

ENGROSSED HOUSE  
BILL NO. 1329

By: Perry of the House

and

Coffee of the Senate

An Act relating to state government; enacting the Oklahoma Online Bidding Act; stating intent; defining terms; authorizing an online bidding process; providing requirements of the online bidding process; providing for rules; amending 61 O.S. 2001, Section 209, as amended by Section 33, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2002, Section 209), which relates to the Public Building Construction and Planning Act; clarifying certain duty of the Director of the Department of Central Services; amending 74 O.S. 2001, Section 85.5, as amended by Section 3, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2002, Section 85.5), which relates to duties of the State Purchasing Director and the Director of the Department of Central Services; clarifying duty of the State Purchasing Director; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.45o of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Oklahoma Online Bidding Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.45p of Title 74, unless there is created a duplication in numbering, reads as follows:

The intent of the Oklahoma Online Bidding Act is:

1. To provide increased economy in state government procurement activities and to maximize to the fullest extent practicable the purchasing value of state monies while ensuring that procurements are the most advantageous to state agencies;

2. To foster effective broad-based competition for state procurement within the free enterprise system;

3. To modernize state statutes governing state government procurement and permit the continued development of explicit and thoroughly considered procurement policies and practices;

4. To ensure the fair and equitable treatment of all persons who deal with state government procurement processes and to promote increased public confidence in state government procurement procedures; and

5. To provide an ongoing funding source for new and innovative electronic procurement practices that would otherwise not be possible due to previous funding practices and guidelines.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.45q of Title 74, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Online Bidding Act:

1. "Information technology" means data processing, telecommunications, and office systems technologies and services;

2. "Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance;

3. "Construction" shall be defined as provided by Section 202 of Title 61 of the Oklahoma Statutes for online bids subject to the Public Building Construction and Planning Act;

4. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration;

5. "State agencies" or "agencies" shall be defined as provided by Section 85.2 of Title 74 of the Oklahoma Statutes for online bids subject to the Oklahoma Central Purchasing Act or as defined by Section 202 of Title 61 of the Oklahoma Statutes for online bids subject to the Public Building Construction and Planning Act;

6. "Online bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event;

7. "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web; and

8. "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or request for quotation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.45r of Title 74, unless there is created a duplication in numbering, reads as follows:

A. When a state agency purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act for the purchase of goods, services, construction, or information services.

B. The online bidding process shall provide:

1. A designated opening and closing date and time. At the opening date and time, state agencies shall begin accepting online electronic bids. Online bids shall be accepted until the designated

closing date and time, except as provided by paragraph 6 of this subsection;

2. The posting of all online bids electronically and updating of bids on a real-time basis by state agencies;

3. The authorization for state agencies to require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation or applicable acts;

4. The authorization for state agencies to also require potential bidders to prequalify as bidders and to restrict solicitations to prequalified online bidders;

5. The retention of the authority of state agencies to determine the criteria that will be used as the basis for making awards; and

6. The authorization for the Director of the Department of Central Services, in the event the state agency determines that a significant error or event occurred that affected the electronic receipt of any online bid by the agency, to determine it is in the best interest of the state to allow the agency to accept an electronic bid after the specified official closing date and time.

C. The provisions of the Oklahoma Online Bidding Act shall not apply to bid or proposal sealing or opening provisions found in any state law other than the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act.

D. All bids submitted electronically through the online bidding process pursuant to the Oklahoma Online Bidding Act are subject to the same public disclosure laws that govern bids received pursuant to sealed bid procurement procedures pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act.

E. All remedies available to state agencies and suppliers through the sealed bid process pursuant to the Oklahoma Central

Purchasing Act or the Public Building Construction and Planning Act are also available to state agencies and online bidders in an online bidding process.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.45s of Title 74, unless there is created a duplication in numbering, reads as follows:

The Director of the Department of Central Services shall promulgate rules to implement the Oklahoma Online Bidding Act.

SECTION 6. AMENDATORY 61 O.S. 2001, Section 209, as amended by Section 33, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2002, Section 209), is amended to read as follows:

Section 209. The Director of the Department of Central Services shall promulgate rules:

1. For state agencies to perform minor construction projects;
2. Specifying building codes for construction projects;
3. Permitting state agencies who have the expertise, upon written application to the Construction and Properties Division of the Department of Central Services, to perform any part of the responsibilities of the Division pursuant to the provisions of the Public Building Construction and Planning Act for a specific project;
4. Specifying procedures and guidelines for the implementation of shared savings financing by state agencies;
5. Specifying energy conservation performance guidelines, for conducting a life cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned or leased structures and for developing energy performance indices to evaluate the efficiency of energy utilization for completing designs in the construction of state-financed and leased structures;
6. The time, manner, authentication, and form of making requisitions to the Division;

7. The form and manner of submission for bids or proposals and the manner of accepting and opening bids or proposals that may include online bids pursuant to the Oklahoma Online Bidding Act;

8. The manner for a state agency to acquire services for construction projects not exceeding the amount for which competitive bids are required pursuant to Section 102 of this title;

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

10. The form of any document the Director requires.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.5, as amended by Section 3, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2002, 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 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. 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;

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 Section 3001 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 official, bidder, or 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 pursuant to the Oklahoma Online Bidding Act for solicitation, notification, and other purchasing processes;

2. Monitoring 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;

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

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;

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;

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

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 8. This act shall become effective July 1, 2003.

SECTION 9. 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 House of Representatives the 3rd day of March, 2003.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2003.

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Presiding Officer of the Senate