

ENROLLED SENATE
BILL NO. 1592

By: Herbert of the Senate

and

Askins of the House

An Act relating to state government; amending 74 O.S. 1991, Sections 85.2, as last amended by Section 1, Chapter 289, O.S.L. 1999, 85.10, and Section 1, Chapter 291, O.S.L. 1995, as last amended by Section 7, Chapter 289, O.S.L. 1999 (74 O.S. Supp. 1999, Sections 85.2 and 85.9D), which relate to the Oklahoma Central Purchasing Act; modifying definition; permitting State Purchasing Director to keep confidential certain financial or proprietary bidder information; authorizing negotiation of high technology system contracts; 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 289, O.S.L. 1999 (74 O.S. Supp. 1999, 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 methods of purchase, lease-purchase, lease with option to purchase, and rental of~~ items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease-purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act unless the items, products, supplies, services, or equipment are exempt pursuant to the Oklahoma Central Purchasing Act;

2. "Best value criteria" means bid or proposal evaluation criteria which include, but are not limited to, the following:

- a. the acquisition's operational cost a state agency would incur,
- b. the quality of the acquisition, or its technical competency,
- c. the reliability of the bidder's delivery and implementation schedules,

- d. the acquisition's facilitation of data transfer and systems integration,
- e. the acquisition's warranties and guarantees and the bidder's return policy,
- f. the bidder's financial stability,
- g. the acquisition's adherence to the state agency's planning documents and announced strategic program direction,
- h. the bidder's industry and program experience and record of successful past performance with acquisitions of similar scope and complexity,
- i. the anticipated acceptance by user groups, and
- j. the acquisition's use of proven development methodology, and innovative use of current technologies that lead to quality results;

3. "Bid" or "proposal" means an offer a bidder submits in response to an invitation to bid or request for proposal;

4. "Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal;

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;

6. "Change order" means a unilateral written order directing a supplier to make a change;

7. "Chief administrative officer" means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency;

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

9. "Consolidation contract" means a contract for several state agencies for the purpose of purchasing computer software maintenance or hardware maintenance;

10. "Contract" means a mutually binding legal relationship obligating the seller to furnish an acquisition and the buyer to pay for it. It includes all types of commitments that obligate a state agency to an expenditure of funds or action that, unless otherwise authorized, is 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 under which the contract becomes effective by written acceptance or performance, and
- e. bilateral contract modifications;

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

12. "Contracting" means purchasing, renting, leasing, or otherwise obtaining acquisitions from private sources. Contracting includes description, but not determination, of acquisitions required, selection and solicitation of sources, preparation and award of contracts, and contract administration;

13. "Electronic commerce" means the use of electronic methods to enable solicitation, supplier response, notice of contract award, state agency acquisition processes, or any other function to make an acquisition;

14. "Enterprise agreement" means an agreement for computer hardware, software, and service that a supplier manufactures, develops, and designs, and that one or more state agencies use;

15. "Equipment" means personal property a state agency acquires for its use which is an item or product and shall include all personal property used or consumed by a state agency that is not included within the category of materials and supplies;

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

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

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

19. "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. the consistency of the proposed acquisition with the state agency's planning documents and announced strategic program direction;

20. "Materials" or "supplies" includes all property except real property or equipment that a state agency acquires for its use or consumption;

21. "Multistate contract" or "multigovernmental contract" means an agreement entered into between two or more entities of government for acquisitions pursuant to a single contract;

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

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

24. "Open market contract" means a contract for a one-time acquisition not exceeding the acquisition amount requiring competitive bid pursuant to Section 85.7 of this title;

25. "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 state agency policy development, decision making, management, administration, or the operation of management systems;

26. "Purchase order" means an offer by a state agency to make an acquisition utilizing simplified procedures;

27. "Requisition" means a written request by a state agency for an acquisition;

28. "Services" or "contractual services" means direct engagement of 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;

29. "Sole brand acquisition" means an acquisition that by specification restricts the acquisition to one manufacturer or brand name;

30. "Sole source acquisition" means an acquisition which, by specification, restricts the acquisition to one supplier;

31. "Split purchase" means dividing a known quantity or failing to consolidate a known quantity of an acquisition for the purpose of evading a competitive bidding requirement;

32. "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;

33. "State purchase card" means an electronic transaction device issued to state agency officials for making acquisitions;

34. "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;

35. "Statewide contract" means a contract for specific acquisitions entered into by state agencies during a specified period with a provision allowing the agencies to place orders as the acquisitions are needed for delivery during the period specified; and

36. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

SECTION 2. AMENDATORY Section 1, Chapter 291, O.S.L. 1995, as last amended by Section 7, Chapter 289, O.S.L. 1999 (74 O.S. Supp. 1999, Section 85.9D), is amended to read as follows:

Section 85.9D A. Except as otherwise provided in subsection B of this section, agencies within the executive branch shall coordinate acquisition of computer software maintenance and hardware maintenance contracts through the Purchasing Division of the Department of Central Services. The Purchasing Division may establish consolidation contracts and enterprise agreements for state agencies. The State Purchasing Director may negotiate consolidation contracts ~~and~~ enterprise agreements and high technology system contracts in lieu of or in conjunction with bidding procedures to reduce acquisition cost.

B. The provisions of this section shall not apply to the Northeast Oklahoma Public Facilities Authority.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.10, is amended to read as follows:

Section 85.10 ~~All~~ Except as otherwise provided by law, records of the State Purchasing Director pertaining to any acquisition, contract ~~or,~~ transfer ~~conducted by him, or pertaining to any,~~ negotiations, order, or rejection ~~connected therewith~~ shall be open during ~~all~~ regular office hours of the Purchasing Division to any person, ~~whether an official or private citizen,~~ subject only to such reasonable limitations ~~as may be necessary~~ to prevent the removal of ~~such~~ records from the Purchasing Division ~~offices~~ and to allow ~~such~~ records to be kept current and in good order; and the acquisition records of all state agencies relating to requisitions, inventory, purchase or contract shall likewise and under the same conditions be open to public inspection under the same conditions. If the State Purchasing Director requires bidders to submit bidders' financial or proprietary information with a bid, proposal, or quotation, the State Purchasing Director may designate the information confidential and reject all requests to disclose the information so designated.

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.

Passed the Senate the 17th day of May, 2000.

President of the Senate

Passed the House of Representatives the 18th day of May, 2000.

Speaker of the House of
Representatives