

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1650

By: Greenwood

AS INTRODUCED

An Act relating to the Oklahoma Medical Center; amending 56 O.S. 1991, Section 413, which relates to certain powers and duties; prohibiting remuneration; making certain purchases subject to Central Purchasing Act; amending 74 O.S. 1991, Section 85.7, as amended by Section 19, Chapter 373, O.S.L. 1992, and 85.12, as last amended by Section 1, Chapter 246, O.S.L. 1992 (74 O.S. Supp. 1992, Sections 85.7 and 85.12), which relate to the Central Purchasing Act; removing certain exemptions; authorizing certain purchases; amending 74 O.S. 1991, Section 4241, as amended by Section 37 of House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature (74 O.S. Supp. 1992, Section 4241), which relates to prohibiting certain compensation; providing exceptions; amending 74 O.S. 1991, Section 4243, which relates to prohibitions for agencies; requiring certain contract provisions; providing for content; prohibiting certain type contracts; providing for violations; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 413, is amended to read as follows:

Section 413. A. The Oklahoma Medical Center, under the direction of the Oklahoma Commission for Human Services, shall have the authority to:

1. Enter into agreements with other health care providers to share services or to provide a tangible benefit to the Hospitals, and into other cooperative ventures;
2. Join or sponsor membership in organizations or associations intended to benefit the Hospitals;
3. Enter into partnerships;
4. Have members of its governing authority or its officers or administrators serve without ~~pay~~ remuneration either directly or indirectly, in cash or in kind, as directors or officers of any such venture, organization, or partnership; and
5. Offer, directly or indirectly, products and services of the Hospitals or any such venture, organization, or partnership to the general public.

B. All agreements and obligations undertaken, as permitted under this section, by the Oklahoma Medical Center shall be for a public purpose. In addition, the following conditions shall apply to contractual agreements entered into under this authority:

1. Private and public funds shall be accounted for separately;
2. The state does not assume any liability for private entities;
3. The commercial ventures or enterprises with which the Oklahoma Medical Center ~~establish~~ establishes a contractual relationship pursuant to this act must have a public or quasi-governmental purpose; and

4. The authority granted herein shall not authorize without further legislative approval, entry into a contract for lease or management of the Oklahoma Medical Center.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 413.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided by law, the Oklahoma Medical Center shall purchase products pursuant to the Central Purchasing Act.

SECTION 3. 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,~~ Emergency purchases or acquisitions of human organs and internal prostheses, laboratory supplies, medical supplies, pharmaceuticals and human organs shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

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. 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 4. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 1, Chapter 246, O.S.L. 1992 (74 O.S. Supp. 1992, Section 85.12), 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, Section 85.1 et seq. of this title:

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. Purchases of products by Oklahoma Medical Center. The Commission for Human Services shall develop standards for the purchase of products and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and include appropriate safeguards to assure appropriate competition and economical and efficient purchasing;~~

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

~~9.~~ 8. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

~~10.~~ 9. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

~~11.~~ 10. Purchases by the Oklahoma Municipal Power Authority;

~~12.~~ 11. Grand River Dam Authority;

~~13.~~ 12. 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.~~ 13. 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.~~ 14. 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.~~ 15. 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.~~ 16. 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.~~ 17. Contracts entered into by the State Department of Vocational and Technical Education for the development, revision or updating of vocational curriculum materials;

~~19.~~ 18. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

~~20.~~ 19. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5009.1 et seq. of this title and Section ~~5~~ 5066.4 of this ~~act~~ title;

~~21.~~ 20. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

~~22.~~ 21. 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.~~ 22. 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; and

~~24.~~ 23. Purchases amounting to less than that requiring competitive bid pursuant to Section 85.7 of this title. The Director of ~~Public Affairs~~ 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) to ensure competitiveness and fairness in such purchases.

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 and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the ~~Office of Public Affairs~~ Department of Central Services, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority to assure that said purchasing policies and procedures, as approved by him, are being followed.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 4241, as amended by Section 37 of House Joint Resolution No. 1077 of the 2nd

Session of the 43rd Oklahoma Legislature (74 O.S. Supp. 1992, Section 4241), is amended to read as follows:

Section 4241. A. No state employee shall:

1. Directly or indirectly solicit or accept any compensation, gift, loan, entertainment, favor or service given for the purpose of influencing such employee in the discharge of his official duties. Provided, however, that this section shall not apply to bona fide campaign contributions;

2. Use his official position to solicit or secure special privileges or exemptions for himself or others, except as may be provided by law;

3. Disclose or offer to disclose confidential information acquired by reason of his official position to any person, group or others not entitled to receive such confidential information, nor shall he use such information for his personal gain or benefit;

4. Sell, offer to sell or cause to be sold, either as an individual or through any business enterprise in which he holds a substantial financial interest, goods or services to any state agency or to any business entity licensed by or regulated by the state governmental entity which the officer or employee serves, except as provided in Section 4243 of this title;

5. Receive or solicit any compensation from any source that would tend to impair his independence of judgment, for his services as an officer or employee of any state agency, or be paid any compensation directly or indirectly, in cash or in kind from any agency, from any source with which the individual has authority to effectuate and award contracts or influence the award of contracts or purchase orders. Exceptions to this paragraph are officers or employees of state agencies who do not have authority to effectuate the award of contracts or influence the award of contracts or purchase orders between state agencies, and such compensation is not

received from any source other than the state, unless otherwise provided by law; or

6. Accept or solicit other employment which would impair his independence of judgment in the performance of his public duties.

B. No candidate for state office, state officer or state employee shall, directly or indirectly ask or receive or promise to receive anything of value or campaign contributions for agreeing to appoint, appointing or procuring the appointment of another person to any state office or agreeing to employ, employing or procuring the employment of another person in any position as a state employee.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 4243, is amended to read as follows:

Section 4243. A. No state agency shall:

1. Enter into any contract with an employee of the agency, or with a business in which an employee holds a substantial financial interest, unless the contract is made after public notice by the agency and compliance with competitive bidding procedures. This paragraph shall not apply to a contract of employment with the state;

2. Enter into a contract with or make any ruling or take any action in favor of any person or business which is represented before such agency by a former state employee who, while a state employee, participated substantially in the particular matter before the agency; or

3. Purchase any real property from any employee of said state agency or from any person who within eighteen (18) months prior to such purchase held such position with the state government, unless the property is acquired either by condemnation proceedings or the price to be paid for such property is approved in writing by the appointing authority of the agency acquiring such property and by the Governor.

B. 1. The Department of Human Services is authorized to contract with qualified former state employees, or the spouses of state employees, or other relatives of state employees, for the purpose of providing direct care or treatment services to clients of the Department who are mentally retarded or have other developmental disabilities or are delinquent, children in need of supervision, or in need of treatment, or deprived. Provided, however, that rates of payment and other terms and conditions of contracts entered into pursuant to this section shall be established by the Commission for Human Services and shall be no more favorable than contracts for such services with persons who were not employed by the Department of Human Services nor related to an individual employed by the Department of Human Services.

2. A state employee terminating state employment to provide direct care or treatment services to clients of the Department who are mentally retarded or have developmental disabilities, are delinquent, children in need of supervision, or in need of treatment, or deprived may not return to state employment for a period of one hundred eighty (180) days after date of termination from contracts with the Department of Human Services for direct care or treatment services to clients of the Department who are mentally retarded or have developmental disabilities or are delinquent, children in need of supervision, or in need of treatment, or deprived.

C. ~~Notwithstanding provisions to the contrary, the~~ The Department of Human Services is authorized to employ or contract with personnel of the University of Oklahoma Health Sciences Center, directly or indirectly, to obtain professional services for the Oklahoma Medical Center or clients of other programs administered by the Department of Human Services, provided that any such contract for professional services for physicians or dentists shall contain a position description for the services required which shall define

all duties, responsibilities and the amount of time for which such services are contracted. Contracts for professional services of physicians and dentists and contracts for other professional and nonprofessional services shall not be combined or contained in a single or master contract. Contracts for nonprofessional services executed pursuant to this subsection shall comply with and be subject to the provisions of the Central Purchasing Act. Any contract executed for professional services of physicians and dentists and also providing for other professional and nonprofessional services shall be construed to be a violation of the provisions of Section 85.44 of this title.

D. ~~Notwithstanding provisions to the contrary, the~~ The Department of Human Services is authorized to contract with qualified state employees, or the spouses of state employees, or other relatives of state employees, for the purpose of providing foster care, respite care, and attendant services to children in the custody of the Department.

SECTION 7. This act shall become effective July 1, 1993.

SECTION 8. 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.

44-1-5635

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