

EHB 3325

THE STATE SENATE
Monday, April 7, 2008

ENGROSSED

House Bill No. 3325

As Amended

ENGROSSED HOUSE BILL NO. 3325 - By: Murphey and Miller of the House and Aldridge of the Senate.

[state government - Oklahoma Central Purchasing Act -
modifying definitions - effective date]

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

SECTION 1. AMENDATORY 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~~ is not limited to, the following:

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

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

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

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

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

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

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

16 9. "Consolidation contract" means a contract for several state
17 agencies for the purpose of purchasing computer software maintenance
18 or hardware maintenance;

19 10. "Contract" means a mutually binding legal relationship
20 obligating the seller to furnish an acquisition and the buyer to pay
21 for it. It includes all types of commitments that obligate a state
22 agency to an expenditure of funds or action that, unless otherwise

1 authorized, is in writing. In addition to bilateral instruments,
2 contracts include, but are not limited to:

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

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

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

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

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

1 ~~14.~~ 15. "Electronic payment mechanism" means a method of
2 electronic payment for authorized acquisitions;

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

6 ~~15.~~ 17. "Environmentally preferable products and services
7 (EPPS)" means acquisitions that best meet the requirements as
8 defined in the solicitation for human health and the environment;

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

13 ~~16.~~ 19. "High technology system" means advanced technological
14 equipment, software, communication lines, and services for the
15 processing, storing, and retrieval of information by a state agency;

16 ~~17.~~ 20. "Item" or "product" means some quantity or kind of such
17 supplies, materials or equipment;

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

21 ~~19.~~ 22. "Lowest and best" means an acquisition based on
22 criteria which include, but are not limited to, the following:

- 23 a. the lowest total purchase price,

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

5 ~~20.~~ 23. "Materials" or "supplies" includes all property except
6 real property or equipment that a state agency acquires for its use
7 or consumption;

8 ~~21.~~ 24. "Multistate contract" or "multigovernmental contract"
9 means an agreement entered into between two or more entities of
10 government for acquisitions pursuant to a single contract;

11 ~~22.~~ 25. "Nonprofessional services" means services which are
12 predominantly physical or manual in character and may involve the
13 supplying of products;

14 ~~23.~~ 26. "Political subdivision" means local governmental
15 entities and such other entities specified as political subdivisions
16 pursuant to The Governmental Tort Claims Act;

17 ~~24.~~ 27. "Open market contract" means a contract for a one-time
18 acquisition not exceeding the acquisition amount requiring
19 competitive bid pursuant to Section 85.7 of this title;

20 ~~25.~~ 28. "Professional services" means services which are
21 predominantly mental or intellectual in character rather than
22 physical or manual and which do not involve the supplying of
23 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;

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.

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,

1 h. automotive equipment, parts, and accessories, and
2 i. any other commodity group found by the Director of the
3 Department of Central Services to justify special
4 purchasing attention;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 4. Be employed in any of the positions authorized by this
2 section if a relative within the third degree of consanguinity or
3 affinity sells to or otherwise provides acquisitions to any agency
4 subject to The Oklahoma Central Purchasing Act or is interested in
5 any business entity which does so, except that such relative,
6 excluding a spouse or child, may own Five Thousand Dollars
7 (\$5,000.00) worth or less, or one percent (1%) or less, whichever
8 amount is the lesser amount, of the stock of a corporation or any
9 business entity which sells to or otherwise provides acquisitions to
10 any state agency subject to The Oklahoma Central Purchasing Act.

11 SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.5, as
12 last amended by Section 126, Chapter 1, O.S.L. 2005 (74 O.S. Supp.
13 2007, Section 85.5), is amended to read as follows:

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

19 B. The State Purchasing Director, after consultation with the
20 requisitioning state agency, shall have authority to determine the
21 particular brand, model, or other specific classification of each
22 acquisition and to draft or invoke pursuant to The Oklahoma Central

1 Purchasing Act specifications establishing the requirements for all
2 necessary contracts or purchase orders.

3 C. The Director of the Department of Central Services shall
4 have authority and responsibility to promulgate rules pursuant to
5 provisions of The Oklahoma Central Purchasing Act governing,
6 providing for, prescribing, or authorizing any act, practice, or
7 requirement for which regulatory power is delegated for:

8 1. The time, manner, authentication, and form of making
9 requisitions for acquisitions;

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

12 3. The form and manner of submission for bids or proposals a
13 supplier submits and the manner of accepting and opening bids or
14 proposals;

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

19 5. Obtaining acquisitions produced by state institutions;

20 6. Conditions under which any of the rules herein authorized
21 may be waived;

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

1 of acquisitions and the conditions under which such bond or other
2 surety shall be required;

3 8. Storage and storage facilities necessary to accomplish
4 responsibilities of the Director of the Department of Central
5 Services;

6 9. The manner and conditions of delivery, which shall include
7 the designation of the common carrier of property to be used to
8 transport acquisitions whenever a common carrier is used, and the
9 acceptance, or rejection, including check of quantities, of any
10 acquisitions;

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

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

21 a. state agencies shall make acquisitions not exceeding
22 Two Thousand Five Hundred Dollars (\$2,500.00),
23 provided the acquisition process is fair and

1 reasonable and is conducted pursuant to rules
2 authorized pursuant to this section, and
3 b. state agencies with certified procurement officers and
4 internal purchasing procedures found compliant by the
5 Director of the Department of Central Services
6 pursuant to this section may make acquisitions in
7 excess of Two Thousand Five Hundred Dollars
8 (\$2,500.00) as provided below:
9 (1) acquisitions with a price exceeding Two Thousand
10 Five Hundred Dollars (\$2,500.00) and not
11 exceeding Ten Thousand Dollars (\$10,000.00),
12 pursuant to rules authorized by this section, and
13 (2) acquisitions with a price exceeding Ten Thousand
14 Dollars (\$10,000.00) and not exceeding the amount
15 requiring a requisition to the State Purchasing
16 Director, pursuant to Section 85.7 of this title,
17 by telephone, facsimile, invitation to bid, or
18 solicitation by means of electronic commerce,
19 receipt of bids and bid award by the state
20 agency;
21 12. Training by the State Purchasing Director of state agency
22 procurement officers;

1 13. Review and audit by the State Purchasing Director of state
2 agency acquisitions;

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

6 15. ~~State agency use~~ Use of a state purchase card to make
7 acquisitions; and

8 16. Any other matter or practice which relates to the
9 responsibilities of the Director of the Department of Central
10 Services.

11 D. The State Purchasing Director shall provide training for
12 state agency purchasing officials and other purchasing staff. The
13 training shall include principles of state procurement practices,
14 basic contracting, provisions of The Oklahoma Central Purchasing
15 Act, rules promulgated pursuant to The Oklahoma Central Purchasing
16 Act, provisions of Section 3001 et seq. of this title, which relate
17 to the State Use Committee, and any other matters related to state
18 procurement practices. State agency purchasing officials that
19 demonstrate proficiency shall be certified as "certified procurement
20 officers" by the State Purchasing Director and shall be authorized
21 to make acquisitions pursuant to provisions of The Oklahoma Central
22 Purchasing Act and rules authorized by this section. The State
23 Purchasing Director shall assess a fee to state agencies for the

1 training that does not exceed each state agency's pro rata share of
2 the costs the State Purchasing Director incurs to provide the
3 training.

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

6 1. Ensuring state agency compliance with provisions of The
7 Oklahoma Central Purchasing Act;

8 2. Ensuring state agency compliance with rules promulgated by
9 the Department of Central Services pursuant to The Oklahoma Central
10 Purchasing Act;

11 3. Ensuring state agency compliance with provisions of Section
12 3001 et seq. of this title pertaining to the State Use Committee;

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

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

20 F. When recommended by the State Purchasing Director, based on
21 written findings by the State Purchasing Director, the Director of
22 the Department of Central Services may:

1 1. Require retraining of state agency procurement officials and
2 other purchasing staff found not to be in compliance with provisions
3 of The Oklahoma Central Purchasing Act, or rules promulgated
4 pursuant to The Oklahoma Central Purchasing Act;

5 2. Reduce the acquisition competitive bid limit for any state
6 agency found not to be in compliance with provisions of The Oklahoma
7 Central Purchasing Act or rules promulgated pursuant to The Oklahoma
8 Central Purchasing Act;

9 3. Transmit written findings by the State Purchasing Director
10 to the State Auditor and Inspector for further investigation,
11 indicating purchasing procedures that do not conform to provisions
12 pursuant to The Oklahoma Central Purchasing Act or rules promulgated
13 pursuant to The Oklahoma Central Purchasing Act;

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

21 5. Increase the state agency acquisition purchase amount
22 requiring competitive bid, not to exceed the acquisition purchase

1 amount requiring competitive bid, pursuant to Section 85.7 of this
2 title.

3 G. 1. Pursuant to the requirements of The Oklahoma Central
4 Purchasing Act, the State Purchasing Director shall have authority
5 to enter into any statewide, multistate or multigovernmental
6 contract. The state entity designated by law, as specified in
7 Section 1010.3 of Title 56 of the Oklahoma Statutes, shall
8 participate in the purchase of pharmaceuticals available through
9 such multistate or multigovernmental contracts entered into by the
10 State Purchasing Director.

11 2. The State Purchasing Director may utilize contracts awarded
12 by other governmental agencies, including agencies of the United
13 States of America.

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

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

19 I. The State Purchasing Director shall endeavor to satisfy state
20 agencies in terms of cost, quality, and timeliness of the delivery
21 of acquisitions by using bidders who have a record of successful
22 past performance, promoting competition, minimizing administrative

1 operating costs, and conducting business with integrity, fairness,
2 and openness.

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

4 1. The use of electronic commerce pursuant to the Oklahoma
5 Online Bidding Act for solicitation, notification, and other
6 purchasing processes;

7 2. Monitoring rules promulgated pursuant to The Oklahoma
8 Central Purchasing Act to ensure that the rules, satisfy the
9 interests of the state, are clear and succinct, and encourage
10 efficiency in purchasing processes;

11 3. A program to identify vendors with poor delivery and
12 performance records;

13 4. Development of criteria for the use of sealed bid
14 contracting procedures, negotiated contracting procedures, selection
15 of types of contracts, postaward administration of purchase orders
16 and contracts, contract modifications, termination of contracts, and
17 contract pricing;

18 5. Continual improvement in the quality of the performance of
19 the Purchasing Division through training programs, management
20 seminars, development of benchmarks and key management indicators,
21 and development of standard provisions, clauses and forms;

1 6. Development of electronic means of making state agencies
2 aware of office furniture, equipment, machinery, tools, and hardware
3 available for purchase from the surplus property programs; ~~and~~

4 7. Development of programs to improve customer relations
5 through training, improved communications, and appointment of
6 technical representatives; and

7 8. In cooperation with the Office of State Finance and the
8 State Treasurer, develop an electronic payment mechanism for use in
9 the settlement of accounts payable invoices, with no limit, to make
10 payment for products or services acquired in accordance with The
11 Oklahoma Central Purchasing Act and any rules promulgated pursuant
12 thereto.

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

17 L. The State Purchasing Director may authorize ~~state agencies~~
18 ~~to utilize~~ the use of a state purchase card for acquisitions ~~on~~
19 ~~statewide contracts issued by the State Purchasing Director with no~~
20 within the following parameters:

21 1. No limit on the amount of the transaction- for the
22 following:

1 1364 of Title 68 of the Oklahoma Statutes if such entity is required
2 to do so.

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

8 ~~Q. The Department of Central Services may finance a new heat
9 and air system for the State Capitol.~~

10 ~~R.~~ The Office of State Finance, with input from the State
11 Purchasing Director, shall promulgate payment procedure rules for
12 state agencies to adhere to regarding statewide contracts issued by
13 the State Purchasing Director.

14 ~~S.~~ R. The Office of State Finance along with the Department of
15 Central Services, Central Purchasing Division, shall promulgate
16 payment procedure rules for agencies to adhere to regarding
17 statewide contracts issued by the Division.

18 SECTION 4. 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 2007, 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) without submission of a requisition to the State
2 Purchasing Director and submission of suppliers' competitive bids or
3 proposals to the State Purchasing Director.

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

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

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

19 c. The State Purchasing Director shall report all
20 requests for waivers or increases, stating the amount
21 and whether the request was granted or denied, monthly
22 to the Governor, President Pro Tempore of the Senate,
23 and Speaker of the House of Representatives.

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

1 or Appropriations Committee of the Senate, if the
2 member requests.

3 4. Requisitions pursuant to this section shall not be required
4 prior to emergency acquisitions by a state agency not exceeding
5 ~~Thirty-five Thousand Dollars (\$35,000.00)~~ Fifty Thousand Dollars
6 (\$50,000.00). The state agency shall submit a requisition to the
7 State Purchasing Director within five (5) days following the
8 acquisition together with a statement of the emergency. The State
9 Purchasing Director shall send the requisition and a written
10 analysis to the Governor, the President Pro Tempore of the Senate,
11 and the Speaker of the House of Representatives specifying the facts
12 and circumstances giving rise to the emergency requisition.

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

21 a. in which serious damage to the environment will
22 quickly occur if immediate action is not taken and the

1 damage will be so significant that the urgent need for
2 action outweighs the need for competitive bids, or
3 b. a situation in which human life or safety is in
4 imminent danger or significant property interests are
5 threatened with imminent destruction.

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

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

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

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

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

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

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

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

22 d. Any state agency desiring to have a service qualified
23 for a fixed and uniform rate shall make a request for

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

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

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

1 Department of Central Services shall be specifically
2 identified in the list by the state agency.

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

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

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

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

21 (1) prior to entering into any contract for the
22 services of an entity to administer a structured
23 settlement agreement, the Attorney General

1 receives proposals from at least three entities
2 engaged in providing such services, and

3 (2) the selection of a particular entity is made on
4 the basis of the response to the request which is
5 the most economical and provides the most
6 competent service which furthers the best
7 interests of the state.

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

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

18 16. The Commission on Marginally Producing Oil and Gas Wells
19 shall be exempt from the competitive bid requirements of this
20 section for contracts with local vendors for the purpose of holding
21 special events and exhibitions throughout the state.

22 17. Agreements entered into by any state agency with the United
23 States Army Corps of Engineers in order to provide emergency

1 response or to protect the public health, safety, or welfare shall
2 not require requisitions and shall not be subject to competitive
3 bidding requirements of this section.

4 B. Acquisitions shall be awarded to the lowest and best, or
5 best value, bidder at a specified time and place, which shall be
6 open to the public.

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

18 D. When requested by CompSource Oklahoma, the State and
19 Education Employees Group Insurance Board, or the governing board of
20 a state retirement system authorized to hire investment managers,
21 the Department of Central Services shall assist the requesting body
22 in the process of selecting investment managers. When requested by
23 the Flexible Benefits Advisory Council, the Department of Central

1 Services shall assist the Council in the process of selecting
2 contracts for the design, development, communication, or
3 implementation of the state employees flexible benefits plan.

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

9 SECTION 5. AMENDATORY 74 O.S. 2001, Section 85.13, is
10 amended to read as follows:

11 Section 85.13 It shall be unlawful for the State Purchasing
12 Director or any buyer or any officer of the ~~Office of Public Affairs~~
13 Department of Central Services, or any member of their immediate
14 family, under The Oklahoma Central Purchasing Act to accept any
15 gift, donation, or gratuity for himself or any member of his
16 immediate family from any seller or prospective seller of any
17 property covered by The Oklahoma Central Purchasing Act; and it
18 shall further be unlawful for any seller or any prospective seller
19 to give or donate anything of value to the State Purchasing Director
20 or any buyer or officer of the ~~Office of Public Affairs~~ Department
21 of Central Services or any buyer under The Oklahoma Central
22 Purchasing Act or any member of the immediate family of the State

1 Purchasing Director or buyer or officer of the ~~Office of Public~~
2 ~~Affairs~~ Department of Central Services.

3 The violation of any provision of this section shall constitute
4 a misdemeanor and in the event the State Purchasing Director or any
5 buyer or any officer of the ~~Office of Public Affairs~~ Department of
6 Central Services is convicted for the violation of this section he
7 shall forfeit his position immediately in addition to the penalty
8 provided in this section.

9 SECTION 6. AMENDATORY 74 O.S. 2001, Section 85.22, is
10 amended to read as follows:

11 Section 85.22 ~~A notarized sworn statement shall be attached to~~
12 ~~any~~ Any competitive bid submitted to the State of Oklahoma or
13 contract executed by the state for goods or services shall contain a
14 certification, which shall be in substantially the following form:

15 STATE OF OKLAHOMA }
16 }

17 }

18 COUNTY OF }

19 _____, ~~of lawful age, being first duly sworn, on oath~~

20 ~~says~~ A. For purposes of competitive bids, I certify:

21 1. ~~(s)he is~~ I am the duly authorized agent of _____,
22 the bidder submitting the competitive bid which is attached to this
23 statement, for the purpose of certifying the facts pertaining to the
existence of collusion among bidders and between bidders and state

1 officials or employees, as well as facts pertaining to the giving or
2 offering of things of value to government personnel in return for
3 special consideration in the letting of any contract pursuant to the
4 bid to which this statement is attached;

5 2. ~~(s)he is~~ I am fully aware of the facts and circumstances
6 surrounding the making of the bid to which this statement is
7 attached and ~~has~~ have been personally and directly involved in the
8 proceedings leading to the submission of such bid; and

9 3. Neither the bidder nor anyone subject to the bidder's
10 direction or control has been a party:

11 a. to any collusion among bidders in restraint of freedom
12 of competition by agreement to bid at a fixed price or
13 to refrain from bidding,

14 b. to any collusion with any state official or employee
15 as to quantity, quality or price in the prospective
16 contract, or as to any other terms of such prospective
17 contract, nor

18 c. in any discussions between bidders and any state
19 official concerning exchange of money or other thing
20 of value for special consideration in the letting of a
21 contract.

22 _____
23 ~~Subscribed and sworn to before me~~

1 B. I certify, if awarded the contract, whether competitively
2 bid or not, neither the contractor nor anyone subject to the
3 contractor's direction or control has paid, given or donated or
4 agreed to pay, give or donate to any officer or employee of the
5 State of Oklahoma any money or other thing of value, either directly
6 or indirectly, in procuring the contract to which this statement is
7 attached.

8 Certified this _____ day of _____ 19 20 .

9 _____

10 ~~Notary Public (or Clerk or Judge)~~

11 SECTION 7. REPEALER 74 O.S. 2001, Section 85.23, is
12 hereby repealed.

13 SECTION 8. This act shall become effective November 1, 2008.

14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-2-08 - DO
15 PASS, As Amended and Coauthored.