

EHB 1329

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THE STATE SENATE
Wednesday, March 26, 2003

ENGROSSED

House Bill No. 1329

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:

1 The intent of the Oklahoma Online Bidding Act is:

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

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

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

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

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

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

21 As used in the Oklahoma Online Bidding Act:

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

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

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

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

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

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

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

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

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

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

19 B. The online bidding process shall provide:

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

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

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

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

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

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

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

21 C. The provisions of the Oklahoma Online Bidding Act shall not
22 apply to bid or proposal sealing or opening provisions found in any

1 state law other than the Oklahoma Central Purchasing Act or the
2 Public Building Construction and Planning Act.

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

9 E. All remedies available to state agencies and suppliers
10 through the sealed bid process pursuant to the Oklahoma Central
11 Purchasing Act or the Public Building Construction and Planning Act
12 are also available to state agencies and online bidders in an online
13 bidding process.

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

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

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

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

- 1 1. For state agencies to perform minor construction projects;
- 2 2. Specifying building codes for construction projects;
- 3 3. Permitting state agencies who have the expertise, upon
4 written application to the Construction and Properties Division of
5 the Department of Central Services, to perform any part of the
6 responsibilities of the Division pursuant to the provisions of the
7 Public Building Construction and Planning Act for a specific
8 project;
- 9 4. Specifying procedures and guidelines for the implementation
10 of shared savings financing by state agencies;
- 11 5. Specifying energy conservation performance guidelines, for
12 conducting a life cycle cost analysis of alternative architectural
13 and engineering designs and alternative major items of energy-
14 consuming equipment to be retrofitted in existing state-owned or
15 leased structures and for developing energy performance indices to
16 evaluate the efficiency of energy utilization for completing designs
17 in the construction of state-financed and leased structures;
- 18 6. The time, manner, authentication, and form of making
19 requisitions to the Division;
- 20 7. The form and manner of submission for bids or proposals and
21 the manner of accepting and opening bids or proposals that may
22 include online bids pursuant to the Oklahoma Online Bidding Act;

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

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

6 10. The form of any document the Director requires.

7 SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.5, as
8 amended by Section 3, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2002,
9 Section 85.5), is amended to read as follows:

10 Section 85.5 A. Pursuant to the provisions of Section 85.4 of
11 this title, the State Purchasing Director, under the supervision of
12 the Director of the Department of Central Services, shall have sole
13 and exclusive authority and responsibility for all acquisitions used
14 or consumed by state agencies.

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

21 C. The Director of the Department of Central Services shall
22 have authority and responsibility to promulgate rules pursuant to
23 provisions of the Oklahoma Central Purchasing Act governing,

1 providing for, prescribing, or authorizing any act, practice, or
2 requirement for which regulatory power is delegated for:

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

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

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

10 4. The conditions under which the Department of Central
11 Services shall require written contracts for acquisitions, the
12 conditions under which acquisitions may be made on an open account
13 basis, and the conditions and manner of negotiating such contracts;

14 5. Obtaining acquisitions produced by state institutions;

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

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

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

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

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

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

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

21 b. state agencies with certified procurement officers and
22 internal purchasing procedures found compliant by the
23 Director of the Department of Central Services

1 pursuant to this section may make acquisitions in
2 excess of Two Thousand Five Hundred Dollars
3 (\$2,500.00) as provided below:

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

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

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

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

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

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

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

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

- 1 1. Ensuring state agency compliance with provisions of the
2 Oklahoma Central Purchasing Act;
- 3 2. Ensuring state agency compliance with rules promulgated by
4 the Department of Central Services pursuant to the Oklahoma Central
5 Purchasing Act;
- 6 3. Ensuring state agency compliance with provisions of Section
7 3001 et seq. of this title pertaining to the State Use Committee;
- 8 4. Reporting any acquisition by any state agency found not to
9 be in compliance with those sections or rules to the Director of the
10 Department of Central Services; and
- 11 5. Recommending that the Director of the Department of Central
12 Services reduce the acquisition competitive bid limit amount for any
13 state agency found not to be in compliance with the Oklahoma Central
14 Purchasing Act or rules promulgated thereto.
- 15 F. When recommended by the State Purchasing Director, based on
16 written findings by the State Purchasing Director, the Director of
17 the Department of Central Services may:
- 18 1. Require retraining of state agency procurement officials and
19 other purchasing staff found not to be in compliance with provisions
20 of the Oklahoma Central Purchasing Act, or rules promulgated
21 pursuant to the Oklahoma Central Purchasing Act;
- 22 2. Reduce the acquisition competitive bid limit for any state
23 agency found not to be in compliance with provisions of the Oklahoma

1 Central Purchasing Act or rules promulgated pursuant to the Oklahoma
2 Central Purchasing Act;

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

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

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

19 G. Pursuant to the requirements of the Oklahoma Central
20 Purchasing Act, the State Purchasing Director shall have authority
21 to enter into any statewide, multistate or multigovernmental
22 contract.

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

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

10 J. The State Purchasing Director shall undertake the following:

11 1. The use of electronic commerce pursuant to the Oklahoma
12 Online Bidding Act for solicitation, notification, and other
13 purchasing processes;

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

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

20 4. Development of criteria for the use of sealed bid
21 contracting procedures, negotiated contracting procedures, selection
22 of types of contracts, postaward administration of purchase orders

1 and contracts, contract modifications, termination of contracts, and
2 contract pricing;

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

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

10 7. Development of programs to improve customer relations
11 through training, improved communications, and appointment of
12 technical representatives.

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

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

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

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

1 SECTION 9. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 3-24-03
6 - DO PASS.