

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1381

By: Dickerson of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Central Purchasing Act; amending 74 O.S. 2001, Section 85.5, which relates to powers and duties of the State Purchasing Director; clarifying language; granting authority for certain rule making regarding certain audits and use of state purchase card; assessing fees for certain training; clarifying references; amending vendor reference to reflect supplier; deleting reference to certain pilot project; granting authority for Director to authorize use of certain purchase card; granting authority for Director to authorize reverse auctions; amending 74 O.S. 2001, Section 85.31, which relates to bonds; clarifying language; updating references; assessing pro rata share of excess cost of a bond in certain circumstances; allowing general counsel to determine form and legal sufficiency of blanket bonds; amending the filing of blanket bonds; amending 74 O.S. 2001, Section 85.41, which relates to professional services contracts; requiring certain reports be sent to the State Purchasing Director in certain situations; expanding certain examination to State Purchasing Director; clarifying language; amending 74 O.S. 2001, Section 85.58A, as amended by Section 1 of Enrolled Senate Bill No. 1232 of the 2nd Session of the 48th Oklahoma Legislature, which relates to risk management; clarifying language; amending duties of the Department of Central Services; providing for a system to allocate insurance and program costs; allowing the Department of Central Services to obtain, provide or assist the State Regents in obtaining certain insurance; amending references; providing for evaluation of insurance needs for other entities; providing for negotiation of insurance coverage and services contracts; specifying duties of State Purchasing Director; deleting requirement for approval by Risk Management Administrator prior to purchase of certain insurance; deleting certain references to motor license agents; amending 74 O.S. 2001, Section 85.58M, which relates to insurance fees; requiring the Department of Central Services to levy and collect certain fees and premiums; clarifying language; including premiums in consideration of delinquent invoices; requiring the Office of State

Finance to transfer certain funds to the Department of Central Services; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.5, is amended to read as follows:

Section 85.5 A. Pursuant 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 all acquisitions used or consumed by state agencies.

B. The State Purchasing Director, after consultation with the requisitioning state agency, shall have authority to determine the particular brand, model, or other specific classification of each acquisition and to draft or invoke pursuant to the Oklahoma Central Purchasing Act specifications establishing the requirements for all necessary contracts or purchase orders.

C. The Director of the Department of Central Services shall have authority and responsibility to promulgate rules pursuant to provisions of the Oklahoma Central Purchasing Act governing, providing for, prescribing, or authorizing any act, practice, or requirement for which regulatory power is delegated for:

1. The time, manner, authentication, and form of making requisitions for acquisitions;

2. Inspection, analysis, and testing of acquisitions or samples suppliers submit prior to contract award;

3. The form and manner of submission for bids or proposals a supplier submits and the manner of accepting and opening bids or proposals;

4. The conditions under which ~~The~~ the Department of Central Services shall require written contracts for acquisitions, the

conditions under which acquisitions may be made on an open account basis, and the conditions and manner of negotiating such contracts;

5. ~~Acquiring~~ Obtaining acquisitions produced by state institutions;

6. Conditions under which any of the rules herein authorized may be waived;

7. The amounts of and deposits on any bond required to be submitted with a bid or contract for the furnishing of acquisitions and the conditions under which such bond shall be required;

8. Storage and storage facilities necessary to accomplish responsibilities of the Director of the Department of Central Services;

9. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport acquisitions whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any acquisitions;

10. The form of any estimate, order, or other document the Director of the Department of Central Services requires;

11. State agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid pursuant to Section 85.7 of this title to ensure competitiveness, fairness, compliance with provisions of all sections of the Oklahoma Central Purchasing Act, and compliance with provisions of Section 3001 et seq. of this title, which relate to the State Use Committee. The rules shall include separate provisions based on acquisition purchase price as follows:

- a. state agencies shall make acquisitions not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), provided the acquisition process is fair and reasonable and is conducted pursuant to rules authorized pursuant to this section, and

b. state agencies with certified procurement officers and internal purchasing procedures found compliant by the Director of the Department of Central Services pursuant to this section may make acquisitions in excess of Two Thousand Five Hundred Dollars (\$2,500.00) as provided below:

- (1) acquisitions with a price exceeding Two Thousand Five Hundred Dollars (\$2,500.00) and not exceeding Ten Thousand Dollars (\$10,000.00), pursuant to rules authorized by this section, and
- (2) acquisitions with a price exceeding Ten Thousand Dollars (\$10,000.00) and not exceeding the amount requiring a requisition to the State Purchasing Director, pursuant to Section 85.7 of this title, by telephone, facsimile, invitation to bid, or solicitation by means of electronic commerce, receipt of bids and bid award by the state agency;

12. Training by the State Purchasing Director of state agency procurement officers;

13. Review and audit by the State Purchasing Director of state agency acquisitions;

14. The conditions for increasing acquisition limits for state agencies which have had a prior reduction in acquisition limit by the Director of the Department of Central Services; ~~and~~

15. State agency use of a state purchase card to make acquisitions; and

16. Any other matter or practice which relates to the responsibilities of the Director of the Department of Central Services.

D. The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff. The

training shall include principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, rules promulgated pursuant to the Oklahoma Central Purchasing Act, provisions of Section 3001 et seq. of this title, which relate to the State Use Committee, and any other matters related to state procurement practices. State agency purchasing officials that demonstrate proficiency shall be certified as "certified procurement officers" by the State Purchasing Director and shall be authorized to make acquisitions pursuant to provisions of the Oklahoma Central Purchasing Act and rules authorized by this section. The State Purchasing Director shall assess a fee to state agencies for the training that does not exceed each state agency's pro rata share of the costs the State Purchasing Director incurs to provide the training.

E. The State Purchasing Director shall review state agency acquisitions for the purposes of:

1. Ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act;
2. Ensuring state agency compliance with rules promulgated by the Department of Central Services pursuant to the Oklahoma Central Purchasing Act;
3. Ensuring state agency compliance with provisions of ~~Sections~~ Section 3001 through 3010 et seq. of this title pertaining to the State Use Committee;
4. Reporting any acquisition by any state agency found not to be in compliance with those sections or rules to the Director of the Department of Central Services; and
5. Recommending that the Director of the Department of Central Services reduce the acquisition competitive bid limit amount for any state agency found not to be in compliance with the Oklahoma Central Purchasing Act or rules promulgated thereto.

F. When recommended by the State Purchasing Director, based on written findings by the State Purchasing Director, the Director of the Department of Central Services may:

1. Require retraining of state agency procurement officials and other purchasing staff found not to be in compliance with provisions of the Oklahoma Central Purchasing Act, or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

2. Reduce the acquisition competitive bid limit for any state agency found not to be in compliance with provisions of the Oklahoma Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

3. Transmit written findings by the State Purchasing Director to the State Auditor and Inspector for further investigation, indicating purchasing procedures that do not conform to provisions pursuant to the Oklahoma Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

4. Transmit to the Attorney General or the State Auditor and Inspector for further investigation a report made by the State Purchasing Director that the Director of the Department of Central Services reasonably believes indicates that an action that constitutes a criminal violation pursuant to the Oklahoma Central Purchasing Act or other laws has been taken by any state agency, state agency ~~purchasing~~ official, bidder, or ~~vendor~~ supplier; or

5. Increase the state agency acquisition purchase amount requiring competitive bid, not to exceed the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title.

G. 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.

H. The State Purchasing Director may develop and test new contracting policies and procedures that hold potential for making the Purchasing Division more effective and efficient.

I. The State Purchasing Director shall endeavor to satisfy state agencies in terms of cost, quality, and timeliness of the delivery of acquisitions by using bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs, and conducting business with integrity, fairness, and openness.

J. The State Purchasing Director shall undertake the following:

1. The use of electronic commerce for solicitation, notification, and other purchasing processes;

~~2. A pilot project to allow selected state agencies to use State Purchase Cards for purchases not exceeding Two Thousand Five Hundred Dollars (\$2,500.00);~~

~~3. Monitoring of rules promulgated pursuant to the Oklahoma Central Purchasing Act to ensure that the rules, satisfy the interests of the state, are clear and succinct, and encourage efficiency in purchasing processes;~~

~~4. 3. A program to identify vendors with poor delivery and performance records;~~

~~5. 4. Development of 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. 5. Continual improvement in the quality of the performance of the Purchasing Division through training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;~~

~~7.~~ 6. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property programs; and

~~8.~~ 7. Development of programs to improve customer relations through training, improved communications, and appointment of technical representatives.

K. The State Purchasing Director shall, in cooperation with the Oklahoma State Department of Agriculture, identify the needs of state agencies and institutions for agricultural products grown and produced in Oklahoma.

L. The State Purchasing Director may authorize state agencies to utilize a state purchase card for acquisitions not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) per transaction.

M. The State Purchasing Director may utilize and authorize state agencies to utilize reverse auctions to obtain acquisitions.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.31, is amended to read as follows:

Section 85.31 A. Whenever any officer, statutory board, commission, committee, department, authority, or any state agent or agency by whatever name called, is authorized by any law of this state to purchase any official bond, surety bond, blanket bond, or surety contract upon any state officer or employee, ~~such the~~ authority is hereby transferred and conferred upon the Purchasing Division of the ~~Office of Public Affairs and such~~ Department of Central Services. The authority ~~so transferred and conferred~~ shall be exercised by the Purchasing Division in the manner ~~and~~ pursuant to the provisions and requirements prescribed by ~~Sections 85.26 through 85.31~~ Section 85.58A of this title ~~and the Central Purchasing Act.~~

B. The premium for ~~the~~ a bond will be invoiced to the ~~Central~~ Purchasing Division and paid for by legislative appropriation set aside for that specific purpose.

C. ~~The~~ If the legislative appropriation is insufficient to meet the cost of a bond, the State Purchasing Director in conjunction with the State Risk Administrator shall assess each entity covered by the bond a pro rata share of the excess cost amount.

D. A blanket bond shall be approved as to form and legal sufficiency by the ~~Attorney General~~ general counsel of the Department of Central Services and shall be filed with the ~~Secretary of State~~ Director of Central Services.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.41, is amended to read as follows:

Section 85.41 A. A state agency that acquires professional services shall comply with the provisions of this section.

B. The state agency shall evaluate the performance of the professional services provided pursuant to a professional services contract. The performance evaluation shall indicate the quality of service or work product of the supplier. The state agency shall ~~send a copy of the evaluation to the State Purchasing Director and~~ retain the evaluation in the document file the state agency maintains for the acquisition pursuant to Section 85.39 of this title. If the evaluation indicates deficiencies with the supplier's work, the state agency shall send a copy of the evaluation to the State Purchasing Director.

C. If the work product of the contract is a report, the state agency shall file the report with the State Librarian and Archivist.

D. A state agency shall administer, monitor, and audit the professional services contract. The State Purchasing Director may require the state agency to report to the State Purchasing Director the status of an unfinished professional services contract.

E. A professional services contract shall include an audit clause which provides that all items of the supplier that relate to the professional services are subject to examination by the state

agency ~~and~~, the State Auditor and Inspector and the State Purchasing Director.

F. 1. If the final product of the professional services contract is a written proposal, report, or study, the professional services contract shall require the supplier to sign a sworn statement certifying that the supplier has not previously provided the state agency or ~~any other~~ another state agency with a final product that is a substantial duplication of the final product of the proposed contract.

2. Any state agency renewing a contract with a supplier shall not be subject to the provisions of paragraph 1 of this subsection.

G. 1. Contracts for professional services shall provide for payment for services at a uniform rate throughout the duration of the contract if the services throughout the duration of the contract are similar and consistent.

2. No state agency shall execute a contract for professional services providing for nonuniform payments throughout the duration of the contract without authorization of the State Purchasing Director.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 85.58A, as amended by Section 1 of Enrolled Senate Bill No. 1232 of the 2nd Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 85.58A A. The Department of Central Services ~~is hereby directed to~~ shall establish for all state agencies, whether or not subject to the Central Purchasing Act, and ~~for such~~ other entities as provided by law a comprehensive professional risk management program which shall:

1. Identify and evaluate ~~all risks for state agencies and such other entities as provided by law~~ of loss and exposures to loss to officers, employees and properties;

2. ~~Eliminate, reduce, or minimize all~~ Minimize risks through a ~~continuous effective loss-prevention and loss-control program~~ programs;

3. Transfer risks, ~~if it is~~ economically advantageous to the state ~~to do so~~, by acquiring commercial insurance, ~~or by contractual pass-off~~ pass through of liability, or by other means;

4. Consolidate and administer ~~all~~ risk management plans and programs ~~pertaining to risk management~~ including self-insurance programs, except Workers' Compensation Insurance and State Employees Group Insurance;

5. Determine feasibility of and, if feasible, establish self-insurance programs;

~~6. Establish, if feasible, such self-insurance programs. Each self-insurance program so established shall be fully self-supporting and not dependent upon payments for insurance coverage under other programs, considering whether a program may be self-supporting to remain financially and actuarially sound;~~

~~7. Require~~ 6. Provide a system to allocate insurance and program costs to determine payment by agencies for insurance coverage and program expenses provided by the risk management program Department of Central Services;

~~8. 7.~~ When requested by a state retirement system, ~~the State Insurance Fund~~ CompSource Oklahoma or the State and Education Employees Group Insurance Board, assist ~~the state retirement system, the Fund or the Board~~ in obtaining ~~indemnity~~ insurance authorized by law ~~or when.~~ If requested by the Oklahoma State Regents for Higher Education, assist trust funds for which the State Regents serve as trustees in obtaining ~~indemnity~~ insurance authorized by law;

~~9. 8.~~ Assist ~~any~~ state agency agencies and ~~any~~ officers, employees, and members thereof, charged with ~~any type of~~ licensing authority, in obtaining ~~indemnity~~ insurance for liability for

judgments, based on the licensing authority, rendered by any court pursuant to federal law; and

~~10.~~ 9. When requested by a public trust established pursuant to Title 60 of the Oklahoma Statutes of which the State of Oklahoma is the beneficiary, obtain ~~or~~, provide or assist ~~such~~ the public trust in obtaining ~~indemnity~~ insurance authorized by law or trust indenture covering any board member, trustee, official, officer, employee or volunteer for ~~any~~ errors and omissions or liability risks arising from the performance of their official duties pursuant to law or trust indenture; and

10. When requested by the State Regents, for the purpose of insuring real property required pursuant to Section 4018 of Title 70 of the Oklahoma Statutes, of which the State Regents is the beneficiary, obtain, provide or assist the State Regents in obtaining insurance for the real property pursuant to the provisions of this section.

B. The Director of ~~the Department of~~ Central Services ~~is authorized to~~ may hire or contract for the services of a Risk Management Administrator ~~who shall to~~ supervise ~~all aspects of~~ the Comprehensive Professional Risk Management Program established pursuant to this section. If appointed by the Director as a state employee, the Risk Management Administrator shall be in the unclassified service.

C. The Risk Management Administrator shall ~~also be responsible for the continuing evaluation of the~~ evaluate insurance coverage ~~needed by the state needs and the insurance coverage in force for~~ state agencies, whether or not subject to the Central Purchasing Act, and other entities as provided by law. All ~~state agencies~~ entities shall submit to the Risk Management Administrator ~~any~~ all information which the Risk Management Administrator deems necessary to perform this duty.

D. The Risk Management Administrator in conjunction with the State Purchasing Director under the authority of the Director of Central Services may negotiate insurance coverage and services contracts. The State Purchasing Director shall ensure open processes for solicitation and qualification of insurance coverage and services providers. The State Purchasing Director shall award contracts for insurance coverage and services to the provider which offers the best and final terms and conditions.

E. The school districts of this state ~~are authorized to~~ may request the Risk Management Administrator to ~~supervise~~ advise for the purchase of insurance coverage for the school districts.

~~E. Prior to~~ F. A state agency, whether or not subject to the Central Purchasing Act, that contemplates purchase of property and casualty insurance by any state agency, shall provide details of the proposed purchase ~~shall be submitted~~ to the Risk Management Administrator for approval or disapproval prior to the purchase.

~~F. Any state agency, board, commission, or department, and any officers, employees, and members thereof, charged with any type of licensing authority may obtain indemnity insurance for liability for judgments based on any action taken pursuant to the licensing authority rendered by any court pursuant to federal law. Prior to purchase of said insurance, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.~~

G. The Director of ~~the Department of~~ Central Services shall promulgate rules ~~necessary~~ to effect the provisions of ~~this~~ the comprehensive professional risk management program.

H. 1. a. Any community action agency established pursuant to Sections 5035 through 5040 of this title ~~shall be eligible to~~ may participate in the comprehensive professional risk management program established pursuant to this section for risks incurred as a

result of operating a Head Start program or providing transportation services to the public. The Risk Management ~~Administration~~ Administrator shall obtain or provide for insurance coverage for such community action agencies or bonding for employees of such community action agencies. Any liability insurance coverage obtained or provided shall include expenses for administrative and legal services obtained or provided by the Risk Management Administrator.

b. The Risk Management Administrator shall determine criteria for participation in the risk management program by such community action agencies. In addition, the Risk Management ~~Administration~~ Administrator may require each such community action agency to:

- (1) provide adequate qualified personnel and suitable facilities and equipment for operating a Head Start program or providing transportation services to the public, and
- (2) comply with such standards as are necessary for the protection of the clients it serves.

2. To receive coverage pursuant to this section, a community action agency ~~or motor license agent~~ shall ~~be required to~~ make payments for any insurance coverage and shall otherwise comply with the provisions of this section and rules promulgated by the Department pursuant to the provisions of this section.

3. Requests for the insurance coverage provided pursuant to the provisions of this ~~section~~ subsection shall be submitted in writing to the Risk Management Administrator by the community action agencies ~~or motor license agents~~.

I. The Risk Management Administrator may provide or obtain for any state agency, ~~any~~ public trust with the state as a beneficiary

and ~~any~~ a director, officer, employee ~~and~~ or member thereof, ~~indemnity~~ insurance for liability for loss, including judgments, awards, settlements, costs and legal expenses, resulting from violations of rights or privileges secured by the Constitution or laws of the United States of America which occur while a director, officer, employee or member is acting within the scope of ~~his~~ service to the State of Oklahoma. ~~Such indemnity~~ The insurance shall be for coverage in excess of the limits on liability established by the Governmental Tort Claims Act but shall not limit or waive any immunities now or hereafter available to the State of Oklahoma or any state agency, any public trust with the state as a beneficiary, or any director, officer, employee or member thereof, including, but not limited to, any immunities under the Eleventh Amendment to the Constitution of the United States, state sovereign immunity, and any absolute or qualified immunity held by any director, officer, employee or member.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 85.58M, is amended to read as follows:

Section 85.58M A. The Department of Central Services ~~may~~ shall levy and collect ~~a~~ reasonable ~~fee~~ fees and premiums from state agencies and other entities as provided by law covered by the Comprehensive Professional Risk Management Program for the purpose of providing insurance coverage ~~through a self-insurance program, or purchased insurance or a combination thereof.~~

B. All fees ~~or~~ and premiums shall be promptly paid when due ~~and fees or.~~ Fees and premiums collected in accordance with the provisions of this section shall be deposited in the appropriate risk management fund.

C. If a state ~~agencies fail~~ agency fails to pay the insurance fees and premiums within forty-five (45) days of due date, the Department of Central Services shall consider the invoice delinquent. The Department may present a claim to the Office of

State Finance for payment of the delinquent invoice from funds available to the delinquent agency. The Office of State Finance ~~is authorized to~~ shall transfer funds to the Department of Central Services to pay the invoice from monies available to the delinquent agency for the general operations of the agency which are not specifically prohibited for such use by federal or state law. If funds of the delinquent agency are not available to pay the invoice in full, the Department of Central Services shall submit claims as necessary to pay the invoice as soon as funds are available from the funds of the delinquent agency.

SECTION 6. This act shall become effective November 1, 2002.

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