

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1004

By: Deutschendorf, Glover and
Staggs of the House

and

Helton of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to prisons and reformatories; amending 57 O.S. 1991, Sections 545, as amended by Section 1, Chapter 111, O.S.L. 1993 and 549.1, as amended by Section 1, Chapter 77, O.S.L. 1992 (57 O.S. Supp. 1996, Sections 545 and 549.1), which relates to prison industries; providing that inmates who have worked for State Prison Industries are not eligible for unemployment compensation; authorizing performance of certain services; amending 74 O.S. 1991, Section 85.12, as last amended by Section 1 of Enrolled Senate Bill No. 78 of the 1st Session of the 46th Oklahoma Legislature, which relates to exemptions from the Oklahoma Central Purchasing Act; adding exemptions; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 545, as amended by Section 1, Chapter 111, O.S.L. 1993 (57 O.S. Supp. 1996, Section 545), is amended to read as follows:

Section 545. A. Any inmate employed by any prison industry shall be subject to all rules established for his employment by the State Board of Corrections and to all statutes governing the operation of state prison industries as well as by all laws generally governing employment, wages and working conditions except as provided for herein.

B. Inmates employed by prison industries are not state employees, and they are specifically forbidden from organizing into unions or other associations in connection with their

employment or from engaging in any strike, work stoppage, slowdown or collective bargaining process. This prohibition applies to any inmates forming a union local or similar organization at any prison industry but it shall not prohibit any inmate from otherwise achieving or retaining status as a union member.

C. The claims of the state against an inmate to cover the costs of incarceration of an inmate shall be prior to the unsecured claims of any creditor.

D. The employment of any inmate by any prison industry is a privilege granted by the state which may be revoked by the Director of the Department of Corrections.

E. Any inmate employed by any prison industry shall not be eligible to receive benefits under the unemployment compensation law if such employment ceases.

F. As used in subsection C of this section, "costs of incarceration" shall include all costs associated with maintaining an inmate in the custody of the Department of Corrections and shall include costs paid by the state for medical care for the inmate.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 549.1, as amended by Section 1, Chapter 77, O.S.L. 1992 (57 O.S. Supp. 1996, Section 549.1), is amended to read as follows:

Section 549.1 A. The Department of Corrections is authorized to purchase in the manner prescribed by law, facilities, equipment, raw materials and supplies, and to engage the supervisory personnel necessary to establish and maintain for this state at the penal institutions, now or hereafter under the control of the State Board of Corrections, industries and agricultural programs for the utilization of services of prisoners in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by this state and the political subdivisions ~~thereof~~ of this state.

B. All articles and services provided by the Department of Corrections in the state correctional institutions, and not

required for use therein, shall be purchased as required by all offices, departments, institutions and agencies of this state which are supported in whole or in part by this state, and no such article or product may be purchased by any such office, department, institution or agency from any other source unless excepted from the provisions as hereinafter provided. Purchases made by the above-described state agencies may be made by submitting the proper requisition through the Office of Public Affairs or by direct order to the prison industries program of the Department of Corrections.

C. If a requisition is received by the Office of Public Affairs or a direct order is received by the Prison Industries Program of the Department of Corrections from a state agency for any product or service provided by the Department of Corrections and such product or service is also available from a severely handicapped person or a qualified nonprofit agency for the severely handicapped as provided in Sections 3001 ~~et seq.~~ through 3010 of Title 74 of the Oklahoma Statutes at a comparable price, then the product or service shall be purchased from such severely handicapped person or qualified nonprofit agency for the severely handicapped. If the product or service is not available within the time period required by the purchasing state agency, then such product or service shall be purchased from the Department of Corrections under the provisions of this section.

D. All counties, cities, districts or political subdivisions, or any agency thereof, may purchase the goods or services produced by the prison industries of the Department of Corrections through their properly authorized purchasing authority, or they may place a direct order without competitive bid, with the prison industries of the Oklahoma Department of Corrections.

E. Not-for-profit corporations or charitable agencies chartered in Oklahoma or other states may purchase such goods and services. Units of the federal government and units of government in other states may also purchase such goods and services. All entities which contract with the state, its political units, its agencies, its public institutions, not-for-profit corporations or

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charitable agencies chartered in Oklahoma may purchase goods or services from the Department of Corrections which are used in the performance of such contracts. Any church located in the State of Oklahoma may also purchase goods and services produced by the prison industries of the Department of Corrections. Nothing shall prohibit the Department from bidding on portions of a state contract which are subcontracted by the primary contractor.

F. Others are prohibited from purchasing such goods and services, with the exception that services performed by the State Prison Industries program can be performed for private business entities through contracts approved by the State Board of Corrections and all surplus agricultural products may be sold on the open market or bartered and exchanged for other food, feed or seed products of comparable value. The Department of Corrections shall keep complete and accurate records of any such barters or exchanges in such form and manner as the Office of Public Affairs may prescribe. A copy of such records shall be filed with the Office of Public Affairs no later than March 1 of each year for all barters or exchanges occurring in the previous calendar year.

G. Products manufactured by the Department of Corrections shall be of styles, patterns, designs and quantities specified by the Department of Corrections except where the same have been or may be specified by the Office of Public Affairs. Products shall be provided at a fair market price for comparable quality.

H. State agencies shall make maximum utilization of such products and no similar products shall be purchased by state agencies from any other source than the Department of Corrections except as provided in subsection C of this section, unless the Department of Corrections certifies to the Central Purchasing Director that it is not able to provide products, and no claim therefor shall be paid without such certification.

I. Exceptions from the mandatory provisions hereof may be made in any case where, in the opinion of the Office of Public Affairs, the article or product does not meet the reasonable requirements of or for such offices, departments, institutions or agencies, or in any case where the requisitions made cannot be

reasonably complied with. No such offices, departments, institutions or agencies, shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the Office of Public Affairs, when the articles, services or products produced or manufactured by the Oklahoma Department of Corrections, in accordance with established standards, are reasonably adapted to the actual needs of such offices, departments, institutions or agencies.

J. In the event of disagreement between the Department of Corrections and the Central Purchasing Director on fairness of price, ability to comply to specifications, reasonableness of specifications and timeliness of delivery of products the matter will be resolved by the Director of Public Affairs.

K. The Office of Public Affairs shall cooperate with the Department of Corrections in seeking to promote for use in state agencies and by all other eligible customers, the products manufactured and services provided by the prison industries.

L. The Department of Corrections shall prepare catalogs containing the description of all goods and services provided, with the pricing of each item. Copies of such catalog shall be sent by the Department of Corrections to all offices, departments, institutions and agencies of this state, and shall be available for distribution to all other eligible customers.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 1 of Enrolled Senate Bill No. 78 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. The following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by institutions of The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees. In order to be exempt from the Oklahoma Central Purchasing Act pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of the Oklahoma Central Purchasing Act;

4. Acquisitions by institutions of The Oklahoma State System of Higher Education, the Oklahoma State Regents for Higher Education, or the University Centers subject to the State Regents insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials, and specialized laboratory equipment, or to acquisitions for the telecommunications network known as OneNet, whether said network is governed or operated by the State Regents or any other state entity assigned responsibility for OneNet;

5. Department of Transportation and Transportation Commission contractual services or right-of-way purchases. Contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts, and contracts for public service type announcements initiated by the Department

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of Transportation. Contractual services as used herein shall not include advertising or public relations or employment services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by an Indian Tribal Council for use by the Department of Corrections only;

7. Acquisition of products and services by the University Hospitals and the University Hospitals Authority. The Authority shall develop standards for the acquisition of products 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 ensure appropriate competition and economical and efficient purchasing, and shall be approved by the Director of Central Purchasing;

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

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

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

11. Purchases by the Oklahoma Municipal Power Authority;

12. Acquisitions by the Grand River Dam Authority;

13. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes;

14. Purchases by the Oklahoma Ordnance Works Authority or Midwestern Oklahoma Development Authority;

15. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and for the services of legal counsel when approved by the Attorney General;

16. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and

State-supported Programs, except monies appropriated for the Administrative and Support Functions of the State Department of Education;

17. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

18. Contracts entered into by the Oklahoma Department of Vocational and Technical Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Vocational and Technical Education for training and supportive services that meet the needs of new or expanding industries;

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

20. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

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

22. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is on current statewide contract and the terms of such contract are more favorable to the agency than the terms of a statewide contract for the same products as determined by the Director of Central Purchasing;

23. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

24. Purchases of products by the Forestry Service of the State Department of Agriculture as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the item is not on current statewide contract or the terms of such federal

contract are more favorable to the agency than the terms of a statewide contract for the same products;

25. Purchases amounting to less than the amount requiring competitive bid pursuant to Section 85.7 of this title. The Director of Central Services shall promulgate rules related to such purchases in excess of Seven Hundred Fifty Dollars (\$750.00) and not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) to ensure competitiveness and fairness in such purchases;

26. Purchases or acquisitions of clothing for clients of the Department of Human Services and purchases and acquisitions of food for group homes operated by the Department of Human Services;

27. Purchases made or contracts entered into by the Oklahoma Energy Resources Board;

28. Purchases or acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and purchases and acquisitions of food for group homes operated by the Office of Juvenile Affairs; ~~and~~

29. Expenditures incurred by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction; and

30. Purchases or acquisitions of products and services to be used in the processing or manufacturing of products for resale by State Prison Industries.

C. Notwithstanding the exclusions provided herein, any agency or common school of Oklahoma, any municipality of the state, any rural fire protection district, and county officers may, unless the contract with the state specifies otherwise, avail themselves of the provisions of the Oklahoma Central Purchasing contracts and the services of the Director of Central Purchasing. Provided further, however, that any subdivision of government and any rural fire protection district of the state may designate the office of Oklahoma Central Purchasing as its agent for the purchase or procurement of any item or service contracted or available to the state.

D. Notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the Department of Central Services, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that said purchasing policies and procedures, as approved, are being followed.

SECTION 4. This act shall become effective July 1, 1997.

SECTION 5. 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.

46-1-7573

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