An Act relating to state government; amending 74 O.S. 2001, Sections 85.2, 85.3, 85.5, as last amended by Section 126, Chapter 1, O.S.L. 2005, 85.7, as last amended by Section 2, Chapter 309, O.S.L. 2004, 85.13 and 85.22 (74 O.S. Supp. 2007, Sections 85.5 and 85.7), which relate to The Oklahoma Central Purchasing Act; modifying definitions; modifying employment of the purchasing division; modifying powers and duties of the state purchasing director; modifying competitive bidding procedures; modifying the accepting or giving of gratuities; providing for certified statement; repealing 74 O.S. 2001, Section 85.23, which relates to the notarized sworn statement attached to contract; and providing an effective date.

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

SECTION 1. AMENDING 74 O.S. 2001, Section 85.2, is amended to read as follows:

Section 85.2 As used in The Oklahoma Central Purchasing Act, unless the context otherwise requires:

1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease-purchase, lease with option to purchase, or rental pursuant to The
Oklahoma Central Purchasing Act unless the items, products, supplies, services, or equipment are exempt pursuant to The Oklahoma Central Purchasing Act;

2. "Best value criteria" means bid or proposal evaluation criteria which may include, but are not limited to, the following:

a. the acquisition's operational cost a state agency would incur,

b. the quality of the acquisition, or its technical competency,

c. the reliability of the bidder's delivery and implementation schedules,

d. the acquisition's facilitation of data transfer and systems integration,

e. the acquisition's warranties and guarantees and the bidder's return policy,

f. the bidder's financial stability,

g. the acquisition's adherence to the state agency's planning documents and announced strategic program direction,

h. the bidder's industry and program experience and record of successful past performance with acquisitions of similar scope and complexity,

i. the anticipated acceptance by user groups, and
j. the acquisition's use of proven development methodology, and innovative use of current technologies that lead to quality results;

3. "Bid" or "proposal" means an offer a bidder submits in response to an invitation to bid or request for proposal;

4. "Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal;

5. "Business entity" means individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm, group or concern which functions as a separate entity for business purposes;

6. "Change order" means a unilateral written order directing a supplier to make a change;

7. "Chief administrative officer" means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency;

8. "Component" means any item supplied as part of an end item or of another component;

9. "Consolidation contract" means a contract for several state agencies for the purpose of purchasing computer software maintenance or hardware maintenance;
10. "Contract" means a mutually binding legal relationship obligating the seller to furnish an acquisition and the buyer to pay for it. It includes all types of commitments that obligate a state agency to an expenditure of funds or action that, unless otherwise authorized, is in writing. In addition to bilateral instruments, contracts include, but are not limited to:

   a. awards and notices of awards,
   b. orders issued under basic ordering agreements,
   c. letter contracts,
   d. orders under which the contract becomes effective by written acceptance or performance, and
   e. bilateral contract modifications;

11. "Contract modification" means any written change in the terms of the contract;

12. "Contracting" means purchasing, renting, leasing, or otherwise obtaining acquisitions from private sources. Contracting includes description, but not determination, of acquisitions required, selection and solicitation of sources, preparation and award of contracts, and contract administration;

13. "Contractor" means an individual or business entity entering into a contract for goods and/or services with the state as a result of a solicitation;

14. "Electronic commerce" means the use of electronic methods to enable solicitation, supplier response, notice of contract award,
state agency acquisition processes, or any other function to make an
acquisition;

14. 15. “Electronic payment mechanism” means a method of
electronic payment for authorized acquisitions;

16. "Enterprise agreement" means an agreement for computer
hardware, software, and service that a supplier manufactures,
develops, and designs, and that one or more state agencies use;

15. 17. “Environmentally preferable products and services
(EPPS)” means acquisitions that best meet the requirements as
defined in the solicitation for human health and the environment;

18. "Equipment" means personal property a state agency acquires
for its use which is an item or product and shall include all
personal property used or consumed by a state agency that is not
included within the category of materials and supplies;

16. 19. "High technology system" means advanced technological
equipment, software, communication lines, and services for the
processing, storing, and retrieval of information by a state agency;

17. 20. "Item" or "product" means some quantity or kind of such
supplies, materials or equipment;

18. 21. "Local governmental entity" means any unit of local
government including, but not limited to, any school district,
county, or municipality of this state;

19. 22. "Lowest and best" means an acquisition based on
criteria which include, but are not limited to, the following:
a. the lowest total purchase price,
b. the quality and reliability of the product, and
c. the consistency of the proposed acquisition with the
   state agency's planning documents and announced
   strategic program direction;

20. "Materials" or "supplies" includes all property except
real property or equipment that a state agency acquires for its use
or consumption;

21. "Multistate contract" or "multigovernmental contract"
means an agreement entered into between two or more entities of
government for acquisitions pursuant to a single contract;

22. "Nonprofessional services" means services which are
predominantly physical or manual in character and may involve the
supplying of products;

23. "Political subdivision" means local governmental
entities and such other entities specified as political subdivisions
pursuant to The Governmental Tort Claims Act;

24. "Open market contract" means a contract for a one-time
acquisition not exceeding the acquisition amount requiring
competitive bid pursuant to Section 85.7 of this title;

25. "Professional services" means services which are
predominantly mental or intellectual in character rather than
physical or manual and which do not involve the supplying of
products. Professional services include services to support or
improve state agency policy development, decision making,
management, administration, or the operation of management systems;

26. "Purchase order" means an offer by a state agency to
make an acquisition utilizing simplified procedures;

27. "Requisition" means a written request by a state agency
for an acquisition;

28. "Services" or "contractual services" means direct
engagement of the time and effort of a contractor for the primary
purpose of performing an identifiable task rather than for the
furnishing of an end item of supply;

29. "Sole brand acquisition" means an acquisition that by
specification restricts the acquisition to one manufacturer or brand
name;

30. "Sole source acquisition" means an acquisition which,
by specification, restricts the acquisition to one supplier;

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

32. "Split purchase" means dividing a known quantity or failing
to consolidate a known quantity of an acquisition for the purpose of
evading a competitive bidding requirement;
"State agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only political subdivisions of the state;

"State purchase card" means an electronic transaction device issued to state agency officials used for making acquisitions;

"State Purchasing Director" or "Director of Central Purchasing" includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority;

"Statewide contract" means a contract for specific acquisitions entered into by state agencies during a specified period with a provision allowing the agencies and local governmental entities to place orders as the acquisitions are needed for delivery during the period specified; and

"Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

SECTION 2. 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 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. 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 3. AMENDATORY 74 O.S. 2001, Section 85.5, as last amended by Section 126, Chapter 1, O.S.L. 2005 (74 O.S. Supp. 2007, 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 or other surety
required to be submitted with a bid or contract for the furnishing