

CS for SB 559

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THE STATE SENATE
Wednesday, March 2, 2005

Committee Substitute for
Senate Bill No. 559

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 559 - By: SHURDEN of the Senate and LIOTTA of the House.

[state government - Oklahoma Central Purchasing Act - responsibilities - purchasing limits - effective date]

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.4, as amended by Section 1, Chapter 342, O.S.L. 2003 (74 O.S. Supp. 2004, Section 85.4), is amended to read as follows:

Section 85.4 A. Except as otherwise provided by the Oklahoma Central Purchasing Act, every state agency shall make all acquisitions used, consumed or spent by the state agency in the performance of its official functions by the presentation of requisitions to the Purchasing Division.

B. The provisions of the Oklahoma Central Purchasing Act shall not preclude a state agency from:

1. Accepting gifts or donations in any manner authorized by law; or

2. Making an acquisition for itself without presentation of a requisition when an acquisition without requisition is authorized in writing by the State Purchasing Director.

1 C. Subject to the provisions of this section, every state
2 agency shall determine its own quantitative needs for acquisitions
3 and the general class or nature of the acquisitions.

4 1. Any contract for nonprofessional services or professional
5 services whether or not such services are exempt from the
6 competitive bidding requirements of this section or pursuant to
7 Section 85.7 of this title shall be signed by the chief
8 administrative officer of the state agency or the chief
9 administrative officer of the requisitioning unit of the state
10 agency, and shall include a statement certifying that:

11 a. no employee of the state agency is able and
12 available to perform the services to be provided
13 pursuant to the contract,

14 b. the state agency shall receive, review and accept a
15 detailed work plan from the supplier for performance
16 pursuant to the contract if requested by the State
17 Purchasing Director,

18 c. the state agency has developed, and fully intends to
19 implement, a written plan providing for the
20 assignment of specific state agency personnel to:

- 21 (1) monitoring and auditing supplier performance,
22 (2) the periodic review of interim reports, or other
23 indications of performance, and

1 (3) if requested by the State Purchasing Director,
2 the ultimate utilization of the final product of
3 the nonprofessional or professional services,
4 d. the work to be performed under the contract is
5 necessary or incidental to the state agency's
6 responsibilities, and there is statutory authority
7 to enter into the contract,
8 e. the contract will not establish an employment
9 relationship between the state or the state agency
10 and any persons performing under the contract,
11 f. no current state employee will engage in the
12 performance of the contract, unless specifically
13 approved by the State Purchasing Director,
14 g. the purchase of the nonprofessional or professional
15 services is justified, and
16 h. the contract contains provisions that are required
17 by Section 85.41 of this title;
18 2. a. When a state agency requisition indicates that a
19 supplier will provide acquisitions in components or
20 phases, the requisition shall list each component or
21 phase, and the State Purchasing Director shall include
22 the list in the Invitation to Bid.

1 **b.** The determination of the lowest and best bid or best
2 value bid, as required by the Oklahoma Central
3 Purchasing Act, shall include all component or phase
4 deliveries and shall not be based solely on the
5 first component or phase delivery.

6 **c.** For a purchase order or contract that includes
7 separate component deliveries, the State Purchasing
8 Director or a state agency may issue change orders
9 to increase a purchase order or contract for the
10 acquisition that do not exceed an increase of ten
11 percent (10%) of the original purchase order or
12 contract total price.

13 D. The Director of Central Services shall prescribe
14 standardized contract forms and all other forms requisite or
15 deemed necessary by the Director of Central Services to effectuate
16 the provisions of this section and the Oklahoma Central Purchasing
17 Act.

18 E. ~~1. A contract that results from a requisition required by~~
19 ~~this section for nonprofessional services or professional services~~
20 ~~whether or not such services are exempt from the competitive~~
21 ~~bidding requirements of this section or pursuant to Section 85.7~~
22 ~~of this title shall be signed by the chief administrative officer~~

1 ~~of the state agency or the chief administrative officer of the~~
2 ~~requisitioning unit of the state agency certifying that:~~

3 ~~a. no employee of the state agency is able and~~
4 ~~available to perform the services to be provided~~
5 ~~pursuant to the contract,~~

6 ~~b. the state agency shall receive, review and accept a~~
7 ~~detailed work plan from the supplier for performance~~
8 ~~pursuant to the contract if requested by the State~~
9 ~~Purchasing Director,~~

10 ~~c. the state agency has developed, and fully intends to~~
11 ~~implement, a written plan providing for the~~
12 ~~assignment of specific state agency personnel to:~~
13 ~~(1) monitoring and auditing supplier performance,~~
14 ~~(2) the periodic review of interim reports, or~~
15 ~~other indications of performance, and~~
16 ~~(3) if requested by the State Purchasing Director,~~
17 ~~the ultimate utilization of the final product~~
18 ~~of the nonprofessional or professional~~
19 ~~services,~~

20 ~~d. the work to be performed under the contract is~~
21 ~~necessary to the state agency's responsibilities,~~
22 ~~and there is statutory authority to enter into the~~
23 ~~contract,~~

1 ~~e. the contract will not establish an employment~~
2 ~~relationship between the state or the state agency~~
3 ~~and any persons performing under the contract,~~
4 ~~f. no current state employee will engage in the~~
5 ~~performance of the contract, unless specifically~~
6 ~~approved by the State Purchasing Director,~~
7 ~~g. the purchase of the nonprofessional or professional~~
8 ~~services is justified, and~~
9 ~~h. the contract contains provisions that are required~~
10 ~~by Section 85.41 of this title.~~

11 ~~2. a. When a state agency requisition indicates that a~~
12 ~~supplier will provide acquisitions in components or~~
13 ~~phases, the requisition shall list each component or~~
14 ~~phase, and the State Purchasing Director shall include~~
15 ~~the list in the Invitation to Bid.~~

16 ~~b. The determination of the lowest and best bid or best~~
17 ~~value bid, as required by the Oklahoma Central~~
18 ~~Purchasing Act, shall include all component or phase~~
19 ~~deliveries and shall not be based solely on the first~~
20 ~~component or phase delivery.~~

21 ~~e. For a purchase order or contract that includes~~
22 ~~separate component deliveries, the Purchasing Director~~
23 ~~or a state agency may issue change orders to increase~~

1 ~~a purchase order or contract for the acquisition that~~
2 ~~do not exceed an increase of ten percent (10%) of the~~
3 ~~original purchase order or contract total price.~~

4 ~~F.~~ Any person certifying the information required by
5 subsection ~~E~~ C of this section who knows such information to be
6 false, shall upon conviction be guilty of a misdemeanor and shall
7 be punished by fine or imprisonment or both fine and imprisonment
8 pursuant to the provisions of Section 85.15 of this title and
9 shall be civilly liable for the amount of the contract.

10 ~~G.~~ F. The State Purchasing Director may request additional
11 information necessary to adequately review the requisitions to
12 ensure compliance with the Oklahoma Central Purchasing Act.

13 ~~H.~~ G. If the State Purchasing Director determines that an
14 acquisition is not necessary, excessive or not justified, the
15 State Purchasing Director shall deny the requisition.

16 ~~I.~~ H. 1. No state agency shall enter into a lease-purchase
17 agreement if title is acquired to tangible property of any class
18 or nature by making lease, rental, or any other type payments,
19 except as specifically authorized by law and except insofar as
20 data processing equipment or other equipment is concerned;
21 provided, however, the lease-purchase of data processing or other
22 equipment by any state agency shall be processed by competitive

1 bids through the Purchasing Division of the Department of Central
2 Services.

3 2. The ~~Council of Legislative~~ Bond Oversight Commission shall
4 have the authority to determine the most cost-effective method for
5 obtaining financing for lease-purchase agreements, which may be
6 financed by either negotiated sale or competitive bid. If the
7 ~~Council of Legislative~~ Bond Oversight Commission determines that
8 the lease-purchase of personal or real property should be financed
9 through negotiated sale, the financing shall be subject to the
10 provisions of the Oklahoma Bond Oversight and Reform Act. Unless
11 the ~~Council~~ Commission determines that the sale should be executed
12 on a negotiated basis, such financing shall be processed by
13 competitive bids through the Purchasing Division of the Department
14 of Central Services.

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

19 4. The State Purchasing Director may permit lease-purchasing
20 of equipment by the Oklahoma Tourism and Recreation Commission if
21 such leasing is determined by the State Purchasing Director to be
22 in the best interest of the state; provided, that such leasing
23 must be processed by competitive bids through the State Purchasing

1 Director except as to those acquisitions exempt under Section
2 85.12 of this title.

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

10 Lessee shall have the right to terminate the lease, in whole
11 but not in part, at the end of any fiscal year of lessee, if the
12 Legislature fails to allocate sufficient funds to lessee for the
13 rental payments required under the lease.

14 ~~K.~~ J. 1. No change order or addendum shall be made to a
15 lease-purchase agreement which extends the term or life of the
16 original bid contract. Any lease-purchase agreement requiring
17 such extensions or refinancing shall be readvertised and processed
18 in accordance with the provisions of the Oklahoma Central
19 Purchasing Act.

20 2. Every state agency, whether or not subject to the
21 provisions of the Oklahoma Central Purchasing Act, shall maintain
22 a list of all tangible personal property which it is acquiring by
23 a lease-purchase method and, prior to the renewal of a lease-

1 purchase agreement, shall evaluate the rate being paid under the
2 current lease-purchase agreement against rates currently being
3 received by the Purchasing Division of the Department of Central
4 Services on a competitive bid basis to determine whether or not
5 refinancing of the property will benefit the state. Any state
6 agency which elects not to submit a requisition for a possible
7 refinancing when the existing rates are at least one percent (1%)
8 above rates being currently bid, and when the total sum to be paid
9 for the property including principal and interest will be reduced,
10 shall submit a written justification to the State Purchasing
11 Director stating the reasons for not attempting to refinance the
12 property. The State Purchasing Director shall forward all such
13 justifications to the Chair of the Appropriations Committee of the
14 Senate and the Chair of the Committee on Appropriations and Budget
15 of the House of Representatives no later than February 1 of each
16 year.

17 3. Unless otherwise provided by law, no state agency shall
18 enter into a lease-purchase agreement for real or personal
19 property costing less than Fifty Thousand Dollars (\$50,000.00).

20 4. a. Unless otherwise provided by law, the maximum term
21 of a state agency lease-purchase agreement shall be
22 the lesser of the useful life of real or personal
23 property subject to a lease-purchase agreement as

1 determined by the State Purchasing Director, or
2 three (3) years for personal property and ten (10)
3 years for real property, respectively.

4 b. The Council of Legislative Bond Oversight shall have
5 the authority to extend the term of a lease-purchase
6 agreement beyond three (3) years for personal
7 property and ten (10) years for real property if the
8 State Purchasing Director determines that the useful
9 life of the property exceeds the terms and the
10 Oklahoma State Bond Advisor recommends the extension
11 as being in the best interests of this state.

12 5. Unless otherwise provided by law, state agency real
13 property acquisitions subject to lease-purchase agreements shall
14 be explicitly authorized by the Legislature. Acquisitions of real
15 property authorized by the Legislature, unless otherwise exempted
16 by the Legislature, shall be subject to the competitive bid
17 provisions of the Oklahoma Central Purchasing Act. If a state
18 agency is authorized to enter into a lease-purchase agreement for
19 real property, the financing of the acquisition, including
20 acquisitions deemed desirable for executing a lease-purchase,
21 certificate of participation, or similar agreement or obligation,
22 shall be obtained in accordance with the provisions of the
23 Oklahoma Central Purchasing Act. The State Purchasing Director

1 shall consult with the Oklahoma State Bond Advisor on the
2 preparation, evaluation, and negotiation of such financing.
3 Legislative authorization shall constitute legal authorization for
4 this state or state agencies to enter into such lease-purchase
5 agreements.

6 ~~H.~~ K. The State Purchasing Director may permit leasing of
7 products by state agencies if such leasing is determined by the
8 State Purchasing Director to be in the best interest of the state,
9 provided that such leasing must be processed by competitive bids
10 through the State Purchasing Director except as to those
11 acquisitions exempt pursuant to Section 85.12 of this title.

12 ~~M.~~ L. 1. Before reoffering or remarketing an obligation, a
13 state agency shall obtain written approval from the Oklahoma State
14 Bond Advisor. Should a remarketing of a lease-purchase agreement
15 be proposed that includes the remarketing of securities or
16 obligations to more than a single investor, any disclosure
17 language prepared in connection with such remarketing that
18 describes the state's liability under the lease-purchase agreement
19 shall be approved in advance and in writing by the Oklahoma State
20 Bond Advisor.

21 2. In no event shall a state agency enter into a lease-
22 purchase agreement unless that agreement states that the State of
23 Oklahoma reserves the right to approve any reoffering of this

1 obligation to another investor either through private placement,
2 issuance of certificates of participation, or any other mechanism.

3 ~~N.~~ M. 1. Whenever it appears advantageous to the state or to
4 any state agency to purchase or otherwise acquire any acquisition
5 which may be offered for sale by the government of the United
6 States of America or any agency thereof, the State Purchasing
7 Director may execute a contract for the acquisition with the
8 federal government or federal agency.

9 2. If the State Purchasing Director approves an acquisition
10 from the federal government or agency and determines that the
11 regulations of the federal government, or agency handling the
12 disposition and sale require that partial or full payment be made
13 at the time sale is effected and before the acquisition will be
14 delivered, the State Purchasing Director, upon requisition by the
15 requesting party, shall have a state warrant drawn against the
16 funds of the acquiring state agency payable to the United States
17 of America or its proper agency. The warrant shall be in such
18 amount as may be necessary to meet the terms and conditions of
19 sale without requiring a certificate showing that the acquisition
20 has actually been delivered to the state agency in whose behalf
21 the purchase is being negotiated.

1 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.5, as
2 last amended by Section 2, Chapter 511, O.S.L. 2004 (74 O.S. Supp.
3 2004, Section 85.5), is amended to read as follows:

4 Section 85.5 A. Pursuant to the provisions of Section 85.4 of
5 this title, the State Purchasing Director, under the supervision of
6 the Director of the Department of Central Services, shall have ~~sole~~
7 ~~and exclusive authority~~ oversight and responsibility for all
8 acquisitions used or consumed by state agencies.

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

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

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

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

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

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

8 5. Obtaining acquisitions produced by state institutions;

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

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

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

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

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

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

9 a. state agencies shall make acquisitions not exceeding
10 ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five
11 Thousand Dollars (\$5,000.00), provided the acquisition
12 process is fair and reasonable and is conducted
13 pursuant to rules authorized pursuant to this section,
14 and

15 b. state agencies with certified procurement officers and
16 internal purchasing procedures found compliant by the
17 Director of the Department of Central Services
18 pursuant to this section may make acquisitions in
19 excess of ~~Two Thousand Five Hundred Dollars~~
20 ~~(\$2,500.00)~~ Five Thousand Dollars (\$5,000.00) as
21 provided below:

22 (1) acquisitions with a price exceeding ~~Two Thousand~~
23 ~~Five Hundred Dollars (\$2,500.00)~~ Five Thousand

1 Dollars (\$5,000.00) and not exceeding ~~Ten~~
2 ~~Thousand Dollars (\$10,000.00)~~ Twenty-five
3 Thousand Dollars (\$25,000.00), pursuant to rules
4 authorized by this section, and

5 (2) acquisitions with a price exceeding ~~Ten Thousand~~
6 ~~Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars
7 (\$25,000.00) and not exceeding the amount
8 requiring a requisition to the State Purchasing
9 Director, pursuant to Section 85.7 of this title,
10 by telephone, facsimile, invitation to bid, or
11 solicitation by means of electronic commerce,
12 receipt of bids and bid award by the state
13 agency;

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

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

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

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

1 16. Any other matter or practice which relates to the
2 responsibilities of the Director of the Department of Central
3 Services; and

4 17. Procedures for negotiation of contracts or agreements,
5 whenever negotiation for such contracts or agreements is authorized
6 by law.

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

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

3 1. Ensuring state agency compliance with provisions of the
4 Oklahoma Central Purchasing Act;

5 2. Ensuring state agency compliance with rules promulgated by
6 the Department of Central Services pursuant to the Oklahoma Central
7 Purchasing Act;

8 3. Ensuring state agency compliance with provisions of Section
9 3001 et seq. of this title pertaining to the State Use Committee;

10 4. Reporting any acquisition by any state agency found not to
11 be in compliance with those sections or rules to the Director of the
12 Department of Central Services; and

13 5. Recommending that the Director of the Department of Central
14 Services reduce the acquisition competitive bid limit amount for any
15 state agency found not to be in compliance with the Oklahoma Central
16 Purchasing Act or rules promulgated thereto.

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

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

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

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

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

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

21 G. 1. Pursuant to the requirements of the Oklahoma Central
22 Purchasing Act, the State Purchasing Director shall have authority
23 to enter into any statewide, multistate or multigovernmental

1 contract. The state entity designated by law, as specified in
2 Section 1010.3 of Title 56 of the Oklahoma Statutes, shall
3 participate in the purchase of pharmaceuticals available through
4 such multistate or multigovernmental contracts entered into by the
5 State Purchasing Director.

6 2. The State Purchasing Director may utilize contracts awarded
7 by other governmental agencies, including agencies of the United
8 States of America.

9 3. The State Purchasing Director may designate contracts
10 described in this subsection for use by state agencies.

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

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

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

21 1. The use of electronic commerce pursuant to the Oklahoma
22 Online Bidding Act for solicitation, notification, and other
23 purchasing processes;

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

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

7 4. Development of criteria for the use of sealed bid
8 contracting procedures, negotiated contracting procedures, selection
9 of types of contracts, postaward administration of purchase orders
10 and contracts, contract modifications, termination of contracts, and
11 contract pricing;

12 5. Continual improvement in the quality of the performance of
13 the Purchasing Division through training programs, management
14 seminars, development of benchmarks and key management indicators,
15 and development of standard provisions, clauses and forms;

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

19 7. Development of programs to improve customer relations
20 through training, improved communications, and appointment of
21 technical representatives.

22 K. The State Purchasing Director shall, in cooperation with the
23 Oklahoma Department of Agriculture, Food, and Forestry, identify the

1 needs of state agencies and institutions for agricultural products
2 grown and produced in Oklahoma.

3 L. The State Purchasing Director may authorize state agencies
4 to utilize a state purchase card for acquisitions on statewide
5 contracts issued by the State Purchasing Director with no limit on
6 the amount of the transaction. For any other transaction with a
7 state purchase card, the transaction shall not exceed ~~Two Thousand~~
8 ~~Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00).

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

11 N. Prior to the award of a contract to a supplier, the State
12 Purchasing Director shall verify, pursuant to applicable provisions
13 of law, that the supplier is eligible to do business in the State of
14 Oklahoma by confirming registration with the Secretary of State and
15 franchise tax payment status pursuant to Sections 1203 and 1204 of
16 Title 68 of the Oklahoma Statutes. The provisions of this
17 subsection shall be applicable only if the contract amount is
18 ~~Twenty-five Thousand Dollars (\$25,000.00)~~ One Hundred Thousand
19 Dollars (\$100,000.00) or greater.

20 O. As a condition of awarding a contract pursuant to the
21 Oklahoma Central Purchasing Act, the State Purchasing Director shall
22 verify with the Oklahoma Tax Commission that the business entity to
23 which the state contract is to be awarded, whether subject to the

1 procedures required by Section 85.7 of this title or not, has
2 obtained a sales tax permit pursuant to the provisions of Section
3 1364 of Title 68 of the Oklahoma Statutes if such entity is required
4 to do so.

5 P. The State Purchasing Director is hereby authorized to
6 explore and investigate cost savings in energy, resource usage, and
7 maintenance contracts and to identify and negotiate contract
8 solutions in accordance with applicable rules including, but not
9 limited to, pilot projects to achieve cost savings for the State of
10 Oklahoma.

11 Q. The Department of Central Services may finance a new heat
12 and air system for the State Capitol.

13 R. The Office of State Finance, with input from the ~~State~~
14 ~~Purchasing Director~~ Director of the Department of Central Services
15 or a designee, shall promulgate payment procedure rules for state
16 agencies to adhere to regarding statewide contracts issued by the
17 State Purchasing Director.

18 SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.7, as
19 last amended by Section 2, Chapter 309, O.S.L. 2004 (74 O.S. Supp.
20 2004, Section 85.7), is amended to read as follows:

21 Section 85.7 A. 1. Except as otherwise provided by the
22 Oklahoma Central Purchasing Act, no state agency shall make an
23 acquisition for an amount exceeding ~~Twenty-five Thousand Dollars~~

1 ~~(\$25,000.00)~~ One Hundred Thousand Dollars (\$100,000.00) without
2 submission of a requisition to the State Purchasing Director and
3 submission of suppliers' competitive bids or proposals to the State
4 Purchasing Director.

5 2. Any acquisition a state agency makes shall be made pursuant
6 to the Oklahoma Central Purchasing Act and rules promulgated
7 pursuant thereto.

8 a. Split purchasing for the purpose of evading the
9 requirement of competitive bidding shall be a felony.

10 b. The State Purchasing Director may waive or increase
11 the limit of ~~Twenty five Thousand Dollars (\$25,000.00)~~
12 One Hundred Thousand Dollars (\$100,000.00) for a state
13 agency acquisition by not more than ten percent (10%)
14 to perfect an otherwise valid acquisition
15 inadvertently exceeding the limit due to
16 administrative error by the state agency or
17 unforeseeable circumstances. The state agency shall
18 request a waiver upon the discovery of the error or
19 circumstance to the State Purchasing Director on a
20 form the Director requires.

21 c. The State Purchasing Director shall report all
22 requests for waivers or increases, stating the amount
23 and whether the request was granted or denied, monthly

1 to the Governor, President Pro Tempore of the Senate,
2 and Speaker of the House of Representatives.

- 3 3. a. Contracts for master custodian banks or trust
4 companies, investment managers, investment
5 consultants, and actuaries for the state retirement
6 systems, CompSource Oklahoma, State and Education
7 Employees Group Insurance Board, pension fund
8 management consultants of the Oklahoma State Pension
9 Commission and the Commissioners of the Land Office,
10 and other professional services as defined in Section
11 803 of Title 18 of the Oklahoma Statutes shall be
12 exempt from competitive bidding procedures of Section
13 85.4 of this title.
- 14 b. Contracts with financial institutions to act as
15 depositories and managers of the Oklahoma College
16 Savings Plan accounts shall be exempt from competitive
17 bidding procedures.
- 18 c. A state agency that makes an acquisition pursuant to
19 this paragraph shall notify the State Purchasing
20 Director within fifteen (15) days following completion
21 of the acquisition. The Department of Central
22 Services shall compile a list of the exempt contracts
23 and send the list to a member of the Appropriations

1 and Budget Committee of the House of Representatives
2 or Appropriations Committee of the Senate, if the
3 member requests.

4 4. Requisitions pursuant to this section shall not be required
5 prior to emergency acquisitions by a state agency not exceeding
6 ~~Thirty-five Thousand Dollars (\$35,000.00)~~ One Hundred and Twenty-
7 five Thousand Dollars (\$125,000.00). The state agency shall submit
8 a requisition to the State Purchasing Director within five (5) days
9 following the acquisition together with a statement of the
10 emergency. The State Purchasing Director shall send the requisition
11 and a written analysis to the Governor, the President Pro Tempore of
12 the Senate, and the Speaker of the House of Representatives
13 specifying the facts and circumstances giving rise to the emergency
14 requisition.

15 5. Requisitions pursuant to this section for acquisitions to
16 alleviate a serious environmental emergency shall not be required
17 if, upon receiving a request from the Chair of the Corporation
18 Commission and after having examined the facts and circumstances of
19 the case, the Governor certifies in writing the existence of a
20 serious environmental emergency. For the purposes of this section,
21 "serious environmental emergency" means a situation within the
22 jurisdiction of the Commission:

- 1 a. in which serious damage to the environment will
2 quickly occur if immediate action is not taken and the
3 damage will be so significant that the urgent need for
4 action outweighs the need for competitive bids, or
5 b. a situation in which human life or safety is in
6 imminent danger or significant property interests are
7 threatened with imminent destruction.

8 6. Acquisitions for repairs of equipment in emergencies, of
9 livestock through a market agency, dealer, commission house, or
10 livestock auction market bonded or licensed under federal or state
11 law, the purchase or collection of semen or embryos, and the
12 placement of embryos into recipient livestock shall not require
13 requisitions pursuant to this section or any other provisions of the
14 Oklahoma Central Purchasing Act.

15 7. The Board of Directors of the Oklahoma Historical Society
16 shall select suppliers for the restoration of historical sites and
17 museums and shall not be subject to the requisition requirements of
18 this section or any other provision of the Oklahoma Central
19 Purchasing Act. The Board may send a requisition to the State
20 Purchasing Director and request supplier bid or proposal submission
21 procedures, but supplier and bid selection will be the prerogative
22 of the Board and will be based on contractors' documented
23 qualifications and experience.

1 8. Purchases of postage by state agencies shall be made
2 pursuant to Sections 90.1 through 90.4 of this title.

3 9. Sole source or sole brand acquisitions by a state agency or
4 the State Purchasing Director shall comply with Section 85.45j of
5 this title.

6 10. Acquisitions for the design, development, communication, or
7 implementation of the state employees flexible benefits plan shall
8 not be subject to the requirements of this section; provided, that
9 the Flexible Benefits Advisory Council shall use procedures
10 consistent with the competitive bid requirements of the Oklahoma
11 Central Purchasing Act.

12 11. a. Any acquisition of a service which the Department of
13 Central Services has approved as qualifying for a
14 fixed and uniform rate shall be made pursuant to
15 provisions of this paragraph.

16 b. The Department of Central Services shall establish
17 criteria and guidelines for those services which may
18 qualify for a fixed and uniform rate.

19 c. Fixed and uniform rate contracts authorized by this
20 paragraph shall be limited to contracts for those
21 services furnished to persons directly benefiting from
22 such services and shall not be used by a state agency
23 to employ consultants or to make other acquisitions.

1 d. Any state agency desiring to have a service qualified
2 for a fixed and uniform rate shall make a request for
3 service qualification to the Department of Central
4 Services and submit documentation to support the
5 request. The Department of Central Services shall
6 approve or deny the request. If the Department of
7 Central Services approves the request, the state
8 agency shall establish a fixed and uniform rate for
9 the service. No contracts shall be entered into by
10 the state agency until the rate has been approved by
11 the state agency in a public hearing. The proposed
12 rate shall be clearly and separately identified in the
13 agenda of the state agency for the hearing and shall
14 be openly and separately discussed during such
15 hearing. The state agency shall notify the Director
16 of the Department of Central Services of its pending
17 consideration of the proposed rate at least thirty
18 (30) days before the state agency is to meet on the
19 proposed rate. The state agency shall deliver to the
20 Director of the Department of Central Services a copy
21 of the agenda items concerning the proposed rate with
22 supporting documentation. The Director of the
23 Department of Central Services shall communicate any

1 observation, reservation, criticism, or recommendation
2 to the agency, either in person at the time of the
3 hearing or in writing delivered to the state agency
4 before or at the time of the hearing. The Director of
5 the Department of Central Services shall specifically
6 note in the written communications whether the
7 Director of the Department of Central Services has
8 determined the rate to be excessive. Any written
9 communication presented in the absence of the Director
10 of the Department of Central Services shall be
11 presented orally during the public hearing. Whether
12 made in person or in writing, any comment made by the
13 Director of the Department of Central Services shall
14 be made a part of the minutes of the hearing in full.

15 e. Within two (2) weeks after the convening of the
16 Legislature, the administrative officer of the state
17 agency shall furnish to the Speaker of the House of
18 Representatives, the President Pro Tempore of the
19 Senate and to any member of the House or Senate, if
20 requested by the member, a complete list of all of the
21 types of services paid for by uniform fixed rates, the
22 amount of the rate last approved by the agency for the
23 service, and the number of contracts then in existence

1 for each type of service. Any rate which has been
2 determined to be excessive by the Director of the
3 Department of Central Services shall be specifically
4 identified in the list by the state agency.

5 f. At any time, the Director of the Department of Central
6 Services may review, suspend, or terminate a contract
7 entered into pursuant to the provisions of this
8 paragraph if the Director of the Department of Central
9 Services determines the contract is not necessary, is
10 excessive, or is not justified.

11 12. Specifically prescribed nonmedical adaptive technology-
12 related acquisitions for individuals with disabilities who are
13 clients of the State Department of Rehabilitation Services and which
14 are prescribed by a physician, rehabilitation engineer, qualified
15 rehabilitation technician, speech therapist, speech pathologist,
16 occupational therapist, physical therapist, or qualified sensory
17 aids specialist, and other client acquisitions, shall not be subject
18 to the requisition requirements of this section. The Commission for
19 Rehabilitation Services shall develop standards for the purchase of
20 such acquisitions and may elect to utilize the Purchasing Division
21 for an acquisition. The standards shall foster economy, provide a
22 short response time, include appropriate safeguards, require written

1 records, ensure appropriate competition for economical and efficient
2 purchasing, and shall be approved by the State Purchasing Director.

3 13. The Department of Human Services shall develop procedures
4 for acquisitions of specifically prescribed nonmedical assistive
5 technology-related items not exceeding the acquisition purchase
6 amount requiring a requisition pursuant to this section for
7 individuals under sixteen (16) years of age who are recipients of
8 Supplemental Security Income which are prescribed by a physician,
9 qualified sensory aids specialist or qualified special education
10 instructor. The procedures shall reflect standards for the
11 acquisition of such nonmedical assistive technology-related items,
12 may provide for utilization of the Purchasing Division when
13 appropriate, shall foster economy, provide a short response time,
14 shall include appropriate safeguards and written records to ensure
15 appropriate competition and economical and efficient purchasing, and
16 shall be approved by the State Purchasing Director.

17 14. a. Structured settlement agreements entered into by the
18 Attorney General's office in order to settle any
19 lawsuit involving the state, the Legislature, any
20 state agency or any employee or official of the state
21 shall not be subject to the competitive bidding
22 requirements of this section if:

- 1 (1) prior to entering into any contract for the
2 services of an entity to administer a structured
3 settlement agreement, the Attorney General
4 receives proposals from at least three entities
5 engaged in providing such services, and
6 (2) the selection of a particular entity is made on
7 the basis of the response to the request which is
8 the most economical and provides the most
9 competent service which furthers the best
10 interests of the state.

11 b. A list of any such structured settlement agreements
12 entered into by the Attorney General with summary
13 thereon for the previous calendar year shall be
14 submitted to the Speaker of the House of
15 Representatives and the President Pro Tempore of the
16 Senate on January 31 of each year.

17 15. Acquisitions a state agency makes pursuant to a contract
18 the State Purchasing Director enters into or awards and designates
19 for use by state agencies shall be exempt from competitive bidding
20 procedures.

21 16. The Commission on Marginally Producing Oil and Gas Wells
22 shall be exempt from the competitive bid requirements of this

1 section for contracts with local vendors for the purpose of holding
2 special events and exhibitions throughout the state.

3 17. Agreements entered into by any state agency with the United
4 States Army Corp of Engineers in order to provide emergency response
5 or to protect the public health, safety, or welfare shall not
6 require requisitions and shall not be subject to competitive bidding
7 requirements of this section.

8 B. Acquisitions shall be awarded to the lowest and best, or
9 best value, bidder at a specified time and place, which shall be
10 open to the public.

11 C. Bids for professional service contracts for an amount
12 requiring submission of requisitions to the State Purchasing
13 Director shall be evaluated by the State Purchasing Director and the
14 state agency contracting for such service. Both cost and technical
15 expertise shall be considered in determining the lowest and best, or
16 best value, bid. Further, the state agency shall present its
17 evaluation and recommendation to the State Purchasing Director. A
18 documented evaluation report containing the evaluations of the State
19 Purchasing Director and the state agency contracting for such
20 service shall be completed prior to the awarding of a professional
21 service contract and such report shall be a matter of public record.

22 D. When requested by CompSource Oklahoma, the State and
23 Education Employees Group Insurance Board, or the governing board of

1 a state retirement system authorized to hire investment managers,
2 the Department of Central Services shall assist the requesting body
3 in the process of selecting investment managers. When requested by
4 the Flexible Benefits Advisory Council, the Department of Central
5 Services shall assist the Council in the process of selecting
6 contracts for the design, development, communication, or
7 implementation of the state employees flexible benefits plan.

8 E. Except as otherwise specifically provided by law, the
9 acquisition of food items or food products by a state agency from a
10 public trust created pursuant to Sections 176 through 180.56 of
11 Title 60 of the Oklahoma Statutes shall comply with competitive
12 bidding procedures pursuant to the provisions of this section.

13 SECTION 4. AMENDATORY 74 O.S. 2001, Section 85.12, as
14 last amended by Section 90, Chapter 5, O.S.L. 2004 (74 O.S. Supp.
15 2004, Section 85.12), is amended to read as follows:

16 Section 85.12 A. The provisions of this section shall not be
17 construed to affect any law relating to fiscal or accounting
18 procedure except as they may be directly in conflict herewith; and
19 all claims, warrants, and bonds shall be examined, inspected, and
20 approved as now provided by law.

21 B. Except as otherwise provided by this section, the
22 acquisitions specified in this subsection shall be made in

1 compliance with Section 85.39 of this title but are not subject to
2 other provisions of the Oklahoma Central Purchasing Act:

3 1. Food and other products produced by state institutions and
4 agencies;

5 2. The printing or duplication of publications or forms of
6 whatsoever kind or character by state agencies if the work is
7 performed upon their own equipment by their own employees. Pursuant
8 to this paragraph, the state agency may only use equipment owned or
9 leased by the agency and may only utilize that equipment for
10 printing services required by the agency in performing duties
11 imposed upon the agency or functions authorized to be performed by
12 the agency. Any use of the equipment by the agency pursuant to an
13 agreement or contract with any other entity resulting in delivery of
14 intermediate or finished products to the entity purchasing or using
15 the products shall be subject to the provisions of the Oklahoma
16 Central Purchasing Act;

17 3. Department of Transportation and Transportation Commission
18 contractual services or right-of-way purchases; contracts awarded
19 pursuant to bids let by the Transportation Commission for the
20 maintenance or construction of streets, roads, highways, bridges,
21 underpasses, or any other transportation facilities under the
22 control of the Department of Transportation, the acquisitions of
23 equipment or materials accruing to the Department of Transportation

1 required in Federal-Aid contracts; and contracts for public service
2 type announcements initiated by the Department of Transportation;
3 but not contractual services for advertising or public relations or
4 employment services;

5 4. Utility services where rates therefor are regulated by a
6 state or federal regulatory commission, or by municipal ordinance,
7 or by an Indian Tribal Council for use by the Department of
8 Corrections only;

9 5. Acquisitions by the University Hospitals Authority. The
10 Authority shall develop standards for the acquisition of products
11 and services and may elect to utilize the Purchasing Division. The
12 standards shall foster economy and short response time and shall
13 include appropriate safeguards and record-keeping requirements to
14 ensure appropriate competition and economical and efficient
15 purchasing;

16 6. Contracts for custom harvesting by the Department of
17 Corrections for the Department or its institutions;

18 7. Contracts with private prison contractors which are subject
19 to the contracting procedures of Section 561 of Title 57 of the
20 Oklahoma Statutes;

21 8. Acquisitions by the Oklahoma Municipal Power Authority;

22 9. Acquisitions by the Grand River Dam Authority;

1 10. Acquisitions by rural water, sewer, gas, or solid waste
2 management districts created pursuant to the Rural Water, Sewer, Gas
3 and Solid Waste Management Districts Act;

4 11. Acquisitions by the Oklahoma Ordnance Works Authority, the
5 Northeast Oklahoma Public Facilities Authority, or the Midwestern
6 Oklahoma Development Authority;

7 12. Contracts entered into by the Oklahoma Industrial Finance
8 Authority for the services of an appraiser or for acquisition of
9 insurance when the Authority's Board of Directors determines that an
10 emergency exists, and contracts for the services of legal counsel
11 when approved by the Attorney General;

12 13. Expenditure of monies appropriated to the State Board of
13 Education for Local and State Supported Financial Support of Public
14 Schools, except monies allocated therefrom for the Administrative
15 and Support Functions of the State Department of Education;

16 14. Expenditure of monies appropriated to the State Department
17 of Rehabilitation Services for educational programs or educational
18 materials for the Oklahoma School for the Blind and the Oklahoma
19 School for the Deaf;

20 15. Contracts entered into by the Oklahoma Department of Career
21 and Technology Education for the development, revision, or updating
22 of vocational curriculum materials, and contracts entered into by
23 the Oklahoma Department of Career and Technology Education for

1 training and supportive services that address the needs of new or
2 expanding industries;

3 16. Contracts entered into by the Oklahoma Center for the
4 Advancement of Science and Technology for professional services;

5 17. Contracts entered into by the Oklahoma Department of
6 Commerce pursuant to the provisions of Section 5066.4 of this title;

7 18. Acquisitions made by the Oklahoma Historical Society from
8 monies used to administer the White Hair Memorial;

9 19. Acquisitions available to an agency through a General
10 Services Administration (GSA) contract or other federal contract if
11 the acquisition is on current statewide contract and the terms of
12 the GSA or other federal contract, as determined by the State
13 Purchasing Director, are more favorable to the agency than the terms
14 of a statewide contract for the same products;

15 20. Purchases of pharmaceuticals available through a multistate
16 or multigovernmental contract if such pharmaceuticals are or have
17 been on state contract within the last fiscal year, and the terms of
18 such contract are more favorable to the state or agency than the
19 terms of a state contract for the same products, as determined by
20 the State Purchasing Director. The state entity designated by law,
21 as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes,
22 shall participate in the purchase of pharmaceuticals available
23 through such contracts;

1 21. Contracts for managed health care services entered into by
2 the state entity designated by law or the Department of Human
3 Services, as specified in paragraph 1 of subsection A of Section
4 1010.3 of Title 56 of the Oklahoma Statutes;

5 22. Acquisitions by the Forestry Service of the Oklahoma
6 Department of Agriculture, Food, and Forestry as authorized by the
7 federal General Services Administration through a General Services
8 Administration contract or other federal contract if the
9 acquisitions are not on current statewide contract or the terms of
10 the federal contract are more favorable to the agency than the terms
11 of a statewide contract for the same products;

12 23. Acquisitions of clothing for clients of the Department of
13 Human Services and acquisitions of food for group homes operated by
14 the Department of Human Services;

15 24. Acquisitions by the Oklahoma Energy Resources Board;

16 25. Acquisitions of clothing for juveniles in the custody of
17 the Office of Juvenile Affairs and acquisitions of food for group
18 homes operated by the Office of Juvenile Affairs;

19 26. State contracts for flexible benefits plans pursuant to the
20 Oklahoma State Employees Benefits Act, Section 1361 et seq. of this
21 title;

22 27. Acquisitions by the Department of Securities to
23 investigate, initiate, or pursue administrative, civil, or criminal

1 proceedings involving potential violations of the acts under the
2 Department's jurisdiction;

3 28. Acquisitions by the Native America Cultural and Educational
4 Authority and acquisitions by the Oklahoma Department of Commerce to
5 assist the Native American Cultural and Educational Authority
6 pursuant to Section 5017 of this title;

7 29. Acquisitions for resale in and through canteens operated
8 pursuant to Section 537 of Title 57 of the Oklahoma Statutes;

9 30. Acquisitions by the Oklahoma Boll Weevil Eradication
10 Organization for employment and personnel services, and for
11 acquiring sprayers, blowers, traps, and attractants related to the
12 eradication of boll weevils in this state or as part of a national
13 or regional boll weevil eradication program;

14 31. Contracts entered into by the Oklahoma Indigent Defense
15 System for expert services pursuant to the provisions of subsection
16 D of Section 1355.4 of Title 22 of the Oklahoma Statutes; and

17 32. Acquisitions by the Oklahoma Correctional Industries and
18 the Agri-Services programs of the Oklahoma Department of Corrections
19 of raw materials, component parts and other products used to produce
20 goods or services for resale and for the production of agricultural
21 products.

22 C. Pursuant to the terms of a contract the State Purchasing
23 Director enters into or awards, a state agency, common school,

1 municipality, rural fire protection district, county officer, or any
2 program contract, purchase, acquisition or expenditure that is not
3 subject to the provisions of the Oklahoma Central Purchasing Act,
4 may, unless acting pursuant to a contract with the state that
5 specifies otherwise, make use of statewide contracts and the
6 services of the Purchasing Division and the State Purchasing
7 Director. Any political subdivision or rural fire protection
8 district may designate the State Purchasing Director as its agent
9 for any acquisition from a statewide contract or otherwise available
10 to the state.

11 D. The ~~State Purchasing~~ Director of Central Services shall make
12 periodic audits of the purchasing procedures of the Oklahoma
13 Ordnance Works Authority, the Northeast Oklahoma Public Facilities
14 Authority, the University Hospitals Authority, and the Midwestern
15 Oklahoma Development Authority to ensure that the procedures are
16 being followed.

17 SECTION 5. AMENDATORY 74 O.S. 2001, Section 85.39, is
18 amended to read as follows:

19 Section 85.39 A. 1. Each state agency shall develop internal
20 purchasing procedures for acquisitions by the state agency.
21 Procedures shall, at a minimum, include provisions for the state
22 agency's needs assessment, funding, routing, review, audits,
23 monitoring, and evaluations. The Director of Central Services shall

1 make available recommended standard purchasing procedures that state
2 agencies may modify to suit the individual needs of each agency.

3 Following development, the state agency shall submit the procedures
4 to the State Purchasing Director.

5 2. The State Purchasing Director shall review the procedures
6 submitted pursuant to paragraph 1 of this subsection to determine
7 compliance with the Oklahoma Central Purchasing Act, and the rules
8 promulgated pursuant thereto, Sections 3001 through 3010 of this
9 title, and provisions of paragraph 1 of this subsection. The State
10 Purchasing Director shall provide written findings, including
11 details of noncompliance, if any, to the Director of the Department
12 of Central Services.

13 3. The Director of the Department of Central Services shall,
14 within fifteen (15) days after the procedures are submitted, notify
15 the state agency that the procedures are in compliance or indicate
16 revisions necessary to bring the procedures into compliance.

17 B. A state agency shall not make acquisitions exceeding ~~Two~~
18 ~~Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars
19 (\$5,000.00) pursuant to Section 85.5 of this title, unless the
20 Director of the Department of Central Services provides notice of
21 compliance.

22 C. Each state agency shall maintain a document file for each
23 acquisition the state agency makes which shall include, at a

1 minimum, justification for the acquisition, supporting
2 documentation, copies of all contracts, if any, pertaining to the
3 acquisition, evaluations, written reports if required by contract,
4 and any other information the State Purchasing Director requires be
5 kept.

6 SECTION 6. AMENDATORY 74 O.S. 2001, Section 85.43, is
7 amended to read as follows:

8 Section 85.43 A. Each chief administrative officer of a state
9 agency shall submit to the State Purchasing Director by November 1
10 of each year a report listing all acquisitions exceeding ~~Ten~~
11 ~~Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars
12 (\$25,000.00) but not exceeding ~~Twenty-five Thousand Dollars~~
13 ~~(\$25,000.00)~~ One Hundred Thousand Dollars (\$100,000.00) of the state
14 agency for the preceding fiscal year which will include the
15 following information:

- 16 1. Professional services contracts;
17 2. Nonprofessional services contracts; and
18 3. Contracts for the leasing of property including real
19 property contracts and any lease agreements for products or
20 equipment.

21 B. The report shall contain:

- 22 1. The name of the supplier;
23 2. A description of each acquisition;

1 3. The purchase price of the acquisition; and

2 4. The total amount expended to date for the preceding fiscal
3 year for the acquisition.

4 C. The report shall specifically identify sole source and sole
5 brand acquisitions.

6 D. The state agency shall submit the report to the State
7 Auditor and Inspector and to the Department of Central Services.
8 The state agency shall submit the report to any member of the
9 Appropriations and Budget Committee of the House of Representatives
10 or Appropriations Committee of the Senate if a member so requests.

11 E. The State Auditor and Inspector shall review the report for
12 compliance with statutes and rules or other provisions of law
13 applicable to sole source and sole brand acquisitions.

14 SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.45j, is
15 amended to read as follows:

16 Section 85.45j A. 1. Pursuant to the provisions of this
17 section, an acquisition may be exempt from competitive bidding
18 procedures as a sole source or sole brand acquisition.

19 2. If a state agency desires to make a sole source or sole
20 brand acquisition, the state agency shall retain in the state
21 agency's acquisition file or attach to the requisition an affidavit
22 signed by the chief administrative officer of the state agency, in
23 the following form:

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SOLE SOURCE OR SOLE BRAND ACQUISITION

AFFIDAVIT

STATE AGENCY _____
SUPPLIER NAME _____
SUPPLIER ADDRESS _____
SUPPLIER TELEPHONE _____

I hereby affirm that pursuant to the provisions of the attached requisition or contract that

(Name of Supplier)

is the only person or business entity singularly qualified to provide the acquisition, and if a product is the only brand or product which is unique, for the following reasons:

The following is a brief description of all efforts which were made to verify that the services or products to be purchased pursuant to the provisions of the attached requisition or contract qualify as a sole source or sole brand acquisition:

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I understand that the signing of this affidavit knowing such information to be false may subject me to punishment for perjury.

(Chief administrative officer)

STATE OF OKLAHOMA)

) ss.

COUNTY OF OKLAHOMA)

Subscribed and sworn to before me this __ day of _____, 19__ or 20__.

Notary Public

My Commission expires:

3. A court order requiring the purchase of specific products or services but which does not specify a brand or supplier shall not substitute for the affidavit required by this subsection or otherwise invalidate the acquisition procedures required pursuant to the Oklahoma Central Purchasing Act.

4. Any chief administrative officer of a state agency affirming the affidavit required by this subsection who knows the information

1 to be false shall be deemed guilty of perjury and upon conviction
2 shall be punished by fine or by imprisonment or both fine and
3 imprisonment pursuant to law. Upon conviction or upon entering a
4 plea of nolo contendere pursuant to this paragraph, the chief
5 administrative officer shall immediately forfeit his or her position
6 and shall be ineligible for appointment to or employment in the
7 state service for a period of five (5) years after entering a plea
8 of nolo contendere or being convicted.

9 5. Upon a determination by the Director of the Department of
10 Central Services that there are reasonable grounds to believe that a
11 violation of this subsection has occurred, the Director shall send
12 findings to the Attorney General that support the determination.
13 The Attorney General shall review the findings and determine whether
14 to investigate or prosecute the person.

15 6. If the acquisition's purchase price is such that the state
16 agency is required to submit a requisition to the State Purchasing
17 Director, the State Purchasing Director shall approve or deny the
18 requisition for a sole source or sole brand acquisition. Prior to
19 approving a requisition pursuant to this paragraph, the State
20 Purchasing Director shall document reasons a sole source or sole
21 brand purchase is necessary and shall retain a written record for
22 three (3) fiscal years following the end of the fiscal year during
23 which the sole source or sole brand acquisition was made.

1 7. For sole source or sole brand acquisitions exceeding ~~Two~~
2 ~~Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars
3 (\$5,000.00) and not requiring submission of a requisition to the
4 State Purchasing Director, the state agency's certified procurement
5 officer shall document reasons a sole source or sole brand
6 acquisition is necessary and shall retain a written record for three
7 (3) fiscal years following the end of the fiscal year during which
8 the sole source or sole brand acquisition was made.

9 8. The chief administrative officer of each state agency shall
10 submit to the State Purchasing Director a monthly listing of all
11 sole source and sole brand acquisitions exceeding ~~Two Thousand Five~~
12 ~~Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00)
13 executed by the state agency in the preceding month. The report
14 shall indicate whether requisitions for sole source and sole brand
15 acquisitions were disapproved or modified by the State Purchasing
16 Director and information the State Purchasing Director requires.

17 9. The State Purchasing Director shall electronically provide
18 to the Office of State Finance the information received pursuant to
19 paragraph 8 of this subsection in machine-readable format and in the
20 form the Office of State Finance requires.

21 B. By the fifteenth day of each month, or the first working day
22 thereafter, the Office of State Finance shall provide a report from
23 the information received pursuant to this section to:

1 1. The Speaker of the House of Representatives and the
2 President Pro Tempore of the Senate;

3 2. The Majority and Minority Leaders of both the House of
4 Representatives and the Senate;

5 3. The Chair and Vice Chair of the Appropriations and Budget
6 Committee of the House of Representatives and the Appropriations
7 Committee of the Senate; and

8 4. Any member of the Legislature requesting the report.

9 The report shall detail all sole source and sole brand acquisitions
10 by state agencies for the month prior to the month preceding the
11 submission of the report. The report shall be titled "Monthly Sole
12 Source and Sole Brand Contracting Report of Oklahoma State Agencies"
13 and indicate the time period of the report. The report shall be
14 provided in physical form unless the requesting person specifies the
15 electronic version. The report shall be signed by the Director of
16 State Finance or the Director's designee. The report shall be in
17 columnar database format and shall include at least the following
18 fields of information: state agency number; state agency name; date
19 created by the Department of Central Services for the requisition;
20 date of either approval or disapproval of the requisition; if
21 disapproved, the reason why such contract was disapproved; estimated
22 amount of the requisition; purchase order amount; purchase order
23 number; actual business name of supplier; supplier federal employer

1 identification number; contact person; and the commodity
2 classification listing at the appropriate level to distinguish
3 between similar acquisitions. Information required by this
4 subsection shall be reported and maintained on each report through
5 the next reporting period after an acquisition is made. The
6 applicable data in the fields of information specified in this
7 subsection shall be listed even if the state agency requisition is
8 disapproved.

9 C. The Office of State Finance shall maintain electronic
10 historic data or any other data received pursuant to this section
11 for at least two (2) years.

12 D. By August 15 of each year, from the data received pursuant
13 to this section, the Office of State Finance shall complete and
14 submit a report detailing the number of sole source or sole brand
15 contracts issued by each state agency and a list of the business
16 names of the suppliers who received sole source or sole brand awards
17 during the previous fiscal year and if more than one such award, the
18 number of awards so executed.

19 SECTION 8. AMENDATORY 74 O.S. 2001, Section 85.53, is
20 amended to read as follows:

21 Section 85.53 A. It is the intent of the Legislature that all
22 state public entities procure products or materials with the
23 recycled content levels required or specified by rules promulgated

1 pursuant to the provisions of this section when such products or
2 materials are available.

3 B. By July 1, 1993, the Division when accepting bids for state
4 purchases of supplies, equipment and materials shall give preference
5 to the suppliers of paper products or products manufactured with
6 recycled materials if:

7 1. The price for recycled products and materials is not
8 substantially higher than the price for nonrecycled products and
9 materials. The Department of Central Services shall establish by
10 rule the annual percentage over and above the price of nonrecycled
11 products and materials which will be allowed for the purchase of
12 recycled products and materials; and

13 2. The quality and grade requirements are otherwise comparable.

14 C. By July 1, 1993, any state public entity not subject to the
15 Central Purchasing Act when accepting bids for purchases of
16 supplies, equipment and materials, shall give preference to the
17 suppliers of recycled paper products and products manufactured from
18 recycled materials if:

19 1. The price for recycled products and materials is not
20 substantially higher than the price for nonrecycled products and
21 materials. The price paid for recycled products and materials shall
22 not exceed the percentage over the price for nonrecycled products
23 and materials established by the Department; and

1 2. The quality and grade requirements are otherwise comparable.

2 D. The Purchasing Division and any state public entity not
3 subject to the Central Purchasing Act shall ensure, to the greatest
4 extent economically practical and possible, that the recycled or
5 recovered content of all paper purchased by the Division or agency,
6 measured as a proportion, by weight, of paper products purchased in
7 a calendar year, is not less than the following:

8 1. By 1995, ten percent (10%) of all purchased paper;

9 2. By 1997, twenty-five percent (25%) of all purchased paper;
10 and

11 3. By 1999, forty percent (40%) of all purchased paper.

12 E. 1. By July 1, 1993, the ~~Division~~ Director of the Department
13 of Central Services shall promulgate rules and implement a program
14 for extending state procurement specifications to products
15 manufactured with recycled materials and identifying recycled
16 products.

17 2. By July 1, 1993, any state public entity not subject to the
18 Central Purchasing Act shall implement a program for extending
19 agency procurement specifications to products manufactured with
20 recycled materials.

21 F. In writing specifications under this section, the Department
22 and any other state public entity shall incorporate requirements
23 relating to the recyclability and ultimate disposition of products

1 and, wherever possible, shall write the specifications so as to
2 minimize the amount of solid waste generated by the state. All
3 specifications under this section shall discourage the purchase of
4 single-use, disposable products and require, whenever practical, the
5 purchase of multiple-use, durable products.

6 G. For materials that are not otherwise recycled, the Division
7 and each state public entity not subject to the Central Purchasing
8 Act shall, to the extent practicable, enter into agreements to
9 purchase products made from recyclable materials from vendors who
10 agree to purchase like materials separated from solid waste
11 generated by the state for reuse or use as a raw material in
12 manufacturing.

13 SECTION 9. AMENDATORY 74 O.S. 2001, Section 85.55, is
14 amended to read as follows:

15 Section 85.55 A. Each state public entity whether or not
16 subject to the Central Purchasing Act shall:

17 1. Be subject to the rules promulgated by the ~~Purchasing~~
18 ~~Division~~ Director of the Department of Central Services regarding
19 the purchase of recycled products;

20 2. Establish management practices in accordance with the
21 provisions of the Oklahoma State Recycling and Recycled Materials
22 Procurement Act;

1 3. Report by November 1 of each year to the Director of Central
2 Services the following:

3 a. the total amount of waste paper and other recyclable
4 materials sold during the previous fiscal year,

5 b. the amount of procured recycled paper products and
6 other products manufactured with recycled materials,
7 and

8 c. the total amount of monies collected and expended to
9 implement the Oklahoma State Recycling and Recycled
10 Materials Procurement Act; and

11 4. The Director shall coordinate the information provided by
12 state public entities and report and submit such information to the
13 Governor, the President Pro Tempore of the Senate, and to the
14 Speaker of the House of Representatives on or before January 15 of
15 each year.

16 B. It is the intention of the Legislature that all state public
17 entities and other governmental subdivisions of this state
18 aggressively pursue procurement practices that encourage solid waste
19 reduction and development of markets for recyclable materials and
20 compost and shall, whenever practical, procure products containing
21 recycled materials.

22 SECTION 10. This act shall become effective November 1, 2005.

23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
24 PASS, As Amended and Coauthored.