

THE STATE SENATE
Monday, February 28, 2000

Senate Bill No. 1592

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, Section 85.2, as last amended by Section 1, Chapter 289, O.S.L. 1999, and 85.10 (74 O.S. Supp. 1999, Section 85.2), which relate to the Oklahoma Central Purchasing Act; modifying definition; permitting State Purchasing Director to keep confidential certain financial or proprietary information of bidders; 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:

- 1 a. the acquisition's operational cost a state agency
2 would incur,
- 3 b. the quality of the acquisition, or its technical
4 competency,
- 5 c. the reliability of the bidder's delivery and
6 implementation schedules,
- 7 d. the acquisition's facilitation of data transfer and
8 systems integration,
- 9 e. the acquisition's warranties and guarantees and the
10 bidder's return policy,
- 11 f. the bidder's financial stability,
- 12 g. the acquisition's adherence to the state agency's
13 planning documents and announced strategic program
14 direction,
- 15 h. the bidder's industry and program experience and
16 record of successful past performance with
17 acquisitions of similar scope and complexity,
- 18 i. the anticipated acceptance by user groups, and
- 19 j. the acquisition's use of proven development
20 methodology, and innovative use of current
21 technologies that lead to quality results;
- 22 3. "Bid" or "proposal" means an offer a bidder submits in
23 response to an invitation to bid or request for proposal;

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

4 5. "Business entity" means individuals, partnerships, business
5 trusts, cooperatives, associates, corporations or any other firm,
6 group or concern which functions as a separate entity for business
7 purposes;

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

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

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

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

19 10. "Contract" means a mutually binding legal relationship
20 obligating the seller to furnish an acquisition and the buyer to pay
21 for it. It includes all types of commitments that obligate a state
22 agency to an expenditure of funds or action that, unless otherwise

1 authorized, is in writing. In addition to bilateral instruments,
2 contracts include, but are not limited to:

- 3 a. awards and notices of awards,
- 4 b. orders issued under basic ordering agreements,
- 5 c. letter contracts,
- 6 d. orders under which the contract becomes effective by
7 written acceptance or performance, and
- 8 e. bilateral contract modifications;

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

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

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

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

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

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

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

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

13 19. "Lowest and best" means an acquisition based on criteria
14 which include, but are not limited to, the following:

- 15 a. the lowest total purchase price,
- 16 b. the quality and reliability of the product, and
- 17 c. the consistency of the proposed acquisition with the
18 state agency's planning documents and announced
19 strategic program direction;

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

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

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

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

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

13 25. "Professional services" means services which are
14 predominantly mental or intellectual in character rather than
15 physical or manual and which do not involve the supplying of
16 products. Professional services include services to support or
17 improve state agency policy development, decision making,
18 management, administration, or the operation of management systems;

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

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

1 28. "Services" or "contractual services" means direct
2 engagement of the time and effort of a contractor for the primary
3 purpose of performing an identifiable task rather than for the
4 furnishing of an end item of supply;

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

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

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

13 32. "State agency" includes any office, officer, bureau, board,
14 counsel, court, commission, institution, unit, division, body or
15 house of the executive or judicial branches of the state government,
16 whether elected or appointed, excluding only political subdivisions
17 of the state;

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

20 34. "State Purchasing Director" or "Director of Central
21 Purchasing" includes any employee or agent of the State Purchasing
22 Director, acting within the scope of delegated authority;

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

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

8 SECTION 2. AMENDATORY 74 O.S. 1991, Section 85.10, is
9 amended to read as follows:

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

1 State Purchasing Director may designate the information confidential
2 and reject all requests to disclose the information so designated.

3 SECTION 3. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT OPERATIONS & AGENCY
4 OVERSIGHT, dated 2-24-00 - DO PASS, As Coauthored.