

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1217

By: Perry

AS INTRODUCED

An Act relating to the Oklahoma Central Purchasing Act; amending 74 O.S. 1991, Sections 85.2, as last amended by Section 2, Chapter 371, O.S.L. 1998 and 85.4, as last amended by Section 3, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, Sections 85.2 and 85.4), which relate to definitions and purchasing requirements and procedures; adding a definition; prohibiting purchase of certain equipment, materials, and supplies; and providing an effective date.

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 2, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, 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, lease-purchases, lease-purchases with option to purchase, and rentals, whether bought or leased by contract or otherwise, and includes every means by which a state agency obtains for its use any items, products, materials, supplies, consulting services, and all other services or equipment covered by the Oklahoma Central Purchasing Act, except those specifically excluded in the Oklahoma Central Purchasing Act;

2. "Best value" means an acquisition based on criteria which include, but are not limited to, the following:

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

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

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

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, signed by the State Purchasing Director or designee, directing the contractor to make a change;

7. "Chief administrative officer" means the individual who has the responsibility to direct the administration of a state agency.

The term shall not be construed to mean either one or all of the individuals charged with the policy making responsibilities of the state agency;

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

9. "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;

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

11. "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;

12. "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;

13. "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;

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

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

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

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

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

19. "Multistate contract" or "multigovernmental contract" means an agreement entered into between two or more jurisdictions, such as states, for purchases under the same contract;

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

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

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

23. "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;

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

25. "Remanufactured" means the process where equipment, materials, or supplies are restored to their original specifications and are thereby diverted from the solid waste stream, retaining the bulk of components that have been through at least one life cycle and replacing consumable portions to enable the item to be restored to its original function;

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

~~26.~~ 27. "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;

~~27.~~ 28. "Sole source contract" means:

- a. for state agencies subject to the Oklahoma Central Purchasing Act, a contract for a particular acquisition which, by the contract specifications

needed by an agency, restricts the contract to one bidder or to one brand name, and

- b. for state agencies that are not subject to the central purchasing provisions of the Oklahoma Central Purchasing Act, a contract for a particular acquisition which, by the contract specifications needed by an agency, restricts the contract to one bidder or to one brand name;

~~28.~~ 29. "Split purchase" means a separate contract or acquisition for the purpose of evading the requirement of competitive bidding;

~~29.~~ 30. "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;

~~30.~~ 31. "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);

~~31.~~ 32. "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

~~32.~~ 33. "Statewide contract" means an indefinite delivery-type contract, written for a specified contract period, for specific acquisitions, with a provision allowing state agencies to place orders as supplies and services are needed.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 85.4, as last amended by Section 3, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, Section 85.4), is amended to read as follows:

Section 85.4 A. Except as provided in Section 85.12 of this title, every state agency shall make all acquisitions used, consumed

or spent by the state agency in the performance of its official functions by the presentation of requisitions to the Purchasing Division established in Section 85.3 of this title and no acquisitions shall be acquired by any state agency for such use or consumption except by the presentation of the requisition and receipt of the acquisitions requisitioned through the Purchasing Division. The provisions of the Oklahoma Central Purchasing Act shall not preclude the acceptance of gifts and donations in the manner now authorized by law or the purchase of any acquisition by any state agency acting for itself and without presentation of a requisition when such acquisition is authorized in writing by the State Purchasing Director. Subject to the provisions of this section, every state agency shall have the authority to determine its own quantitative needs for acquisitions, insofar as it has such authority under existing law and shall have the authority to determine the general class or nature of acquisitions, subject to the provisions of Section 85.5 of this title.

B. The Director of the Department of Central Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of the Department of Central Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

C. 1. Each requisition required by this section for the acquisition of any product shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying:

- a. the product requested is necessary to the agency's responsibilities,
- b. the amount of the product requested is not excessive, and
- c. the justification for the purchase of the product.

2. Each requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements pursuant to Section 85.7 of this title shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

- a. no employee of the state agency is able and available to perform the services called for by the contract,
- b. the state agency shall receive, review and accept a detailed work plan from the contractor for performance pursuant to the contract if requested by the State Purchasing Director,
- c. the state agency has developed, and fully intends to implement, a written plan providing for the assignment of specific state agency personnel to:
  - (1) a monitoring and auditing function,
  - (2) the periodic review of interim reports, or other indications of past performance, and
  - (3) the ultimate utilization of the final product of the nonprofessional or professional services if requested by the State Purchasing Director,
- d. the work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,
- e. the contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,
- f. no current state employee will engage in the performance of the contract, unless specifically approved by the State Purchasing Director; and



g. the purchase of the nonprofessional or professional services is justified.

3. When a state agency requisitions acquisitions that are to be supplied in components or phases, the requisition shall list each component or phase and the same shall be included on the Invitation to Bid. The determination of the lowest and best bid or best value bid, as required by the Oklahoma Central Purchasing Act, shall include all component or phase deliveries and shall not be based solely on the first component or phase delivery. State agencies may issue change orders to increase a purchase order for an acquisition not to exceed ten percent (10%) of the original purchase order total price.

D. Any person certifying the information required by subsection C of this section who knows such information to be false, upon conviction, shall be deemed guilty of a misdemeanor and shall be punished by fine or imprisonment or both fine and imprisonment pursuant to the provisions of Section 85.15 of this title and civilly liable for the amount of the contract.

E. The State Purchasing Director may request any additional information necessary to adequately review the requisitions and the statements required pursuant to subsection C of this section and compliance with the Oklahoma Central Purchasing Act.

F. Upon a determination that an acquisition is not necessary, is excessive or is not justified, the State Purchasing Director shall deny the requisition.

G. 1. No state agency shall enter into a lease-purchase agreement if title is acquired to tangible property of any class or nature by making lease, rental, or any other type payments, except as specifically authorized by law or by a governing board of regents as to institutions of The Oklahoma State System of Higher Education and except insofar as data processing equipment or other equipment is concerned; provided, however, the lease-purchase of data

processing or other equipment by any state agency, whether or not the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

2. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to determine the most cost-effective method for obtaining financing for lease-purchase agreements, which may be financed by either negotiated sale or competitive bid. If the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission determine that the lease-purchase of personal or real property should be financed through negotiated sale, the financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, Section 695.1 et seq. Unless said Commissions determine that the sale should be executed on a negotiated basis, such financing shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

3. Regardless of the method of financing, the acquisition price of personal property subject to a lease-purchase agreement shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

H. No state agency shall enter into a lease-purchase contract between the state agency as lessee and a private party as lessor if the contract is not capable of complete performance within the current fiscal year in which the contract was entered into unless a valid nonappropriation clause is included in the contract. Such contracts shall contain the following or substantially similar language:

Lessee shall have the right to terminate this lease, in whole but not in part, at the end of any fiscal year of lessee, if the

Legislature fails to allocate sufficient funds to lessee for the rental payments required under this lease.

I. 1. No change order or addendum can be made to a lease-purchase agreement which extends the term or life of the original bid contract. Any lease-purchase agreement requiring such extensions or refinancing shall be readvertised and processed in accordance with the provisions of the Oklahoma Central Purchasing Act.

2. All state agencies, whether or not the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall prepare a list of all tangible personal property which it is acquiring by a lease-purchase method and, prior to the renewal of a lease-purchase agreement, shall evaluate the rate being paid under the current lease-purchase agreement against rates currently being received by the Purchasing Division of the Department of Central Services on a competitive bid basis to determine whether or not refinancing of the property will benefit the state. Any state agency which elects not to submit a requisition for a possible refinancing when the existing rates are at least one percent (1%) above rates being currently bid, and when the total sum to be paid for the property including principal and interest will be reduced, must submit a written justification to the State Purchasing Director stating the reasons for not attempting to refinance the property. The Purchasing Director shall forward all such justifications to the Chairman of the Appropriations Committee of the Senate and the Chairman of the Committee on Appropriations and Budget of the House of Representatives no later than February 1 of each year.

3. Unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for real or personal property costing less than Fifty Thousand Dollars (\$50,000.00). Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

4. a. Unless otherwise provided by law, the maximum term of a state agency lease-purchase agreement shall be the lesser of the useful life of real or personal property subject to a lease-purchase agreement as determined by the State Purchasing Director, or three (3) years for personal property and ten (10) years for real property, respectively. Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.
- b. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to extend the term of a lease-purchase agreement beyond three (3) years for personal property and ten (10) years for real property if the State Purchasing Director determines that the useful life of the property exceeds said terms and the Oklahoma State Bond Advisor recommends the extension as being in the best interests of the State of Oklahoma.

5. Unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Acquisitions of real property authorized by the Legislature, unless otherwise exempted by the Legislature, shall be subject to the competitive bid provisions of the Oklahoma Central Purchasing Act. If a state agency is authorized to enter into a lease-purchase agreement for real property, the financing of such acquisition, including acquisitions deemed desirable for executing a lease-purchase, certificate of participation, or similar agreement or obligation, shall be obtained in accordance with the provisions of the Oklahoma Central Purchasing Act. The State Purchasing Director shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such financing. Legislative authorization shall constitute legal

authorization for this state or state agencies to enter into such lease-purchase agreements. Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

J. The State Purchasing Director may permit leasing of products by state agencies if such leasing is determined by the State Purchasing Director to be in the best interest of the state, provided that such leasing must be processed by competitive bids through the State Purchasing Director except as to those acquisitions exempt under Section 85.12 of this title.

K. 1. In no event shall a state agency enter into a lease-purchase agreement unless that agreement contains the following or similar language:

The State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism. Such approval must be obtained in advance, in writing, from the Oklahoma State Bond Advisor prior to any remarketing.

2. In the event that a remarketing of a lease-purchase agreement is proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such marketing that describes the state's liability under the lease-purchase agreement must be approved in advance, in writing, by the Oklahoma State Bond Advisor.

L. 1. Whenever it appears advantageous to the state or any state agency to purchase or otherwise acquire any acquisition which may be offered for sale by the government of the United States of America or any agency thereof, the State Purchasing Director may enter into a contract for the acquisition with the federal government or with any federal agency charged with the sale or disposition of such equipment, supplies, material, or other

property, and the State Purchasing Director shall be authorized to execute such contract.

2. Should the regulations of the federal government, or any agency thereof handling the disposition and sale of any equipment, supplies, materials, or other property which it would be advantageous to the state to purchase, require that partial or full payment be made at the time sale is effected and before the equipment, supplies, material, or other property will be delivered, the State Purchasing Director, upon requisition by the requesting party, shall draw a state warrant against the funds of the department or agency payable to the United States of America or its proper agency. The warrant shall be in such amount as may be necessary to meet the terms and conditions of sale without requiring a certificate showing that the equipment, supplies, material, or other property has actually been delivered to the state department or other agency in whose behalf the purchase is being negotiated.

M. A state agency shall not purchase any equipment, materials, or supplies whose original manufacturer places restrictions on the remanufacturing of the equipment, materials, or supplies by any other business. Such restrictions by a manufacturer shall include but shall not be limited to: Reducing the price of the product in exchange for an agreement not to remanufacture the product; a licensing agreement on the product that forbids remanufacturing; or any contract that forbids the remanufacturing or recycling of the product. In furtherance of this subsection which is intended to prevent used equipment, materials, or supplies from entering into the solid waste stream, original manufacturers, who have established recycling or remanufacturing programs available to a majority of their customers, may enter into signed agreements requiring the return of used equipment, materials, or supplies for the sole purpose of recycling and remanufacturing and making the

remanned equipment, materials, or supplies readily available  
for purchase.

SECTION 3. This act shall become effective November 1, 1999.

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