

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1069

BY: STEIDLEY

AS INTRODUCED

AN ACT RELATING TO STATE GOVERNMENT; AMENDING 74 O.S. 1981, SECTION 85.4, AS LAST AMENDED BY SECTION 18, CHAPTER 300, O.S.L. 1989 (74 O.S. SUPP. 1990, SECTION 85.4), WHICH RELATES TO THE OKLAHOMA CENTRAL PURCHASING ACT; MODIFYING MAXIMUM TERM OF CERTAIN LEASE PURCHASE AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 74 O.S. 1981, Section 85.4, as last amended by Section 18, Chapter 300, O.S.L. 1989 (74 O.S. Supp. 1990, Section 85.4), is amended to read as follows:

Section 85.4 A. Except as provided in Section 85.12 of this title, every state agency shall acquire all contractual services, supplies, equipment, or materials used, consumed or spent by such agency in the performance of its official functions by the presentation of requisitions for such services, supplies, materials, or equipment to the Purchasing Division established in Section 85.3 of this title and no such items or service shall be acquired by any state agency for such use or consumption except by the presentation

of such requisition and receipt of the items or service requisitioned through the Purchasing Division. The provisions of the Oklahoma Central Purchasing Act shall not preclude the acceptance of gifts and donations in the manner now authorized by law or the purchase of any equipment, materials, supplies, or services by any state agency acting for itself and without presentation of a requisition when such acquisition is authorized in writing by the State Purchasing Director. Subject to the provisions of this section, every state agency shall have the authority to determine its own quantitative needs for services, supplies, equipment, and materials, insofar as it has such authority under existing law and shall have the authority to determine the general class or nature of supplies, equipment, materials, or services, subject to the provisions of Section 85.5 of this title.

B. The Director of Public Affairs shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of Public Affairs to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

C. 1. Each requisition required by this section for the acquisition of any product shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the agency certifying:

- a. the product requested is necessary to the agency's responsibilities,
- b. the amount of the product requested is not excessive, and
- c. the justification for the purchase of such products;

2. Each requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements shall be accompanied by a statement signed by the chief

administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the agency certifying that:

- a. no employee of the agency is able and available to perform the services called for by the contract,
- b. the agency shall receive, review and accept a detailed work plan from the contractor for performance under the contract if requested by the Office of Public Affairs,
- c. the agency has developed, and fully intends to implement, a written plan providing for the assignment of specific agency personnel to:
 - (1) a monitoring and auditing function,
 - (2) the periodic review of interim reports, or other indications of past performance, and
 - (3) the ultimate utilization of the final product of the services if requested by the Office of Public Affairs,
- d. the work to be performed under the contract is necessary to the agency's responsibilities, and there is statutory authority to enter into the contract,
- e. the contract will not establish an employment relationship between the state or the agency and any persons performing under the contract,
- f. no current state employee will engage in the performance of the contract, unless specifically approved by the Office of Public Affairs; and
- g. the purchase of such services is justified.

D. Any person certifying the information required by subsection C of this section who knows such information to be false, upon conviction, shall be deemed guilty of a misdemeanor and shall be punished by fine or imprisonment or both fine and imprisonment

pursuant to the provisions of Section 85.15 of this title and civilly liable for the amount of the contract.

E. The State Purchasing Director may request any additional information necessary to adequately review the requisitions and the statements required pursuant to subsection C of this section and compliance with the Oklahoma Central Purchasing Act.

F. Upon a determination that an item or product or service is not necessary, is excessive or is not justified, the State Purchasing Director shall deny the requisition.

G. No state agency shall enter into a lease-purchase agreement if title is acquired to tangible property of any class or nature by making lease, rental, or any other type payments, except as specifically authorized by law or by a governing board of regents as to institutions within The Oklahoma State System of Higher Education and except insofar as data processing equipment or other equipment is concerned; provided, however, the lease-purchase of data processing or other equipment by any state agency, whether or not such agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall be processed by competitive bids through the Purchasing Division of the Office of Public Affairs.

H. No state agency shall enter into a lease-purchase contract between the state agency as lessee and a private party as lessor if the contract is not capable of complete performance within the current fiscal year in which the contract was entered into unless a valid nonappropriation clause is included in the contract. Such contracts shall contain the following or substantially similar language:

Lessee shall have the right to terminate this lease, in whole but not in part, at the end of any fiscal year of lessee, if the Legislature fails to allocate sufficient funds to lessee for the rental payments required under this lease.

I. 1. No change order or addendum can be made to a lease-purchase agreement for data processing or other equipment which extends the term or life of the original bid contract. Any lease-purchase agreement requiring such extensions or refinancing shall be readvertised and processed for competitive bids through the Purchasing Division of the Office of Public Affairs.

2. All agencies, whether or not such agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall prepare a list of all tangible personal property which it is acquiring by a lease-purchase method and, prior to the renewal of a lease-purchase agreement, shall evaluate the rate being paid under the current lease-purchase agreement against rates currently being received by the Purchasing Division of the Office of Public Affairs on a competitive bid basis to determine whether or not refinancing of the property will benefit the state. Any agency which elects not to submit a requisition for a possible refinancing when the existing rates are at least one percent (1%) above rates being currently bid, and when the total sum to be paid for the property including principal and interest will be reduced, must submit a written justification to the Purchasing Director stating the reasons for not attempting to refinance the property. The Purchasing Director shall forward all such justifications to the Chairman of the Senate Appropriations Committee and the Chairman of the House Committee on Appropriations and Budget no later than February 1 of each year.

3. Effective July 1, 1990, unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for any single item of real or personal property costing less than Fifty Thousand Dollars (\$50,000.00). Institutions within the Higher Education system shall be exempt from this provision.

4. Effective July 1, 1990, unless otherwise provided by law, the maximum term of a state agency lease-purchase agreement shall be the lesser of the useful life of real or personal property subject

to a lease-purchase agreement as determined by the Purchasing Director within the Office of Public Affairs, or ~~three (3)~~ five (5) years for personal property and ten (10) years for real property, respectively. Institutions within the Higher Education system shall be exempt from this provision.

5. Effective July 1, 1990, unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Authorizations of real property acquisitions granted by the Legislature, unless otherwise exempted by the Legislature, shall be subject to the competitive bid provisions of the Central Purchasing Act. If an agency is authorized to enter into a lease-purchase agreement for real property, the financing of such acquisition, including goods and services deemed desirable for executing a lease-purchase, certificate of participation, or similar agreement or obligation, shall be competitively bid in accordance with the provisions of the Central Purchasing Act. The Director of Purchasing within the Office of Public Affairs shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such bids. Legislative authorization shall constitute legal authorization for this state or its agencies to enter into such lease-purchase agreements. Institutions within the Higher Education system shall be exempt from this provision.

6. The Oklahoma Capitol Improvement Authority is hereby authorized to acquire real and personal property on behalf of state agencies through lease-purchase agreements. The Authority may pledge the income and revenue it receives from re-leasing or subleasing such property for the purpose of paying its obligations under such lease-purchase agreements. The obligations of the Authority under such lease-purchase agreements shall not be debts of the State of Oklahoma nor the Authority but shall be special obligations payable solely from the income and revenue derived from

re-leasing or subleasing such property. Title to all such property shall be held by the Authority.

7. The provisions of paragraphs 3, 4 and 5 of this subsection shall not apply to lease-purchase agreements outstanding as of June 30, 1990.

J. The Purchasing Division of the Office of Public Affairs may permit leasing of products by state agencies if such leasing is determined by the Purchasing Division of the Office of Public Affairs to be in the best interest of the state, provided that such leasing must be processed by competitive bids through the Purchasing Division of the Office of Public Affairs except as to those acquisitions exempt under Section 85.12 of this title.

SECTION 2. This act shall become effective September 1, 1991.

43-1-5458

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