

ENROLLED HOUSE
BILL NO. 3070

By: Hamilton and Settle of
the House

and

Dickerson, Hobson and
Haney of the Senate

An Act relating to the Oklahoma Central Purchasing Act; providing procedures and requirements concerning the drafting and issuing of request for proposals and invitations to bid; making certain persons ineligible to receive contracts under certain circumstances; making procedures and requirements applicable to all state agencies; making certain actions unlawful; specifying penalty; amending 74 O.S. 1991, Sections 85.22 and 85.23, which relate to sworn statements; modifying content of certain sworn statements; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.7b of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A state agency, prior to beginning the drafting of a request for proposal or proposals (RFP) or invitation to bid (ITB), shall terminate any consultation or other relationship, contractual or otherwise, paid or unpaid, that the agency has had with any individual or business entity for preliminary work on the development of the RFP or ITB. From the time that the drafting begins, and until the RFP or ITB is issued, the state agency shall have no communication with the individual or entity regarding the RFP or ITB. However, nothing in this subsection shall be construed as precluding the individual or business entity from receiving an RFP or ITB when it is issued or submitting proposals or bids in response thereto.

B. When issuing an RFP or ITB, the state agency shall attach a document disclosing the identity of any individual or business entity that provided assistance prior to the beginning of the drafting of the RFP or ITB and describing the nature of the assistance rendered. The document shall also be available for public inspection in the manner provided by the Oklahoma Open Records Act.

C. Any individual or business entity that assists a state agency in evaluating proposals or bids submitted in response to an RFP or ITB shall be ineligible to receive a contract pursuant to that RFP or ITB.

D. The provisions of this section shall apply to any acquisition made by a state agency pursuant to an RFP or ITB, whether or not the agency is otherwise exempt from requirements of the Oklahoma Central Purchasing Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.15a of Title 74, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any public officer, employee, or any other person representing or acting on behalf of a state agency or on behalf of a state officer or employee to make any unauthorized disclosure to any person of the terms, contents, specifications, conditions, or other information which is or will be contained in a bid notice or which is submitted in response to a bid notice issued by a state agency in advance of the date on which the bid notice is to be made equally and uniformly known to all prospective bidders and the public, in advance of the opening of all bids submitted pursuant to the notice, or in advance of the award of the bid, if the bids are not publicly made known prior to the award of the bid.

B. It is unlawful for any person to solicit, possess, or receive information which is or will be contained in a bid notice of a state agency, for use in preparing a bid, in advance of the date on which the bid notice is to be made equally and uniformly known to all prospective bidders and the public.

C. It is unlawful for any person to solicit, possess, or receive information from a state officer, employee, or other person representing or acting on behalf of a state agency or on behalf of a state officer or employee, which relates to the bid notice, or the bids submitted in response to the bid notice, which is confidential or not otherwise available to all prospective bidders and the public.

D. It is unlawful for any officer or employee of a state agency, or any person representing or acting on behalf of a state agency, to withhold or impede the distribution of the information specified in subsection A of this section after notice of the bid has been given, unless the solicitation of bids has been withdrawn or the particular information in question has been deleted or replaced through alteration of the bid notice and the withdrawal or alteration has been made equally and uniformly known.

E. Any violation of this section made with intent to defraud this state shall be a felony and may, upon determination of a court of competent jurisdiction, render the proceedings voidable and require a new solicitation and award. Upon conviction, a person violating this section shall be subject to imprisonment as provided in Schedule G of the state sentencing matrix for a violation committed on or after the effective date of Section 20.1 of Title 21 of the Oklahoma Statutes. Any person convicted of such a violation committed before the effective date of Section 20.1 of Title 21 of the Oklahoma Statutes shall be subject to imprisonment not to exceed two (2) years.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.22, is amended to read as follows:

Section 85.22 A notarized sworn statement shall be attached to any ~~competitive~~ bid submitted to the State of Oklahoma for goods or services whether or not the bid is subject to the Oklahoma Central Purchasing Act, which shall be in substantially the following form:

STATE OF OKLAHOMA)
) ss
COUNTY OF)

_____, of lawful age, being first duly sworn, on oath says:

1. (s)he is the duly authorized agent of _____, the bidder submitting the ~~competitive~~ bid which is attached to this statement, for the purpose of certifying the facts pertaining to the

existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;

2. (s)he is fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bid; ~~and~~

3. neither the bidder nor anyone subject to the bidder's direction or control has been a party:

- a. to any ~~collusion~~ agreement among bidders in restraint of freedom of competition ~~by agreement to bid at a fixed price or to refrain,~~ including but not limited to an agreement relating to the price, quality, quantity, or nature of the item to be bid, or refraining from bidding, or as to any other terms of the prospective contract or bid,
- b. to any ~~collusion~~ agreement with any state official or employee ~~as to~~ or others representing or acting on behalf of the state or on behalf of any state official or employee, in restraint of freedom of competition or otherwise, including any agreement relating to the price, quality, quantity, quality or price in the prospective contract or the nature of the item to be bid, or to refrain from bidding, or as to any other terms of such the prospective contract or bid, nor
- c. ~~in to~~ any discussions discussion between a bidder or bidders or among bidders and any state official or employee or others representing or acting on behalf of the state or on behalf of a state official or employee, concerning the exchange of money or other thing of value for special consideration in the letting of a the contract;

4. to the best of the affiant's knowledge, neither the bidder nor anyone subject to the direction or control of the bidder has solicited or received, or otherwise possesses any information about the bid notice or which was contained in the bid notice, or which was used in preparing the bid notice or contained in the responses thereto, in advance of such information being equally available to all bidders or prospective bidders and/or the public.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public (or Clerk or Judge)

SECTION 4. AMENDATORY 74 O.S. 1991, Section 85.23, is amended to read as follows:

Section 85.23 A notarized sworn statement shall be attached to each contract for goods and services awarded by the state, which shall be in substantially the following form:

STATE OF OKLAHOMA)
) ss
COUNTY OF)

_____, of lawful age, being first duly sworn, on oath says:

1. (s)he is the duly authorized agent of _____, the ~~contractor under~~ vendor who is a party to the contract which is

attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among vendors, between vendors and state officials or employees, as well as facts pertaining to the giving of things of value to government personnel in order to procure said contract;

2. (s)he is fully aware of the facts and circumstances surrounding the making of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the ~~procurement of said contract; and~~

3. neither the ~~contractor~~ vendor nor anyone subject to the ~~contractor's~~ vendor's direction or control has:

- a. paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the letting of the contract to which this statement is attached,
- b. been a party to any agreement among vendors in restraint of freedom of competition, including but not limited to an agreement relating to the price, quality, quantity or the nature of the item or service to be sold or provided, or refraining from offering such items or services, or as to any terms in the prospective contract or bid,
- c. been a party to any agreement with any state official or employee or others representing or acting on behalf of the state or on behalf of any state officer or employee, in restraint of freedom of competition or otherwise, including any agreement relating to the price, quality, quantity or the nature of the item or service to be sold or provided, or to refrain from offering such items or services, or as to any terms in the prospective contract or bid, or
- d. been a party to any discussion among vendors and/or among one or more vendors and any state officer or employee or others representing or acting on behalf of the state or on behalf of a state officer or employee, concerning the exchange of money or other thing of value for special consideration in the letting of the contract; and

4. to the best of the affiant's knowledge, neither the vendor nor anyone subject to the direction or control of the vendor has solicited or received, or otherwise possesses any information which was contained in the bid notice, or which was used in preparing the bid notice or was contained in the responses thereto, in advance of such information being equally available to all vendors or prospective vendors and/or the public.

(Name/Title)

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public (or Clerk or Judge)

SECTION 5. It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 29th day of May, 1998.

Speaker

of the House of
Representatives

Passed the Senate the 29th day of May, 1998.

President

of the Senate