

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2337

By: Rhoads (Karroll)

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 1991, Sections 85.4, as amended by Section 13, Chapter 327, O.S.L. 1993 and 85.12, as last amended by Section 8, Chapter 336, O.S.L. 1993 (74 O.S. Supp. 1993, Section 85.4 and 85.12), which relate to the Oklahoma Central Purchasing Act; including higher education in the Oklahoma Central Purchasing Act unless otherwise prohibited; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 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.

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

punished by fine or imprisonment or both fine and imprisonment pursuant to the provisions of Section 85.15 of this title and civilly liable for the amount of the contract.

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

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

G. 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~~ Unless prohibited by the Oklahoma Constitution, institutions within the Higher Education system shall not 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~~ Unless prohibited by the Oklahoma Constitution, institutions within the Higher Education system shall not 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~~ Unless prohibited by the Oklahoma Constitution, institutions within the Higher Education system shall not 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 2. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 8, Chapter 336, O.S.L. 1993 (74 O.S. Supp. 1993, 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:

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. 3. 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.~~ 4. 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.~~ 5. 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.~~ 6. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

~~9.~~ 7. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

~~10.~~ 8. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

~~11.~~ 9. Purchases by the Oklahoma Municipal Power Authority;

~~12.~~ 10. Grand River Dam Authority;

~~13.~~ 11. 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.~~ 12. 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.~~ 13. 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.~~ 14. 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.~~ 15. 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.~~ 16. Contracts entered into by the State Department of Vocational and Technical Education for the development, revision or updating of vocational curriculum materials;

~~19.~~ 17. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

~~20.~~ 18. 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.~~ 19. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

~~22.~~ 20. 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.~~ 21. 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.~~ 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;

~~25.~~ 23. Purchases amounting to less than that requiring competitive bid pursuant to Section 85.7 of this title. The Director 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) to ensure competitiveness and fairness in such purchases; and

~~26.~~ 24. 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. Beginning July 1, 1994, the following acquisitions shall be included within the purview of the Oklahoma Central Purchasing Act unless otherwise prohibited by the Oklahoma Constitution:

1. 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; and

2. 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.

D. 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.~~ E. 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 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 3. This act shall become effective July 1, 1994.

SECTION 4. 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.

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