes any employee or agent of the State Purchasing Director, acting within the scope of his authority;

9. "Sole source contract" means a contract for a particular service or item which by the specifications for the item or qualifications needed by an agency restricts the bidders to one person, to one business entity or to one brand name;

10. "Professional services" means services which are predominantly mental or intellectual in character, rather than physical or manual and which do not involve the supplying of products. Professional services include those services requiring special, usually advanced education and skill;

11. "Nonprofessional services" means services which are predominantly physical or manual in character and may involve the supplying of products;

12. "Open market contract" means a contract for the one-time acquisition of a particular item over ~~Seven Hundred Fifty Dollars (\$750.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00); and

13. "Statewide contract" means a contract for the purchase of items used or needed on a continual or regular basis by state agencies.

SECTION 2. AMENDATORY 74 O.S. 1981, Section 85.7, as last amended by Section 19, Chapter 337, O.S.L. 1990 (74 O.S. Supp. 1990, Section 85.7), is amended to read as follows:

Section 85.7 A. No acquisition or contract shall be made without the submission of competitive bids by the State Purchasing Director, except as provided in this section.

1. Any acquisition or contract for an amount of ~~Seven Hundred Fifty Dollars (\$750.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) or less shall be exempted from competitive bidding procedures. Separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirement of competitive bidding shall be deemed a felony. The State Purchasing Director may waive or increase the ~~seven-hundred-fifty-dollar~~ two-thousand-five-hundred-

dollar limit up to, but not to exceed, a contract or purchase price of One Thousand Dollars (\$1,000.00) to perfect an otherwise valid acquisition or contract inadvertently exceeding the ~~seven-hundred-fifty-dollar~~ two-thousand-five-hundred-dollar limit due to administrative error or unforeseeable circumstances. Requests for such waiver or increase shall be promptly submitted upon the discovery of such error or circumstance to the State Purchasing Director in a form prescribed by said Director setting forth the facts. All requests for such waiver or increase in amount, whether granted or denied, shall be reported monthly to the offices of the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

2. Contracts for master custodian banks or trust companies, investment managers and investment consultants for state retirement systems, the State Insurance Fund, and the State and Education Employees Group Insurance Board, the pension fund management consultants of the Oklahoma State Pension Commission and actuarial, architectural, engineering, legal or other professional services as such term is defined in Section 803 of Title 18 of the Oklahoma Statutes shall be exempt from competitive bidding procedures. The Office of Public Affairs shall send a copy of such contracts or a list of such contracts to any member of the House or Senate Appropriations Committee, if requested by such member.

3. Competitive bids shall not be required for any emergency acquisitions or contracts involving Two Thousand Dollars (\$2,000.00) or less, when upon written request of the State Purchasing Director specifying the facts and circumstances given rise thereto, the Governor may certify in writing the existence of an emergency authorizing the acquisition or contract.

4. Purchases or acquisitions for repairs of equipment and machinery in emergencies, or of livestock through a market agency, dealer, commission house or livestock auction market bonded or

licensed under federal or state law shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

5. Purchases or acquisitions of human organs and internal prostheses for the Oklahoma Medical Center, shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

6. Any contract for the restoration of historical sites and museums shall not be subject to the competitive bid requirements of this section or any other provision of the Oklahoma Central Purchasing Act. The procedures will be followed except contractor and bid selection will be the prerogative of the Oklahoma Historical Society Board and selection will be based on contractors' documented qualifications and experience.

7. Purchases of postage by state agencies shall be made in accordance with the provisions of Sections 90.1 through 90.4 of this title.

8. Any sole source contract shall not be subject to competitive bidding procedures. Any agency requesting products or services pursuant to a sole source contract shall comply with Section 89 of this title.

9. Contracts for the design, development, communication or implementation of the state employees flexible benefits plan shall not be subject to the requirements of this section, provided that the Flexible Benefits Advisory Council shall use procedures consistent with the competitive bid requirements of the Oklahoma Central Purchasing Act, ~~Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.~~

10. a. Any contract for a service for which the Office of Public Affairs has approved as qualifying for a fixed and uniform rate shall not be subject to competitive bid procedures.

- b. The Office of Public Affairs shall establish criteria and guidelines for those services which may be qualified for a fixed and uniform rate.
- c. The exception to competitive bid procedures authorized by this paragraph shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by any agency to employ consultants or to purchase products.
- d. Any agency desiring to have a service qualified for a fixed and uniform rate shall make a request for such qualification to the Office of Public Affairs and shall submit any documentation necessary to support such request. The Office of Public Affairs shall either approve or deny the request. If the Office of Public Affairs qualifies such services for a fixed and uniform rate, the agency requesting such qualification shall establish a fixed and uniform rate for such service, provided no contracts shall be entered into by the agency until such rate has been approved by the agency in a public hearing. Prior to approval, the proposed rate shall be clearly and separately identified in the agenda of the agency for the hearing and shall be openly and separately discussed during such hearing. In addition, the agency shall notify the Director of the Office of Public Affairs of its pending consideration of the proposed rate at least thirty (30) days before the agency is to meet on the proposed rate. Along with such notice, the agency shall deliver to the Office of Public Affairs a copy of the agenda items concerning the proposed rate with all supporting documentation and materials. The

Director of the Office of Public Affairs shall communicate any observation, reservation, criticism or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the agency before or at the time of the hearing. The Director of the Office of Public Affairs shall specifically note in such written communications if the Director of the Office of Public Affairs has determined the rate to be excessive. Any such written communication presented in the absence of the Director of the Office of Public Affairs shall be presented orally during the public hearing. Whether made in person or in writing any comment made by the Director of the Office of Public Affairs shall be made a part of the minutes of the hearing in full.

- e. Within two (2) weeks after the convening of the Legislature, the administrative officer of each state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by such member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Office of Public Affairs shall be specifically identified in such list.
- f. At anytime, the Director of the Office of Public Affairs is authorized to review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Office of Public

Affairs determines the contract is not necessary, is excessive, or is not justified.

B. Acquisitions or contracts shall be awarded to the lowest and best bidder therefor at a specified time and place, which shall be open to the public, with such preference between bidders offering substantially the same products or services at substantially the same prices, as may be set under the authority of Section 85.5 of this title.

C. Bids for professional service contracts shall be evaluated by the State Purchasing Director and the agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best bid. Further, such agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by the governing body of a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board which are authorized to hire investment managers, the Office of Public Affairs shall assist the governing body of a state retirement system, the Fund or the Board in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Office of Public Affairs shall assist the Council in the process of selecting contracts for the design, development, communication or implementation of the state employees flexible benefits plan.

SECTION 3. AMENDATORY Section 5, Chapter 173, O.S.L. 1986 (74 O.S. Supp. 1990, Section 85.40), is amended to read as follows:

Section 85.40 The travel expenses to be incurred by a vendor or service provider pursuant to a contract with a state agency for the

purchase of products or services, whether or not such purchase is exempt from the Oklahoma Central Purchasing Act, shall be included in the total amount of the contract award. An agency shall not pay any travel expenses not specified in the total amount of the contract awarded.

The provisions of this section shall also apply to any acquisition or contract for an amount of ~~Seven Hundred Fifty Dollars (\$750.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) or less. If the total contract amount including travel expenses exceed ~~Seven Hundred Fifty Dollars (\$750.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00), the contract shall be processed by competitive bid unless specifically exempted pursuant to Section 85.7 or 85.12 of Title 74 of the Oklahoma Statutes.

SECTION 4. AMENDATORY Section 31, Chapter 207, O.S.L. 1986 (74 O.S. Supp. 1990, Section 5025), is amended to read as follows:

Section 5025. The Oklahoma Department of Commerce shall negotiate contracts for all expenditures by other entities in amounts over ~~Seven Hundred Fifty Dollars (\$750.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) which have been appropriated to the Department for the use of such entities. The Director of the Department may require a formal contract for such expenditures of ~~Seven Hundred Fifty Dollars (\$750.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) or less.

SECTION 5. This act shall become effective July 1, 1991.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 6th day of March, 1991.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate