

SHORT TITLE: Oklahoma Central Purchasing Act. Effective date.
Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1174

By: Dickerson of the Senate

and

Askins of the House

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 1991, Sections 85.2, as last amended by Section 1, Chapter 316, O.S.L. 1996, 85.5, as last amended by Section 2, Chapter 316, O.S.L. 1996, 85.7, as last amended by Section 5, Chapter 404, O.S.L. 1997, 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, 85.5, 85.7, and 85.41), which relate to the Oklahoma Central Purchasing Act; changing certain definitions; modifying and adding certain definitions; changing certain dollar demarcations; authorizing delegation of certain procurement actions to agencies; requiring agencies to use certain acquisition methods; authorizing certain actions relating to certain unique terms and conditions; deleting certain reporting requirement; changing references to reflect previously changed names; clarifying when certain exemption is subject to Oklahoma Central Purchasing Act; correcting usage; making language gender neutral; providing for recodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 85.2, 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 and rentals, whether bought or leased by contract or otherwise, and includes every means by which a state agency obtains for its use any materials, supplies, service or equipment covered by this act, except those specifically excluded in this act;

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

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

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

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

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

8. "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. "Contract modification" means any written change in the terms of the contract;

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

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

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

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

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

19. "Open market contract" means a contract for the one-time acquisition of a particular item over ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00);

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

22. "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. "Sole source contract" means a contract specified by the provisions of Section 89 of this title;

24. "Split purchase" means separate contracts or acquisitions for the purpose of evading the requirement of competitive bidding. The Director of Central Services shall have the power and responsibility to promulgate rules governing the boundaries of split purchase;

25. "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.~~ 26. "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)~~ Twenty-five Thousand Dollars (\$25,000.00);

~~26.~~ 27. "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.~~ 28. "Statewide contract" means an indefinite delivery-type contract, written for a specified contract period, for specific supplies or services, with a provision allowing state agencies to place orders as supplies and services are needed; and

29. "Value-effective acquisition" means an acquisition based on criteria which include the following:

- a. the operational cost that the state 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, and return policy,
- f. vendor financial stability,
- g. consistency of the proposed solution with the state'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. vendor 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.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 85.5, as last amended by Section 2, Chapter 316, O.S.L. 1996 (74 O.S. Supp. 1997, Section 85.5), 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, used or consumed by agencies of the state government.

B. The State Purchasing Director, after consultation with the requisitioning or purchasing 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 to be acquired for such use or consumption,

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

The State Purchasing Director shall delegate to the using agencies procurement actions from statewide contracts, authorizing the using agency to determine the product, service, or solution. The agency shall use value-effective acquisition methods in making the award under such statewide contracts.

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 the Oklahoma Central Purchasing Act; ~~and~~

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; ~~and~~

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 and the manner of opening and accepting the same, subject to restrictions contained in the Oklahoma Central Purchasing Act; ~~and~~

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, including unique terms and conditions submitted by the vendor that are in the best interest of this state; and

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; ~~and~~

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; ~~and~~

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

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 the Oklahoma Central Purchasing Act, and the conditions under which such bond shall be required; ~~and~~

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

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 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 the Oklahoma Central Purchasing Act; ~~and~~

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. Any other matter or practice which is directly related to ~~his~~ responsibilities within the scope of ~~his~~ authority 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. 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.

E. 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 in terms of cost, quality, and timeliness of the delivered supply or service by using contractors who have a record of successful past performance, promoting competition, minimizing administrative operating costs and conducting business with integrity, fairness and openness.

F. 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)~~ Twenty-five Thousand Dollars (\$25,000.00);

3. A complete review and rewrite of the Central Purchasing rules, 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 Purchasing 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.

~~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.~~

SECTION 3. 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 acquisition or contract shall be made without the submission of competitive bids by the State Purchasing Director, except as provided in this section.

1. Any acquisition or contract for an amount of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or less shall be exempted from competitive bidding procedures. Separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirement of competitive bidding shall be deemed a felony. The State Purchasing Director may waive or increase the ~~two-thousand-five-hundred-dollar~~ 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 contracts to any member of the House or Senate Appropriations Committee, if requested by the member.

3. Competitive bids shall not be required for any emergency acquisitions or contracts involving ~~Five Thousand Dollars~~ ~~(\$5,000.00)~~ 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 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 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~~ Employee Benefits Council shall use procedures consistent with the competitive bid requirements of the Oklahoma Central Purchasing Act.

11. a. Any contract for a service for which the Department of Central Services has approved as qualifying for a fixed and uniform rate shall not be subject to competitive bid procedures.
- b. The Department of Central Services shall establish criteria and guidelines for those services which may be qualified for a fixed and uniform rate.

- c. The exception to competitive bid procedures authorized by this paragraph shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by any agency to employ consultants or to purchase products.
- d. Any agency desiring to have a service qualified for a fixed and uniform rate shall make a request for such qualification to the Department of Central Services and shall submit any documentation necessary to support such request. The Department of Central Services shall either approve or deny the request. If the Department of Central Services qualifies such services for a fixed and uniform rate, the agency requesting such qualification shall establish a fixed and uniform rate for such service, provided no contracts shall be entered into by the agency until such rate has been approved by the agency in a public hearing. Prior to approval, the proposed rate shall be clearly and separately identified in the agenda of the agency for the hearing and shall be openly and separately discussed during such hearing. In addition, the agency shall notify the Director of the Department of Central Services of its pending consideration of the proposed rate at least thirty (30) days before the agency is to meet on the proposed rate. Along with such notice, the agency shall deliver to the Department of Central Services a copy of the agenda items concerning the proposed rate with all supporting documentation and materials. The Director of the Department of Central Services shall communicate any observation, reservation, criticism or

recommendation to the agency, either in person at the time of the hearing or in writing delivered to the agency before or at the time of the hearing. The Director of the Department of Central Services shall specifically note in such written communications if the Director of the Department of Central Services has determined the rate to be excessive. Any such written communication presented in the absence of the Director of the Department of Central Services shall be presented orally during the public hearing. Whether made in person or in writing any comment made by the Director of the Department of Central Services shall be made a part of the minutes of the hearing in full.

- e. Within two (2) weeks after the convening of the Legislature, the administrative officer of each state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by such member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Department of Central Services shall be specifically identified in such list.
- f. At any time, the Director of the Department of Central Services is authorized to review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Department of Central Services determines the contract is not necessary, is excessive, or is not justified.

12. Purchases of or contracts for specifically prescribed nonmedical adaptive technology-related items for individuals with disabilities who are clients of the 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 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 and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing.

13. Purchases of or contracts for specifically prescribed nonmedical assistive technology-related items not exceeding ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for individuals under sixteen (16) years of age who are recipients of Supplemental Security Income and which are prescribed by a physician, qualified sensory aids specialists or qualified special education instructors shall not be subject to the competitive bid requirements. The Department of Human Services shall develop standards for the acquisition of such nonmedical assistive technology-related items and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing.

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

- (1) prior to entering into any contract for the services of an entity to administer a structured settlement agreement, the Attorney General receives proposals from at least three entities engaged in providing such services, and
- (2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.

b. A list of any such structured settlement agreements entered into by the Attorney General with summary thereon for the previous calendar year shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on January 31 of each year.

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 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 bidder therefor at a specified time and place, which shall be open to the public, with such preference between bidders offering substantially the same products or services at substantially the same prices, as may be set under the authority of Section 85.5 of this title.

C. Bids for professional service contracts shall be evaluated by the State Purchasing Director and the agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best bid. Further, such agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by the governing body of a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board which are authorized to hire investment managers, the Department of Central Services shall assist the governing body of a state retirement system, the Fund or the Board in the process of selecting investment managers. When requested by the ~~Flexible Benefits Advisory~~ Employee Benefits 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 4. 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 of Public Affairs~~ Department of 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, and approved for payment by the Director of State Finance.

B. The ~~Office of Public Affairs~~ Department of 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. The vendors must register separately for each commodity list. Each designated fee entitles the vendor to be on 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 5. AMENDATORY 74 O.S. 1991, Section 85.39, is amended to read as follows:

Section 85.39 Each state agency whether or not such agency or such exempted item is subject to the Oklahoma Central Purchasing Act shall develop and promulgate internal purchasing procedures including, but not limited to, needs assessment, funding, routing, review, audits, monitoring and evaluations. Each 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 6. 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 or her knowledge, that he or she 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 or her 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 7. 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 agency is subject to the Oklahoma Central Purchasing Act, shall be required to prepare within ten (10) calendar days, after a legislative session commences, a report listing the following contracts over ~~Seven Hundred Fifty Dollars (\$750.00)~~ Twenty-five Thousand Dollars (\$25,000.00) entered into by the agency for the preceding fiscal year:

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 and the ~~Office of Public Affairs~~ Department of Central Services if requested by the Legislative Service Bureau or 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.

SECTION 8. RECODIFICATION 74 O.S. 1991, Section 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, 85.34D, 85.34E, 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 and 85.38, as amended by Section 8, Chapter 329, O.S.L. 1994 (74 O.S. Supp. 1997, Sections 85.34, 85.34A, 85.34A1, 85.34B, 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 and 85.58L of Title 74 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 9. This act shall become effective July 1, 1998.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-1784

WHT