

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2588

By: Williams of the House

and

Smith of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; creating the Oklahoma Surplus Property Act; amending 74 O.S. 1991, Sections 85.9 and 85.9A and Section 1, Chapter 29, O.S.L. 1992 (74 O.S. Supp. 1993, Section 85.9C), which relate to surplus property; defining terms; providing for duties; providing for promulgation of rules; requiring certain reports and lists; requiring certain contents; providing for certain use of program; providing for certain costs; modifying deposits into special cash funds; providing for disposition of certain receipts; requiring compliance; providing for transfer or disposal of property having minimal or no value; requiring lists; specifying contents; authorizing certain disposals; providing for costs; modifying surplus property provisions of Department of Transportation; amending 74 O.S. 1991, Section 85.5, which relates to authority of the State Purchasing Director; modifying powers and duties; requiring Bidder's lists; providing for rules; providing for notification; amending 74 O.S. 1991, Section 107, amending 74 O.S. 1991, Sections 85.2, as amended by Section 6, Chapter 250, O.S.L. 1992, 85.3, as amended by Section 1, Chapter 175, O.S.L. 1993, 85.4, as amended by Section 13, Chapter 327, O.S.L. 1993, 85.5, 85.7, as last amended by Section 1, Chapter 129, O.S.L. 1993, 85.12, as last amended by Section 28 of Enrolled House Bill No. 2299 of the 2nd Session of the 44th Oklahoma Legislature, 85.15, 85.33, 85.40, 85.43 and 89, as amended by Section 1, Chapter 250, O.S.L. 1992 (74 O.S. Supp. 1993, Sections 85.2, 85.3, 85.4, 85.7 and 89), which relate to the Central Purchasing Act; modifying definition of open market contract; requiring Purchasing Division to make purchases according to certain statutory provisions; deleting restriction upon transactions between certain personnel and state governmental entities or between related persons and state governmental entities; authorizing Central Purchasing Director to approve change orders; imposing limitation upon change orders; modifying criminal penalty from misdemeanor to felony; providing for treble damages; modifying terms; expanding transactions for which rules or regulations may be promulgated; modifying amount of contract exempt from competitive bidding procedures; modifying amount of contract for which emergency bidding procedures may be used; authorizing use of competitive sealed proposals for

certain acquisitions; prescribing procedures related thereto; prescribing procedures for entering into contract as a result of competitive sealed proposals; modifying provisions related to sole source contracts; providing procedures upon protest of contract award; authorizing stay of award; prescribing circumstances under which stay not granted; prescribing procedures for issuance of stay; prescribing procedures for protests based upon certain improprieties or defective bid specifications; modifying provision related to exemption from Central Purchasing Act; modifying amount of purchases within such exemption; providing felony penalty upon state employees for direct or indirect participation in certain transactions; providing exception for financial interests based on existence of certain trust; providing for felony penalty for certain false information; providing for felony penalty based upon acquisitions performed in certain manner; providing for felony penalty based upon acquisitions made in violation of certain restriction; providing for felony penalty based upon acquisitions made in violation of small purchase provisions; modifying misdemeanor penalty; providing for felony; increasing penalty amount; increasing authorized period of incarceration for certain offenses; providing for civil liability and treble damages; modifying statutory references to dollar amount of certain contracts; modifying authority of State Purchasing Director to exempt certain purchases from competitive bidding requirements; providing for form and procedures for sole source contracts; specifying content of certain affidavit; modifying provisions related to sole source contracts; providing for forfeiture of position based upon violation of requirement related to sole source contract; modifying dollar amount of contracts subject to listing requirement; modifying definition; providing for codification; providing for recodification; repealing 74 O.S. 1991, Section 85.9B, which relates to certain purchases; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 62.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 7 of this act shall be known and may be cited as the "Oklahoma Surplus Property Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 62.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Surplus Property Act:

1. "Surplus property" means any item, commodity, material, supplies or equipment owned by a state agency and determined by such state agency to be excess, obsolete, antiquated, unused or not needed;

2. "State agency" means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, and the Office of the Governor;

3. "Department" means the Department of Central Services;

4. "Director" means the Director of the Department of Central Services;

5. "Surplus property program" means any program which may be established by the Department of Central Services for the purchase, sale and disposal of surplus property;

6. "Sale" includes but is not limited to authorization for the Director to sell by sealed bids or auction; and

7. "Minimal or no value" means the surplus property having a value less than any costs incurred in the sale, trade or disposal of the property.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 62.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Director shall:

1. Establish written surplus property acquisition and disposal rules for use by all state agencies;

2. Develop minimum standards for proper recordkeeping of surplus property acquisition and disposal for use by all state agencies; and

3. Make recommendations to state agencies on surplus property management programs.

B. Any state agency selling, trading, redistributing or otherwise disposing of surplus property shall comply with the rules promulgated by the Department of Central Services.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 85.9, is amended to read as follows:

Section 85.9 ~~Any~~ A. A state agency may request the Director to sell, trade, redistribute or dispose of surplus property on behalf of such state agency.

B. 1. Except as otherwise provided by this subsection, any state agency which transfers ~~excess, obsolete, antiquated, or unused materials, supplies, or equipment~~ surplus property to the Purchasing Director for sale, trade, or redistribution ~~to other state agencies~~ shall receive full credit for the value thereof as may be arranged between the ~~State Purchasing~~ Director, the state fiscal agencies necessarily involved, and the state agencies so transferring and receiving such ~~materials, supplies, or equipment;~~ and said value, as thus determined surplus property less any fees and charges assessed by the Director for costs incurred in such sale, trade or redistribution. The proceeds from the sale, trade or redistribution of the surplus property shall be credited to a special cash fund created by Section ~~2~~ 5 of this act.

~~The term "sale" as used herein shall include authorization for the purchasing director to sell by sealed bids or auction, and the costs for any auction conducted shall be paid from the proceeds received therefrom~~

2. Any surplus property determined by a state agency to have minimal or no value may be discarded or transferred to the Department pursuant to rules established by the Department.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 85.9A, is amended to read as follows:

Section 85.9A A. There is hereby created a special cash fund in the State Treasury for each state agency, ~~department, board, commission, institution, or authority~~ which requests that the ~~Purchasing~~ Director sell, trade, or ~~distribute~~ redistribute to other state agencies any ~~excess, obsolete, antiquated, or unused material, supplies, or equipment~~ surplus property.

B. All proceeds received from such transaction, and the proceeds of any insurance claim arising from the loss by fire, theft or casualty of insured material, supplies, or equipment shall be deposited in such special cash fund of such ~~subdivision of government~~ state agency and may be expended for the purchase or

replacement of materials, supplies, or equipment of such ~~subdivision of government~~ state agency and for the payment of the cost of conducting any such transaction.

C. Whenever an unencumbered balance exists in said fund after June 30, the close of each fiscal year, such balance shall lapse and be transferred to the General Revenue Fund of the current fiscal year.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 62.6 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. 1. It shall be the duty and responsibility of the chief administrative officer of each state agency, except as otherwise provided by subsection B of this section, to maintain a current list of all surplus property held and disposed of by that state agency.

2. Except as otherwise provided in paragraph 3 of this subsection, such list shall include the location where surplus property is maintained, purchase price, when sold and selling price, if transferred to which agency or entity, and if otherwise disposed of, what manner of disposal.

3. If any surplus property having minimal or no value is transferred to the Department, any such list shall reflect that the surplus property had minimal or no value and was transferred to the Department for disposal.

B. The Department is authorized to sell, trade or redistribute any surplus property having minimal or no value separately or in bulk or may properly dispose of such property as provided by law. Any costs incurred by the Department in the sale, trade, distribution or disposal of any surplus property having minimal or no value in excess of any monies received for such surplus property may be chargeable against the state agency transferring such surplus property to the Department.

C. Such lists shall be available upon request to the Department of Central Services, the State Auditor and Inspector, the Governor or any member of the Legislature.

SECTION 7. AMENDATORY Section 1, Chapter 29, O.S.L. 1992 (74 O.S. Supp. 1993, Section 85.9C), is amended to read as follows:

Section 85.9C A. When the Oklahoma Department of Transportation determines that any equipment or vehicle becomes ~~excess, obsolete, antiquated, unused or otherwise~~ surplus property, the Department of Transportation shall notify the ~~Office of Public Affairs~~ Department of Central Services in writing that such equipment or vehicle is surplus. The notice shall identify:

1. The type, brand or make, and country of manufacture of the equipment or vehicle;
2. The age of the equipment or vehicle including but not limited to mileage;
3. Whether the equipment or vehicle is in good working condition or not;
4. If the equipment or vehicle is not in good working condition, whether it is in repairable condition at reasonable cost;
5. Original cost of the equipment or vehicle; and
6. Present value of the equipment or vehicle, if known.

B. 1. The Department of Transportation shall prepare and maintain Bidder's lists for persons and entities eligible to purchase surplus equipment or vehicles from the Department of Transportation who have registered as buyers pursuant to this subsection.

2. By January 1, 1995, and by January 1 of each year thereafter, the Department of Transportation shall notify the persons and entities specified in this paragraph of the method and procedures for registering with the Department as buyers and for inclusion on the Bidder's lists of the Department. The ~~Office of Public Affairs, with any other notice of surplus property,~~ Department of Transportation shall ~~notify the eligible individuals or entities as provided in subsection C of this section of the availability of the~~ provide such notification surplus property of the Oklahoma Department of Transportation to:

- a. other state agencies,

- b. political subdivisions of the state,
- c. rural fire departments located in this state,
- d. rural water districts located in this state, and
- e. other persons registered as buyers on the Bidder's lists.

3. The Department of Transportation shall promulgate rules for procedures for inclusion on and removal from the Bidder's lists.

C. Prior to any advertised public auction or advertised sealed bids to all individuals and entities eligible ~~for participation in the surplus program to purchase surplus equipment and vehicles from the Department,~~ the Department of Transportation, thirty (30) days prior to the advertised auction date, shall offer, at fair market value, the equipment or vehicles to ~~the individuals or entities~~ registered bidders, in the ~~following~~ order of priority:

- ~~1. Other state agencies;~~
- ~~2. Political subdivisions of the state;~~
- ~~3. Rural fire departments located in this state; and~~
- ~~4. Rural water districts located in this state~~ specified in subsection B of this section.

D. Any equipment or vehicles purchased pursuant to this section shall be made available to the purchaser on the date of purchase.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 85.5, is amended to read as follows:

Section 85.5 Subject to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of Public Affairs, shall have sole and exclusive authority and responsibility for the acquisition of all materials, supplies, equipment, and services acquired, used or consumed by agencies of the state government. The State Purchasing Director, after consultation with the requesting or purchasing agency, shall have authority to determine the particular brand, model, or other specific classification of each item or group of materials, supplies, equipment, or services to be acquired for such use or

consumption, and to draft specifications establishing the requirements for all such leases or purchases under the restrictions provided in the Oklahoma Central Purchasing Act. The Director of Public Affairs shall have authority and responsibility to promulgate rules and regulations governing, providing for, and prescribing:

1. The time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and services covered by the Oklahoma Central Purchasing Act; and

2. Inspection and testing of all supplies, materials, and equipment purchased or leased for use or consumption by state agencies and for analyzing and testing any samples or portions thereof, and the manner of such inspections, tests, and analyses; and

3. The form and the time and manner of submission of any bids submitted for contracts to furnish any of the items or services affected by this act and the manner of opening and accepting the same, subject to restrictions contained in the Oklahoma Central Purchasing Act; and

4. The conditions under which written contracts for such purchases or leases are to be required for the acquisitions affected by the Oklahoma Central Purchasing Act and the conditions under which such acquisitions may be made on an open account basis, subject to restrictions contained in the Oklahoma Central Purchasing Act, and the conditions and manner of negotiating such contracts; and

~~5. The conditions under which surplus, or other unused materials, supplies, or equipment acquired or owned by any state agency may be sold, or traded or transferred to another state agency, or otherwise disposed of and the manner of accomplishing the same; and~~

~~6.~~ The conditions under which purchases or leases may be made by state agencies without use of the procedure required by the Oklahoma Central Purchasing Act, and the form and manner of requests for such authority from the State Purchasing Director; and

~~7.~~ 6. Any preference which may be found feasible to give to items and services produced by state institutions, or within this state, or the United States; and

~~8.~~ 7. Conditions under which any of the rules and regulations herein authorized may be waived, under the restrictions contained in the Oklahoma Central Purchasing Act; and

~~9.~~ 8. The amounts of and deposits on any bond required to be submitted with a bid or contract for the furnishing of items or services affected by the Oklahoma Central Purchasing Act, and the conditions under which such bond shall be required; and

~~10.~~ 9. Such storage and storage facilities as may be necessary to accomplish his responsibilities pursuant to the Oklahoma Central Purchasing Act; and

~~11.~~ 10. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport any supplies, materials or equipment purchased pursuant to the Oklahoma Central Purchasing Act whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any supplies, materials, service, or equipment affected by the Oklahoma Central Purchasing Act; and

~~12.~~ 11. The form of any estimate, order, or other document required to discharge the responsibilities fixed by the provisions of the Oklahoma Central Purchasing Act; and

~~13.~~ 12. Any other matter or practice which is directly related to his responsibilities within the scope of his authority as defined by the provisions of the Oklahoma Central Purchasing Act. The authority delegated by this section to promulgate rules and regulations shall be construed to authorize any act, practice, or requirement for which such regulatory power is delegated, but which is not presently authorized by law.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 107, is amended to read as follows:

Section 107. ~~The Office of Public Affairs~~ Department of Central Services is hereby authorized and empowered to sell and execute oil and gas leases, and other mining leases, on any of the lands of this state under the control of said ~~Office of Public~~

~~Affairs~~ Department of Central Services. Sale of Oklahoma State Capitol lands or parkways or the Executive Mansion lands shall be made upon a basis of a retained royalty of not less than one-eighth (1/8) of all the oil, gas, and other minerals produced therefrom, and such additional cash bonus as may be procured. Such leases shall contain a provision that in the event of the discovery of natural gas, gas shall be furnished free of charge to any state institution located or hereafter located upon the lands covered by said lease, or leases. Said leases shall be sold only after advertisement for a period of three (3) weeks in a legal newspaper published and of general circulation in the county in which said lands are located. The sale shall be made to the highest and best bidder, and all bids for any tract shall be presented to the ~~Office of Public Affairs~~ Department of Central Services in sealed envelopes, and shall all be opened and considered at the same time. Said ~~Office of Public Affairs~~ Department of Central Services shall have the right to reject any and all of said bids and again readvertise said lease, or leases, for sale.

The Director of ~~Public Affairs~~ Department of Central Services is further authorized to make and promulgate such additional rules and regulations as he may deem necessary and for the best interest of the state in facilitating the sale of said leases. The Director may contract with other state agencies to implement the provisions of this section and any expenses charged under such contract may be paid from the proceeds of the lease.

All monies derived from the sale of any and all of said leases, and from any royalties subsequently accruing, after deduction of the amount required to pay necessary and actual expenses of developing the lease, shall be paid into the State Treasury and credited to the General Revenue Fund of the state.

SECTION 10. AMENDATORY 74 O.S. 1991, Section 85.2, as amended by Section 6, Chapter 250, O.S.L 1992 (74 O.S. Supp. 1993, 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

Req. No. L9643Page 10

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 specified by the provisions of Section 89 of this title;

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 ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00); 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 11. AMENDATORY 74 O.S. 1991, Section 85.3, as amended by Section 1, Chapter 175, O.S.L. 1993 (74 O.S. Supp. 1993, Section 85.3), is amended to read as follows:

Section 85.3 A. There is hereby created and established in the Department of Central Services a Purchasing Division, the administrative head of which shall be the Director of Central Purchasing. Said Director shall be hired by the Director of the Department of Central Services. The Director shall be at least twenty-eight (28) years of age, have a thorough knowledge of office practices and buying procedures in volume purchasing, and be a graduate of an accredited college or university with at least five (5) years' experience in commercial or governmental purchasing, or, in lieu of such educational requirement, have at least ten (10) years' experience in commercial or governmental purchasing. Said State Purchasing Division shall include the following employees, and employment of such employees is hereby authorized: one assistant director; one qualified specifications engineer; nineteen or less qualified buyers who shall be experienced for three (3) years, respectively, in the following commodities: food, hardware, textiles, petroleum, office

supplies, building materials, pharmaceutical supplies, automotive equipment, parts and accessories, and any other commodity group found by the Department of Central Services to justify special purchasing attention, and one of whom shall be responsible solely for purchases of products and services of the severely handicapped, as provided in Section 3001 et seq. of this title; one dietitian, who shall have the qualifications required by the State Department of Health; and such other technical and clerical personnel as shall be employed by the Department of Central Services, or hereafter provided by law. All activities of any state agency, department, or institution relating to purchasing shall be under the direction of the Purchasing Division, except such acquisitions as are excluded by the Oklahoma Central Purchasing Act. The provisions of the Oklahoma Central Purchasing Act shall not apply to county government nor to institutions of higher learning. The Purchasing Division shall provide qualified personnel to supervise the purchasing activities of the various agencies, departments, and institutions of the state.

B. Each agency, department, and institution shall designate personnel to coordinate its purchasing functions with the Purchasing Division. The Purchasing Division may, if the needs of an agency, department, or institution are such as to so require, employ, and establish a buyer within such agency, department, or institution. No agency, department, or institution of this state shall have or maintain a purchasing section without the prior approval in writing of the Purchasing Division except those agencies whose acquisitions are exempted in Section 85.12 of this title.

C. The Purchasing Division ~~is encouraged to~~ shall make purchases pursuant to Section 549.1 of Title 57 of the Oklahoma Statutes from industries operated by the State Department of Corrections of items manufactured or offered for sale by said Department of Corrections, and to make all purchases from industries operated and items manufactured and sold in this state, whenever practicable.

~~None of the personnel authorized by this section shall furnish any of the services, materials, supplies, or equipment covered by the Oklahoma Central Purchasing Act, nor shall such personnel be employees, partners, associates, officers, or stockholders in or with any business entity which does, nor shall anyone be employed in any of the positions authorized by this section whose spouse or child owns any stock in any business entity which furnishes any supplies, materials, services, or equipment covered by the Oklahoma Central Purchasing Act, nor shall anyone be employed in any of the positions authorized by this section whose brother, sister, father, mother, aunt, uncle, or other relative within the third degree, whether related by consanguinity or affinity, is engaged in furnishing such supplies, materials, services, or equipment or is interested in any business entity which does, except that such relative, excluding a spouse or child, may own Five Thousand Dollars (\$5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which furnishes such materials, supplies, equipment, and services.~~

SECTION 12. AMENDATORY 74 O.S. 1991, Section 85.4, as amended by Section 13, Chapter 327, O.S.L. 1993 (74 O.S. Supp. 1993, 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 Central Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of Central Services 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 Department of Central Services,

- 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 Department of Central Services,
- 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 Department of Central Services, and
- g. the purchase of such services is justified.

The Central Purchasing Director may approve change orders to decrease the amount of goods and services. Any change to increase the same shall not exceed ten percent (10%) of the original bid amount for all phases or deliveries.

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~~ felony 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 three times 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. 1. 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 Department of Central Services.

2. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to determine the most cost-effective method for obtaining financing for lease-purchase agreements, which may be financed by either negotiated sale or competitive bid. If the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission determine that the lease-purchase of personal or real property should be financed through negotiated sale, the financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, Section 695.1 et seq. Unless said Commissions determine that the sale should be executed on a negotiated basis, such financing shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

3. Regardless of the method of financing, the acquisition price of personal property subject to a lease-purchase agreement shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

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 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 in accordance with the provisions of this act.

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 Department of Central Services 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. Unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for 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. a. 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 Department of Central Services, or three (3) years for personal property and ten (10) years for real property, respectively. Institutions within the Higher Education system shall be exempt from this provision.

b. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to extend the term of a lease-purchase agreement beyond three (3) years for personal property and ten (10) years for real property if the Purchasing Director of the Department of Central Services determines that the useful life of the property exceeds said terms and the Bond Advisor recommends the extension as being in the best interests of the State of Oklahoma.

5. Unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Acquisitions of real property authorized 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 obtained in accordance with the provisions of this act.

The Director of Purchasing within the Department of Central Services shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such financing. 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.

J. The Purchasing Division of the Department of Central Services may permit leasing of products by state agencies if such leasing is determined by the Purchasing Division of the Department of Central Services 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 Department of Central Services except as to those acquisitions exempt under Section 85.12 of this title.

K. 1. In no event shall a state agency enter into a lease-purchase agreement unless that agreement contains the following or similar language:

The State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism. Such approval must be obtained in advance, in writing, from the State Bond Advisor prior to any remarketing.

2. In the event that a remarketing of a lease-purchase agreement is proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such marketing that describes the state's liability under the lease-purchase agreement must be approved in advance, in writing, by the Oklahoma State Bond Advisor.

SECTION 13. AMENDATORY 74 O.S. 1991, Section 85.5, is amended to read as follows:

Section 85.5 Subject to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of ~~Public Affairs~~ the Department of Central

Services, shall have sole and exclusive authority and responsibility for the acquisition of all materials, supplies, equipment, and services acquired, used or consumed by agencies of the state government. The State Purchasing Director, after consultation with the requesting or purchasing agency, shall have authority to determine the particular brand, model, or other specific classification of each item or group of materials, supplies, equipment, or services to be acquired for such use or consumption, and to draft specifications establishing the requirements for all such leases or purchases under the restrictions provided in the Oklahoma Central Purchasing Act. The Director of ~~Public Affairs~~ the Department of Central Services shall have authority and responsibility to promulgate rules and regulations governing, providing for, and prescribing:

1. The time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and services covered by the Oklahoma Central Purchasing Act; and

2. Inspection and testing of all supplies, materials, and equipment purchased or leased for use or consumption by state agencies and for analyzing and testing any samples or portions thereof, and the manner of such inspections, tests, and analyses; and

3. The form and the time and manner of submission of any bids submitted for contracts to furnish any of the items or services affected by this act and the manner of opening and accepting the same, subject to restrictions contained in the Oklahoma Central Purchasing Act; and

4. The conditions under which written contracts for such purchases or leases are to be required for the acquisitions affected by the Oklahoma Central Purchasing Act and the conditions under which such acquisitions may be made on an open account basis, subject to restrictions contained in the Oklahoma Central Purchasing Act, and the conditions and manner of negotiating such contracts; and

5. The conditions under which surplus, or other unused materials, supplies, or equipment acquired or owned by any state

agency may be sold, or traded or transferred to another state agency, or otherwise disposed of and the manner of accomplishing the same; and

6. The conditions under which purchases or leases may be made by state agencies without use of the procedure required by the Oklahoma Central Purchasing Act, and the form and manner of requests for such authority from the State Purchasing Director; and

7. Any preference which may be found feasible to give to items and services produced by state institutions, or within this state, or the United States; and

8. Conditions under which any of the rules and regulations herein authorized may be waived, under the restrictions contained in the Oklahoma Central Purchasing Act; and

9. The amounts of and deposits on any bond required to be submitted with a bid, proposal or contract for the furnishing of items or services or to obtain a stay to delay an award to enjoin the performance of an awarded contract affected by the Oklahoma Central Purchasing Act, and the conditions under which such bond shall be required; and

10. Such storage and storage facilities as may be necessary to accomplish his responsibilities pursuant to the Oklahoma Central Purchasing Act; and

11. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport any supplies, materials or equipment purchased pursuant to the Oklahoma Central Purchasing Act whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any supplies, materials, service, or equipment affected by the Oklahoma Central Purchasing Act; and

12. The form of any estimate, order, or other document required to discharge the responsibilities fixed by the provisions of the Oklahoma Central Purchasing Act; and

13. Any other matter or practice which is directly related to his responsibilities within the scope of his authority as defined by the provisions of the Oklahoma Central Purchasing Act. The

authority delegated by this section to promulgate rules and regulations shall be construed to authorize any act, practice, or requirement for which such regulatory power is delegated, but which is not presently authorized by law.

SECTION 14. AMENDATORY 74 O.S. 1991, Section 85.7, as last amended by Section 1, Chapter 129, O.S.L. 1993 (74 O.S. Supp. 1993, 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 ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) 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 ~~two-thousand-five-hundred-dollar~~ ten-thousand-dollar limit up to, but not to exceed, a contract or purchase price of ten percent (10%) above the open market limit to perfect an otherwise valid acquisition or contract inadvertently exceeding the ~~two-thousand-five-hundred-dollar~~ ten-thousand-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 Department of Central Services 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 ~~Five Thousand Dollars (\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) 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. Competitive bids for services to alleviate a serious environmental emergency shall not be required if, upon the request of the Chairman of the Corporation Commission, the Governor having examined the facts and circumstances of the case, certifies in writing the existence of a serious environmental emergency. A serious environmental emergency for the purpose of this section means a situation within the jurisdiction of the Commission:

- a. in which serious damage to the environment will quickly occur if immediate action is not taken, and the damage will be so significant that the urgent need for action outweighs the public policy strongly favoring competitive bids, or
- b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

5. Competitive sealed proposals may be used for acquisitions pursuant to requests for proposals. Whenever any state agency subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, requisitions the State Purchasing Director for any particular product or service by competitive sealed proposal, the chief administrative officer of such agency shall attach to the requisition an affidavit on a form prescribed by the State Purchasing Director affirming the reasons why the use of

competitive sealed bidding is either not practicable or not advantageous to the state. The affidavit shall also include the signature of such chief administrative officer of the agency witnessed by a notary public affirming that false information provided may subject him to punishment for perjury.

A contract may be entered into resulting from competitive sealed proposals as follows:

- a. the Director of the Department of Central Services may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of goods or services by competitive bidding,
- b. proposals shall be solicited through a request for proposals. Notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding. The request for proposals shall state the relative importance of price and other evaluation factors,
- c. as provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be potentially acceptable for selection for receiving the award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements,
- d. offerors shall be accorded consistent treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, any information derived from proposals submitted by competing offerors shall be deemed confidential information,
- e. proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be

prepared in accordance with the applicable rules and shall be open for public inspection after the contract award,

- f. awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set forth in the request for proposals, and
- g. the contract file shall contain the basis on which the award is made.

6. 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.

~~6.~~ 7. 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.

~~7.~~ 8. 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.

~~8.~~ 9. Purchases of postage by state agencies shall be made in accordance with the provisions of Sections 90.1 through 90.4 of this title.

~~9.~~ ~~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.~~

10. 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.

11. a. any contract for a service for which the Department of Central Services has approved as qualifying for a fixed and uniform rate shall not be subject to competitive bid procedures.
- b. the Department of Central Services 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 Department of Central Services and shall submit any documentation necessary to support such request. The Department of Central Services shall either approve or deny the request. If the Department of Central Services 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 Department of Central Services 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 Department of Central Services a copy of the agenda items concerning the proposed rate with all supporting documentation and materials. The Director of the Department of Central Services 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 Department of Central Services shall specifically note in such written communications if the Director of the Department of Central Services has determined the rate to be excessive. Any such written communication presented in the absence of the Director of the Department of Central Services shall be presented orally during the public hearing. Whether made in person or in writing any comment made by the Director of the Department of Central Services 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 Department of Central Services shall be specifically identified in such list.

f. at any time, the Director of the Department of Central Services is authorized to review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Department of Central Services determines the contract is not necessary, is excessive, or is not justified.

12. Purchases of or contracts for specifically prescribed nonmedical adaptive technology for individuals with disabilities who are clients of vocational rehabilitation and which is prescribed by a physician, rehabilitation engineer, qualified rehabilitation technician or qualified sensory aids specialist shall not be subject to the competitive bid requirements of this section. This paragraph will be subject to the procedure required in paragraph 7 of subsection B of Section 85.12 of this title.

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 Department of Central Services shall assist the governing body of a state retirement system, the Fund

Req. No. L9643Page 29

or the Board in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Department of Central Services 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.7b of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any unsuccessful bidder for a contract to supply goods or services to an agency who protests the award of the contract may request a stay of the award to enjoin the performance of the awarded contract pursuant to the provisions of Article II of the Administrative Procedures Act.

B. The State Purchasing Director shall hear the request for the stay, or at the request of the State Purchasing Director, the Director of the Department of Central Services may submit the question of the stay to an administrative law judge.

C. A stay may be granted if it appears that the unsuccessful bidder has a substantial likelihood of prevailing on the merits of a protest asserting a violation of the provisions of the Oklahoma Central Purchasing Act.

D. A stay shall not be issued if, upon the written determination of the deciding authority, one of the following conditions apply:

1. The goods or services to be contracted for are urgently required;
2. Delivery or performance will be unduly delayed by failure to make an award promptly; or
3. A prompt award is advantageous to the state.

E. A stay shall not become effective unless the protestant files a bond in the amount of five percent (5%) of the amount of the contract or Ten Thousand Dollars (\$10,000.00), whichever is greater, to cover any damage which could be sustained by the state

as a result of the stay. The bond shall be in the form of a cashier's check, a letter of credit or a surety bond.

F. An unsuccessful bidder obtaining a stay of the award of a contract and the successful bidder receiving the award are deemed to be interested parties to the determination of the issues addressed in the stay, and shall therefore be disqualified from bidding on any contract necessitated by the stay.

G. Upon determination by the deciding authority that the protest was without reasonable basis or was frivolous, the unsuccessful protester shall pay costs and attorney fees incurred by the state.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.7c of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Protests based upon alleged improprieties or defective bid specifications in a solicitation for which there is a prebid conference prior to the awarding of the bid must be submitted no later than five (5) working days prior to the closing date of the bid. Failure to assert alleged improprieties or defective bid specifications within the five-day time period shall constitute a waiver of such objections and shall not be a basis for protest after the contract is awarded.

B. In acquisitions where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation by way of evaluations or other measures may be protested as other causes pursuant to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.

C. Any adverse decision may be appealed pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

SECTION 17. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 28 of Enrolled House Bill No. 2299 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. The following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by state educational institutions included within The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees;

4. Acquisitions by The Oklahoma State System of Higher Education on any institution or entity comprising the same insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials and specialized laboratory equipment;

5. Department of Transportation and Transportation Commission contractual services or right-of-way purchases. Contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts, and contracts for public service type announcements initiated by the Department of Transportation. Contractual services as used herein shall not include advertising or public relations services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by an Indian Tribal Council for use by the Department of Corrections only;

7. Acquisition of products and services by the University Hospitals and the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing;

8. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

9. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

10. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

11. Purchases by the Oklahoma Municipal Power Authority;

12. Grand River Dam Authority;

13. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes;

14. Purchases by the Oklahoma Ordnance Works Authority or Midwestern Oklahoma Development Authority, except that the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority shall remain subject to the provisions of Section 85.32 of this title;

15. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when it is determined by its Board of Directors that an emergency exists and for the services of legal counsel when approved by the Attorney General;

16. Contracts entered into by the State Department of Education for the purpose of implementing the provisions of Section 6-156 of Title 70 of the Oklahoma Statutes;

17. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and

State-supported Programs except monies appropriated for the Administrative and Support Functions of the State Department of Education;

18. Contracts entered into by the State Department of Vocational and Technical Education for the development, revision or updating of vocational curriculum materials;

19. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

20. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5009.1 et seq. of this title and Section 5066.4 of this title;

21. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

22. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is on current state contract and the terms of such contract are more favorable to the agency than the terms of a state contract for the same products as determined by the State Purchasing Director;

23. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 3 of the Oklahoma Medicaid Healthcare Options Act;

24. Purchases of products by the Forestry Service of the State Department of Agriculture as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the item is not on current state contract or the terms of such federal contract are more favorable to the agency than the terms of a state contract for the same products;

25. Purchases amounting to less than that requiring competitive bid pursuant to Section 85.7 of this title. The Director of the Department of Central Services shall promulgate rules related to such purchases in excess of Seven Hundred Fifty Dollars (\$750.00) and not exceeding ~~Two Thousand Five Hundred~~

~~Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) to ensure competitiveness and fairness in such purchases; and

26. Purchases or acquisitions of clothing for clients of the Department of Human Services and purchases and acquisitions of food for group homes operated by the Department of Human Services.

C. Notwithstanding the exclusions provided herein, any agency or common schools of Oklahoma, any municipality of the state, any rural fire protection district and county officers may, unless the contract with the state specifies otherwise, avail themselves of the provisions of the Oklahoma Central Purchasing contracts and the services of the Purchasing Director. Provided further, however, that any subdivision of government and any rural fire protection district of the state may designate the office of Oklahoma Central Purchasing as its agent for the purchase or procurement of any item or service contracted or available to the state.

D. Further, notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the Department of Central Services, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority and the Midwestern Oklahoma Development Authority to ensure that said purchasing policies and procedures, as approved, are being followed.

SECTION 18. AMENDATORY 74 O.S. 1991, Section 85.15, is amended to read as follows:

Section 85.15 A. It shall be a felony for any state employee to participate directly or indirectly in a purchase of goods or services for an agency of the state when the employee knows or has reason to believe that:

1. The employee or a spouse, child, parent, sibling or other relative within the third degree, whether related by consanguinity or affinity, of the employee has a financial interest in the purchase of such goods or services;

2. A business or organization in which the employee or a spouse, child, parent, sibling or other relative within the third degree, whether related by consanguinity or affinity, of the employee has a financial interest or is a party to the purchase of such goods or services; or

3. Any other person, business or organization with whom the employee or a spouse, child, parent or sibling of the employee is negotiating or has an arrangement concerning prospective employment is a party to the purchase of such goods or services.

Provided, the provisions of paragraphs 1 and 2 of this subsection shall not apply to an employee for the sole reason that a relative of the employee other than a spouse or a child owns Five Thousand Dollars (\$5,000.00) worth or less, or one percent (1%) or less, whichever is the lesser amount, of the stock of a corporation or any business entity which furnishes goods or services to the state.

B. Where an employee or a spouse, child, parent or sibling of the employee holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with matters pertaining to that financial interest, provided the disclosure of the existence of the blind trust has been made.

C. It shall be a felony for any individual to certify information required by the Central Purchasing Act, Section 85.1 et seq. of this title, when such individual knows or has reason to know that such information is false.

D. It shall be a felony for any individual or business entity to knowingly and willfully participate in any activity which results or is designed to result in an agency acquiring goods or services through separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirements of the Oklahoma Central Purchasing Act.

E. It shall be a felony for an individual or business entity to knowingly and willfully participate in any activity which results or is designed to result in an agency acquiring goods or services through the sole source method of source selection in

violation of any of the requirements or restrictions applicable to sole source acquisitions.

F. It shall be a felony for an individual or business entity to knowingly and willfully participate in any activity which results or is designed to result in an agency acquiring goods or services as a small purchase pursuant to paragraph 1 of subsection A of Section 85.7 of this title in violation of any of the requirements or restrictions of such acquisition.

G. All persons, agents, officers and employees of the state included within the provisions of ~~this act~~ the Central Purchasing Act are required to conform strictly to the provisions of ~~this~~ such act, and any such persons, agents, officers or employees violating any provision of ~~this~~ such act shall be deemed guilty of a ~~misdemeanor~~ felony unless herein otherwise provided, and upon conviction shall be fined not ~~less than One Hundred Dollars (\$100.00) nor~~ more than ~~Five Hundred Dollars (\$500.00)~~ Ten Thousand Dollars (\$10,000.00) or be imprisoned in the ~~county jail~~ State Penitentiary not to exceed ~~six (6) months~~ five (5) years or by both such fine and imprisonment.

H. In addition to the criminal liability provided for in this section, an individual who has violated any provision of the Central Purchasing Act shall be civilly liable for three times the amount of the contract or purchase involved plus court costs and attorneys fees. It shall not be necessary for an individual to be convicted of a crime for the state to recover in a civil action.

SECTION 19. AMENDATORY 74 O.S. 1991, Section 85.33, is amended to read as follows:

Section 85.33 A. There is hereby created in the State Treasury a revolving fund for the ~~Office of Public Affairs~~ Department of Central Services to be designated the "Registration of State Vendors Revolving Fund". The fund shall consist of any monies received from fees collected in accordance with subsection B of this section. The revolving fund shall be a continuing fund, without legislative appropriation, not subject to fiscal year limitations, and shall be under the control and management of the ~~Office of Public Affairs~~ Department of Central Services.

Expenditures from the Registration of State Vendors Revolving Fund shall be budgeted and expended pursuant to the laws of the state and the statutes relating to public finance. The fund shall be used to defray the costs of the Purchasing Division for commodity research, classification, and analysis. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the ~~Office~~ Department, and approved for payment by the Director of State Finance.

B. The ~~Office of Public Affairs~~ Department of Central Services may designate the amount of and collect a fee, not to exceed Ten Dollars (\$10.00), to register vendors that desire to do business with the State of Oklahoma through the Purchasing Division of the ~~Office~~ Department. The vendors must register separately for each commodity list. Each designated fee entitles the vendor to be on that list for one (1) year, to receive all bid notices from the Central Purchasing Division of the Department in that classification for that period, and to receive one copy of the State's Commodity Classification Manual when published. All fees collected in accordance with this section shall be deposited in the revolving fund created in subsection A of this section.

SECTION 20. AMENDATORY 74 O.S. 1991, 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 ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) or less. If the total contract amount including travel expenses ~~exceed~~ exceeds ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00), 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~~ this title.

SECTION 21. AMENDATORY 74 O.S. 1991, Section 85.43, is amended to read as follows:

Section 85.43 A. Each chief administrative officer of an agency, whether or not such agency is subject to the Oklahoma Central Purchasing Act, shall be required to prepare within ten (10) calendar days, after a legislative session commences, a report listing the following contracts over ~~Seven Hundred Fifty Dollars (\$750.00)~~ Ten Thousand Dollars (\$10,000.00) entered into by the agency for the preceding fiscal year:

1. Open market contracts;
2. Professional services contracts;
3. Nonprofessional services contracts; and
4. Contracts for the leasing of property including real

property contracts and any lease agreements for products or equipment.

B. The report shall contain:

1. The name of the vendor or service provider;
2. A description of service or item;
3. The total amount of the contract; and
4. The total amount expended to date for the preceding fiscal

year.

C. The report shall specifically identify sole source contracts.

D. This report shall be submitted to the Legislative Service Bureau and the ~~Office of Public Affairs~~ Department of Central Services if requested by the Legislative Service Bureau or the ~~Office of Public Affairs~~ Department of Central Services. In addition, the report shall be submitted to any member of the House or Senate Appropriation Committee if requested by such member.

SECTION 22. AMENDATORY 74 O.S. 1991, Section 89, as amended by Section 1, Chapter 250, O.S.L. 1992 (74 O.S. Supp. 1993, Section 89), is amended to read as follows:

Section 89. A. 1. Pursuant to the provisions of this section, the State Purchasing Director ~~shall~~ may exempt from

competitive bidding procedures a requisition for a sole source contract requested by a state agency subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, only if in the opinion of the State Purchasing Director it would be in the best interest of the state.

2. Whenever any state agency subject to the Oklahoma Central Purchasing Act requisitions the Purchasing Director for any particular product or service by sole source contract the chief administrative officer of such agency shall attach to the requisition an affidavit on a form prescribed by the State Purchasing Director which shall include the name of the agency, the name of the service provider/vendor, address and phone number, affirmation that the services or products to be purchased are specialized or great expertise is needed, affirmation that the service provider/vendor is the only person or business entity singularly qualified to provide such services or products, or if the product is the only brand name which is singularly and peculiarly unique, the reasons that is true. The affidavit shall also include, unless exempted as provided in subsection A of this section, affirmation that bids were solicited according to Section 85.7 of this title to determine if the services or products could only be procured by sole source contract, and the signature of such chief administrative officer of the agency witnessed by a notary public affirming that false information provided may subject him to punishment for perjury. ~~signed by such chief administrative officer, in the following form:~~

~~SOLE SOURCE~~

~~AFFIDAVIT~~

~~AGENCY _____~~

~~SERVICE PROVIDER/VENDOR _____~~

~~ADDRESS _____~~

~~PHONE _____~~

~~I hereby affirm that the services or products to be purchased pursuant to the provisions of the attached contract are very specialized or for which great acquired expertise is needed and to the best of my knowledge~~

~~(Name of Service Provider/Vendor)~~

~~is the only person or business entity which is singularly and peculiarly qualified to provide such services or products, and if a product is the only brand name which is singularly and peculiarly unique, for the following reasons:~~

~~_____

_____~~

~~The following is a brief description of all efforts, if any, which were made to solicit bids for the services or products to be purchased pursuant to the provisions of the attached contract:~~

~~_____

_____~~

~~I understand that the signing of this affidavit knowing such information to be false may subject me to punishment for perjury.~~

~~_____

(Chief administrative officer)~~

~~STATE OF OKLAHOMA)~~

~~) ss.~~

~~COUNTY OF OKLAHOMA)~~

~~Subscribed and sworn to before me this ___ day of ___, 19__.~~

~~_____

Notary Public~~

~~My Commission expires:~~

~~_____
_____~~

3. A court order requiring the purchase of certain products or services but which does not specify specific vendors or providers shall not constitute an affidavit nor be acceptable as a substitute for the affidavit required by this subsection or otherwise invalidate the competitive bidding procedures required pursuant to Section 85.7 of this title.

4. Any chief administrative officer of an agency affirming the affidavit required by this subsection who knows such information to be false shall be deemed guilty of perjury and upon conviction shall be punished by fine or by imprisonment or both fine and imprisonment pursuant to law. Any person convicted pursuant to this paragraph shall immediately forfeit the person's position and shall be ineligible for appointment to or employment in a position of state service for a period of five (5) years after the conviction.

5. Upon a determination by the Director of the Department of Central Services that there are reasonable grounds to believe that a violation of this subsection has occurred, the Director shall request the Attorney General to initiate criminal proceedings in district court.

6. The State Purchasing Director shall either approve or deny any requisition for a sole source contract.

B. Until July 1, 1993:

1. The chief administrative officer of each state agency subject to the Oklahoma Central Purchasing Act shall submit to the Speaker of the House of Representatives, President Pro Tempore of the Senate and the Chairmen of the House and Senate Appropriations Committees a listing of all sole source contracts executed or disapproved in the preceding month. The report shall identify the vendor or service provider, description of service or products, the contract amount and whether the contract was approved or disapproved or modified.

2. The Department of Central Services shall send to all members of the House and Senate Appropriations Committees, a copy of each sole source contract approved or rejected by the Department within thirty (30) days of acceptance or rejection of such contract if requested by such member.

C. Until July 1, 1993, the chief administrative officer of each state agency not subject to the Oklahoma Central Purchasing Act shall initiate procedures for:

1. Differentiating sole source contracts from competitively bid contracts; and

2. Classifying purchases of services and products pursuant to commodity classification listing at item level based on the Integrated Central System Purchasing Module.

D. Effective July 1, 1993:

1. The chief administrative officer of each state agency subject to the Oklahoma Central Purchasing Act shall submit to the State Purchasing Director a monthly listing of all sole source contracts exceeding ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) executed by the state agency in the preceding month. The report shall also contain information regarding requisitions for sole source contracts that were disapproved or modified by the State Purchasing Director and such other information required by the State Purchasing Director.

2. The State Purchasing Director shall electronically provide to the Office of State Finance the information received pursuant to this subsection in machine-readable format and in such form as is required by the Office of State Finance.

E. Effective July 1, 1993, the chief administrative officer of each agency not subject to the Oklahoma Central Purchasing Act shall submit to the Office of State Finance a monthly listing of all sole source contracts exceeding ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) executed by the agency in the preceding month and such additional information and in such form as is required by the Office of State Finance.

F. Effective July 1, 1993:

1. By the fifteenth day of each month, or the first working day thereafter, the Office of State Finance shall provide a report from the information received pursuant to this section to:

- a. the Speaker of the House of Representatives and the President Pro Tempore of the Senate,
- b. the Majority and Minority Leaders of both the House of Representatives and the Senate,
- c. the Chairmen and Vice Chairmen of the Appropriations Committees of both the House of Representatives and the Senate,

- d. the Chairmen and Vice Chairmen of each subcommittee for the Appropriations Committees in both the House of Representatives and the Senate, and
- e. any member of the Legislature requesting such report.

The report shall detail all sole source contracting activity by state agencies for the month prior to the month preceding the submission of the report. The report shall be titled "Monthly Sole Source Contracting Report of Oklahoma State Agencies" and reflect the period covered in the report. The report shall be signed by the Director of State Finance or his designee. The report shall be in columnar database format and shall include at least the following fields of information: agency number; agency name; date created by the Department of Central Services for the requisition; date of either approval or disapproval of the requisition; estimated amount of the requisition; purchase order amount; purchase order number; actual business name of vendor; vendor federal employer identification number; contact person; and the commodity classification listing at the item level. Information required by this subsection shall be reported and maintained on each report through the next reporting period after a contract is awarded. The applicable data in the fields of information specified in this subsection shall be required to be listed even if the agency requisition is disapproved.

2. The Office of State Finance shall maintain electronic historic data or any other said data received pursuant to this section for at least two (2) years.

3. By August 15 of each year from the data received pursuant to this section, the Office of State Finance shall complete and submit a report detailing the number of sole source contracts issued by each state agency and a list of the business names of the vendors who received sole source contracts during the previous fiscal year and if more than one such contract, the number of contracts so executed.

G. For purposes of this section:

1. "State agency" or "agency" includes any office, officer, department, bureau, board, authority, council, court, commission, institution, unit, or division of each branch of state government, whether elected or appointed, excluding only municipalities, counties, school districts and any other local governmental subdivision of the state; and

2. "Sole source contract" means:

- a. for state agencies subject to the Oklahoma Central Purchasing Act, a contract for a particular service or item which by the specifications for the item or qualifications needed by an agency, as determined by competitive bidding as required by Section 85.7 of this title, restricts the bidders to one person, to one business entity or to one brand name or for which the requirement for competitive bidding has been waived by the State Purchasing Director pursuant to subsection A of this section, and
- b. for state agencies that are not subject to the Oklahoma Central Purchasing Act, a contract for which competitive bids are not or have not been taken.

SECTION 23. RECODIFICATION 74 O.S. 1991, Sections 85.9 and 85.9A, as amended by Sections 4 and 5 of this act, shall be recodified as Sections 62.4 and 62.5 of Title 74 of the Oklahoma Statutes, unless there is created a duplication in numbering. Section 1, Chapter 29, O.S.L. 1992 (74 O.S. Supp. 1993, Section 85.9C), as last amended by Section 7 of this act, shall be recodified as Section 62.7 of Title 74 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 24. REPEALER 74 O.S. 1991, Section 85.9B, is hereby repealed.

SECTION 25. This act shall become effective July 1, 1994.

SECTION 26. 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.

44-2-L9643 KSM