

1 ENGROSSED HOUSE
2 BILL NO. 3325

By: Miller of the House

3 and

4 Aldridge of the Senate

5
6
7 An Act relating to state government; amending 74 O.S.
8 2001, Sections 85.2, 85.3, 85.5, as last amended by
9 Section 126, Chapter 1, O.S.L. 2005, 85.7, as last
10 amended by Section 2, Chapter 309, O.S.L. 2004, 85.13
11 and 85.22 (74 O.S. Supp. 2007, Sections 85.5 and
12 85.7), which relate to The Oklahoma Central
13 Purchasing Act; modifying definitions; modifying
14 employment of the purchasing division; modifying
15 powers and duties of the state purchasing director;
16 modifying competitive bidding procedures; modifying
17 the accepting or giving of gratuities; providing for
18 certified statement; repealing 74 O.S. 2001, Section
19 85.23, which relates to the notarized sworn statement
20 attached to contract; and providing an effective
21 date.

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

23 SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.2, is
24 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

1 Oklahoma Central Purchasing Act unless the items, products,
2 supplies, services, or equipment are exempt pursuant to The Oklahoma
3 Central Purchasing Act;

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

- 7 a. the acquisition's operational cost a state agency
8 would incur,
- 9 b. the quality of the acquisition, or its technical
10 competency,
- 11 c. the reliability of the bidder's delivery and
12 implementation schedules,
- 13 d. the acquisition's facilitation of data transfer and
14 systems integration,
- 15 e. the acquisition's warranties and guarantees and the
16 bidder's return policy,
- 17 f. the bidder's financial stability,
- 18 g. the acquisition's adherence to the state agency's
19 planning documents and announced strategic program
20 direction,
- 21 h. the bidder's industry and program experience and
22 record of successful past performance with
23 acquisitions of similar scope and complexity,
- 24 i. the anticipated acceptance by user groups, and

1 j. the acquisition's use of proven development
2 methodology, and innovative use of current
3 technologies that lead to quality results;

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

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

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

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

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

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

21 9. "Consolidation contract" means a contract for several state
22 agencies for the purpose of purchasing computer software maintenance
23 or hardware maintenance;

1 10. "Contract" means a mutually binding legal relationship
2 obligating the seller to furnish an acquisition and the buyer to pay
3 for it. It includes all types of commitments that obligate a state
4 agency to an expenditure of funds or action that, unless otherwise
5 authorized, is in writing. In addition to bilateral instruments,
6 contracts include, but are not limited to:

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

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

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

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

23 14. "Electronic commerce" means the use of electronic methods
24 to enable solicitation, supplier response, notice of contract award,

1 state agency acquisition processes, or any other function to make an
2 acquisition;

3 ~~14.~~ 15. "Electronic payment mechanism" means a method of
4 electronic payment for authorized acquisitions;

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

8 ~~15.~~ 17. "Environmentally preferable products and services
9 (EPPS)" means acquisitions that best meet the requirements as
10 defined in the solicitation for human health and the environment;

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

15 ~~16.~~ 19. "High technology system" means advanced technological
16 equipment, software, communication lines, and services for the
17 processing, storing, and retrieval of information by a state agency;

18 ~~17.~~ 20. "Item" or "product" means some quantity or kind of such
19 supplies, materials or equipment;

20 ~~18.~~ 21. "Local governmental entity" means any unit of local
21 government including, but not limited to, any school district,
22 county, or municipality of this state;

23 ~~19.~~ 22. "Lowest and best" means an acquisition based on
24 criteria which include, but are not limited to, the following:

- 1 a. the lowest total purchase price,
2 b. the quality and reliability of the product, and
3 c. the consistency of the proposed acquisition with the
4 state agency's planning documents and announced
5 strategic program direction;

6 ~~20.~~ 23. "Materials" or "supplies" includes all property except
7 real property or equipment that a state agency acquires for its use
8 or consumption;

9 ~~21.~~ 24. "Multistate contract" or "multigovernmental contract"
10 means an agreement entered into between two or more entities of
11 government for acquisitions pursuant to a single contract;

12 ~~22.~~ 25. "Nonprofessional services" means services which are
13 predominantly physical or manual in character and may involve the
14 supplying of products;

15 ~~23.~~ 26. "Political subdivision" means local governmental
16 entities and such other entities specified as political subdivisions
17 pursuant to The Governmental Tort Claims Act;

18 ~~24.~~ 27. "Open market contract" means a contract for a one-time
19 acquisition not exceeding the acquisition amount requiring
20 competitive bid pursuant to Section 85.7 of this title;

21 ~~25.~~ 28. "Professional services" means services which are
22 predominantly mental or intellectual in character rather than
23 physical or manual and which do not involve the supplying of
24 products. Professional services include services to support or

1 improve state agency policy development, decision making,
2 management, administration, or the operation of management systems;

3 ~~26.~~ 29. "Purchase order" means an offer by a state agency to
4 make an acquisition utilizing simplified procedures;

5 ~~27.~~ 30. "Requisition" means a written request by a state agency
6 for an acquisition;

7 ~~28.~~ 31. "Services" or "contractual services" means direct
8 engagement of the time and effort of a contractor for the primary
9 purpose of performing an identifiable task rather than for the
10 furnishing of an end item of supply;

11 ~~29.~~ 32. "Sole brand acquisition" means an acquisition that by
12 specification restricts the acquisition to one manufacturer or brand
13 name;

14 ~~30.~~ 33. "Sole source acquisition" means an acquisition which,
15 by specification, restricts the acquisition to one supplier;

16 ~~31.~~ 34. "Solicitation" means a request or invitation by the
17 State Purchasing Director or a state agency for a supplier to submit
18 a priced offer to sell acquisitions to the state. A solicitation
19 may be an invitation to bid, request for proposal, or a request for
20 quotation;

21 35. "Split purchase" means dividing a known quantity or failing
22 to consolidate a known quantity of an acquisition for the purpose of
23 evading a competitive bidding requirement;

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1 ~~32.~~ 36. "State agency" includes any office, officer, bureau,
2 board, counsel, court, commission, institution, unit, division, body
3 or house of the executive or judicial branches of the state
4 government, whether elected or appointed, excluding only political
5 subdivisions of the state;

6 ~~33.~~ 37. "State purchase card" means an electronic transaction
7 device ~~issued to state agency officials~~ used for making
8 acquisitions;

9 ~~34.~~ 38. "State Purchasing Director" or "Director of Central
10 Purchasing" includes any employee or agent of the State Purchasing
11 Director, acting within the scope of delegated authority;

12 ~~35.~~ 39. "Statewide contract" means a contract for specific
13 acquisitions ~~entered into by state agencies during~~ for a specified
14 period with a provision allowing the agencies and local governmental
15 entities to place orders as the acquisitions are needed for delivery
16 during the period specified; and

17 ~~36.~~ 40. "Supplier" or "vendor" means an individual or business
18 entity that sells or desires to sell acquisitions to state agencies.

19 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.3, is
20 amended to read as follows:

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

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

4 1. Be at least twenty-eight (28) years of age;

5 2. Have a thorough knowledge of office practices and buying
6 procedures in volume purchasing; and

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

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

13 1. One assistant director;

14 2. One qualified specifications engineer;

15 3. Buyers who have at least three (3) years' procurement
16 experience for:

17 a. food,

18 b. hardware,

19 c. textiles,

20 d. petroleum,

21 e. office supplies,

22 f. building materials,

23 g. pharmaceutical supplies,

24 h. automotive equipment, parts, and accessories, and

1 i. any other commodity group found by the Director of the
2 Department of Central Services to justify special
3 purchasing attention;

4 4. One buyer for products and services of the severely disabled
5 as provided in Section 3001 et seq. of this title;

6 5. One dietitian, who shall have the qualifications required by
7 the State Department of Health; and

8 6. Such other technical and clerical personnel as shall be
9 assigned to the Purchasing Division by the Director of the
10 Department of Central Services.

11 D. All activities of any state agency, department, or
12 institution relating to purchasing shall be under the direction of
13 the Purchasing Division unless otherwise provided by The Oklahoma
14 Central Purchasing Act.

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

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

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

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

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

10 J. None of the personnel authorized by this section shall:

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

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

17 3. Be employed in any of the positions authorized by this
18 section if a spouse or child owns any stock in any business entity
19 which sells to or otherwise provides acquisitions to any agency
20 subject to The Oklahoma Central Purchasing Act; or

21 4. Be employed in any of the positions authorized by this
22 section if a relative within the third degree of consanguinity or
23 affinity sells to or otherwise provides acquisitions to any agency
24 subject to The Oklahoma Central Purchasing Act or is interested in

1 any business entity which does so, except that such relative,
2 excluding a spouse or child, may own Five Thousand Dollars
3 (\$5,000.00) worth or less, or one percent (1%) or less, whichever
4 amount is the lesser amount, of the stock of a corporation or any
5 business entity which sells to or otherwise provides acquisitions to
6 any state agency subject to The Oklahoma Central Purchasing Act.

7 SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.5, as
8 last amended by Section 126, Chapter 1, O.S.L. 2005 (74 O.S. Supp.
9 2007, Section 85.5), is amended to read as follows:

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

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

21 C. The Director of the Department of Central Services shall
22 have authority and responsibility to promulgate rules pursuant to
23 provisions of The Oklahoma Central Purchasing Act governing,
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1 providing for, prescribing, or authorizing any act, practice, or
2 requirement for which regulatory power is delegated for:

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

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

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

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

14 5. Obtaining acquisitions produced by state institutions;

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

17 7. The amounts of and deposits on any bond or other surety
18 required to be submitted with a bid or contract for the furnishing
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