ENROLLED HOUSE
BILL NO. 1555

By: Seikel of the House

and

Rozell of the Senate

An Act relating to state government; amending 74 O.S. 1991, Section 85.7, as last amended by Section 19 of Enrolled House Bill No. 2428 of the 2nd Session of the 45th Oklahoma Legislature, which relates to competitive bids; expanding types of purchases or contracts of the Department of Rehabilitation Services which are not subject to competitive bids; 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 85.7, as last amended by Section 19 of Enrolled House Bill No. 2428 of the 2nd 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, the Commissioners of the Land Office 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 the 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 certifies 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 and after having examined the facts and circumstances of the case, the Governor 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 and other client goods and services 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.

14. a. Structured settlement agreements entered into by the Attorney General's office in order to settle any lawsuit involving the state, the Legislature, any state board, agency, commission, or any employee or official of the state shall not be subject to the competitive bidding requirements of this section if:

(1) prior to entering into any contract for the services of an entity to administer a structured settlement agreement, the Attorney General receives proposals from at least three entities engaged in providing such services, and

(2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.

b. A list of any such structured settlement agreements entered into by the Attorney General with summary thereon for the previous calendar year shall be submitted to the Speaker of the House of

Representatives and the President Pro Tempore of the Senate on January 31 of each year.

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 2. This act shall become effective July 1, 1996.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of April, 1996.

Speaker of the House of Representatives

Passed the Senate the 17th day of April, 1996.

President of the Senate