

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1810

By: Toure

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 2001, Sections 85.3 and 85.5, as amended by Section 3, Chapter 483, O.S.L. 2002 (74 O.S Supp. 2002, Section 85.5), which relate to the purchasing division of the Department of Central Services; updating statutory language; deleting certain term; directing the Purchasing Director to encourage certain purchases; adding certain criteria for state agency acquisitions made by the Purchasing Director; creating the Small and Emerging Business Development Program Act; creating the Small and Emerging Business Development Advisory Committee; providing for membership, meetings, officers, and travel reimbursement; stating purpose of the Committee; providing for staffing; providing definitions; stating certain purpose; specifying conditions for the program; authorizing the Director of the Department of Central Services to promulgate rules; repealing 74 O.S. 2001, Sections 85.45, 85.45a, 85.45b, 85.45c, 85.45d, 85.45e, 85.45f, 85.45g, 85.45h and 85.45i, which relate to the Oklahoma Minority Business Enterprise Assistance Act; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.3, is amended to read as follows:

Section 85.3 A. There is hereby created and established in the Department of Central Services a Purchasing Division, the administrative head of which shall be the State Purchasing Director.

B. The Director of the Department of Central Services shall hire the State Purchasing Director. The State Purchasing Director shall:

1. Be at least twenty-eight (28) years of age;
2. Have a thorough knowledge of office practices and buying procedures in volume purchasing; and

3. Be a graduate of an accredited college or university with at least five (5) years' experience in commercial or governmental purchasing, or, in lieu of such education, have at least ten (10) years' experience in commercial or governmental purchasing.

C. The Purchasing Division shall include the following employees, and employment of ~~such~~ those employees is hereby authorized:

1. One assistant director;
2. One qualified specifications engineer;
3. Buyers who have at least three (3) years' procurement experience for:
  - a. food,
  - b. hardware,
  - c. textiles,
  - d. petroleum,
  - e. office supplies,
  - f. building materials,
  - g. pharmaceutical supplies,
  - h. automotive equipment, parts, and accessories, and
  - i. any other commodity group found by the Director of the Department of Central Services to justify special purchasing attention;
4. One buyer for products and services of the severely disabled as provided in Section 3001 et seq. of this title;
5. One dietitian, who shall have the qualifications required by the State Department of Health; and
6. Such other technical and clerical personnel as shall be assigned to the Purchasing Division by the Director of the Department of Central Services.

D. All activities of any state agency, ~~department,~~ or institution relating to purchasing shall be under the direction of

the Purchasing Division unless otherwise provided by the Oklahoma Central Purchasing Act.

E. The Purchasing Division shall provide qualified personnel to assist the purchasing activities of state agencies,~~departments,~~ and institutions.

F. Each state agency, ~~department,~~ and institution shall designate personnel to coordinate its purchasing functions with the Purchasing Division.

G. The Purchasing Division may, if the needs of a state agency, ~~department,~~ or institution are such as to so require, employ, and establish a buyer within a state agency, department, or institution.

H. No state agency,~~department,~~ or institution subject to the Oklahoma Central Purchasing Act shall have or maintain a purchasing section without the prior approval in writing of the Purchasing Division unless otherwise provided in the Oklahoma Central Purchasing Act.

I. The Purchasing Division shall make acquisitions from industries operated by the State Department of Corrections pursuant to the provisions of Section 549.1 of Title 57 of the Oklahoma Statutes.

J. The Purchasing Director shall encourage to the extent possible purchases from suppliers participating in the Small and Disadvantaged Business Program Act.

K. None of the personnel authorized by this section shall:

1. Sell to or otherwise provide acquisitions to any state agency subject to the Oklahoma Central Purchasing Act;

2. Be employees, partners, associates, officers, or stockholders in or with any business entity that sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act;

3. Be employed in any of the positions authorized by this section if a spouse or child owns any stock in any business entity

which sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act; or

4. Be employed in any of the positions authorized by this section if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act or is interested in any business entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars (\$5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Central Purchasing Act.

SECTION 2. 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, at least one of the bidders is a small and emerging business as defined by Section 5 of this act, 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, and
  - (3) at least two of the bidders are small and emerging businesses as defined by Section 5 of this act;

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

Sections 3 through 6 of this act shall be known and may be cited as the "Small and Emerging Business Development Program Act".

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

A. There is hereby created the Small and Emerging Business Development Advisory Committee. The Committee shall be composed of the following seven (7) members:

1. Five members appointed by the Governor, one appointed from each of the congressional districts in the state. The members appointed shall have experience in promoting the development of small and emerging businesses;

2. One member of the House of Representatives appointed by the Speaker of the House of Representatives; and

3. One member of the Senate appointed by the President Pro Tempore of the Senate.

B. The Director of State Purchasing shall convene the initial meeting. The Committee shall elect a chair and any other officers it deems necessary who shall serve one-year terms. Officers may serve additional consecutive terms.

C. Members of the Small and Emerging Business Development Advisory Committee shall receive no compensation, but they shall be reimbursed for necessary travel expenses in accordance with the State Travel Reimbursement Act.

D. The purpose of the Committee shall be to advise the State Purchasing Director and the Director of the Department of Central Services on implementation of this act.

E. Staffing assistance to the Committee shall be provided by the State Purchasing Division.

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

As used in the Small and Emerging Business Development Program Act:

1. "Division" means the Purchasing Division within the Department of Central Services;

2. "Program" means the Small and Emerging Business Development Program created within the Purchasing Division;

3. "Small and emerging business" means a small business organized for profit and performing a commercially useful function and is:

- a. at least sixty percent (60%) owned,
- b. controlled by one or more small and emerging business persons, and
- c. has its principal place of business located in this state; and

4. "Small and emerging business person" means a citizen of the United States who has resided in this state for at least one (1) year and whose ability to compete in the free enterprise system has been impaired historically due to diminished capital or credit opportunities as compared to others in the same or similar line of business and whose diminished opportunities have historically precluded, or are likely to preclude, the person from successfully competing in the open market.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 845.450 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Purchasing Division in the Department of Central Services shall provide for the increased opportunity for small and emerging businesses to become competitive in a modern economy without regard to race or gender. This purpose shall be accomplished by providing a program of assistance and promotion. The following provisions shall be applied and interpreted to promote this purpose.

B. There is hereby established within the Division the Small and Emerging Business Development Program. In an effort to assist small and emerging businesses, the Division shall identify, develop, and promote equal opportunity for all qualified small and emerging businesses.

C. The program shall not assist concerns owned and controlled by individuals who accumulated substantial wealth or who have not experienced or who will have overcome impediments to obtaining access to financing, markets, and resources.

D. The Director of Purchasing may require all certified small and emerging businesses participating or applying to participate in the program to report information the Director of the Purchasing Division deems necessary to enable and facilitate the progress of the program.

E. The Director of the Department of Central Services, with appropriate input from the Small and Emerging Business Development Advisory Committee created by Section 3 of this act, may promulgate rules necessary to implement this act.

SECTION 7. REPEALER 74 O.S. 2001, Sections 85.45, 85.45a, 85.45b, 85.45c, 85.45d, 85.45e, 85.45f, 85.45g, 85.45h and 85.45i, are hereby repealed.

SECTION 8. This act shall become effective November 1, 2003.

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