STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 305

By: Smith of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Indigent Defense System; amending 22 O.S. 1991, Sections 1355.4, as last amended by Section 1, Chapter 326, O.S.L. 1997, and 1355.14, as last amended by Section 7, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1998, Sections 1355.4 and 1355.14), which relate to the Oklahoma Indigent Defense System; providing for certain sole source contracts; excluding certain contracts from certain requirements of solicitation; making payment of certain travel expenses discretionary; requiring certain costs to be paid directly to the Oklahoma Indigent Defense System; amending 74 O.S. 1991, Section 85.12, as last amended by Section 32 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, which relates to the Oklahoma Central Purchasing Act; excluding certain contracts by the Oklahoma Indigent Defense System from the Oklahoma Central Purchasing Act; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1355.4, as last amended by Section 1, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 1998, Section 1355.4), is amended to read as follows:

Section 1355.4 A. The chief executive officer of the Oklahoma Indigent Defense System shall be the Executive Director, who shall be appointed by the Board and serve at the pleasure of the Board. The Executive Director shall be an attorney who has been licensed to practice law in this state for at least four (4) years preceding the appointment~~, with~~ <u>and shall have</u> experience in the representation of persons accused or convicted of crimes.

B. The Executive Director shall perform administrative functions which serve the Board.

C. The Executive Director shall have the following powers and duties:

1. To prepare and administer a master budget to be submitted to the Board and to process claims for the System, subject to approval by the Board;

2. To enter into contracts, as necessary, with individuals to provide counsel in cases in which the defendant is indigent and unable to employ counsel and to approve or disapprove the provisions of any such contract;

3. To review and approve or disapprove claims for expenditures of monies from whatever source, on a monthly basis;

4. To take such actions as shall strengthen the criminal justice system in this state;

5. To provide a professional organization for the education, training, and coordination of technical efforts of all attorneys representing indigent criminal defendants;

6. To maintain and improve defense efficiency and effectiveness in guaranteeing effective representation for the indigent criminal defendant;

7. To employ ~~such~~ personnel as necessary to carry out the duties imposed upon the System by law;

8. To solicit and maintain a current list of attorneys licensed to practice law in this state who are willing to accept court appointments and who meet any other qualifications as set by the Board;

9. To solicit and maintain a separate list of persons eligible for appointment to capital cases, who meet the qualifications set by the Board;

10. To establish reasonable hourly rates of compensation for attorneys appointed in accordance with the Indigent Defense Act in any county, subject to approval by the Board;

11. To establish maximum caseloads for attorneys employed by the System, subject to approval by the Board;

12. To ~~require reduction of~~ reduce caseloads through reassignment of cases to private attorneys, as necessary;

13. To approve the sharing of office space, equipment, or personnel among the separate indigent defense programs within the System;

14. To prepare and submit to the Board an annual report of expenditures of funds, cases ~~involved in~~, and status of ~~such~~ cases for the preceding fiscal year, and file ~~such~~ that report with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Oklahoma Supreme Court, and the Presiding Judge of the Oklahoma Court of Criminal Appeals ~~regarding the implementation of the Indigent Defense Act~~;

15. To ~~convene~~ conduct regional or statewide conferences and training seminars for the purpose of implementing the provisions of the Indigent Defense Act;

16. To serve in an advisory capacity to the indigent defenders and defense attorneys who represent indigents pursuant to contract or who volunteer to represent indigents of ~~the~~ this state;

17. To gather and disseminate information to indigent defenders relative to their official duties, including, but not limited to, changes in the law relative to their office;

18. To recommend additional legislation necessary to upgrade the Oklahoma Indigent Defense System or to improve the justice system; and

19. To operate a cost effective system by:

a. implementing procedures to track System expenditures to show costs by case and client and to track time and expenses by attorney if the attorney is employed by the System,

b. adopting written policies regarding when employees are to be in travel status and making efforts to pool trips to reduce costs, and

c. reviewing assignment of indigency status to identify clients who have available resources, and collecting costs of representation when feasible.

D. 1. The Executive Director is hereby authorized to develop, establish, and maintain lists of approved contractors that will be available to provide expert services. An attorney appointed in accordance with the Indigent Defense Act may select and have preapproved an expert or experts from the list of experts maintained by the Executive Director. An attorney may request to contract for expert services from one or more experts not on the list only when there is no expert on the list capable of providing the specific services needed and only with the prior approval of the Executive Director. The list shall include any expert who desires to furnish services to the agency and who has filed a schedule of fees for services with, and on a form approved by, the Executive Director. An attorney may agree to deviate from the schedule of fees only with the prior written approval of the Executive Director.

2. Attorneys appointed in accordance with the Indigent Defense Act may request and must have pre-approved investigative or other nonexpert witness services from the Executive Director on a form provided by the Executive Director. The Director may, subject to funds budgeted and available to the System, authorize such services at a reasonable hourly rate of compensation.

3. Services obtained under this section may be obtained as sole source contracts and are specifically exempt from the requirements

of soliciting no less than three quotations found in paragraph 7 of subsection A of Section 85.45j of Title 74 of the Oklahoma Statutes.

E. Each individual performing the services provided for in subsection D of this section ~~shall~~ may, with the approval of the Executive Director, be reimbursed for ~~their~~ necessary travel expenses ~~as provided~~ up to the amount permitted by the State Travel Reimbursement Act.

F. Requests for expenses not included in subsections D and E of this section shall require pre-approval by the Executive Director.

G. If there is a vacancy or extended absence in the Office of Executive Director, the Board shall perform ~~said~~ the duties or appoint an interim director to perform such duties until a new Executive Director is appointed.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1355.14, as last amended by Section 7, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1998, Section 1355.14), is amended to read as follows:

Section 1355.14 A. At the time of pronouncing the judgment and sentence or other final order, the court shall order any person represented by an attorney employed by the Indigent Defense System or a defense attorney who contracts or volunteers to represent indigents pursuant to the provisions of the Indigent Defense Act to pay the costs for representation in total or in installments and, in the case of installment payments, set the amount and due date of each installment. The attorney representing the indigent person shall document for the court the total costs for representation.

B. Costs assessed pursuant to this section shall be collected by the court clerk and ~~deposited in~~ when collected paid monthly to the Oklahoma Indigent Defense System for deposit to the Indigent Defense System Revolving Fund. The court clerk may retain not more than ten percent (10%) of all such costs collected as an administrative fee, which shall be deposited in the Court Clerk's Revolving Fund.

C. Costs of representation shall be a debt against the person represented until paid and shall be subject to any method provided by law for the collection of debts.

D. Any order directing the defendant to pay costs of representation shall be a lien against all real and personal property of the defendant and may be filed against such property and foreclosed as provided by law for civil liens.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 32 of Enrolled House Bill No. 1845 of the 1st Session of the 47th 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. Except as otherwise provided by this section, the following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act, 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 Purchasing 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. 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. Purchases by the Oklahoma Municipal Power Authority;

11. Acquisitions by the Grand River Dam Authority;

12. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

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

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;

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;

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;

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;

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

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

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

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;

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;

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;

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;

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

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;

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

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;

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

31. Expenditures of money or contracts entered into by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for the purchase or leasing of sprayers, blowers, traps, and attractants, related to the eradication of boll weevils in this state, or as part of a national regional boll weevil eradication program; and

32. Contracts entered into by the Oklahoma Indigent Defense System for expert services pursuant to the provisions of subsection D of Section 1355.4 of Title 22 of the Oklahoma Statutes.

C. Any agency or common school of Oklahoma, any municipality of ~~the~~ this state, any rural fire protection district, and county officers may, unless the contract with the state specifies otherwise, avail themselves of the Purchasing Division statewide

contracts and the services of the State Purchasing Director~~.~~ ~~Provided~~; provided, that any subdivision of government and any rural fire protection district of the state may designate the State Purchasing Director as its agent for the purchase or procurement of any acquisition from a statewide contract or otherwise available to the state.

D. 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 shall be subject to approval by the Director of the Department of Central Services, and 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 4. 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.

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