

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 622
the Senate

By: Dickerson and Rozell of

and

Steidley of the House

An Act relating to state government; amending 74 O.S.
1991, Sections 3001, as amended by Section 1,
Chapter 110, O.S.L. 1994, 3003, 3004, Section 2,
Chapter 175, O.S.L. 1993, 3006, 3007, 3008, 3009
and 3010 (74 O.S. Supp. 1994, Sections 3001 and
3004.1), which relate to the Committee on Purchases
of Products and Services of the Severely
Handicapped; renaming the Committee; * * * and
declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"(state government - amending 10 sections in Title 74 -
Committee on Purchases of Products and Services of the
Severely Handicapped - competitive bids - emergency)

SECTION 1. AMENDATORY 74 O.S. 1991, Section 3001, as
amended by Section 1, Chapter 110, O.S.L. 1994 (74 O.S. Supp. 1994,
Section 3001), is amended to read as follows:

Section 3001. A. There is hereby re-created, to continue until July 1, 2000, in accordance with the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of this title, in the Department of Central Services a committee to be known as the ~~"Committee on Purchases of Products and Services of the Severely Handicapped"~~ which shall serve as successor to the ~~Committee on Purchases of Blind-made Products and Services created by Section 103 of Title 7 of the Oklahoma Statutes~~ "State Use Committee". The Committee shall consist of five (5) members and one ~~ex officio~~ nonvoting member as follows:

1. A private citizen conversant with the ~~problems incident to the employment of the severely handicapped~~ employment needs of people with severe disabilities who shall be appointed by and serve at the pleasure of the Governor to act as an advocate for the employment needs of people with severe disabilities;

2. The State Purchasing Director or designee;

3. The Director of Visual Services, or ~~his~~ designee;

4. The past president of Oklahoma Community-Based Providers or designee to serve for a one-year period, who may be reappointed by the succeeding president;

5. ~~A private citizen who is handicapped~~ An individual or a parent or guardian of an individual with severe disabilities who participates in vocational programming through a sheltered environment facility, to be selected by the Committee; and

6. ~~A~~ As a nonvoting member, a person employed by the Department of Central Services as ~~not less than~~ a qualified buyer in the purchasing division, appointed by the State Purchasing Director and designated as a ~~"Buyer of Products and Services of the Severely Handicapped"~~ to serve as an ex officio nonvoting member of the Committee specifically to solicit, develop, and negotiate contracts with agencies and individuals and who is certified by the Committee.

B. The Committee shall elect from among its membership a Chair and a ~~Secretary~~ Vice Chair who shall both serve for a period of one (1) year.

C. The private citizens on the Committee shall serve for a period of ~~three (3)~~ two (2) years and may be reappointed by the appointing authority. Any private citizen appointed pursuant to this section to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term.

D. The long-term benefits derived for people with severe disabilities and for this state through their employment pursuant to the State Employees Disability Program Act, Section 1331 et seq. of this title, shall be the basis of all decisions made by the Committee members.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 3003, is amended to read as follows:

Section 3003. As used in this act:

1. "Blind person" means a person having a visual acuity not to exceed 20/200 in the better eye, with correcting lenses, or visual acuity greater than 20/200 but with limitation in the field of vision such that the widest diameter of visual field subtends an angle no greater than twenty (20) degrees;

2. "Committee" means the ~~Committee on Purchases of Products and Services of the Severely Handicapped~~ State Use Committee;

3. "Qualified nonprofit agency for the severely handicapped" means a nonprofit agency which is certified as a sheltered workshop by the wage and hour division of the Department of Labor and employing severely handicapped disabled persons who constitute at least seventy-five percent (75%) of the personnel engaged in direct production of products or services offered by the agency for procurement by this state; and

4. "Severely ~~handicapped~~ disabled person" means an individual ~~under~~ with a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and includes any blind person.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 3004, is amended to read as follows:

Section 3004. The Committee shall designate by ~~regulation~~ rule a schedule, hereinafter referred to as the procurement schedule, of the products directly manufactured, produced, processed or assembled or services directly performed, offered or provided by any severely ~~handicapped~~ disabled person or qualified nonprofit agency for the severely ~~handicapped~~ disabled, as defined by this act, which the Committee determines are suitable for procurement by the state. No state agency shall purchase products or services purporting to be made by severely disabled persons in workshops which are not certified by the Committee or by severely disabled individuals who are not certified by the Committee. Contracts will be retained from year to year as long as the contracts are maintained with good quantity and are at the fair market price.

SECTION 4. AMENDATORY Section 2, Chapter 175, O.S.L. 1993 (74 O.S. Supp. 1994, Section 3004.1), is amended to read as follows:

Section 3004.1 One percent (1%) of any contract for products or services of the severely ~~handicapped~~ disabled shall be withheld by the Office of State Finance as paid and deposited in the Purchases of Products and Services of the Severely Handicapped Revolving Fund, as created in Section ~~3 of this act~~ 3004.2 of this title, for the salary and other administrative costs of the buyer in the Purchasing Division of the Department of Central Services responsible for such contracts.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 3006, is amended to read as follows:

Section 3006. The Committee may designate a central nonprofit agency to facilitate the distribution of orders of the state for products or services on the procurement schedule among qualified nonprofit agencies for ~~the severely handicapped~~ people with severe disabilities.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 3007, is amended to read as follows:

Section 3007. A. Whenever the State of Oklahoma or any of its agencies intends to procure any product or service included in the procurement schedule, that entity shall secure the product or service from a ~~severely handicapped person or a~~ qualified nonprofit agency ~~for the severely handicapped~~ providing employment to people with severe disabilities at the fair market price determined by the Committee if the product or service is available within the period required by the entity.

B. An agency of this state shall not evade the intent and meaning of this section by slight variations from standards adopted by the ~~Office of Public Affairs~~ Committee or circumvent the fair market value of commodities or services by soliciting prices from other vendors or other state agencies after the Committee has approved the price.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 3008, is amended to read as follows:

Section 3008. Nothing in Sections 3001 et seq. of this title pursuant to purchases of products and services ~~of the severely handicapped~~ from people with severe disabilities shall be construed to prohibit any department or agency of the ~~State of Oklahoma~~ state from manufacturing or supplying its own products or services for its own use. Procurements made pursuant to this act shall not be

subject to the competitive bid requirements of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 3009, is amended to read as follows:

Section 3009. A. ~~The Committee on Purchases of Products and Services of the Severely Handicapped~~ State Use Committee shall prescribe rules ~~and regulations~~ to carry out the purposes of the provisions of Sections 3001 through 3009 of this title.

B. The rules shall include requirements for:

1. Publishing a ~~list of~~ catalog listing goods and services and jobs that workshops can ~~do for~~ provide the state, annually;

2. Conducting a minimum of six ~~(6)~~ meetings per year, in compliance with the Oklahoma Open Meeting Law Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes;

3. Making available to contractors the minutes of all meetings;

4. Notifying contractors at least ten (10) days prior to meeting dates. Meetings shall be called by the Committee ~~Chairman~~ Chair; and

5. Establishing guidelines by which a vendor may file a grievance.

C. The Committee shall report any violations of the intent of the laws to the Attorney General's office within thirty (30) days of their determination of such violations.

D. The Committee shall file an Annual Report within ~~thirty (30)~~ sixty (60) days after the close of the legislative year with the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 3010, is amended to read as follows:

Section 3010. Any municipality or county agency of this state is authorized to purchase products and services from any qualified nonprofit agency ~~for the severely handicapped~~ providing employment

to persons with severe disabilities which is certified as a sheltered workshop by the Wage and Hour Division of the United States Department of Labor. Procurements made pursuant to the provisions of this section shall not be subject to competitive bid requirements. To participate, a qualified nonprofit agency for the severely ~~handicapped~~ disabled must be able to meet the needs and specifications for the products or services required by the purchasing body at a fair market price.

SECTION 10. AMENDATORY 74 O.S. 1991, Section 85.7, as last amended by Section 31 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, 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 giving 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.

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.

12. Purchases of or contracts for specifically prescribed nonmedical adaptive technology-related items for individuals with disabilities who are clients of the Department of Rehabilitation Services and which ~~item is~~ are prescribed by a physician, rehabilitation engineer, qualified rehabilitation technician, speech therapist, speech pathologist, occupational therapist, physical therapist or qualified sensory aids specialist shall not be subject to the competitive bid requirements of this section. The Commission for Rehabilitation Services shall develop standards for the ~~acquisition~~ purchase of such ~~nonmedical adaptive technology-related items~~ goods 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.

13. Purchases of or contracts for specifically prescribed nonmedical assistive technology-related items not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) for individuals under sixteen (16) years of age who are recipients of Supplemental Security Income and which are prescribed by a physician, qualified sensory aids specialists or qualified special education instructors shall not be subject to the competitive bid requirements. The

Department of Human Services shall develop standards for the acquisition of such nonmedical assistive technology-related items 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.

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.

E. Except as otherwise specifically provided by law, the acquisition of food items or food products by a state public agency from a public trust created pursuant to Sections 176 through 180.56 of Title 60 of the Oklahoma Statutes shall comply with competitive bidding procedures pursuant to the provisions of this section.

SECTION 11. 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."

Passed the House of Representatives the 24th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate