

ENGROSSED HOUSE
BILL NO. 2693

By: Cox and Ross of the
House

and

Leftwich of the Senate

An Act relating to state government; 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; requiring agencies entering into certain sole source contracts to provide certain information; prohibiting sole source contract for certain purpose without approval by State Purchasing Director; prohibiting expenditure of funds in excess of certain period; providing exception; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 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 exempt from competitive bidding procedures a requisition for a sole source contract requested by a state agency subject to the Central Purchasing Act.

2. Whenever any state agency subject to the 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__.

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 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.

5. Upon a determination by the Director 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. Prior to the date as of which a state agency enters into a sole source contract for the performance of services by persons

employed by or leased to an entity obligated to perform services pursuant to the contract, the agency shall provide evidence to the State Purchasing Director that the persons who will perform services pursuant to a sole source contract meet the same qualifications as the agency personnel who would otherwise have performed those services and that the results achieved pursuant to the sole source contract will be in full and complete compliance with the applicable requirements for the performance of the duties and responsibilities imposed upon the agency for which the sole source contract is proposed. The State Purchasing Director shall not approve a sole source contract described by this subsection unless, pursuant to the documentation submitted by the agency to support the request, the agency has adequately demonstrated compliance with the requirements imposed by this subsection. No agency entering into a sole source contract pursuant to the provisions of this subsection shall expend funds for performance of services in excess of ninety (90) days unless the agency can demonstrate to the State Purchasing Director that the services being performed pursuant to the contract are so unique that only the vendor performing the services is capable of executing the duties and responsibilities otherwise imposed upon the agency.

C. Effective July 1, 1993:

1. 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. 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.~~ D. Effective July 1, 1993, the chief administrative officer of each 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 agency in the preceding month and such additional information and in such form as is required by the Office of State Finance.

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

1. 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 Speaker of the House of Representatives and the President Pro Tempore of the Senate,
- b. the Majority and Minority Leaders of both the House of Representatives and the Senate,
- c. the Chairmen and Vice Chairmen of the Appropriations Committees of both the House of Representatives and the Senate,
- d. the Chairmen and Vice Chairmen of each subcommittee for the Appropriations Committees in both the House of Representatives and the Senate, and
- e. 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: agency number; 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 agency requisition is disapproved.

2. 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. 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. "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 2. This act shall become effective July 1, 1998.

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

Passed the House of Representatives the 2nd day of March, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate