

1 ENGROSSED HOUSE  
2 BILL NO. 1410

By: Murphey, Martin (Scott) and  
McCullough 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 85.5, as last amended by Section 3,  
9 Chapter 96, O.S.L. 2008, 85.7, as last amended by  
10 Section 4, Chapter 96, O.S.L. 2008, 85.13, as amended  
11 by Section 5, Chapter 96, O.S.L. 2008, 85.22, as  
12 amended by Section 6, Chapter 96, O.S.L. 2008, 85.39,  
13 85.41, as amended by Section 5, Chapter 483, O.S.L.  
14 2002, 85.42, as last amended by Section 1, Chapter  
15 276, O.S.L. 2008, 85.43 and 85.45j (74 O.S. Supp.  
16 2008, Sections 85.5, 85.7, 85.13, 85.22, 85.41 and  
17 85.42), which relate to The Oklahoma Central  
18 Purchasing Act; modifying dollar threshold related to  
19 certain purchasing procedures; modifying powers of  
20 State Purchasing Director; modifying terminology for  
21 certain purchasing officials; authorizing State  
22 Purchasing Director to renegotiate certain contracts;  
23 modifying limits for transactions with state purchase  
24 card; requiring annual report by State Purchasing  
Director; modifying provisions related to dollar  
threshold for emergency acquisitions; providing  
certain restriction regarding things of value  
inapplicable based upon administrative rules of  
Oklahoma Ethics Commission; modifying formalities  
regarding execution of certain statements; modifying  
procedures related to certification of certain  
profession services contracts; and deleting certain  
requirements for use of affidavit.

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

2 SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.5, as  
3 last amended by Section 3, Chapter 96, O.S.L. 2008 (74 O.S. Supp.  
4 2008, Section 85.5), is amended to read as follows:

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

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

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

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

23 2. Inspection, analysis, and testing of acquisitions or samples  
24 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 or other surety  
12 required to be submitted with a bid or contract for the furnishing  
13 of acquisitions and the conditions under which such bond or other  
14 surety shall be required;

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

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

23           10. The form of any estimate, order, or other document the  
24 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) as provided below:~~

21 ~~(1) acquisitions with a price exceeding Two Thousand~~  
22 ~~Five Hundred Dollars (\$2,500.00) and not~~  
23 ~~exceeding Ten Thousand Dollars (\$10,000.00),~~  
24 ~~pursuant to rules authorized by this section, and~~

1           ~~(2) acquisitions with a price exceeding Ten Thousand~~  
2           ~~Dollars (\$10,000.00) and not exceeding the amount~~  
3           ~~requiring a requisition to the State Purchasing~~  
4           ~~Director, pursuant to Section 85.7 of this title,~~  
5           ~~by telephone, facsimile, invitation to bid, or~~  
6           ~~solicitation by means of electronic commerce,~~  
7           ~~receipt of bids and bid award by the state agency~~  
8           Five Thousand Dollars (\$5,000.00) and not  
9           exceeding One Hundred Thousand Dollars  
10           (\$100,000.00), pursuant to rules authorized by  
11           this section;

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

14           13. Review and audit by the State Purchasing Director of state  
15 agency acquisitions;

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

19           15. Use of a state purchase card to make acquisitions; ~~and~~

20           16. Any other matter or practice which relates to the  
21 responsibilities of the Director of the Department of Central  
22 Services;

1       17. Conditions for determination and authorization of  
2 acquisition limits of state agencies pursuant to Section 85.7 of  
3 this title; and

4       18. The form and manner of verification by suppliers that the  
5 supplier is eligible to do business in the State of Oklahoma and has  
6 obtained all necessary permits and licenses, pursuant to applicable  
7 provisions of law.

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

24

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;

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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  
24 contract. The state entity designated by law, as specified in

1 Section 1010.3 of Title 56 of the Oklahoma Statutes, shall  
2 participate in the purchase of pharmaceuticals available through  
3 such multistate or multigovernmental contracts entered into by the  
4 State Purchasing Director.

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

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

10 4. The State Purchasing Director may authorize renegotiation of  
11 an existing contract with an incumbent supplier for the purposes of  
12 obtaining more favorable terms for the state.

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

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

22 J. The State Purchasing Director shall undertake the following:  
23  
24

- 1        1. The use of electronic commerce pursuant to the Oklahoma  
2 Online Bidding Act for solicitation, notification, and other  
3 purchasing processes;
- 4        2. Monitoring rules promulgated pursuant to The Oklahoma  
5 Central Purchasing Act to ensure that the rules, satisfy the  
6 interests of the state, are clear and succinct, and encourage  
7 efficiency in purchasing processes;
- 8        3. A program to identify vendors with poor delivery and  
9 performance records;
- 10       4. Development of criteria for the use of sealed bid  
11 contracting procedures, negotiated contracting procedures, selection  
12 of types of contracts, postaward administration of purchase orders  
13 and contracts, contract modifications, termination of contracts, and  
14 contract pricing;
- 15       5. Continual improvement in the quality of the performance of  
16 the Purchasing Division through training programs, management  
17 seminars, development of benchmarks and key management indicators,  
18 and development of standard provisions, clauses and forms;
- 19       6. Development of electronic means of making state agencies  
20 aware of office furniture, equipment, machinery, tools, and hardware  
21 available for purchase from the surplus property programs;
- 22       7. Development of programs to improve customer relations  
23 through training, improved communications, and appointment of  
24 technical representatives; and

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

7       K. The State Purchasing Director shall, in cooperation with the  
8 Oklahoma Department of Agriculture, Food, and Forestry, identify the  
9 needs of state agencies and institutions for agricultural products  
10 grown and produced in Oklahoma.

11       L. The State Purchasing Director may authorize the use of a  
12 state purchase card for acquisitions within the following  
13 parameters:

14       1. No limit on the amount of the transaction for the following:

- 15           a. purchases from statewide contracts issued by the State  
16                 Purchasing Director, and  
17           b. regulated utilities; and

18       2. For any other transaction with a state purchase card, the  
19 transaction shall not exceed ~~Two Thousand Five Hundred Dollars~~  
20 ~~(\$2,500.00)~~ Five Thousand Dollars (\$5,000.00).

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

23       N. Prior to the award of a contract to a supplier, the State  
24 Purchasing Director shall verify, pursuant to applicable provisions

1 of law, that the supplier is eligible to do business in the State of  
2 Oklahoma by confirming registration with the Secretary of State and  
3 franchise tax payment status pursuant to Sections 1203 and 1204 of  
4 Title 68 of the Oklahoma Statutes. The provisions of this  
5 subsection shall be applicable only if the contract amount is  
6 Twenty-five Thousand Dollars (\$25,000.00) or greater.

7 O. As a condition of awarding a contract pursuant to The  
8 Oklahoma Central Purchasing Act, the State Purchasing Director shall  
9 verify with the Oklahoma Tax Commission that the business entity to  
10 which the state contract is to be awarded, whether subject to the  
11 procedures required by Section 85.7 of this title or not, has  
12 obtained a sales tax permit pursuant to the provisions of Section  
13 1364 of Title 68 of the Oklahoma Statutes if such entity is required  
14 to do so.

15 P. The State Purchasing Director is hereby authorized to  
16 explore and investigate cost savings in energy, resource usage, and  
17 maintenance contracts and to identify and negotiate contract  
18 solutions including, but not limited to, pilot projects to achieve  
19 cost savings for the State of Oklahoma.

20 Q. The Office of State Finance, with input from the State  
21 Purchasing Director, shall promulgate payment procedure rules for  
22 state agencies to adhere to regarding statewide contracts issued by  
23 the State Purchasing Director.

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1 R. The Office of State Finance along with the Department of  
2 Central Services, Central Purchasing Division, shall promulgate  
3 payment procedure rules for agencies to adhere to regarding  
4 statewide contracts issued by the Division.

5 S. On an annual basis, the State Purchasing Director shall  
6 transmit to the Governor, Speaker of the House of Representatives  
7 and President Pro Tempore of the State Senate a report documenting  
8 the savings realized by each agency through the application of best  
9 spend practices including the collection and tracking of spend data,  
10 strategic sourcing programs, and implementation of managed and  
11 mandatory statewide contracts. The report shall document the  
12 reasons for the failure to issue a mandatory statewide contract for  
13 any items comprising total statewide spend in the amount of Five  
14 Million Dollars (\$5,000,000.00) or greater.

15 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.7, as  
16 last amended by Section 4, Chapter 96, O.S.L. 2008 (74 O.S. Supp.  
17 2008, Section 85.7), is amended to read as follows:

18 Section 85.7 A. 1. Except as otherwise provided by The  
19 Oklahoma Central Purchasing Act, no state agency shall make an  
20 acquisition for an amount exceeding ~~Twenty five Thousand Dollars~~  
21 ~~(\$25,000.00)~~ Fifty Thousand Dollars (\$50,000.00) or the limit  
22 determined by the State Purchasing Director pursuant to rules  
23 authorized by Section 85.5 of this title, not to exceed One Hundred  
24 Thousand Dollars (\$100,000.00), without submission of a requisition

1 to the State Purchasing Director and submission of suppliers'  
2 competitive bids or proposals to the State Purchasing Director.

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

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

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

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

23 3. a. Contracts for master custodian banks or trust  
24 companies, investment managers, investment

1 consultants, and actuaries for the state retirement  
2 systems, CompSource Oklahoma, State and Education  
3 Employees Group Insurance Board, pension fund  
4 management consultants of the Oklahoma State Pension  
5 Commission and the Commissioners of the Land Office,  
6 and other professional services as defined in Section  
7 803 of Title 18 of the Oklahoma Statutes shall be  
8 exempt from competitive bidding procedures of Section  
9 85.7 and requisition requirements of Section 85.4 of  
10 this title.

11 b. Contracts with financial institutions to act as  
12 depositories and managers of the Oklahoma College  
13 Savings Plan accounts shall be exempt from competitive  
14 bidding procedures.

15 c. A state agency that makes an acquisition pursuant to  
16 this paragraph shall notify the State Purchasing  
17 Director within fifteen (15) days following completion  
18 of the acquisition. The Department of Central  
19 Services shall compile a list of the exempt contracts  
20 and send the list to a member of the Appropriations  
21 and Budget Committee of the House of Representatives  
22 or Appropriations Committee of the Senate, if the  
23 member requests.

1           4. Requisitions pursuant to this section shall not be required  
2 prior to emergency acquisitions by a state agency not exceeding  
3 ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars  
4 (\$100,000.00). The state agency shall submit a requisition to the  
5 State Purchasing Director within five (5) days following the  
6 acquisition together with a statement of the emergency. The State  
7 Purchasing Director shall send the requisition and a written  
8 analysis to the Governor, the President Pro Tempore of the Senate,  
9 and the Speaker of the House of Representatives specifying the facts  
10 and circumstances giving rise to the emergency requisition.

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

19           a. in which serious damage to the environment will  
20                 quickly occur if immediate action is not taken and the  
21                 damage will be so significant that the urgent need for  
22                 action outweighs the need for competitive bids, or  
23  
24

1           b.    a situation in which human life or safety is in  
2                    imminent danger or significant property interests are  
3                    threatened with imminent destruction.

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

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

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

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

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

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

11        b. The Department of Central Services shall establish  
12 criteria and guidelines for those services which may  
13 qualify for a fixed and uniform rate.

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

19        d. Any state agency desiring to have a service qualified  
20 for a fixed and uniform rate shall make a request for  
21 service qualification to the Department of Central  
22 Services and submit documentation to support the  
23 request. The Department of Central Services shall  
24 approve or deny the request. If the Department of

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

1 determined the rate to be excessive. Any written  
2 communication presented in the absence of the Director  
3 of the Department of Central Services shall be  
4 presented orally during the public hearing. Whether  
5 made in person or in writing, any comment made by the  
6 Director of the Department of Central Services shall  
7 be made a part of the minutes of the hearing in full.

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

21 f. At any time, the Director of the Department of Central  
22 Services may review, suspend, or terminate a contract  
23 entered into pursuant to the provisions of this  
24 paragraph if the Director of the Department of Central

1 Services determines the contract is not necessary, is  
2 excessive, or is not justified.

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

17 13. The Department of Human Services shall develop procedures  
18 for acquisitions of specifically prescribed nonmedical assistive  
19 technology-related items not exceeding the acquisition purchase  
20 amount requiring a requisition pursuant to this section for  
21 individuals under sixteen (16) years of age who are recipients of  
22 Supplemental Security Income which are prescribed by a physician,  
23 qualified sensory aids specialist or qualified special education  
24 instructor. The procedures shall reflect standards for the

1 acquisition of such nonmedical assistive technology-related items,  
2 may provide for utilization of the Purchasing Division when  
3 appropriate, shall foster economy, provide a short response time,  
4 shall include appropriate safeguards and written records to ensure  
5 appropriate competition and economical and efficient purchasing, and  
6 shall be approved by the State Purchasing Director.

7 14. a. Structured settlement agreements entered into by the  
8 Attorney General's office in order to settle any  
9 lawsuit involving the state, the Legislature, any  
10 state agency or any employee or official of the state  
11 shall not be subject to the competitive bidding  
12 requirements of this section if:

13 (1) prior to entering into any contract for the  
14 services of an entity to administer a structured  
15 settlement agreement, the Attorney General  
16 receives proposals from at least three entities  
17 engaged in providing such services, and

18 (2) the selection of a particular entity is made on  
19 the basis of the response to the request which is  
20 the most economical and provides the most  
21 competent service which furthers the best  
22 interests of the state.

23 b. A list of any such structured settlement agreements  
24 entered into by the Attorney General with summary

1           thereon for the previous calendar year shall be  
2           submitted to the Speaker of the House of  
3           Representatives and the President Pro Tempore of the  
4           Senate on January 31 of each year.

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

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

13           17. Agreements entered into by any state agency with the United  
14 States Army Corps of Engineers in order to provide emergency  
15 response or to protect the public health, safety, or welfare shall  
16 not require requisitions and shall not be subject to competitive  
17 bidding requirements of this section.

18           B. Acquisitions shall be awarded to the lowest and best, or  
19 best value, bidder at a specified time and place, which shall be  
20 open to the public.

21           C. Bids for professional service contracts for an amount  
22 requiring submission of requisitions to the State Purchasing  
23 Director shall be evaluated by the State Purchasing Director and the  
24 state agency contracting for such service. Both cost and technical

1 expertise shall be considered in determining the lowest and best, or  
2 best value, bid. Further, the state agency shall present its  
3 evaluation and recommendation to the State Purchasing Director. A  
4 documented evaluation report containing the evaluations of the State  
5 Purchasing Director and the state agency contracting for such  
6 service shall be completed prior to the awarding of a professional  
7 service contract and such report shall be a matter of public record.

8 D. When requested by CompSource Oklahoma, the State and  
9 Education Employees Group Insurance Board, or the governing board of  
10 a state retirement system authorized to hire investment managers,  
11 the Department of Central Services shall assist the requesting body  
12 in the process of selecting investment managers. When requested by  
13 the Flexible Benefits Advisory Council, the Department of Central  
14 Services shall assist the Council in the process of selecting  
15 contracts for the design, development, communication, or  
16 implementation of the state employees flexible benefits plan.

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

22 SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.13, as  
23 amended by Section 5, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2008,  
24 Section 85.13), is amended to read as follows:

1           Section 85.13 It shall be unlawful for the State Purchasing  
2 Director or any buyer or any officer of the Department of Central  
3 Services, or any member of their immediate family, under The  
4 Oklahoma Central Purchasing Act to accept any gift, donation, or  
5 gratuity for himself or any member of his immediate family from any  
6 seller or prospective seller of any property covered by The Oklahoma  
7 Central Purchasing Act; and it shall further be unlawful for any  
8 seller or any prospective seller to give or donate anything of value  
9 to the State Purchasing Director or any buyer or officer of the  
10 Department of Central Services or any buyer under The Oklahoma  
11 Central Purchasing Act or any member of the immediate family of the  
12 State Purchasing Director or buyer or officer of the Department of  
13 Central Services. This provision shall not apply to exceptions to  
14 the definition of "anything of value" in the Rules of the Ethics  
15 Commission promulgated pursuant to Article XXIX of the Oklahoma  
16 Constitution.

17           The violation of any provision of this section shall constitute  
18 a misdemeanor and in the event the State Purchasing Director or any  
19 buyer or any officer of the Department of Central Services is  
20 convicted for the violation of this section he shall forfeit his  
21 position immediately in addition to the penalty provided in this  
22 section.

23  
24

1 SECTION 4. AMENDATORY 74 O.S. 2001, Section 85.22, as  
2 amended by Section 6, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2008,  
3 Section 85.22), is amended to read as follows:

4 Section 85.22 Any competitive bid submitted to the State of  
5 Oklahoma or contract executed by the state for goods or services  
6 shall contain a certification, which shall be in substantially the  
7 following form:

8 ~~STATE OF OKLAHOMA~~

9 ~~COUNTY OF~~

10 A. For purposes of competitive bids, I certify:

11 1. I am the duly authorized agent of \_\_\_\_\_, the bidder  
12 submitting the competitive bid which is attached to this statement,  
13 for the purpose of certifying the facts pertaining to the existence  
14 of collusion among bidders and between bidders and state officials  
15 or employees, as well as facts pertaining to the giving or offering  
16 of things of value to government personnel in return for special  
17 consideration in the letting of any contract pursuant to the bid to  
18 which this statement is attached;

19 2. I am fully aware of the facts and circumstances surrounding  
20 the making of the bid to which this statement is attached and have  
21 been personally and directly involved in the proceedings leading to  
22 the submission of such bid; and

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

- 1           a.    to any collusion among bidders in restraint of freedom  
2                   of competition by agreement to bid at a fixed price or  
3                   to refrain from bidding,  
4           b.    to any collusion with any state official or employee  
5                   as to quantity, quality or price in the prospective  
6                   contract, or as to any other terms of such prospective  
7                   contract, nor  
8           c.    in any discussions between bidders and any state  
9                   official concerning exchange of money or other thing  
10                  of value for special consideration in the letting of a  
11                  contract.

12           B.   I certify, if awarded the contract, whether competitively  
13 bid or not, neither the contractor nor anyone subject to the  
14 contractor's direction or control has paid, given or donated or  
15 agreed to pay, give or donate to any officer or employee of the  
16 State of Oklahoma any money or other thing of value, either directly  
17 or indirectly, in procuring the contract to which this statement is  
18 attached.

19 Certified this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

22           Section 85.39 A. 1. Each state agency shall develop internal  
23 purchasing procedures for acquisitions by the state agency.

24 Procedures shall, at a minimum, include provisions for the state

1 agency's needs assessment, funding, routing, review, audits,  
2 monitoring, and evaluations. Following development, the state  
3 agency shall submit the procedures to the State Purchasing Director.

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

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

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

21 C. Each state agency shall maintain a document file for each  
22 acquisition the state agency makes which shall include, at a  
23 minimum, justification for the acquisition, supporting  
24 documentation, copies of all contracts, if any, pertaining to the

1 acquisition, evaluations, written reports if required by contract,  
2 and any other information the State Purchasing Director requires be  
3 kept.

4 SECTION 6. AMENDATORY 74 O.S. 2001, Section 85.41, as  
5 amended by Section 5, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2008,  
6 Section 85.41), is amended to read as follows:

7 Section 85.41 A. A state agency that acquires professional  
8 services shall comply with the provisions of this section.

9 B. The state agency shall evaluate the performance of the  
10 professional services provided pursuant to a professional services  
11 contract. The performance evaluation shall indicate the quality of  
12 service or work product of the supplier. The state agency shall  
13 retain the evaluation in the document file the state agency  
14 maintains for the acquisition pursuant to Section 85.39 of this  
15 title. If the evaluation indicates deficiencies with the supplier's  
16 work, the state agency shall send a copy of the evaluation to the  
17 State Purchasing Director.

18 C. If the work product of the contract is a report, the state  
19 agency shall file the report with the State Librarian and Archivist.

20 D. A state agency shall administer, monitor, and audit the  
21 professional services contract. The State Purchasing Director may  
22 require the state agency to report to the State Purchasing Director  
23 the status of an unfinished professional services contract.

24

1 E. A professional services contract shall include an audit  
2 clause which provides that all items of the supplier that relate to  
3 the professional services are subject to examination by the state  
4 agency, the State Auditor and Inspector and the State Purchasing  
5 Director.

6 F. 1. If the final product of the professional services  
7 contract is a written proposal, report, or study, the professional  
8 services contract shall require the supplier to ~~sign a sworn~~  
9 ~~statement certifying~~ certify that the supplier has not previously  
10 provided the state agency or another state agency with a final  
11 product that is a substantial duplication of the final product of  
12 the proposed contract.

13 2. Any state agency renewing a contract with a supplier shall  
14 not be subject to the provisions of paragraph 1 of this subsection.

15 G. 1. Contracts for professional services shall provide for  
16 payment for services at a uniform rate throughout the duration of  
17 the contract if the services throughout the duration of the contract  
18 are similar and consistent.

19 2. No state agency shall execute a contract for professional  
20 services providing for nonuniform payments throughout the duration  
21 of the contract without authorization of the State Purchasing  
22 Director.

23

24

1 SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.42, as  
2 last amended by Section 1, Chapter 276, O.S.L. 2008 (74 O.S. Supp.  
3 2008, Section 85.42), is amended to read as follows:

4 Section 85.42 A. Except as otherwise provided for in this  
5 section, any agency, whether or not such agency is subject to The  
6 Oklahoma Central Purchasing Act, is prohibited from entering into a  
7 sole source contract or a contract for professional services with or  
8 for the services of any person, who has terminated employment with  
9 or who has been terminated by that agency for one (1) year after the  
10 termination date of the employee from the agency. The provisions of  
11 this subsection shall not prohibit an agency from hiring or rehiring  
12 such person as a state employee.

13 B. Each contract entered into by any person or firm with the  
14 State of Oklahoma shall include ~~an affidavit~~ a statement certifying  
15 that no person who has been involved in any manner in the  
16 development of that contract while employed by the State of Oklahoma  
17 shall be employed to fulfill any of the services provided for under  
18 said contract. This subsection shall not preclude faculty and staff  
19 of the institutions within The State System of Higher Education from  
20 negotiating and participating in research grants and educational  
21 contracts. Nor shall this subsection apply to personnel of the  
22 Capital Resources Division of the Oklahoma Department of Commerce  
23 who contract to provide services to the Oklahoma Capital Investment  
24 Board.

1 C. As used in this section, person is defined as any state  
2 official or employee of a department, board, bureau, commission,  
3 agency, trusteeship, authority, council, committee, trust, school  
4 district, fair board, court, executive office, advisory group, task  
5 force, study group, supported in whole or in part by public funds or  
6 entrusted with the expenditure of public funds or administering or  
7 operating public property, and all committees, or subcommittees  
8 thereof, judges, justices, and state legislators.

9 D. An agency may enter into a sole source contract or a  
10 contract for professional services at any time with a person who is  
11 a qualified interpreter for the deaf.

12 E. The Department of Transportation, Oklahoma Water Resources  
13 Board, Department of Environmental Quality, Oklahoma Tourism and  
14 Recreation Department, the Oklahoma ~~Transportation~~ Turnpike  
15 Authority and the Oklahoma Department of Agriculture, Food, and  
16 Forestry may enter into a contract for professional services at any  
17 time with a person who has retired from state service, provided the  
18 provisions specified in subsection B of this section are satisfied.

19 F. The Department of Human Services may enter into a contract  
20 for professional services related to computer application  
21 development support and network engineering at any time with a  
22 person who has separated from state service, provided the provisions  
23 specified in subsection B of this section are satisfied.

24

1 G. To maintain public health infrastructure and preparedness,  
2 the State Department of Health and city-county health departments  
3 may enter into a contract for professional services at any time with  
4 a physicians assistant, registered nurse, advanced practice nurse,  
5 nurse midwife, registered dietician, occupational therapist,  
6 physical therapist, or speech-language pathologist who has retired  
7 from state service; provided, the provisions specified in subsection  
8 B of this section are also satisfied.

9 H. The Department of Mental Health and Substance Abuse Services  
10 may enter into a contract for professional services at any time with  
11 a physician who has separated and/or retired from state service;  
12 provided that the provisions specified in subsection B of this  
13 section are satisfied.

14 SECTION 8. AMENDATORY 74 O.S. 2001, Section 85.43, is  
15 amended to read as follows:

16 Section 85.43 A. Each chief administrative officer of a state  
17 agency shall submit to the State Purchasing Director by November 1  
18 of each year a report listing all acquisitions exceeding ~~Ten~~  
19 ~~Thousand Dollars (\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00)  
20 but not exceeding ~~Twenty five Thousand Dollars (\$25,000.00)~~ One  
21 Hundred Thousand Dollars (\$100,000.00) of the state agency for the  
22 preceding fiscal year which will include the following information:

- 23 1. Professional services contracts;  
24 2. Nonprofessional services contracts; and

1           3. Contracts for the leasing of property including real  
2 property contracts and any lease agreements for products or  
3 equipment.

4           B. The report shall contain:

5           1. The name of the supplier;

6           2. A description of each acquisition;

7           3. The purchase price of the acquisition; and

8           4. The total amount expended to date for the preceding fiscal  
9 year for the acquisition.

10          C. The report shall specifically identify sole source and sole  
11 brand acquisitions.

12          D. The state agency shall submit the report to the State  
13 Auditor and Inspector and to the Department of Central Services.  
14 The state agency shall submit the report to any member of the  
15 Appropriations and Budget Committee of the House of Representatives  
16 or Appropriations Committee of the Senate if a member so requests.

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

20          SECTION 9.        AMENDATORY        74 O.S. 2001, Section 85.45j, is  
21 amended to read as follows:

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

1 2. If a state agency desires to make a sole source or sole  
2 brand acquisition, the state agency shall retain in the state  
3 agency's acquisition file or attach to the requisition ~~an affidavit~~  
4 a certification signed by the chief administrative officer of the  
5 state agency, in the following form:

6 SOLE SOURCE OR SOLE BRAND ACQUISITION

7 AFFIDAVIT CERTIFICATION

8 STATE AGENCY \_\_\_\_\_  
9 SUPPLIER NAME \_\_\_\_\_  
10 SUPPLIER ADDRESS \_\_\_\_\_  
11 SUPPLIER TELEPHONE \_\_\_\_\_

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

14 (Name of Supplier)

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

18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_

23 The following is a brief description of all efforts which were  
24 made to verify that the services or products to be purchased

1 pursuant to the provisions of the attached requisition or contract  
2 qualify as a sole source or sole brand acquisition:

3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

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

11 \_\_\_\_\_  
12 (Chief administrative officer)

13 ~~STATE OF OKLAHOMA )~~

14 ~~) ss.~~

15 ~~COUNTY OF OKLAHOMA)~~

16 ~~Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 19\_\_ or~~  
17 ~~20\_\_.~~

18 \_\_\_\_\_  
19 ~~Notary Public~~

20 ~~My Commission expires:~~

21 \_\_\_\_\_

22 3. A court order requiring the purchase of specific products or  
23 services but which does not specify a brand or supplier shall not  
24 substitute for the ~~affidavit~~ certification required by this

1 subsection or otherwise invalidate the acquisition procedures  
2 required pursuant to the Oklahoma Central Purchasing Act.

3 4. Any chief administrative officer of a state agency affirming  
4 the ~~affidavit~~ certification required by this subsection who knows  
5 the information to be false shall be deemed guilty of perjury and  
6 upon conviction shall be punished by fine or by imprisonment or both  
7 fine and imprisonment pursuant to law. Upon conviction or upon  
8 entering a plea of nolo contendere pursuant to this paragraph, the  
9 chief administrative officer shall immediately forfeit his or her  
10 position and shall be ineligible for appointment to or employment in  
11 the state service for a period of five (5) years after entering a  
12 plea of nolo contendere or being convicted.

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

19 6. If the acquisition's purchase price is such that the state  
20 agency is required to submit a requisition to the State Purchasing  
21 Director, the State Purchasing Director shall approve or deny the  
22 requisition for a sole source or sole brand acquisition. Prior to  
23 approving a requisition pursuant to this paragraph, the State  
24 Purchasing Director shall document reasons a sole source or sole

1 brand purchase is necessary and shall retain a written record for  
2 three (3) fiscal years following the end of the fiscal year during  
3 which the sole source or sole brand acquisition was made.

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

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

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

24

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

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

6 2. The Majority and Minority Leaders of both the House of  
7 Representatives and the Senate;

8 3. The Chair and Vice Chair of the Appropriations and Budget  
9 Committee of the House of Representatives and the Appropriations  
10 Committee of the Senate; and

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

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

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

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

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

21  
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24

1 Passed the House of Representatives the 17th day of February,  
2 2009.

3  
4  
5 Presiding Officer of the House of  
6 Representatives

7 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2009.

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10 Presiding Officer of the Senate

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