

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1822

By: Askins, Hamilton, Covey
and Braddock of the House

and

Rozell of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; amending 74 O.S. 1991, Sections 85.1, 85.2, as last amended by Section 1, Chapter 316, O.S.L. 1996, 85.4, as last amended by Section 28, Chapter 294, O.S.L. 1997, 85.5, as last amended by Section 2 of Enrolled House Bill No. 1162 of the 2nd Session of the 46th Oklahoma Legislature, 85.7, as last amended by Section 5, Chapter 404, O.S.L. 1997, 85.12, as last amended by Section 6 of Enrolled Senate Bill No. 1317 of the 2nd Session of the 46th Oklahoma Legislature, 85.33, 85.39, 85.41, as last amended by Section 1, Chapter 302, O.S.L. 1994, and 85.43 (74 O.S. Supp. 1997, Sections 85.2, 85.4, 85.7 and 85.41), which relate to The Oklahoma Central Purchasing Act; clarifying scope of The Oklahoma Central Purchasing Act; modifying and adding definitions; updating terminology; adding procedures concerning acquisitions to be supplied in components or phases; expanding the rulemaking authority of the Director of the Department of Central Services; requiring training for certain state agency personnel; requiring the State Purchasing Director to review certain state agency acquisitions; authorizing certain actions upon recommendation of the State Purchasing Director; modifying and adding initiatives to be undertaken by the State Purchasing Director; adding, modifying and deleting competitive bid exemptions; prohibiting state agencies from acquiring a high technology system or enhancements to a high technology system unless certain conditions are met; modifying exemptions subject to certain requirements; requiring certain procedures developed by state agencies to be submitted to the State Purchasing Director for review and written findings; adding limitation concerning certain acquisitions; clarifying scope of section concerning contracting for professional services; modifying procedures and reporting requirement concerning certain contracts; requiring the State Auditor and Inspector to review certain report; amending 74 O.S. 1991, Section 79, as amended by Section 1, Chapter 204, O.S.L. 1993 (74 O.S. Supp. 1997, Section 79), which relates to the State Travel Division; changing designation of the Division to an Office; clarifying scope of duties of the Office; amending 74 O.S. 1991, Section 89, as last amended by Section 1, Chapter 59,

O.S.L. 1994 (74 O.S. Supp. 1997, Section 89), which relates to sole source contracts; modifying requirements for approval of sole source contracts; adding forfeiture of office penalty for certain perjury action; requiring property acquired by the state to be used for official business of the state; providing penalty; providing for recodification; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 85.1, is amended to read as follows:

Section 85.1 ~~This act~~ Sections 85.1 through 85.45k of this title shall be known and may be cited as "The Oklahoma Central Purchasing Act".

SECTION 2. AMENDATORY 74 O.S. 1991, Section 85.2, as last amended by Section 1, Chapter 316, O.S.L. 1996 (74 O.S. Supp. 1997, Section 85.2), is amended to read as follows:

Section 85.2 As used in the Oklahoma Central Purchasing Act, unless the context otherwise requires:

1. "Acquisition" means all types of purchases, lease-purchases, lease-purchases with option to purchase, and rentals, whether bought or leased by contract or otherwise, and includes every means by which a state agency obtains for its use any items, products, materials, supplies, ~~service~~ consulting services, and all other services or equipment covered by ~~this act~~ the Oklahoma Central Purchasing Act, except those specifically excluded in ~~this act~~ the Oklahoma Central Purchasing Act;

2. "Best value" means an acquisition based on criteria which include, but are not limited to, the following:

- a. the operational cost that the state agency would incur if the bid or proposal is accepted,
- b. quality of the product, or its technical competency,
- c. reliability of delivery and implementation schedules,
- d. the maximum facilitation of information/data exchange and systems integration,
- e. warranties, guarantees, return policy,

- f. bidder financial stability,
- g. consistency of the proposed solution with the state agency's planning documents and announced strategic program direction,
- h. quality and effectiveness of the business solution approach,
- i. industry and program experience,
- j. prior record of vendor performance,
- k. bidder expertise with engagements of similar scope and complexity,
- l. extent and quality of the proposed participation and acceptance by all user groups,
- m. proven development methodology and tools, and
- n. innovative use of current technologies and quality results;

~~3.~~ 3. "Bid" means an offer submitted by ~~an offeror~~ a bidder in response to a sealed bid or an invitation to bid;

~~3.~~ 4. "Bidder" means an individual or other business entity that has submitted a bid in response to an invitation to bid;

~~4.~~ 5. "Business entity" means individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm, group or concern which functions as a separate entity for business purposes;

~~5.~~ 6. "Change order" means a unilateral written order, signed by the State Purchasing Director or designee, directing the contractor to make a change;

~~6.~~ 7. "Chief administrative officer" means the individual who has the responsibility to direct the administration of ~~an~~ a state agency. The term shall not be construed to mean either one or all of the individuals charged with the policy making responsibilities of the state agency;

~~7.~~ 8. "Component" means any item supplied as part of an end item or of another component;

~~8.~~ 9. "Contract" means a mutually binding legal relationship obligating the seller to furnish supplies or services and the buyer to pay for them. It includes all types of commitments that

obligate the state to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include, but are not limited to:

- a. awards and notices of awards,
- b. orders issued under basic ordering agreements,
- c. letter contracts,
- d. orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance, and
- e. bilateral contract modifications;

~~9.~~ 10. "Contract modification" means any written change in the terms of the contract;

~~10.~~ 11. "Contracting" means purchasing, renting, leasing, or otherwise obtaining supplies or services from private sources. Contracting includes description, but not determination, of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration;

~~11.~~ 12. "Electronic commerce" means the use of electronic data interchange (EDI) techniques to both describe state requirements to offerors using a paper-free electronic medium and to enable offerors to respond to these requirements in a similar fashion, including the transmission of purchase orders and contracts to contractors, shipment receipt, and payment;

~~12.~~ 13. "Equipment" means all personal property acquired by a state agency for its use which is in the nature of a tool, device or machine and shall be deemed to include all personal property used or consumed by a state agency and not included within the category of materials and supplies;

~~13.~~ 14. "High technology system" means advanced technological equipment, software, communication lines and services for the processing, storing, and retrieval of information, by a state agency;

15. "Item" or "product" means some quantity or kind of such supplies, materials and equipment;

~~14.~~ 16. "Local governmental entity" means any unit of local government including, but not limited to, any school district, county, or municipality of this state;

~~15.~~ 17. "Lowest and best" means an acquisition based on criteria which include, but are not limited to, the following:

- a. the lowest total purchase price,
- b. the quality and reliability of the product, and
- c. consistency of the proposed solution with the state agency's planning documents and announced strategic program direction;

18. "Materials" or "supplies" includes all property except real property or equipment acquired by a state agency for its use or consumption;

~~16.~~ 19. "Multistate contract" or "multigovernmental contract" means an agreement entered into between two or more jurisdictions, such as states, for purchases under the same contract;

~~17.~~ 20. "Nonprofessional services" means services which are predominantly physical or manual in character and may involve the supplying of products;

~~18.~~ 21. "Political subdivision" means local governmental entities and such other entities specified as political subdivisions pursuant to the Governmental Tort Claims Act;

~~19.~~ 22. "Open market contract" means a contract for the one-time acquisition of a particular item ~~over Two Thousand Five Hundred Dollars (\$2,500.00)~~ not exceeding the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title;

~~20.~~ 23. "Professional services" means services which are predominantly mental or intellectual in character, rather than physical or manual and which do not involve the supplying of products. Professional services include services to support or improve agency policy development, decision making, management, administration, or the operation of management systems;

~~21.~~ 24. "Purchase order" means an offer by the state to buy supplies or services, upon specified terms and conditions, using simplified acquisition procedures;

~~22.~~ 25. "Requisition" means a written request by a state agency for an acquisition;

26. "Services" or "contractual services" refers to directly engaging the time and effort of a contractor for the primary purpose of performing an identifiable task rather than for the furnishing of an end item of supply;

~~23.~~ 27. "Sole source contract" means:

a. for state agencies subject to the Oklahoma Central Purchasing Act, a contract specified for a particular acquisition which, by the provisions of Section 89 of this title contract specifications needed by an agency, restricts the contract to one bidder or to one brand name, and

b. for state agencies that are not subject to the central purchasing provisions of the Oklahoma Central Purchasing Act, a contract for a particular acquisition which, by the contract specifications needed by an agency, restricts the contract to one bidder or to one brand name;

~~24.~~ 28. "Split purchase" means a separate contract or acquisition for the purpose of evading the requirement of competitive bidding;

29. "State agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only political subdivisions of the state;

~~25.~~ 30. "State purchase card" means a purchase card, similar in nature to a commercial credit card, issued to authorized agency officials for their use in acquiring supplies and services estimated at less than Two Thousand Five Hundred Dollars (\$2,500.00);

~~26.~~ 31. "State Purchasing Director" or "Director of Central Purchasing" includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority; and

~~27.~~ 32. "Statewide contract" means an indefinite delivery-type contract, written for a specified contract period, for specific ~~supplies or services~~ acquisitions, with a provision allowing state agencies to place orders as supplies and services are needed.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.4, as last amended by Section 28, Chapter 294, O.S.L. 1997 (74 O.S. Supp. 1997, Section 85.4), is amended to read as follows:

Section 85.4 A. Except as provided in Section 85.12 of this title, every state agency shall ~~acquire~~ make all ~~contractual services, supplies, equipment, or materials~~ acquisitions used, consumed or spent by ~~such~~ the state agency in the performance of its official functions by the presentation of requisitions ~~for such services, supplies, materials, or equipment~~ to the Purchasing Division established in Section 85.3 of this title and no ~~such items or service~~ acquisitions shall be acquired by any state agency for such use or consumption except by the presentation of ~~such~~ the requisition and receipt of the ~~items or service~~ acquisitions requisitioned through the Purchasing Division. The provisions of the Oklahoma Central Purchasing Act shall not preclude the acceptance of gifts and donations in the manner now authorized by law or the purchase of any ~~equipment, materials, supplies, or services~~ acquisition by any state agency acting for itself and without presentation of a requisition when such acquisition is authorized in writing by the State Purchasing Director. Subject to the provisions of this section, every state agency shall have the authority to determine its own quantitative needs for ~~services, supplies, equipment, and materials~~ acquisitions, insofar as it has such authority under existing law and shall have the authority to determine the general class or nature of ~~supplies, equipment, materials, or services~~ acquisitions, subject to the provisions of Section 85.5 of this title.

B. The Director of the Department of Central Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of the Department of
Req. No. 11742Page 7

Central Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

C. 1. Each requisition required by this section for the acquisition of any product shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying:

- a. the product requested is necessary to the agency's responsibilities,
- b. the amount of the product requested is not excessive, and
- c. the justification for the purchase of ~~such products;~~ the product.

2. Each requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements pursuant to Section 85.7 of this title shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

- a. no employee of the state agency is able and available to perform the services called for by the contract,
- b. the state agency shall receive, review and accept a detailed work plan from the contractor for performance ~~under~~ pursuant to the contract if requested by the ~~Department of Central Services~~ State Purchasing Director,
- c. the state agency has developed, and fully intends to implement, a written plan providing for the assignment of specific state agency personnel to:
 - (1) a monitoring and auditing function,
 - (2) the periodic review of interim reports, or other indications of past performance, and
 - (3) the ultimate utilization of the final product of the nonprofessional or professional services if

requested by the ~~Department of Central Services~~
State Purchasing Director,

- d. the work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,
- e. the contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,
- f. no current state employee will engage in the performance of the contract, unless specifically approved by the ~~Department of Central Services~~ State Purchasing Director; and
- g. the purchase of ~~such~~ the nonprofessional or professional services is justified.

3. When a state agency requisitions acquisitions that are to be supplied in components or phases, the requisition shall list each component or phase and the same shall be included on the Invitation to Bid. The determination of the lowest and best bid or best value bid, as required by the Oklahoma Central Purchasing Act, shall include all component or phase deliveries and shall not be based solely on the first component or phase delivery. State agencies may issue change orders to increase a purchase order for an acquisition not to exceed ten percent (10%) of the original purchase order total price.

D. Any person certifying the information required by subsection C of this section who knows such information to be false, upon conviction, shall be deemed guilty of a misdemeanor and shall be punished by fine or imprisonment or both fine and imprisonment pursuant to the provisions of Section 85.15 of this title and civilly liable for the amount of the contract.

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

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

G. 1. No state agency shall enter into a lease-purchase agreement if title is acquired to tangible property of any class or nature by making lease, rental, or any other type payments, except as specifically authorized by law or by a governing board of regents as to institutions ~~within~~ of The Oklahoma State System of Higher Education and except insofar as data processing equipment or other equipment is concerned; provided, however, the lease-purchase of data processing or other equipment by any state agency, whether or not ~~such~~ the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

2. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to determine the most cost-effective method for obtaining financing for lease-purchase agreements, which may be financed by either negotiated sale or competitive bid. If the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission determine that the lease-purchase of personal or real property should be financed through negotiated sale, the financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, Section 695.1 et seq. Unless said Commissions determine that the sale should be executed on a negotiated basis, such financing shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

3. Regardless of the method of financing, the acquisition price of personal property subject to a lease-purchase agreement shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

H. No state agency shall enter into a lease-purchase contract between the state agency as lessee and a private party as lessor if the contract is not capable of complete performance within the

Req. No. 11742Page 10

current fiscal year in which the contract was entered into unless a valid nonappropriation clause is included in the contract. Such contracts shall contain the following or substantially similar language:

Lessee shall have the right to terminate this lease, in whole but not in part, at the end of any fiscal year of lessee, if the Legislature fails to allocate sufficient funds to lessee for the rental payments required under this lease.

I. 1. No change order or addendum can be made to a lease-purchase agreement which extends the term or life of the original bid contract. Any lease-purchase agreement requiring such extensions or refinancing shall be readvertised and processed in accordance with the provisions of ~~this act~~ the Oklahoma Central Purchasing Act.

2. All state agencies, whether or not ~~such~~ the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall prepare a list of all tangible personal property which it is acquiring by a lease-purchase method and, prior to the renewal of a lease-purchase agreement, shall evaluate the rate being paid under the current lease-purchase agreement against rates currently being received by the Purchasing Division of the Department of Central Services on a competitive bid basis to determine whether or not refinancing of the property will benefit the state. Any state agency which elects not to submit a requisition for a possible refinancing when the existing rates are at least one percent (1%) above rates being currently bid, and when the total sum to be paid for the property including principal and interest will be reduced, must submit a written justification to the State Purchasing Director stating the reasons for not attempting to refinance the property. The Purchasing Director shall forward all such justifications to the Chairman of the ~~Senate~~ Appropriations Committee of the Senate and the Chairman of the ~~House~~ Committee on Appropriations and Budget of the House of Representatives no later than February 1 of each year.

3. Unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for real or personal

property costing less than Fifty Thousand Dollars (\$50,000.00). Institutions ~~within the~~ of The Oklahoma State System of Higher Education system shall be exempt from this provision.

4. a. Unless otherwise provided by law, the maximum term of a state agency lease-purchase agreement shall be the lesser of the useful life of real or personal property subject to a lease-purchase agreement as determined by the State Purchasing Director ~~within the Department of Central Services,~~ or three (3) years for personal property and ten (10) years for real property, respectively. Institutions ~~within the~~ of The Oklahoma State System of Higher Education system shall be exempt from this provision.

b. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to extend the term of a lease-purchase agreement beyond three (3) years for personal property and ten (10) years for real property if the State Purchasing Director ~~of the Department of Central Services~~ determines that the useful life of the property exceeds said terms and the Oklahoma State Bond Advisor recommends the extension as being in the best interests of the State of Oklahoma.

5. Unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Acquisitions of real property authorized by the Legislature, unless otherwise exempted by the Legislature, shall be subject to the competitive bid provisions of the Oklahoma Central Purchasing Act. If ~~an~~ a state agency is authorized to enter into a lease-purchase agreement for real property, the financing of such acquisition, including ~~goods and services~~ acquisitions deemed desirable for executing a lease-purchase, certificate of participation, or similar agreement or obligation, shall be obtained in accordance with the provisions of ~~this act~~ the Oklahoma Central Purchasing Act. The ~~Director of State Purchasing within the Department of Central Services~~

Director shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such financing.

Legislative authorization shall constitute legal authorization for this state or ~~its~~ state agencies to enter into such lease-purchase agreements. Institutions ~~within the~~ of The Oklahoma State System of Higher Education system shall be exempt from this provision.

J. The State ~~Purchasing Division of the Department of Central Services~~ Director may permit leasing of products by state agencies if such leasing is determined by the State ~~Purchasing Division of the Department of Central Services~~ Director to be in the best interest of the state, provided that such leasing must be processed by competitive bids through the State ~~Purchasing Division of the Department of Central Services~~ Director except as to those acquisitions exempt under Section 85.12 of this title.

K. 1. In no event shall a state agency enter into a lease-purchase agreement unless that agreement contains the following or similar language:

The State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism. Such approval must be obtained in advance, in writing, from the Oklahoma State Bond Advisor prior to any remarketing.

2. In the event that a remarketing of a lease-purchase agreement is proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such marketing that describes the state's liability under the lease-purchase agreement must be approved in advance, in writing, by the Oklahoma State Bond Advisor.

L. 1. Whenever it appears advantageous to the state or any ~~department, division, bureau, commission, board, or other~~ state agency ~~of the state~~ to purchase or otherwise acquire any ~~equipment, supplies, material, or other property~~ acquisition which may be offered for sale by the government of the United States of America or any agency thereof, the State Purchasing Director may

enter into a contract for ~~such purchase~~ the acquisition with the federal government or with any federal agency charged with the sale or disposition of such equipment, supplies, material, or other property, and the State Purchasing Director shall be authorized to execute such contract.

2. Should the regulations of the federal government, or any agency thereof handling the disposition and sale of any equipment, supplies, materials, or other property which it would be advantageous to the state to purchase, require that partial or full payment be made at the time sale is effected and before the equipment, supplies, material, or other property will be delivered, the State Purchasing Director, upon requisition by the requesting party, shall draw a state warrant against the funds of the department or agency payable to the United States of America or its proper agency. The warrant shall be in such amount as may be necessary to meet the terms and conditions of sale without requiring a certificate showing that the equipment, supplies, material, or other property has actually been delivered to the state department or other agency in whose behalf the purchase is being negotiated.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 85.5, as last amended by Section 2 of Enrolled House Bill No. 1162 of the 2nd Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 85.5 A. Subject to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of the Department of Central Services, shall have sole and exclusive authority and responsibility for ~~the acquisition of all materials, supplies, equipment, and services acquired,~~ acquisitions used or consumed by state agencies ~~of the state government.~~

B. The State Purchasing Director, after consultation with the requisitioning or purchasing state agency, shall have authority to determine the particular brand, model, or other specific classification of each ~~item or group of materials, supplies, equipment, or services~~ acquisition to be acquired for such use or

consumption, and to draft specifications establishing the requirements for all such leases or purchases ~~under the~~ pursuant to restrictions ~~provided in of~~ the Oklahoma Central Purchasing Act.

C. The Director of the Department of Central Services shall have authority and responsibility to promulgate rules governing, providing for, and prescribing:

1. The time, manner, authentication, and form of making requisitions for ~~supplies, materials, equipment, and services covered by~~ acquisitions pursuant to the Oklahoma Central Purchasing Act;

2. Inspection and testing of all supplies, materials, and equipment purchased or leased for use or consumption by state agencies and for analyzing and testing any samples or portions thereof, and the manner of such inspections, tests, and analyses;

3. The form and the time and manner of submission of any bids submitted for contracts to furnish any ~~of the items or services affected by this act~~ acquisitions pursuant to the Oklahoma Central Purchasing Act and the manner of opening and accepting the same, subject to restrictions contained in the Oklahoma Central Purchasing Act;

4. The conditions under which written contracts for such purchases or leases are to be required for the acquisitions affected by the Oklahoma Central Purchasing Act and the conditions under which such acquisitions may be made on an open account basis, subject to restrictions contained in the Oklahoma Central Purchasing Act, and the conditions and manner of negotiating such contracts;

5. The conditions under which purchases or leases may be made by state agencies without use of the procedure required by the Oklahoma Central Purchasing Act, and the form and manner of requests for such authority from the State Purchasing Director;

6. Any preference which may be found feasible to give to items and services produced by state institutions, or within this state, or the United States;

7. Conditions under which any of the rules herein authorized may be waived, ~~under the~~ pursuant to restrictions contained in the Oklahoma Central Purchasing Act;

8. The amounts of and deposits on any bond required to be submitted with a bid or contract for the furnishing of ~~items or services affected by~~ acquisitions pursuant to the Oklahoma Central Purchasing Act, and the conditions under which such bond shall be required;

9. Such storage and storage facilities as may be necessary to accomplish ~~his~~ responsibilities of the Director of the Department of Central Services pursuant to the Oklahoma Central Purchasing Act;

10. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport any ~~supplies, materials or equipment~~ acquisitions purchased pursuant to the Oklahoma Central Purchasing Act whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any ~~supplies, materials, service, or equipment affected by~~ acquisitions pursuant to the Oklahoma Central Purchasing Act;

11. The form of any estimate, order, or other document required to discharge the responsibilities fixed by the provisions of the Oklahoma Central Purchasing Act; ~~and~~

12. State agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid pursuant to Section 85.7 of this title to ensure competitiveness, fairness, compliance with provisions of all sections of the Oklahoma Central Purchasing Act, and compliance with Sections 3001 through 3010 of this title. The rules shall include separate provisions based on acquisition purchase price as follows:

- a. agencies shall make acquisitions not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), provided the acquisition process is fair and reasonable, and
- b. agencies with certified procurement officers pursuant to this section may make acquisitions in

excess of Two Thousand Five Hundred Dollars
(\$2,500.00) as provided below:

- (1) acquisitions with a contract price exceeding Two Thousand Five Hundred Dollars (\$2,500.00) and not exceeding Ten Thousand Dollars (\$10,000.00), pursuant to administrative rules of the Department of Central Services, and
- (2) acquisitions with a contract price exceeding Ten Thousand Dollars (\$10,000.00) and not exceeding a purchase amount requiring Central Purchasing bid, pursuant to Section 85.7 of this title, by competitive bidding by telephone solicitation and receipt of bids, or by facsimile transmission and receipt of bids;

13. Training by the State Purchasing Director of state agency procurement officers;

14. Review by the State Purchasing Director of state agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title and pursuant to requirements of this section;

15. The conditions for increasing acquisition limits for state agencies which have had a prior reduction in acquisition limit by the Director of the Department of Central Services pursuant to the Oklahoma Central Purchasing Act; and

16. Any other matter or practice which is directly related to ~~his~~ the responsibilities of the Director of the Department of Central Services within the scope of ~~his~~ the authority of the Director of the Department of Central Services as defined by the provisions of the Oklahoma Central Purchasing Act. The authority delegated by this section to promulgate rules shall be construed to authorize any act, practice, or requirement for which such regulatory power is delegated, but which is not presently authorized by law.

D. The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff. Such training shall include principles of state procurement

practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, rules promulgated pursuant to the Oklahoma Central Purchasing Act, provisions of Sections 3001 through 3010 of this title and any other matters related to state procurement practices. State agency purchasing officials that demonstrate proficiency shall be certified as "certified procurement officers" by the State Purchasing Director and shall be authorized to make purchases pursuant to provisions of this section.

E. The State Purchasing Director shall review state agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title for the purposes of:

1. Ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act;

2. Ensuring state agency compliance with rules promulgated by the Department of Central Services pursuant to the Oklahoma Central Purchasing Act;

3. Ensuring state agency compliance with provisions of Sections 3001 through 3010 of this title;

4. Reporting any acquisition by any state agency found not to be in compliance with those sections or rules to the Director of the Department of Central Services; and

5. Recommending that the Director of the Department of Central Services reduce the acquisition competitive bid limit amount for any state agency subject to the Oklahoma Central Purchasing Act found not to be in compliance with the Oklahoma Central Purchasing Act or rules promulgated thereto.

F. When recommended by the State Purchasing Director, based on written findings by the State Purchasing Director, the Director of the Department of Central Services may:

1. Require retraining of state agency procurement officials and other purchasing staff found not to be in compliance with provisions of the Oklahoma Central Purchasing Act, or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

2. Reduce the acquisition competitive bid limit for any state agency found not to be in compliance with provisions of the

Oklahoma Central Purchasing Act, or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

3. Transmit written findings by the State Purchasing Director to the State Auditor and Inspector for further investigation indicating purchasing procedures that do not conform to provisions pursuant to the Oklahoma Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

4. Should the Director of the Department of Central Services reasonably believe any acquisition reported by the State Purchasing Director constitutes a criminal violation pursuant to the Oklahoma Central Purchasing Act by any state agency, state agency purchasing official, bidder or vendor, transmit such report to the Attorney General for further investigation; or

5. Increase the state agency acquisition purchase amount requiring competitive bid, not to exceed the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title.

G. Pursuant to the requirements of the Oklahoma Central Purchasing Act, the State Purchasing Director shall have authority to enter into any statewide, multistate or multigovernmental contract.

~~F.~~ H. The State Purchasing Director is empowered to develop and test new contracting policies and procedures that hold potential for making the ~~Central~~ Purchasing Division more effective and efficient. The State Purchasing Director shall work toward implementing commercial practices that focus more on results and less on process. The State Purchasing Director shall endeavor to satisfy state ~~customers~~ agencies in terms of cost, quality, and timeliness of the ~~delivered supply or service~~ delivery of acquisitions by using ~~contractors~~ bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs and conducting business with integrity, fairness and openness.

~~F.~~ I. The State Purchasing Director shall undertake the following initiatives:

1. The use of Electronic Commerce and Electronic Data Interchange in accomplishing the purchasing function and in providing purchasing information to the vendor community and to state agencies;

2. A pilot project to allow selected state agencies to use State Purchase Cards for purchases less than Two Thousand Five Hundred Dollars (\$2,500.00);

3. A complete review and rewrite of ~~the Central Purchasing~~ rules promulgated pursuant to the Oklahoma Central Purchasing Act, endeavoring to ensure that the rules serve their intended purpose, satisfy the overall interests of the state, are clear and succinct, and encourage efficiency in contracting;

4. A past performance program to identify vendors with poor delivery and performance records from the master vendor file;

5. Development of guidance and definitive criteria for the use of sealed bid contracting procedures, negotiated contracting procedures, selection of types of contracts, postaward administration of purchase orders and contracts, contract modifications, termination of contracts and contract pricing;

6. Continual improvement in the quality of ~~Central~~ the performance of the Purchasing Division through training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;

7. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property program; ~~and~~

8. Development of programs to improve customer relations through training, improved communications, and appointment of technical representatives; and

9. Development of a pilot program authorizing certain acquisitions using best value acquisition. The pilot program shall be completed and permanent rules governing best value acquisitions shall be promulgated by the Director of the Department of Central Services by June 30, 1999.

~~G. The State Purchasing Director shall prepare a report identifying the key elements of the initiatives described in paragraphs 1, 2, 4, 6, 7 and 8 of subsection F of this section and shall include specific examples of transactions or occurrences governed by the initiatives. The report shall be filed with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate not later than the last day of January, 1997.~~

~~H.~~ J. The State Purchasing Director shall, in cooperation with the Oklahoma State Department of Agriculture, expand and develop new markets and identify the needs of state agencies and institutions, colleges and universities and other entities of this state, municipalities, counties and other political subdivisions of this state and federal agencies and institutions for agricultural products grown and produced in Oklahoma.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 85.7, as last amended by Section 5, Chapter 404, O.S.L. 1997 (74 O.S. Supp. 1997, Section 85.7), is amended to read as follows:

Section 85.7 A. ~~No~~ Except as otherwise provided by the Oklahoma Central Purchasing Act, no acquisition or contract shall be made without the submission of competitive bids ~~by~~ to 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)~~ Twenty-five Thousand Dollars (\$25,000.00) or less shall be exempted from ~~competitive bidding procedures~~ processing by the Purchasing Division, but subject to the Oklahoma Central Purchasing Act and rules promulgated pursuant thereto. 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~~ twenty-five-thousand-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~~ twenty-five-

thousand-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~~ the exempt contracts to any member of the Appropriations and Budget Committee of the House of Representatives or ~~Senate of the~~ Appropriations Committee of the Senate, 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)~~ Thirty-five Thousand Dollars (\$35,000.00) 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

Req. No. 11742Page 22

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 or the purchase or collection of semen or embryos and the placement of embryos into recipient livestock 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 for acquisitions requested by a state agency 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 state 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 Director of 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 by the state agency.

- 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~~ acquisitions for individuals with disabilities who are clients of the State Department of Rehabilitation Services and which 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~~ acquisitions shall not be subject to the competitive bid requirements of this section. The Commission for Rehabilitation Services shall develop standards for the purchase of such ~~goods and services~~ acquisitions and may elect to utilize ~~Central~~ the Purchasing Division when appropriate. ~~Such~~ The standards shall foster economy, short response time, and shall include appropriate safeguards and written records to ~~assure~~ ensure 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)~~ the acquisition purchase amount requiring competitive bid pursuant to this section 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

Req. No. 11742Page 26

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~~ the Purchasing Division 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 the Department 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.

15. Purchases available pursuant to a multistate or multigovernmental contract through the ~~Central~~ Purchasing Division, if the terms of the contract are more favorable to or will result in more favorable terms, conditions, accessibility, prices, control, or efficiency for the state than purchasing from

Req. No. 11742Page 27

a company distributing to state agencies through a statewide contract or other contract shall be exempt from competitive bidding procedures.

16. The Commission on Marginally Producing Oil and Gas Wells shall be exempt from the competitive bid requirements of this section for contracts with local vendors for the purpose of holding special events and exhibitions throughout the state.

B. Acquisitions or contracts shall be awarded to the lowest and best, or best value 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 state agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best, or best value bid. Further, ~~such~~ the state 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 state 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.7c of Title 74, unless there is created a duplication in numbering, reads as follows:

A. No state agency shall enter into a contract for the acquisition of a high technology system unless the vendors proposing to supply the acquisition:

1. Provide documentation of the projected schedule of recommended or required upgrades or improvements to the high technology system over a projected three-year period following the targeted purchase date; or

2. Provide documentation that no recommended or required upgrades or improvements to the high technology system are planned over a projected three-year period following the targeted purchase date.

For purposes of this subsection, vendors shall provide documentation required for all entities which will be utilized in satisfying any phase.

B. No state agency shall enter into a contract for the acquisition of an upgrade or enhancement to a high technology system unless:

1. The vendor agrees to provide the acquisition at no charge to the state;

2. The vendor previously agreed in a contract to provide the acquisition at no additional charge to the state;

3. The state agency obtains from the vendor proposing to supply the acquisition documentation that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or

4. The vendor provides documentation that the vendor will no longer supply assistance to the state agency for the purpose of

maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.

C. The State Purchasing Director or the procurement officer of state agencies not subject to the Central Purchasing Act shall not process any state agency request for a high technology system acquisition unless the proposed vendor provides documentation that complies with subsections A or B of this section.

D. The State Purchasing Director shall provide such advice and assistance as may be required in order for state agencies to comply with the provisions of this section. For purposes of this section, "state agency" shall include all state agencies, whether subject to the Central Purchasing Act or not.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 6 of Enrolled Senate Bill No. 1317 of the 2nd 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~~ except for Section 85.39 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~~ Division processing 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 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~~ Acquisitions 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.~~ 11. Acquisitions by the Grand River Dam Authority;

~~13.~~ 12. 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.~~ 13. Purchases by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority or the Midwestern Oklahoma Development Authority;

~~15.~~ 14. 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.~~ 15. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and State-supported Programs except monies appropriated for the Administrative and Support Functions of the State Department of Education;

~~17.~~ 16. 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.~~ 17. 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.~~ 18. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

~~20.~~ 19. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

~~21.~~ 20. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

~~22.~~ 21. 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.~~ 22. 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.~~ 23. 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.~~ 24. Purchases or acquisitions of clothing for clients of the Department of Human Services and purchases and acquisitions of food for group homes operated by the Department of Human Services;

~~27.~~ 25. Purchases made or contracts entered into by the Oklahoma Energy Resources Board;

~~28.~~ 26. 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;

~~29.~~ 27. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title; ~~and~~

~~30.~~ 28. 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;

29. Acquisitions by the Native America Cultural and Educational Authority and acquisitions by the Oklahoma Department of Commerce to assist the Native American Cultural and Educational Authority pursuant to Section 5017 of this title; and

30. Acquisitions for resale in and through canteens operated pursuant to Section 537 of Title 57 of the Oklahoma Statutes.

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 Division~~ statewide contracts and the services of the State Purchasing 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 State Purchasing Director~~ State Purchasing Director as its agent for the purchase or procurement of any ~~item or service contracted~~ acquisition from a statewide contract or otherwise available to the state.

D. Notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works
Req. No. 11742Page 34

Authority, the Northeast Oklahoma Public Facilities 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 the State~~ Purchasing Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities 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 8. AMENDATORY 74 O.S. 1991, Section 85.33, is amended to read as follows:

Section 85.33 A. There is hereby created in the State Treasury a revolving fund for the ~~Office of Public Affairs~~ Department of Central Services to be designated the "Registration of State Vendors Revolving Fund". The fund shall consist of any monies received from fees collected in accordance with subsection B of this section. The revolving fund shall be a continuing fund, without legislative appropriation, not subject to fiscal year limitations, and shall be under the control and management of the ~~Office Department of Public Affairs~~ Central Services. Expenditures from the Registration of State Vendors Revolving Fund shall be budgeted and expended pursuant to the laws of the state and the statutes relating to public finance. The fund shall be used to defray the costs of the Purchasing Division for commodity research, classification, and analysis. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the ~~Office Department~~ Department, and approved for payment by the Director of State Finance.

B. The ~~Office Department of Public Affairs~~ Central Services may designate the amount of and collect a fee, not to exceed Ten Dollars (\$10.00), to register vendors that desire to do business with the State of Oklahoma through the Purchasing Division of the ~~Office Department~~ Department. The vendors must register separately for each commodity list. Each designated fee entitles the vendor to be on Req. No. 11742

that list for one (1) year, to receive all bid notices in that classification for that period, and to receive one copy of the State's Commodity Classification Manual when published. All fees collected in accordance with this section shall be deposited in the revolving fund created in subsection A of this section.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 85.39, is amended to read as follows:

Section 85.39 A. 1. Each state agency ~~whether or not such agency is subject to the Oklahoma Central Purchasing Act~~ shall develop ~~and promulgate~~ internal purchasing procedures for all acquisitions including, but not limited to, needs assessment, funding, routing, review, audits, monitoring and evaluations and submit the procedures to the State Purchasing Director.

2. For acquisition procedures subject to the Oklahoma Central Purchasing Act, state agencies shall submit a copy of the procedures within ten (10) days of development.

3. The State Purchasing Director shall review the procedures submitted pursuant to paragraph 2 of this subsection to determine whether they comply with the Oklahoma Central Purchasing Act, rules promulgated pursuant thereto, and Sections 3001 through 3010 of this title. The State Purchasing Director shall provide written findings, including details of noncompliance, if any, to the Director of the Department of Central Services, who shall notify the state agency within fifteen (15) days after the procedures are submitted and indicate revisions necessary to bring the procedures into compliance.

B. Prior to a state agency making acquisitions over the twenty-five-hundred dollar limit pursuant to Section 4 of this act, the state agency shall comply with this section.

C. Each state agency shall ~~also~~ maintain a document file for each contract which shall include, at a minimum, justification for the contract, supporting documentation and related information, copies of the contract, evaluations, written reports if required by the contract, and other such information as is required by the State Purchasing Director.

SECTION 10. AMENDATORY 74 O.S. 1991, Section 85.41, as last amended by Section 1, Chapter 302, O.S.L. 1994 (74 O.S. Supp. 1997, Section 85.41), is amended to read as follows:

Section 85.41 A. Any state agency contracting for professional services, ~~whether or not such services are exempt from the Oklahoma Central Purchasing Act,~~ shall comply with the provisions of this section.

B. 1. Each state agency shall be responsible for evaluating the performance of the professional services provided under a professional services contract and for completing a performance evaluation of the services provided under the contract only when the service was unsatisfactory or problems were encountered with the contractor. The evaluations shall be delivered to the State Purchasing Director, who shall retain the evaluations for future reference.

2. Each state agency shall be required to retain at the central office of the agency in a document file, a copy of the contract, a record of the payments made to the service provider, and a copy of the evaluations required pursuant to paragraph 1 of this subsection.

C. If the final product of the contract is a report, a copy shall be filed with the State Librarian and Archivist.

D. A state agency bears full responsibility for the diligent administration, monitoring and auditing of a professional services contract. The State Purchasing Director may require a state agency to report to the State Purchasing Director at any time on the status of any outstanding state contract to which the state agency is a party.

E. A contract entered into by a state agency or by or ~~under~~ pursuant to the supervision of the State Purchasing Director shall include an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the service provider relevant to the contract are subject to examination by the state agency, and the State Auditor and Inspector.

F. 1. Any person prior to entering into a professional services contract with a state agency for which the final product is a written proposal or study shall sign a sworn statement certifying, to the best of ~~his~~ the person's knowledge, that ~~he~~ the person has not previously entered into a contract with the state agency or any other state agency which would result in a substantial duplication of the final product required by the proposed contract.

2. Any person renewing ~~his~~ the person's contract with the state agency shall not be required to sign the sworn statement specified by this subsection.

G. 1. Contracts for professional services shall provide for payment for such services at a uniform rate throughout the duration of the contract if the services to be provided throughout the duration of the contract are similar and consistent.

2. a. No state agency subject to the Oklahoma Central Purchasing Act shall execute a contract for professional services providing for nonuniform payments throughout the duration of the contract without specific authorization and written justification by the Director.

b. Any state agency not subject to the Oklahoma Central Purchasing Act executing a contract for professional services providing for nonuniform payments throughout the duration of the contract, as a part of the document files required to be maintained pursuant to this section shall provide written justification for such nonuniform payment which justification shall be signed by the administrative head of such agency.

SECTION 11. AMENDATORY 74 O.S. 1991, Section 85.43, is amended to read as follows:

Section 85.43 A. Each chief administrative officer of an agency, whether or not ~~such~~ the agency is subject to the Oklahoma Central Purchasing Act, shall be required to ~~prepare within ten~~ (10) submit to the State Purchasing Director by November 1 of each

calendar days, ~~after a legislative session commences, year~~ a report listing the following all contracts ~~over Seven Hundred Fifty Dollars (\$750.00)~~ equal to or greater than Two Thousand Five Hundred Dollars (\$2,500.00) but not in excess of Twenty-five Thousand Dollars (\$25,000.00) entered into by the agency for the preceding fiscal year which will include the following information:

1. Open market contracts;
2. Professional services contracts;
3. Nonprofessional services contracts; and
4. Contracts for the leasing of property including real property contracts and any lease agreements for products or equipment.

B. The report shall contain:

1. The name of the vendor or service provider;
2. A description of service or item;
3. The total amount of the contract; and
4. The total amount expended to date for the preceding fiscal year.

C. The report shall specifically identify sole source contracts.

D. This report shall be submitted to the ~~Legislative Service Bureau~~ State Auditor and Inspector and the ~~Office of Public Affairs if requested by the Legislative Service Bureau or report shall be submitted to the Office of Public Affairs~~ Department of Central Services. In addition, the report shall be submitted to any member of the House or Senate Appropriation Committee if requested by such member.

E. The State Auditor and Inspector shall review the report for compliance with statutes and rules or other provisions of law applicable to sole source contracts.

SECTION 12. AMENDATORY 74 O.S. 1991, Section 79, as amended by Section 1, Chapter 204, O.S.L. 1993 (74 O.S. Supp. 1997, Section 79), is amended to read as follows:

Section 79. A. There is hereby created the State Travel ~~Division Office~~ within the Purchasing Division of the Department of Central Services.

B. ~~On and after the effective date of this act, all~~ All state agencies and departments of this state shall make arrangements for all air travel on scheduled commercial airlines for state employees required to travel in the course of their official duties and for all other persons traveling at state expense through the State Travel ~~Division Office~~, except when ~~any such~~ the state agency or department determines that:

1. The air travel services can be secured at a cost less than that which can be secured by the State Travel ~~Division Office~~; or

2. The air travel originates from a location outside the state and it would be impractical to arrange for the air travel through the State Travel ~~Division Office~~; or

3. The air travel is necessitated by an emergency and time does not permit utilization of the State Travel ~~Division's~~ Office's services; or

4. The air travel is part of a package arrangement made by the organization scheduling the meeting or conference.

C. All claims made for reimbursement shall contain a statement showing the reason for the exemption.

D. The State Travel ~~Division Office~~ shall divide the state into high travel areas and low travel areas. A high travel area shall consist of no more than one county. Oklahoma, Tulsa, Payne and Cleveland Counties and any other county that accounts for a substantial portion of air travel at state expense shall be designated as high travel areas. The remaining counties of the state shall be designated as low travel areas. Low travel areas may consist of more than one county, as determined by the State Travel ~~Division Office~~. The State Travel ~~Division Office~~ shall contract with no less than six private travel agencies in a high travel area and one or more private travel agencies in a low travel area to provide the scheduling and related travel services required to comply with this section. In order to take advantage of local competitive situations, institutions of ~~higher education~~

The Oklahoma State System of Higher Education in high travel areas are authorized to solicit competitive bids for air travel services by travel agencies. If the bids result in greater savings than the state contract, then these institutions may issue individual contracts to not less than two travel agencies. Further, institutions of ~~higher education~~ The Oklahoma State System of Higher Education in high travel areas are also authorized to solicit competitive bids for applicable city pair destination rates to airline companies. If the bids result in a greater savings than the state contract rates, these institutions may issue individual contracts to the airline companies with the lowest bids.

E. The State Travel ~~Division Office~~ shall promulgate rules ~~and regulations~~ and contract specifications to which the contract travel agencies shall be subject. The rules, ~~regulations~~ and specifications shall be drawn with the intent of obtaining the lowest available fares for scheduled commercial air travel.

F. At the end of each month the contract travel agencies shall furnish a statement, in a form approved by the State Travel ~~Division Office~~, showing certain details of all travel arrangements handled to each state agency ~~or department~~ for which the contract travel agencies have furnished their services and shall also furnish copies of said statements to the State Travel ~~Division Office~~.

SECTION 13. AMENDATORY 74 O.S. 1991, Section 89, as last amended by Section 1, Chapter 59, O.S.L. 1994 (74 O.S. Supp. 1997, Section 89), is amended to read as follows:

Section 89. A. 1. Pursuant to the provisions of this section, the State Purchasing Director ~~shall~~ may exempt from competitive bidding procedures a requisition for a sole source contract requested by a state agency subject to the Oklahoma Central Purchasing Act only if the provisions of paragraph 7 of this subsection have been followed.

2. Whenever any state agency subject to the Oklahoma Central Purchasing Act requisitions the Purchasing Director for any particular product or service by sole source contract the chief

administrative officer of such agency shall attach to the requisition an affidavit signed by such chief administrative officer, in the following form:

SOLE SOURCE

AFFIDAVIT

AGENCY _____

SERVICE PROVIDER/VENDOR _____

ADDRESS _____

PHONE _____

I hereby affirm that the services or products to be purchased pursuant to the provisions of the attached contract are very specialized or for which great acquired expertise is needed and to the best of my knowledge

(Name of Service Provider/Vendor)

is the only person or business entity which is singularly and peculiarly qualified to provide such services or products, and if a product is the only brand name which is singularly and peculiarly unique, for the following reasons:

The following is a brief description of all efforts which were made to solicit bids for the services or products to be purchased pursuant to the provisions of the attached contract:

I understand that the signing of this affidavit knowing such information to be false may subject me to punishment for perjury.

(Chief administrative officer)

STATE OF OKLAHOMA)

) ss.

COUNTY OF OKLAHOMA)

Subscribed and sworn to before me this ___ day of ___, 19__ or
20.

Notary Public

My Commission expires:

3. A court order requiring the purchase of certain products or services but which does not specify specific vendors or providers shall not constitute an affidavit nor be acceptable as a substitute for the affidavit required by this subsection or otherwise invalidate the competitive bidding procedures required pursuant to Section 85.7 of this title.

4. Any chief administrative officer of ~~an~~ a state agency affirming the affidavit required by this subsection who knows such information to be false shall be deemed guilty of perjury and upon conviction shall be punished by fine or by imprisonment or both fine and imprisonment pursuant to law. Any person found guilty or pleading nolo contendere pursuant to this paragraph shall immediately forfeit the person's position and shall be ineligible for appointment to or employment in the state service for a period of five (5) years after being found guilty or pleading nolo contendere.

5. Upon a determination by the Director of the Department of Central Services that there are reasonable grounds to believe that a violation of this subsection has occurred, the Director shall request the Attorney General to initiate criminal proceedings in district court.

6. The State Purchasing Director shall either approve or deny any requisition for a sole source contract.

~~B. Effective July 1, 1993:~~

~~4.~~ 7. Prior to the State Purchasing Director approving a sole source purchase pursuant to this section, no less than three suppliers shall be solicited to submit written or oral quotations in order to determine if a sole source purchase is in order and a

written record shall be maintained for three (3) fiscal years following the end of the fiscal year during which the sole source contract was awarded for audit or other appropriate purposes. For acquisitions between Two Thousand Five Hundred Dollars (\$2,500.00) and Twenty-five Thousand Dollars (\$25,000.00), the certified procurement office shall solicit the quotations required. For acquisitions of Twenty-five Thousand Dollars (\$25,000.00) or more, the State Purchasing Director shall solicit the quotations required.

8. The chief administrative officer of each state agency subject to the Central Purchasing Act shall submit to the State Purchasing Director a monthly listing of all sole source contracts exceeding Two Thousand Five Hundred Dollars (\$2,500.00) executed by the state agency in the preceding month. The report shall also contain information regarding requisitions for sole source contracts that were disapproved or modified by the State Purchasing Director and such other information required by the State Purchasing Director.

~~2.~~ 9. The State Purchasing Director shall electronically provide to the Office of State Finance the information received pursuant to this subsection in machine-readable format and in such form as is required by the Office of State Finance.

~~C. Effective July 1, 1993, the~~ B. The chief administrative officer of each state agency not subject to the Central Purchasing Act shall submit to the Office of State Finance a monthly listing of all sole source contracts exceeding Two Thousand Five Hundred Dollars (\$2,500.00) executed by the state agency in the preceding month and such additional information and in such form as is required by the Office of State Finance.

~~D. Effective July 1, 1993:~~

~~1.~~ C. By the fifteenth day of each month, or the first working day thereafter, the Office of State Finance shall provide a report from the information received pursuant to this section to:

a. the

1. The Speaker of the House of Representatives and the President Pro Tempore of the Senate~~ti~~

~~b. the~~

2. The Majority and Minority Leaders of both the House of Representatives and the Senate~~ti~~

~~c. the~~

3. The Chairmen and Vice Chairmen of the Appropriations Committees of both the House of Representatives and the Senate~~ti~~

~~d. the~~

4. The Chairmen and Vice Chairmen of each subcommittee for the Appropriations Committees in both the House of Representatives and the Senate~~ti~~ and

~~e. any~~

5. Any member of the Legislature requesting such report.

The report shall detail all sole source contracting activity by state agencies for the month prior to the month preceding the submission of the report. The report shall be titled "Monthly Sole Source Contracting Report of Oklahoma State Agencies" and reflect the period covered in the report. The report shall be provided in physical form unless electronic versions are specifically requested by the recipients listed in this section. The report shall be signed by the Director of State Finance or his designee. The report shall be in columnar database format and shall include at least the following fields of information: state agency number; state agency name; date created by the Department of Central Services for the requisition; date of either approval or disapproval of the requisition; if disapproved, the reason why such contract was disapproved; estimated amount of the requisition; purchase order amount; purchase order number; actual business name of vendor; vendor federal employer identification number; contact person; and the commodity classification listing at the appropriate level to distinguish between similar items. Information required by this subsection shall be reported and maintained on each report through the next reporting period after a contract is awarded. The applicable data in the fields of

information specified in this subsection shall be required to be listed even if the state agency requisition is disapproved.

~~2.~~ D. The Office of State Finance shall maintain electronic historic data or any other said data received pursuant to this section for at least two (2) years.

~~3.~~ E. By August 15 of each year from the data received pursuant to this section, the Office of State Finance shall complete and submit a report detailing the number of sole source contracts issued by each state agency and a list of the business names of the vendors who received sole source contracts during the previous fiscal year and if more than one such contract, the number of contracts so executed.

~~E.~~ F. For purposes of this section:1.

~~1.~~ "State state agency" or "agency" includes any office, officer, department, bureau, board, authority, council, court, commission, institution, unit, or division of each branch of state government, whether elected or appointed, excluding only municipalities, counties, school districts and any other local governmental subdivision of the state; ~~and~~

~~2.~~ "~~Sole source contract~~" means:

- ~~a.~~ ~~for state agencies subject to the Oklahoma Central Purchasing Act, a contract for a particular service or item which by the specifications for the item or qualifications needed by an agency restricts the bidders to one person, to one business entity or to one brand name, and~~
- ~~b.~~ ~~for state agencies that are not subject to the Oklahoma Central Purchasing Act, a contract for which competitive bids are not or have not been taken.~~

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 585 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any property acquired by the state shall be used only in the conduct of the official business of the state.

B. Any person convicted of violating the provisions of subsection A of this section is guilty of a misdemeanor.

SECTION 15. RECODIFICATION 74 O.S. 1991, Sections 85.34, as last amended by Section 3, Chapter 329, O.S.L. 1994, 85.34A, as last amended by Section 4, Chapter 329, O.S.L. 1994, Section 1, Chapter 209, O.S.L. 1995, 85.34B, as amended by Section 5, Chapter 221, O.S.L. 1997, 85.34C, 85.34D, 85.34E, 85.34F, as amended by Section 5, Chapter 329, O.S.L. 1994, Section 1, Chapter 301, O.S.L. 1995, Section 14, Chapter 353, O.S.L. 1996, 85.35, as amended by Section 6, Chapter 329, O.S.L. 1994, Section 2, Chapter 301, O.S.L. 1995, 85.37, as last amended by Section 7, Chapter 329, O.S.L. 1994, 85.38, as amended by Section 8, Chapter 329, O.S.L. 1994, 89, as last amended by Section 13 of this act, and 79, as last amended by Section 12 of this act (74 O.S. Supp. 1997, Sections 85.34, 85.34A, 85.34A1, 85.34B, 85.34F, 85.34G, 85.34H, 85.35, 85.36A, 85.37 and 85.38), shall be recodified as Sections 85.58A, 85.58B, 85.58C, 85.58D, 85.58E, 85.58F, 85.58G, 85.58H, 85.58I, 85.58J, 85.58K, 85.58L, 85.58M, 85.58N, 85.45j and 85.45k, respectively, of Title 74 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 16. This act shall become effective November 1, 1998.

46-2-11742 GH