

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 484

By: Mickle of the Senate

and

Williams of the House

COMMITTEE SUBSTITUTE

An Act relating to state government; amending 74 O.S. 1991, Section 85.7, as amended by Section 19, Chapter 373, O.S.L. 1992 (74 O.S. Supp. 1992, Section 85.7), which relates to competitive bid procedures; removing exemption for sole source contracts from competitive bidding procedures; amending 74 O.S. 1991, Section 89, as amended by Section 1, Chapter 250, O.S.L. 1992 (74 O.S. Supp. 1992, Section 89), which relates to requisitions for sole source contracts; requiring certain contracts to be competitively bid; authorizing exemption of sole source contracts from competitive bidding; providing procedure; providing for contents of sole source affidavit; deleting form; correcting references to the Oklahoma Central Purchasing Act; modifying definition; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 85.7, as amended by Section 19, Chapter 373, O.S.L. 1992 (74 O.S. Supp. 1992, 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) 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 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 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) 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. 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. 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, Section 85.1 et seq. of this title.

7. 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. 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.~~ 10. 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.

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

Section 89. A. 1. Pursuant to the provisions of this section, the ~~State Purchasing Director shall~~ Director of Central Services 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 only if in his opinion it would be in the best interests of the state.

2. Whenever any state agency subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, 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 service 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.

5. Upon a determination by the Director 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~~ Director of Central Services 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 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) 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) 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 Director of Central Services 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 3. 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.

44-1-9566

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