

ENGROSSED SENATE AMENDMENT  
TO  
ENGROSSED HOUSE BILL NO. 2147

By: McCorkell of the House

and

Dickerson of the Senate

An Act relating to state government; creating the Procurement Procedures Act; \* \* \* providing for competitive sealed bidding, an invitation to bid, notice, opening of the bid, public inspection, evaluation of bid, correction, withdrawal or cancellation of a bid, certain changes in bids or certain provisions, submission of unpriced offers, and awarding the contract; providing for competitive sealed proposals, rules, request for proposals, notice, content, discussions for clarification, revisions, confidentiality, opening of proposals, register of proposals, public inspection, awarding of contract, and contract file content; providing for sole source selection and related rule requirements including affidavits, records and reports about such contracts; \* \* \* providing procedures for a stay of the award when an award of a contract is protested including a hearing, granting of a stay on merit of the protest and conditions that a stay shall not be issued; requiring sufficient bond for stay to be effective; \* \* \* amending 74 O.S. 1991, Section 85.24, which relates to noncollusion affidavits for certain

bids; repealing 74 O.S. 1991, Sections 85.1, 85.2, as last amended by Section 2, Chapter 329, O.S.L. 1994, 85.3, as amended by Section 1, Chapter 175, O.S.L. 1993, 85.4, as amended by Section 13, Chapter 327, O.S.L. 1993, 85.5, as amended by Section 7, Chapter 342, O.S.L. 1995, 85.6, 85.7, as last amended by Section 7, Chapter 253, O.S.L. 1995, Section 1, Chapter 205, O.S.L. 1992, 85.8, 85.9, as renumbered by Section 9, Chapter 342, O.S.L. 1995, 85.9B, Section 1, Chapter 29, O.S.L. 1992, 85.10, 85.11, 85.12, as last amended by Section 28, Chapter 2, O.S.L. 1994, 85.12a, 85.12b, 85.13, 85.14, 85.15, 85.17, 85.19, 85.22, 85.23, 85.39, 85.40, 85.41, as last amended by Section 1, Chapter 302, O.S.L. 1994, 85.42, as amended by Section 2, Chapter 240, O.S.L. 1992, 85.43 and 85.44 (74 O.S. Supp. 1995, Sections 62.4, 85.2, 85.3, 85.4, 85.5, 85.7, 85.7a, 85.9C, 85.12, 85.41 and 85.42), which relate to the Oklahoma Central Purchasing Act; providing for codification; and providing effective dates.

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

"[ state government - creating the Procurement Procedures Act - amending sections in Title 74 - codification - effective date ]

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

SECTION 1. AMENDATORY 60 O.S. 1991, Section 176, as amended by Section 5, Chapter 371, O.S.L. 1992 (60 O.S. Supp. 1995, Section 176), is amended to read as follows:

Section 176. ~~(a)~~ A. Express trusts may be created to issue obligations and to provide funds for the furtherance and accomplishment of any authorized and proper public function or purpose of the state or of any county or municipality or any and all combinations thereof, in real or personal property, or either or both, or in any estate or interest in either or both, with the state, or any county or municipality or any and all combinations thereof, as the beneficiary thereof by ~~the~~: ~~(1)~~

1. The express approval of the Legislature and the Governor if the State of Oklahoma is the beneficiary; ~~(2)~~

2. The express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a county is a beneficiary; or ~~(3)~~

3. The express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a municipality is a beneficiary. ~~Provided; provided,~~ that no funds of ~~said a~~ a beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of ~~said the~~ the trust, except by express action of the legislative authority of the beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management, or control of any property, real or personal or ~~both~~ mixed, of the beneficiary of ~~such the~~ the trust, or of ~~such~~ a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized and empowered to lease ~~such the~~ the property for ~~said those~~ those purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

~~(b)~~ B. A municipality may convey title to real property which is used for an airport to the trustees of an industrial development authority trust whose beneficiary is the municipality. ~~Said~~ The industrial development authority trust must already have the custody, management, or control of ~~such~~ the real property. ~~Such~~ The conveyance must be approved by a majority of the governing body of the municipality. A conveyance pursuant to this section may be made only for the sole purpose of allowing ~~such~~ the authority to sell the property for fair market value when the property is to be used for industrial development purposes. Conveyances made pursuant to this subsection shall be made subject to any existing reversionary interest or other restrictions burdening the property and subject to any reversionary interest or other restriction considered prudent by the municipality.

~~(c)~~ C. The trustees of a public trust having the State of Oklahoma as beneficiary shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws of a public trust having the State of Oklahoma as beneficiary shall be submitted in writing to the Governor of the State of Oklahoma. The Governor must approve the proposed bylaws before they take effect.

~~(d)~~ D. No public trust in which the State of Oklahoma is the beneficiary may be amended without a two-thirds (2/3) vote of approval of the trustees of ~~such~~ the trust. ~~Provided;~~ provided, that any ~~such~~ amendment is subject to the approval of the Governor of the State of Oklahoma. ~~Such~~ Any amendments shall be sent to the Governor within fifteen (15) days of their adoption.

~~(e)~~ E. No trust in which a county or municipality is the beneficiary shall hereafter create an indebtedness or obligation until ~~such~~ the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of ~~said~~ the beneficiary. In the event a trust has more than one beneficiary, as authorized by

this section, ~~such~~ the trust shall not incur an indebtedness or obligation until ~~such~~ the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of two-thirds (2/3) of the beneficiaries of ~~said~~ the trust.

~~(f)~~ F. All bonds described in subsection ~~(e)~~ E of this section, after the effective date of this act, except bonds sold to the federal government or any agency thereof or to any agency of the State of Oklahoma, shall be awarded to the lowest and best bidder based upon open competitive public offering, advertised at least once a week for two (2) successive weeks in a newspaper of general circulation in the county where the principal office of the trust is located prior to the date on which bids are received and opened, except, on bond issues with the approval of three-fourths (3/4) of the trustees, and a three-fourths (3/4) vote of the governing body of the beneficiary, or three-fourths (3/4) vote of the governing bodies of each of the beneficiaries of ~~said~~ the trust as the case may be, competitive bidding may be waived. No bonds shall be sold for less than par value, except upon approval of three-fourths (3/4) of the trustees. In no event shall bonds be sold for less than sixty-five percent (65%) of par value. ~~Provided;~~ provided, however, in no event shall the original purchaser from the issuer of any bonds issued by any public trust for any purpose receive directly or indirectly any fees, compensation, or other remuneration in excess of four percent (4%) of the price paid for ~~such~~ the bonds by the purchaser of ~~such~~ the bonds from the original purchaser; and further provided, that the average coupon rate thereon shall in no event exceed fourteen percent (14%) per annum. No public trust shall sell bonds for less than ninety-six percent (96%) of par value until the public trust has received from the underwriter or financial advisor or, in the absence of an underwriter or financial advisor, the initial purchaser of ~~such~~ the bonds, an estimated alternative financing structure or structures showing the estimated total

interest and principal cost of each alternative. At least one alternative financing structure shall include bonds sold to the public at par. ~~Such~~ Any estimates shall be considered a public record of ~~said~~ the public trust. Bonds, notes, or other evidences of indebtedness issued by any public trust shall be eligible for purchase by any state banking association or corporation subject to such limitations as to investment quality as may be imposed by regulations, rules or rulings of the State Banking Commissioner.

~~(g)~~ G. Public trusts created pursuant to this section shall file annually, with their respective beneficiaries, copies of financial documents and reports sufficient to demonstrate the fiscal activity of such trust, including, but not limited to, budgets, financial reports, bond indentures, and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

~~(h)~~ H. Contracts for construction, labor, equipment, material, or repairs in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in the preceding section hereof; ~~such~~ the advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered. ~~Provided;~~ provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then ~~such~~ the contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts

of industrial and cultural trusts. Notwithstanding the provisions of this subsection, equipment or materials may be purchased by a public trust directly from any contract duly awarded by this state or any state agency under the Oklahoma Central Purchasing Act, or from any contract duly awarded by a governmental entity which is the beneficiary of the public trust.

~~(i)~~ I. Any public trust created pursuant to the provisions of this section shall have the power to acquire lands by use of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes. Any exercise of the power of eminent domain by a public trust pursuant to the provisions of this section shall be limited to the furtherance of public purpose projects involving revenue-producing utility projects of which the public trust retains ownership; provided, for public trusts in which the State of Oklahoma is the beneficiary the exercise of the power of eminent domain may also be used for public purpose projects involving air transportation. Revenue-producing utility projects shall be limited to projects for the transportation, delivery, treatment, or furnishing of water for domestic purposes or for power, including, but not limited to the construction of lakes, pipelines, and water treatment plants. Any public trust formed pursuant to this section which has a county as its beneficiary shall have the power to acquire, by use of eminent domain, any lands located either inside ~~such~~ the county, or contiguous to ~~such~~ the county pursuant to the limitations imposed pursuant to this section.

~~(j)~~ J. Provisions of this section shall not apply to entities created under Sections 1324.1 through 1324.26 of Title 82 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.100 of Title 74, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Procurement Procedures Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.101 of Title 74, unless there is created a duplication in numbering, reads as follows:

The State of Oklahoma is a large consumer of goods and services. In order to assure the most efficient and economic use of state funds, to assure greater accountability by the various agencies of the state, and to assure individuals and business entities in the private sector doing business with the state of equitable consistent treatment, the Legislature hereby adopts the Procurement Procedures Act.

It is the purpose of the Legislature that the procedures provided in the Procurement Procedures Act:

1. Simplify and clarify the laws governing the procurement process of this state;
2. Permit and encourage the continued development of procurement policies and practices for the benefit of the state and the individuals and business entities doing business with the state;
3. Make as consistent as possible the procurement procedures to be used by agencies;
4. Provide for increased public confidence in the procedures followed in public procurement;
5. Ensure the equitable treatment of all individuals and business entities that deal with the procurement system of this state;
6. Provide increased economy in Oklahoma procurement activities and increase to the fullest extent practicable the purchasing value of public funds; and
7. Provide safeguards for the maintenance of a procurement system of quality and integrity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.102 of Title 74, unless there is created a duplication in numbering, reads as follows:

For purposes of application and interpretation, the words and terms defined in this section shall have the meanings specified:

1. "Acquire" or "acquisition" means obtaining goods or services through any type of procurement process;

2. "Agency" means any authority, board, bureau, commission, council, court, department, division, institution, office, state beneficiary public trust, or other subdivision of the executive and judicial departments of government as set out in Article IV of the Oklahoma Constitution;

3. "Bidder" means an individual or other business entity that has submitted a bid in response to an invitation to bid;

4. "Business entity" means an individual, sole proprietorship, partnership, corporation, business trust, cooperative, association, or any other firm, group, or concern which functions as a legal entity for business purposes;

5. "Change order" means any written alteration accomplished by mutual action or consent of the parties to the contract in specifications, delivery point, schedule of delivery, period of performance, price, quantity, or other provisions of any contract;

6. "Chief administrative officer" means the individual who has the responsibility to direct the administration of an agency. Chief administrative officer shall not be construed to mean either one or all of the individuals charged with the policy-making responsibilities of the agency;

7. "Confidential information" means any information which is available to an individual only because that individual is an employee of the state and such information is not a matter of public knowledge or available to the public on request. Information contained in a sealed bid or sealed proposal is also confidential

information until the contract for which the sealed information is awarded. Such confidential information shall not be deemed to be a record as that term is defined in the Oklahoma Open Records Act;

8. "Contract" means all types of agreements entered into by the State of Oklahoma regardless of what they may be called for the procurement or disposal of goods or services;

9. "Contractor" means any individual or business entity having a contract with an agency;

10. "Designee" means an individual duly authorized to be the representative of some other specified individual or entity;

11. "Employee" means an individual receiving a salary from an agency as a full-time or part-time employee or a noncompensated individual performing personal services for an agency;

12. "Established published price" means the price included in a catalogue, price list, posted price, schedule, or other form that:

- a. is regularly maintained by a manufacturer,
- b. is either published or is otherwise available for inspection by customers, and
- c. states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for goods or services involved;

13. "Goods" means some quantity or kind of property except real property acquired by an agency for its use which is in the nature of products, supplies, materials, tools, devices, or machines and includes all personal property used or consumed by an agency;

14. "Individual" means a human being;

15. "Invitation to bid" means all documents whether attached or incorporated by reference, utilized for soliciting bids;

16. "Nonprofessional services" means services which are predominantly physical or manual in character and may involve the supplying of products;

17. "Offeror" means an individual or business entity that offers to perform a service or provide goods for the use or consumption of an agency;

18. "Procurement" means the acquiring of any goods or services through purchasing, renting, leasing, or otherwise. It also means all functions that pertain to the acquiring of goods or services including but not limited to description of requirements, method of source selection, solicitation of sources, preparation and award of a contract, and all phases of administering the contract;

19. "Professional services" means services which are predominantly mental or intellectual in character, rather than physical or manual, which do not involve the supplying of products. Professional services include those services requiring special, usually advanced, education and skill;

20. "Purchase description" means the words used in a solicitation to describe the goods or services to be acquired and includes specifications attached to or made a part of the solicitation;

21. "Purchasing agency" means the agency which is seeking to procure goods or services necessary for the agency to carry out its statutory duties;

22. "Request for proposal" means all documents whether attached or incorporated by reference which are used for soliciting proposals;

23. "Requisition" means the document whereby an agency submits a request to the State Procurement Officer that a contract be entered into for a specified need, and may include, but is not limited to the technical description of the requested goods, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, method of source selection, and information supplied for the making of any written determination required by the Procurement Procedures Act;

24. "Responsible bidder" means an individual or business entity that has the capability in all respects to perform fully the contract requirements and to assure good faith performance;

25. "Responsive bidder" means an individual or business entity that submits a bid which contains a definite unqualified offer to meet the terms of the invitation to bid;

26. "Services" means the furnishing of labor, time, or effort by a contractor for any type of nonprofessional services or professional services, employment, or undertaking not involving the delivery of goods other than reports which are merely incidental to the required performance. Services shall not be construed to include reference to individuals who are employees of a particular agency;

27. "Sole source contract" means a contract for particular goods or services which by the specifications are specialized or for which acquired expertise is needed and which restricts the individuals or business entities eligible to bid or the brands eligible for acquisition because an individual, business entity, or brand is singularly and peculiarly qualified to meet the needs of the purchasing agency;

28. "Specification" means any description of the physical or functional characteristics, or nature of goods or services. It may include a description of any requirement for inspecting, testing, or preparing goods or services for delivery;

29. "State Procurement Officer" means the individual employed by the Department of Central Services who is the chief administrative officer of the Procurement Division of the Department of Central Services and who has the responsibility to implement the provisions of the Procurement Procedures Act;

30. "Statewide contract" means a contract for the acquisition of goods or services used or needed on a continual or regular basis by agencies; and

31. "Vendor" means any individual or entity that has goods or services for sale to the state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.103 of Title 74, unless there is created a duplication in numbering, reads as follows:

The provisions of the Procurement Procedures Act shall not apply to acquisitions by the following:

1. The Grand River Dam Authority;
2. The Oklahoma Municipal Power Authority;
3. The Oklahoma Ordnance Works Authority or Midwestern Oklahoma Development Authority;
4. Any institution within The Oklahoma State System of Higher Education as established in Article XIII-A of the Oklahoma Constitution;
5. Any rural water, sewer, gas, or solid waste management districts created pursuant to the provisions of Section 1324.1 through 1324.26 of Title 82 of the Oklahoma Statutes; and
6. Any municipality or county.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.104 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any agency not subject to the Procurement Procedures Act shall develop standards for the acquisition of goods or services which are consistent with the legislative intent expressed through the provisions of the Procurement Procedures Act.

B. Any agency, common school as defined in Section 23-104 of Title 70 of the Oklahoma Statutes, municipality, rural fire protection district, or county officer may avail themselves of the provisions of the Procurement Procedures Act and the services of the State Procurement Officer.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.105 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Procurement Procedures Act shall not apply to the following acquisitions:

1. Food and other products produced by an agency;
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. Purchases of goods available to an agency as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the goods are 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 goods;
4. Goods purchased by the Oklahoma Medical Center;
5. Right-of-way purchases, purchases of services and goods for use in the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities, and contracts for public service announcements by the Department of Transportation. Such exempt acquisitions shall not include advertising or public relations services;

6. Water, electricity, gas, and garbage collection services where the rates are regulated by a state or federal regulatory commission;

7. Water, electricity, gas and garbage collection services where the rates are regulated by city ordinance or Indian Tribal Council when for the use of the Department of Corrections; and

8. Services to alleviate a serious environmental emergency 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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.106 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a Procurement Division within the Department of Central Services. All activities of any agency subject to the Procurement Procedures Act relating to procurement shall be subject to the rules adopted by the State Procurement Officer or the Director of Central Services.

B. The Director of Central Services shall appoint a State Procurement Officer and such other employees as necessary to implement the provisions of the Procurement Procedures Act.

C. The State Procurement Officer shall be the individual employed by the Department of Central Services as the chief administrative officer for the Procurement Division. The State Procurement Officer shall be in the unclassified service and shall be a graduate of an accredited college or university with at least five (5) years experience in commercial or governmental purchasing, or in lieu of such education requirement, shall have at least ten (10) years experience in commercial or governmental purchasing.

D. Subject to the approval of the Director of Central Services, the State Procurement Officer may delegate authority regarding implementation of the Procurement Procedures Act to another employee of the Procurement Division or another certified purchasing agency which is subject to the provisions of the Procurement Procedures Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.107 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Before an agency may proceed to acquire goods or services without the direct continuous involvement and direction of the Procurement Division, that agency must be certified by the State Procurement Officer to perform such activities.

B. The State Procurement Officer shall establish by rule such qualifications and training requirements deemed necessary for qualifying agencies to procure goods or services. Such qualifications shall include but not be limited to a clear working understanding of the Procurement Procedures Act and all rules adopted to implement it, and knowledge sufficient to determine the particular classification of goods or services to be acquired for use by the agency and to draft specifications establishing the requirement for such acquisitions.

C. Any agency seeking to receive certification from the State Procurement Officer shall provide qualified personnel for training to perform the procurement activities of that agency so as to assure complete compliance with the provisions of the Procurement Procedures Act.

D. Any agency which is not certified shall designate personnel to coordinate its procurement function with the Procurement Division.

E. Based on the propriety of procurement records and practices as revealed by post-audit examination, the State Procurement Officer may:

1. Temporarily suspend the certification of an agency pending compliance with procedures recommended by the State Procurement Officer; or

2. Cancel the certification of an agency which would require recertification by the State Procurement Officer.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.108 of Title 74, unless there is created a duplication in numbering, reads as follows:

The State Procurement Officer shall have the following duties and responsibilities:

1. Procure or assist an agency in the procurement of goods or services needed by that agency;

2. Sell, trade, or otherwise dispose of surplus goods belonging to the state;

3. Establish and maintain programs for the inspection, testing, and acceptance of goods or services purchased with state funds;

4. Prescribe standardized contract forms and all other forms including but not limited to notification of the awarding of a contract, notarized affidavit on noncollusion, and sole source affidavits deemed necessary by the Director of Central Services or

the State Procurement Officer to effectuate the provisions of the Procurement Procedures Act;

5. Establish and maintain programs for screening, qualifying, and registering vendors eligible to bid or offer goods or services to the state or to contract with the state;

6. Establish and maintain programs for screening, qualifying, and certifying agencies eligible to make acquisitions without the supervision of the State Procurement Officer;

7. Assist agencies in drafting specifications for acquisitions;

8. Promulgate such rules as are necessary to implement the provisions of the Procurement Procedures Act in accordance with the provisions of the Administrative Procedures Act; and

9. Conduct post-audit examinations of the records and procedures of certified agencies.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.109 of Title 74, unless there is created a duplication in numbering, reads as follows:

The rules promulgated by the State Procurement Officer may include but not be limited to the following:

1. The notice, time, manner, form, and authentication of documents necessary to obtain bids, offers, estimates, or orders for use by agencies in procuring goods or services needed;

2. The form, time, and manner of opening and accepting bids or proposals;

3. The conditions applicable to written contracts for the acquisitions and the conditions and manner of negotiating such contracts;

4. Inspection and testing of all goods purchased or leased by agencies and for analyzing and testing any samples and the manner of such inspections, tests, and analyses;

5. The conditions pursuant to which surplus or other unused goods acquired or owned by an agency may be sold, traded or

transferred to another agency, or otherwise disposed of and the manner of accomplishing such disposal;

6. Any preference established by state law;

7. Conditions pursuant to which any of the rules may be waived;

8. The amounts and conditions for the deposit requirements on any bond required to be submitted with a bid, proposal, or contract for the furnishing of goods or services affected by the Procurement Procedures Act;

9. The manner and conditions of delivery of goods which shall include the designation of the common carrier to be used to transport any goods whenever a common carrier is used, and the acceptance or rejection including checking of the goods delivered; or

10. Any other matter or practice which is directly related to the responsibilities of the Procurement Division and the authority of the State Procurement Officer.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.110 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Every agency subject to the provisions of the Procurement Procedures Act shall have the authority to determine its own needs for goods or services necessary to perform their statutory duties and shall have the authority to determine the general class or nature of such goods.

B. All acquisitions made and contracts entered into by an agency shall be accomplished by one of the following methods of source selection:

1. Competitive sealed bidding;

2. Competitive sealed proposal;

3. Sole source;

4. Professional services;

5. Small purchase;

6. Designated state supplier; or

7. Emergency.

C. Awards shall be made based on the invitation to bid document, the request for proposals document, or such other document as is required by the source selection method procedure.

D. The determinations required by the provisions relating to the various methods of source selection are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.111 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Competitive sealed bidding shall be the method of procurement which an agency must first look to for acquisition of goods or services needed.

B. An invitation to bid shall be issued for a competitive sealed bid and shall include a purchase description and all contractual terms and conditions applicable to the procurement of the goods or services.

C. Notice of the invitation to bid shall be given a reasonable time prior to the date set forth therein for the opening of the bids.

D. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. At the time of opening of the bid, only the name of the bidder and the amount of the bid shall be available for public inspection.

E. After the contract is awarded, all information submitted in or with the bid shall be available for public inspection.

F. Bids shall be evaluated based on the requirements set forth in the invitation to bid. Such requirements may include criteria to determine acceptability for a particular purpose. Those criteria

that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

G. Correction of a bid or withdrawal of inadvertently erroneous bids before or after awarded or cancellation of an award or contract based on a bid mistake such as errors of addition shall be permitted in accordance with rules promulgated by the State Procurement Officer. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the State Procurement Officer or the chief administrative officer of the certified purchasing agency or his designee.

H. After the bid opening no changes in bid prices or other provisions of bids prejudicial to the interests of this state or fair competition shall be permitted.

I. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation to bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have qualified for consideration pursuant to the provisions of the first solicitation.

J. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.112 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Competitive sealed proposals may be used as the method of source selection for acquisitions pursuant to requests for proposals. When, pursuant to rules promulgated by the State Procurement Officer, the chief administrative officer of the certified purchasing agency or their designee determines in writing

that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into resulting from competitive sealed proposals.

B. The State Procurement Officer may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of goods or services by competitive bidding.

C. Proposals shall be solicited through a request for proposals. Notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding. The request for proposals shall state the relative importance of price and other evaluation factors.

D. As provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be potentially acceptable for selection for receiving the award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

E. Offerors shall be accorded consistent treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, any information derived from proposals submitted by competing offerors shall be deemed confidential information.

F. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with the applicable rules and shall be open for public inspection after the contract award.

G. Awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set forth in the request for proposals.

H. The contract file shall contain the basis on which the award is made.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.113 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The sole source method of source selection may be used to award a contract for goods or services. Such acquisition may be made without competition upon the determination in writing by the State Procurement Officer or the chief administrative officer of the certified purchasing agency that there is only one source for the required goods or services.

B. Any contract for the procurement of sole source goods or services shall be subject to the rules promulgated by the State Procurement Officer for such source selection method. Such rules shall include:

1. The requirement for an affidavit which shall provide such details as may be necessary to assure the necessity for and appropriateness of the acquisition by the sole source method of source selection to be executed by the State Procurement Officer or the chief administrative officer of the certified purchasing agency which shall be a part of the official records of the purchasing agency;

2. A requirement for each agency to maintain a current record of all sole source contracts which that agency has with a contractor which shall include the name of all parties to the contract, the type of goods or services to be supplied pursuant to the contract, and such other details to demonstrate why the goods or services could only be procured by the sole source selection method deemed necessary for complete disclosure; and

3. A method whereby the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate can be

kept advised of all sole source contracts entered into within thirty (30) days of the execution of such contracts.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.114 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any contract for professional services shall be subject to the provisions of the Procurement Procedures Act relating to the competitive sealed proposal method of source selection.

B. A professional service as defined in the Professional Entity Act, Section 801 et seq. of Title 18 of the Oklahoma Statutes, shall be exempt from the requirements of the competitive sealed bidding and competitive sealed proposal method of source selection.

C. Individuals engaged in providing professional services may submit statements of qualifications and expressions of interest in providing professional services to agencies. The State Procurement Officer shall specify by rule a uniform format for statements of qualifications and procedures for amending, withdrawing, or refiling such statements.

D. Rules shall be promulgated to assure that contracts for professional services cannot be entered into which would result in the circumvention of the full-time-equivalent employee limitation which may be established by law.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.115 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any procurement not exceeding Ten Thousand Dollars (\$10,000.00) may be made in accordance with small purchase procedures promulgated by the State Procurement Officer.

B. Procurement requirements shall not be artificially divided so as to constitute a small purchase pursuant to the provisions of this section.

C. The State Procurement Officer shall promulgate rules for such small purchases to ensure competitiveness in such purchases. Such rules shall include but not be limited to rules to assure that the procedure for acquiring goods or services commonly referred to as "split purchasing" is clearly not available to an agency.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.116 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Vendors may be prequalified to supply goods or services to agencies.

B. Vendors shall be eligible to be designated to supply goods or services if the vendor can supply satisfactory documentation, as established by rule based on a representative sample, that the prices for goods or services sold by the vendor are consistently lower at the time of the survey, and that such designation will be to the advantage of one or more agencies.

C. Vendors must respond as to willingness to submit established published prices to the State Procurement Officer for a survey of selected goods used extensively by agencies. The State Procurement Officer shall determine which goods may be eligible for acquisition by agencies and which prequalified vendors may be eligible to supply goods or services to agencies based upon such surveys.

D. Solicitation mailing lists may be limited to prequalified vendors.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.117 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State Procurement Officer or the chief administrative officer of the certified purchasing agency or their designee may certify in writing the existence of an emergency and may then procure or enter into a contract to procure goods or services necessary to meet the threat to public health, welfare, or safety

under emergency conditions as defined in the rules promulgated by the State Procurement Officer.

B. Such emergency procurements shall be made with such competition as is practicable under the circumstances.

C. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

D. An agency may avail itself of the provisions of this section for acquisitions or contracts for Twenty-five Thousand Dollars (\$25,000.00) or less upon meeting all the requirements for such acquisitions or contracts.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.118 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. An invitation to bid, request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation when it is in the best interests of the state in accordance with rules promulgated by the State Procurement Officer. The written reasons for such action shall be made a part of the contract file.

B. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with rules promulgated by the State Procurement Officer.

C. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.119 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any unsuccessful bidder for a contract to supply goods or services to an agency who protests the award of the contract may

request a stay of the award to enjoin the performance of the awarded contract pursuant to the provisions of Article II of the Oklahoma Administrative Procedures Act.

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

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

D. A stay shall not be issued if upon the written determination of the State Procurement Officer or the administrative law judge that one of the following conditions apply:

1. The goods or services to be contracted for are urgently required;

2. Delivery or performance will be unduly delayed by failure to make an award promptly; or

3. A prompt award is advantageous to the state.

E. A stay shall not become effective unless the protestant files sufficient bond as determined by the State Procurement Officer or administrative law judge to cover any damage which could be sustained by the state as a result of the stay.

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

G. Upon determination of the State Procurement Officer or administrative law judge that the protest was without reasonable basis or was frivolous, the unsuccessful protestor shall pay costs and attorney fees incurred by the state and the successful bidder.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.120 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Protests based upon alleged improprieties or defective bid specifications in a solicitation which are apparent prior to the awarding of the bid must be submitted at least ten (10) days prior to the closing date of the bid. Failure to assert alleged improprieties or defective bid specifications within the ten-day time period shall constitute a waiver of such objections and shall not be a basis for protest after the contract is awarded.

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.121 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State Procurement Officer may cause, at reasonable times and places, an audit to be made of the books and records of any individual or business entity that has submitted cost or pricing information to the extent that such books and records relate to such cost or pricing information.

B. Any individual or business entity that receives a contract, change order, or contract modification for which cost or pricing information is required, shall maintain books and records which relate to such cost or pricing information for five (5) years from the date of final payment pursuant to the provisions of the contract, unless a shorter period is otherwise authorized in writing.

C. The State Procurement Officer may cause an audit to be made of the books and records of a contractor or any subcontractor under

any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment pursuant to the provisions of the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

D. The State Procurement Officer may, at reasonable times, cause an inspection to be made of the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.122 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State Procurement Officer may create a means for analyzing and evaluating goods or services offered or bought through the Procurement Division.

B. The State Procurement Officer may make use of any state laboratories for the tests and analyses authorized wherever practicable and to use private laboratories or the laboratories of another government agency if it is impracticable to use state laboratories.

C. The State Procurement Officer may also cooperate in test and analysis programs or agreements with other states or the United States government, and to accept federal funds and funds donated by private endowments or foundations for the purpose of participation in such testing programs.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.123 of Title 74, unless there is created a duplication in numbering, reads as follows:

Any agency which transfers excess, obsolete, antiquated, or unused goods to the Procurement Division for sale, trade, or redistribution to other agencies may receive credit for the value thereof as may be arranged between the State Procurement Officer, the fiscal agencies necessarily involved, and the agencies so transferring and receiving such goods.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.124 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Procurement Division when accepting bids from bidders domiciled outside the boundaries of this state shall require a successful bidder from another state to submit a bid less than the bid of the responsible bidder of this state by a percentage equal to that required by said other state from a bidder from this state.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.125 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. It shall be a breach of ethical standards for any employee to participate directly or indirectly in an acquisition when the employee knows or has reason to believe that:

1. The employee or a spouse, child, parent, or sibling of the employee has a financial interest pertaining to the acquisition;

2. A business or organization in which the employee or a spouse, child, parent, or sibling of the employee has a financial interest pertaining to the acquisition; or

3. Any other person, business, or organization with whom the employee or a spouse, child, parent, or sibling of the employee is negotiating or has an arrangement concerning prospective employment is involved in the acquisition.

B. Where an employee or a spouse, child, parent, or sibling of the employee holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with

regard to matters pertaining to that financial interest, provided the disclosure of the existence of the blind trust has been made.

C. It shall be a breach of ethical standards for any individual to certify information required by the Procurement Procedures Act when such individual knows or has reason to know that such information is false.

D. It shall be a breach of ethical standards for any individual or business entity to willfully participate in any activity which results or would result in an agency acquiring goods or services through the procedure commonly referred to as "split purchasing".

E. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of employment in regard to procurement procedures is a breach of ethical standards.

F. Any effort to influence any public employee to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of employment in regard to procurement procedures is a breach of ethical standards.

G. Any collusion or anticompetitive practices in relation to procurement of goods or services subject to the provisions of the Procurement Procedures Act shall be a breach of ethical standards.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.126 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Violation of a breach of ethical standards is a felony, punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or imprisonment in the State Penitentiary for not more than five (5) years, or both such fine and imprisonment, and full restitution to the state for all state funds lost and the cost of prosecution.

B. Upon final adjudication, a conviction of a breach of ethical standards by an employee of the state shall result in immediate

termination of such employment and disqualification to be employed by the state for a period of five (5) years following the conviction. In the event the individual is an appointed or elected official, upon final adjudication, conviction shall result in the immediate forfeiture of office and disqualification to hold any state office for a period of five (5) years following conviction.

C. In addition to the criminal liability provided for in this section, an individual who has breached the ethical standards shall be civilly liable for three (3) times the amount of the contract plus court costs and attorney fees. It shall not be necessary for an individual to be convicted of the crime of breach of ethical standards for the state to recover in a civil action.

D. When for any reason collusion or anticompetitive practices are suspected among any bidder or offeror, notice of the relevant facts shall be transmitted to the district attorney for the county in which the suspected prohibited activity was committed.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.127 of Title 74, unless there is created a duplication in numbering, reads as follows:

All reference to the Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes, or to competitive bidding procedures contained in that act shall be interpreted to mean the Procurement Procedures Act and the appropriate competitive bidding procedures contained in that act.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.128 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Director of Central Services and the State Procurement Officer are authorized to promulgate rules and establish procedures as provided in this act.

SECTION 31. AMENDATORY 74 O.S. 1991, Section 85.24, is amended to read as follows:

Section 85.24 Any competitive bid submitted pursuant to the Public Competitive Bidding Act of 1974, Section 101 et seq. of Title 61 of the Oklahoma Statutes, to a school district, county or municipality for furnishing of goods or services shall be accompanied by ~~the~~ a sworn noncollusion statement ~~contained in Section 85.22 of this title, modified in wording to refer to the school district, county or municipality instead of the state.~~

SECTION 32. REPEALER 74 O.S. 1991, Sections 85.1, 85.2, as last amended by Section 2, Chapter 329, O.S.L. 1994, 85.3, as amended by Section 1, Chapter 175, O.S.L. 1993, 85.4, as amended by Section 13, Chapter 327, O.S.L. 1993, 85.5, as amended by Section 7, Chapter 342, O.S.L. 1995, 85.6, 85.7, as last amended by Section 7, Chapter 253, O.S.L. 1995, Section 1, Chapter 205, O.S.L. 1992, 85.8, 85.9, as renumbered by Section 9, Chapter 342, O.S.L. 1995, 85.9B, Section 1, Chapter 29, O.S.L. 1992, 85.10, 85.11, 85.12, as last amended by Section 28, Chapter 2, O.S.L. 1994, 85.12a, 85.12b, 85.13, 85.14, 85.15, 85.17, 85.19, 85.22, 85.23, 85.39, 85.40, 85.41, as amended by Section 1, Chapter 302, O.S.L. 1994, 85.42, as amended by Section 2, Chapter 240, O.S.L. 1992, 85.43 and 85.44 (74 O.S. Supp. 1995, Sections 62.4, 85.2, 85.3, 85.4, 85.5, 85.7, 85.7a, 85.9C, 85.12, 85.41 and 85.42), are hereby repealed.

SECTION 33. Sections 1 through 28, 30 and 31 of this act shall become effective July 1, 1997.

SECTION 34. Section 29 of this act shall become effective July 1, 1996."

Passed the Senate the 2nd day of April, 1996.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of  
\_\_\_\_\_, 1996.

Speaker of the House of  
Representatives