

1 ENGROSSED HOUSE  
2 BILL NO. 2332

By: Murphey, Denney, Dorman and  
Kiesel of the House

3 and

4 Jolley 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 96 of  
9 Enrolled Senate Bill No. 2113 of the 2nd Session of  
10 the 52nd Oklahoma Legislature, 85.22, as last amended  
11 by Section 9, Chapter 322, O.S.L. 2009, Section 3,  
12 Chapter 322, O.S.L. 2009 and 90.2 (74 O.S. Supp.  
13 2009, Sections 85.22 and 85.33B), which relate to The  
14 Oklahoma Central Purchasing Act; modifying duties of  
15 State Purchasing Director; modifying provisions  
16 related to certain dollar limit; imposing duties on  
17 institutions of higher education; modifying  
18 procedures with respect to payment for postal  
19 services; amending Section 1, Chapter 340, O.S.L.  
20 2008, as amended by Section 6, Chapter 451, O.S.L.  
21 2009 (62 O.S. Supp. 2009, Section 41.5a-4), which  
22 relates to the Information Services Division of the  
23 Office of State Finance; clarifying type of  
24 electronic storage for removal; specifying type of  
electronic storage media eligible for certain funds;  
amending 62 O.S. 2001, Section 41.4a, as amended by  
Section 48, Chapter 441, O.S.L. 2009, and as  
renumbered by Section 64, Chapter 441, O.S.L. 2009  
(62 O.S. Supp. 2009, Section 34.71), which relates to  
invoice procedures; modifying time period for payment  
of invoices; providing an effective date; and  
declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.5, as  
last amended by Section 96 of Enrolled Senate Bill No. 2113 of the

1 2nd Session of the 52nd Oklahoma Legislature, is amended to read as  
2 follows:

3 Section 85.5. A. Except as otherwise provided in this section,  
4 pursuant to the provisions of Section 85.4 of this title, the State  
5 Purchasing Director, under the supervision of the Director of the  
6 Department of Central Services, shall have sole and exclusive  
7 authority and responsibility for all acquisitions used or consumed  
8 by state agencies. In order to carry out the powers and duties  
9 established in Section 34.11.1 of Title 62 of the Oklahoma Statutes,  
10 the Chief Information Officer shall have sole and exclusive  
11 authority and responsibility for all acquisitions of information and  
12 telecommunications technology, equipment, software, products and  
13 related peripherals and services used or consumed by state agencies.

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

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

- 1        1. The time, manner, authentication, and form of making  
2 requisitions for acquisitions;
- 3        2. Inspection, analysis, and testing of acquisitions or samples  
4 suppliers submit prior to contract award;
- 5        3. The form and manner of submission for bids or proposals a  
6 supplier submits and the manner of accepting and opening bids or  
7 proposals;
- 8        4. The conditions under which the Department of Central  
9 Services shall require written contracts for acquisitions, the  
10 conditions under which acquisitions may be made on an open account  
11 basis, and the conditions and manner of negotiating such contracts;
- 12        5. Obtaining acquisitions produced by state institutions;
- 13        6. Conditions under which any of the rules herein authorized  
14 may be waived;
- 15        7. The amounts of and deposits on any bond or other surety  
16 required to be submitted with a bid or contract for the furnishing  
17 of acquisitions and the conditions under which such bond or other  
18 surety shall be required;
- 19        8. Storage and storage facilities necessary to accomplish  
20 responsibilities of the Director of the Department of Central  
21 Services;
- 22        9. The manner and conditions of delivery, which shall include  
23 the designation of the common carrier of property to be used to  
24 transport acquisitions whenever a common carrier is used, and the

1 acceptance, or rejection, including check of quantities, of any  
2 acquisitions;

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

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

13 a. state agencies shall make acquisitions not exceeding  
14 Five Thousand Dollars (\$5,000.00), provided the  
15 acquisition process is fair and reasonable and is  
16 conducted pursuant to rules authorized pursuant to  
17 this section, and

18 b. state agencies with certified procurement officers and  
19 internal purchasing procedures found compliant by the  
20 Director of the Department of Central Services  
21 pursuant to this section may make acquisitions in  
22 excess of Five Thousand Dollars (\$5,000.00) and not  
23 exceeding One Hundred Thousand Dollars (\$100,000.00),  
24 pursuant to rules authorized by this section;

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

3       13. Review and audit by the State Purchasing Director of state  
4 agency acquisitions;

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

8       15. Use of a state purchase card to make acquisitions;

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

12       17. Conditions for determination and authorization of  
13 acquisition limits of state agencies pursuant to Section 85.7 of  
14 this title; and

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

19       D. The State Purchasing Director shall provide training for  
20 state agency purchasing officials and other purchasing staff. The  
21 training shall include principles of state procurement practices,  
22 basic contracting, provisions of The Oklahoma Central Purchasing  
23 Act, rules promulgated pursuant to The Oklahoma Central Purchasing  
24 Act, provisions of Section 3001 et seq. of this title, which relate

1 to the State Use Committee, and any other matters related to state  
2 procurement practices. State agency purchasing officials that  
3 demonstrate proficiency shall be certified as "certified procurement  
4 officers" or "certified procurement analysts" by the State  
5 Purchasing Director and shall be authorized to make acquisitions  
6 pursuant to provisions of The Oklahoma Central Purchasing Act and  
7 rules authorized by this section. The State Purchasing Director  
8 shall assess a fee to state agencies for the training that does not  
9 exceed each state agency's pro rata share of the costs the State  
10 Purchasing Director incurs to provide the training.

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

13 1. Ensuring state agency compliance with provisions of The  
14 Oklahoma Central Purchasing Act;

15 2. Ensuring state agency compliance with rules promulgated by  
16 the Department of Central Services pursuant to The Oklahoma Central  
17 Purchasing Act;

18 3. Ensuring state agency compliance with provisions of Section  
19 3001 et seq. of this title pertaining to the State Use Committee;

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

23 5. Recommending that the Director of the Department of Central  
24 Services reduce the acquisition competitive bid limit amount for any

1 state agency found not to be in compliance with The Oklahoma Central  
2 Purchasing Act or rules promulgated thereto.

3 F. When recommended by the State Purchasing Director, based on  
4 written findings by the State Purchasing Director, the Director of  
5 the Department of Central Services may:

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

10 2. Reduce the acquisition competitive bid limit for any state  
11 agency found not to be in compliance with provisions of The Oklahoma  
12 Central Purchasing Act or rules promulgated pursuant to The Oklahoma  
13 Central Purchasing Act;

14 3. Transmit written findings by the State Purchasing Director  
15 to the State Auditor and Inspector for further investigation,  
16 indicating purchasing procedures that do not conform to provisions  
17 pursuant to The Oklahoma Central Purchasing Act or rules promulgated  
18 pursuant to The Oklahoma Central Purchasing Act;

19 4. Transmit to the Attorney General or the State Auditor and  
20 Inspector for further investigation a report made by the State  
21 Purchasing Director that the Director of the Department of Central  
22 Services reasonably believes indicates that an action that  
23 constitutes a criminal violation pursuant to The Oklahoma Central  
24

1 Purchasing Act or other laws has been taken by any state agency,  
2 state agency official, bidder, or supplier; or

3 5. Increase the state agency acquisition purchase amount  
4 requiring competitive bid, not to exceed the acquisition purchase  
5 amount requiring competitive bid, pursuant to Section 85.7 of this  
6 title.

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

15 2. The State Purchasing Director may utilize contracts awarded  
16 by other governmental agencies, including agencies of the United  
17 States of America.

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

20 4. Prior to exercising the authority to cancel a contract, the  
21 State Purchasing Director may authorize renegotiation of an existing  
22 contract with an incumbent supplier for the purposes of obtaining  
23 more favorable terms for the state provided the State Purchasing  
24 Director shall not renegotiate the term of the contract.

1           5. In order to carry out the powers and duties established in  
2 Section 34.11.1 of Title 62 of the Oklahoma Statutes, the Chief  
3 Information Officer shall have the authority to designate certain  
4 information technology and telecommunication contracts for state  
5 agencies as statewide contracts and mandatory statewide contracts.

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

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

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

16           1. The use of electronic commerce pursuant to the Oklahoma  
17 Online Bidding Act for solicitation, notification, and other  
18 purchasing processes;

19           2. Monitoring rules promulgated pursuant to The Oklahoma  
20 Central Purchasing Act to ensure that the rules, satisfy the  
21 interests of the state, are clear and succinct, and encourage  
22 efficiency in purchasing processes;

23           3. A program to identify vendors with poor delivery and  
24 performance records;

1 4. Development of criteria for the use of sealed bid  
2 contracting procedures, negotiated contracting procedures, selection  
3 of types of contracts, postaward administration of purchase orders  
4 and contracts, contract modifications, termination of contracts, and  
5 contract pricing;

6 5. Continual improvement in the quality of the performance of  
7 the Purchasing Division through training programs, management  
8 seminars, development of benchmarks and key management indicators,  
9 and development of standard provisions, clauses and forms;

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

13 7. Development of programs to improve customer relations  
14 through training, improved communications, and appointment of  
15 technical representatives; ~~and~~

16 8. In cooperation with the Office of State Finance and the  
17 State Treasurer, develop an electronic payment mechanism for use in  
18 the settlement of accounts payable invoices, with no limit, to make  
19 payment for products or services acquired in accordance with The  
20 Oklahoma Central Purchasing Act and any rules promulgated pursuant  
21 thereto; and

22 9. Implement a policy to approve the ability of the department,  
23 agencies, boards, commissions and trusts to accept the terms of  
24 service for usage of social media services and contract for

1 technology products and services provided the terms of service or  
2 contract contains standard language including a liability agreement  
3 which is considered customary or largely similar to terms of service  
4 agreed to or contracts entered into by other government entities and  
5 private sector enterprises.

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

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

- 13 1. No limit on the amount of the transaction for the following:
  - 14 a. purchases from statewide contracts issued by the State  
15 Purchasing Director, and
  - 16 b. regulated utilities; and
- 17 2. For any other transaction with a state purchase card, the  
18 transaction shall not exceed Five Thousand Dollars (\$5,000.00).

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

21 N. Prior to the award of a contract to a supplier, the State  
22 Purchasing Director shall verify, pursuant to applicable provisions  
23 of law, that the supplier is eligible to do business in the State of  
24 Oklahoma by confirming registration with the Secretary of State and

1 franchise tax payment status pursuant to Sections 1203 and 1204 of  
2 Title 68 of the Oklahoma Statutes. The provisions of this  
3 subsection shall be applicable only if the contract amount is  
4 Twenty-five Thousand Dollars (\$25,000.00) or greater.

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

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

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

23 R. The Office of State Finance along with the Department of  
24 Central Services, Central Purchasing Division, shall promulgate

1 payment procedure rules for agencies to adhere to regarding  
2 statewide contracts issued by the Division.

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

13 T. The acquisition limitations provided for in subparagraph b  
14 of paragraph 11 of subsection C of this section and paragraph 1 of  
15 subsection A of Section 85.7 of this title shall not apply to agency  
16 purchases provided the agency has subject matter experts on staff  
17 having the specialized expertise to purchase said goods or services,  
18 the agency possesses the necessary legal and procurement staff to  
19 procure and monitor the contracts and provided the Director of  
20 Central Services shall certify that the proposed purchase does not  
21 conflict with consolidated statewide spend initiatives.

22 1. Nothing in this subsection shall give an agency authority to  
23 issue statewide, multistate, or multigovernmental contracts.

24 2. Agencies making purchases pursuant to this subsection shall:

- 1 a. be responsible for contracts awarded pursuant to this  
2 subsection, which includes, but may not be limited to,  
3 contract management, all costs connected with or  
4 incurred as a result of the contract, including legal  
5 representation,
- 6 b. comply with rules and policies of the Department of  
7 Central Services, and
- 8 c. report contracts issued pursuant to this subsection to  
9 the Department of Central Services, Central Purchasing  
10 Division, on a quarterly basis.

11 3. Purchases made in accordance with this subsection shall be  
12 made pursuant to rules authorized by this section.

13 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.22, as  
14 last amended by Section 9, Chapter 322, O.S.L. 2009 (74 O.S. Supp.  
15 2009, Section 85.22), is amended to read as follows:

16 Section 85.22 Any competitive bid submitted to the State of  
17 Oklahoma or contract executed by the state for goods or services in  
18 excess of Five Thousand Dollars (\$5,000.00) shall contain a  
19 certification, which shall be in substantially the following form:

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

21 1. I am the duly authorized agent of \_\_\_\_\_, the bidder  
22 submitting the competitive bid which is attached to this statement,  
23 for the purpose of certifying the facts pertaining to the existence  
24 of collusion among bidders and between bidders and state officials

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

5 2. I am fully aware of the facts and circumstances surrounding  
6 the making of the bid to which this statement is attached and have  
7 been personally and directly involved in the proceedings leading to  
8 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 B. I certify, if awarded the contract, whether competitively  
23 bid or not, neither the contractor nor anyone subject to the  
24 contractor's direction or control has paid, given or donated or

1 | agreed to pay, give or donate to any officer or employee of the  
2 | State of Oklahoma any money or other thing of value, either directly  
3 | or indirectly, in procuring the contract to which this statement is  
4 | attached.

5 | Certified this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

6 | SECTION 3. AMENDATORY Section 3, Chapter 322, O.S.L.  
7 | 2009 (74 O.S. Supp. 2009, Section 85.33B), is amended to read as  
8 | follows:

9 | Section 85.33B A. On a monthly basis the Director of Central  
10 | Purchasing and institutions of higher education shall provide to the  
11 | Office of State Finance a complete listing in electronic format of  
12 | all transactions occurring with the aid of a state purchase card.  
13 | The list shall contain the name of the purchaser and purchasing  
14 | agency, amount of purchase, and all available descriptions of items  
15 | purchased.

16 | B. Upon receipt of the list described in subsection A of this  
17 | section, the Office of State Finance shall allow the public access  
18 | to the list in searchable format through its website defined in  
19 | Section 46 of Title 62 of the Oklahoma Statutes.

20 | SECTION 4. AMENDATORY 74 O.S. 2001, Section 90.2, is  
21 | amended to read as follows:

22 | Section 90.2 ~~No money shall be expended~~ Expenditures by any  
23 | agency, board, commission, department or institution of the state  
24 | for postage stamps or post office box rent ~~except on vouchers~~ shall

1 ~~only be made payable to United States Post Office and the warrant or~~  
2 ~~check shall be endorsed by the postmaster from where the purchase is~~  
3 ~~made.~~

4 SECTION 5. AMENDATORY Section 1, Chapter 340, O.S.L.  
5 2008, as amended by Section 6, Chapter 451, O.S.L. 2009 (62 O.S.  
6 Supp. 2009, Section 41.5a-4), is amended to read as follows:

7 Section 41.5a-4 A. The Information Services Division of the  
8 Office of State Finance is authorized to:

9 1. Develop and publish a state policy and procedures for the  
10 destruction or disposal of all electronic storage media to ensure  
11 that all confidential information stored on such electronic media  
12 devices is destroyed or disposed of in a secure and safe manner;

13 2. Define the requirements for the secure destruction or  
14 disposal of electronic storage media; and

15 3. Assist the Department of Central Services in implementing  
16 the policy and procedures for the destruction or disposal of state  
17 electronic storage media.

18 B. The Information Services Division of the Office of State  
19 Finance shall notify all agencies, boards, commissions and  
20 authorities of the policy and procedures for the secure and safe  
21 destruction or disposal of electronic storage media.

22 C. The Department of Central Services shall remove all data  
23 from electronic storage media from all surplus information  
24 technology and telecommunication equipment before it is sold,

1 donated, stored or destroyed. A state agency may remove electronic  
2 storage media from their surplus information technology and  
3 telecommunication equipment prior to sending the surplus to the  
4 Department of Central Services, so long as the agency has the  
5 technical expertise for removal and that the electronic storage  
6 media is sent for destruction or disposal pursuant to this  
7 subsection.

8 D. The Department of Central Services shall use existing and  
9 future funds from the sale of state surplus equipment and  
10 appropriations, as necessary, to pay for the destruction of  
11 electronic storage media of equipment processed through the  
12 Department of Central Services.

13 SECTION 6. AMENDATORY 62 O.S. 2001, Section 41.4a, as  
14 amended by Section 48, Chapter 441, O.S.L. 2009, and as renumbered  
15 by Section 64, Chapter 441, O.S.L. 2009 (62 O.S. Supp. 2009, Section  
16 34.71), is amended to read as follows:

17 Section 34.71 The Director of the Office of State Finance shall  
18 establish a procedure to issue payment of a proper invoice for goods  
19 or services within no ~~less~~ more than forty-five (45) days from the  
20 date on which the invoice was received in the office designated by  
21 the agency to which the goods or services were sold and delivered.

22 SECTION 7. Section 4 of this act shall become effective  
23 November 1, 2010.

24

