

ENROLLED HOUSE  
BILL NO. 1032

By: Murphey, Pittman and  
Reynolds of the House

and

Brogdon and Ivester of the  
Senate

An Act relating to state government; creating the Oklahoma State Government Modernization Act of 2009; stating legislative purpose; requiring certain persons to provide a list of certain purchase card expenditures; directing Office of State Finance to publish list; amending 62 O.S. 2001, Section 41.5q, as amended by Section 11, Chapter 266, O.S.L. 2006 (62 O.S. Supp. 2008, Section 41.5q), which relates to state fiscal affairs; modifying definition; creating procedures for the development of online licensing and permitting; providing for exemption process from online licensing and permitting; amending 74 O.S. 2001, Sections 85.5, as last amended by Section 3, Chapter 96, O.S.L. 2008, 85.7, as last amended by Section 4, Chapter 96, O.S.L. 2008, 85.13, as amended by Section 5, Chapter 96, O.S.L. 2008, 85.22, as amended by Section 6, Chapter 96, O.S.L. 2008, 85.39, 85.41, as amended by Section 5, Chapter 483, O.S.L. 2002, 85.42, as last amended by Section 1, Chapter 276, O.S.L. 2008, 85.43 and 85.45j (74 O.S. Supp. 2008, Sections 85.5, 85.7, 85.13, 85.22, 85.41 and 85.42), which relate to The Oklahoma Central Purchasing Act; modifying dollar threshold related to certain purchasing procedures; modifying powers of State Purchasing Director; modifying terminology for certain purchasing officials; authorizing State Purchasing Director to renegotiate certain contracts; modifying limits for transactions with state purchase 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 Ethics Commission; modifying formalities regarding execution of certain statements; modifying procedures related to certification of certain professional services contracts; deleting certain requirements for use of affidavit; repealing 40 O.S. 2001, Section 418.2, as last amended by Section 16, Chapter 354, O.S.L. 2007 (40 O.S. Supp. 2008, Section 418.2), which relates to the Workers Safety Policy Council; providing for codification; and providing for noncodification.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma State Government Modernization Act of 2009".

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The State of Oklahoma finds it vital for state government to modernize governmental activities by taking advantage of new technologies to provide more cost-effective services to the citizens while also enhancing transparency.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85.33B of Title 74, unless there is created a duplication in numbering, reads as follows:

A. On a monthly basis the Director of Central Purchasing shall provide to the Office of State Finance a complete listing in electronic format of all transactions occurring with the aid of a state purchase card. The list shall contain the name of the purchaser and purchasing agency, amount of purchase, and all available descriptions of items purchased.

B. Upon receipt of the list described in subsection A of this section, the Office of State Finance shall allow the public access

to the list in searchable format through its website defined in Section 46 of Title 62 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 41.5q, as amended by Section 11, Chapter 266, O.S.L. 2006 (62 O.S. Supp. 2008, Section 41.5q), is amended to read as follows:

Section 41.5q A. Subject to review and adoption as outlined in Section 41.5s of this title, a state agency, board, commission, or authority is hereby authorized to charge a convenience fee for any electronic or online transaction. A convenience fee shall apply to electronic or online transactions only and shall not apply when accessing information provided through state government websites. If a state entity sets a convenience fee for electronic or online transactions, the fee shall be reviewed by the State Governmental Internet Applications Review Board as provided for in Section 41.5s of this title. Each state entity shall keep a record of how the convenience fee has been determined. A state agency, board, commission, or authority may periodically adjust a convenience fee as needed upon review and adoption as provided for in Section 41.5s of this title.

B. For purposes of this section, "convenience fee" shall mean ~~any~~ a charge that is necessary to process an electronic or online transaction with a state agency, board, commission or authority. ~~The fee may be in excess of any fee charged for the service or product being provided by such state entity. This may include reasonable charges for the cost of the electronic or on-line service including recovery of costs incurred in the development and implementation of the service or system, cost of sustaining and upgrading the electronic or on-line service, and future expansion of the electronic or on-line services shall be limited to bank processing fees and financial transaction fees, the cost of providing for secure transaction, portal fees, and fees necessary to compensate for increased bandwidth incurred as a result of providing for an online transaction.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 41.5p-1 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, as of July 1, 2010, each state agency, board, commission or other entity organized within the executive department of state government responsible for licensing or permitting shall utilize the portal system to allow for

the web-based application and renewal application for any license or permit issued by that agency. Access to the online renewal systems shall be featured prominently on the portal system.

B. Each entity responsible for licensing or permitting shall make available to the Office of State Finance on a yearly basis a report describing the number of licenses issued, license renewals and permits issued as well as an estimate of the amount of savings incurred by the entity as a result of the online licensing and permitting process.

C. The Office of State Finance shall make available to the public a copy of each report submitted in accordance with the requirements of subsection B of this section by placing the report on the website defined in Section 46 of Title 62 of the Oklahoma Statutes.

D. The Director of State Finance may exempt a specific license or permit from the requirements of this section should he find compelling evidence that the issuance of the license or permit requires the provision of information that cannot be provided through an online licensing or permitting process and when the failure of the applicant to provide the information would create a significant risk to the integrity of the license or permit. The Director of State Finance shall document any exemptions issued pursuant to the provisions of this subsection and describe the compelling evidence justifying the need for the exemptions in a report to be provided to the Governor, Speaker of the Oklahoma House of Representatives and Speaker Pro Tempore of the State Senate. The exception provided for in this subsection shall not apply to license renewals pursuant to the Oklahoma Vehicle License and Registration Act of Title 47 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 85.5, as last amended by Section 3, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2008, Section 85.5), is amended to read as follows:

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

B. The State Purchasing Director, after consultation with the requisitioning state agency, shall have authority to determine the

particular brand, model, or other specific classification of each acquisition and to draft or invoke pursuant to The Oklahoma Central Purchasing Act specifications establishing the requirements for all necessary contracts or purchase orders.

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

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

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

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

- a. state agencies shall make acquisitions not exceeding ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00), provided the acquisition process is fair and reasonable and is conducted pursuant to rules authorized pursuant to this section, and
- b. state agencies with certified procurement officers and internal purchasing procedures found compliant by the Director of the Department of Central Services pursuant to this section may make acquisitions in excess of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ as provided below:
  - ~~(1) acquisitions with a price exceeding Two Thousand Five Hundred Dollars (\$2,500.00) and not exceeding Ten Thousand Dollars (\$10,000.00), pursuant to rules authorized by this section, and~~
  - ~~(2) acquisitions with a price exceeding Ten Thousand Dollars (\$10,000.00) and not exceeding the amount requiring a requisition to the State Purchasing Director, pursuant to Section 85.7 of this title, by telephone, facsimile, invitation to bid, or solicitation by means of electronic commerce, receipt of bids and bid award by the state agency~~ Five Thousand Dollars (\$5,000.00) and not exceeding One Hundred Thousand Dollars (\$100,000.00), pursuant to rules authorized by this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. The State Purchasing Director shall undertake the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. The Office of State Finance, with input from the State Purchasing Director, shall promulgate payment procedure rules for

state agencies to adhere to regarding statewide contracts issued by the State Purchasing Director.

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

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

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

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

2. Agencies making purchases pursuant to this subsection shall:

- a. be responsible for contracts awarded pursuant to this subsection, which includes, but may not be limited to, contract management, all costs connected with or incurred as a result of the contract, including legal representation,
- b. comply with rules and policies of the Department of Central Services, and

- c. report contracts issued pursuant to this subsection to the Department of Central Services, Central Purchasing Division, on a quarterly basis.

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

SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.7, as last amended by Section 4, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2008, Section 85.7), is amended to read as follows:

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

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

- a. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony.
- b. The State Purchasing Director may waive or increase the limit ~~of Twenty five Thousand Dollars (\$25,000.00)~~ authorized for a state agency acquisition by not more than ten percent (10%) to perfect an otherwise valid acquisition inadvertently exceeding the limit due to administrative error by the state agency or unforeseeable circumstances. The state agency shall request a waiver upon the discovery of the error or circumstance to the State Purchasing Director on a form the Director requires.
- c. The State Purchasing Director shall report all requests for waivers or increases, stating the amount and whether the request was granted or denied, monthly to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

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

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

5. Requisitions pursuant to this section for acquisitions to alleviate a serious environmental emergency shall not be required if, upon receiving a request from the Chair of the Corporation Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. For the purposes of this section,

"serious environmental emergency" means a situation within the jurisdiction of the Commission:

- a. in which serious damage to the environment will quickly occur if immediate action is not taken and the damage will be so significant that the urgent need for action outweighs the need for competitive bids, or
- b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

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

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

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

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

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

11. a. Any acquisition of a service which the Department of Central Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions of this paragraph.
- b. The Department of Central Services shall establish criteria and guidelines for those services which may qualify for a fixed and uniform rate.
- c. Fixed and uniform rate contracts authorized by this paragraph shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by a state agency to employ consultants or to make other acquisitions.
- d. Any state agency desiring to have a service qualified for a fixed and uniform rate shall make a request for service qualification to the Department of Central Services and submit documentation to support the request. The Department of Central Services shall approve or deny the request. If the Department of Central Services approves the request, the state agency shall establish a fixed and uniform rate for the service. No contracts shall be entered into by the state agency until the rate has been approved by the state agency in a public hearing. The proposed rate shall be clearly and separately identified in the agenda of the state agency for the hearing and shall be openly and separately discussed during such hearing. The state agency shall notify the Director of the Department of Central Services of its pending consideration of the proposed rate at least thirty (30) days before the state agency is to meet on the proposed rate. The state agency shall deliver to the Director of the Department of Central Services a copy of the agenda items concerning the proposed rate with supporting documentation. The Director of the Department of Central Services shall communicate any observation, reservation, criticism, or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the state agency before or at the time of the hearing. The Director of the Department of Central Services shall specifically note in the written communications whether the Director of the Department of Central Services has

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

- e. Within two (2) weeks after the convening of the Legislature, the administrative officer of the state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by the member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Department of Central Services shall be specifically identified in the list by the state agency.
- f. At any time, the Director of the Department of Central Services may review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Department of Central Services determines the contract is not necessary, is excessive, or is not justified.

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

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

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

- (1) prior to entering into any contract for the services of an entity to administer a structured settlement agreement, the Attorney General receives proposals from at least three entities engaged in providing such services, and
- (2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.

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

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

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

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

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

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

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

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

SECTION 8. AMENDATORY 74 O.S. 2001, Section 85.13, as amended by Section 5, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2008, Section 85.13), is amended to read as follows:

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

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

SECTION 9. AMENDATORY 74 O.S. 2001, Section 85.22, as amended by Section 6, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2008, Section 85.22), is amended to read as follows:

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

~~STATE OF OKLAHOMA~~  
~~COUNTY OF~~

A. For purposes of competitive bids, I certify:

1. I am the duly authorized agent of \_\_\_\_\_, the bidder submitting the competitive bid which is attached to this statement,

for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;

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

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

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

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

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

SECTION 10. AMENDATORY 74 O.S. 2001, Section 85.39, is amended to read as follows:

Section 85.39 A. 1. Each state agency shall develop internal purchasing procedures for acquisitions by the state agency. Procedures shall, at a minimum, include provisions for the state

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

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

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

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

C. Each state agency shall maintain a document file for each acquisition the state agency makes which shall include, at a minimum, justification for the acquisition, supporting documentation, copies of all contracts, if any, pertaining to the acquisition, evaluations, written reports if required by contract, and any other information the State Purchasing Director requires be kept.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 85.41, as amended by Section 5, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2008, Section 85.41), is amended to read as follows:

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

B. The state agency shall evaluate the performance of the professional services provided pursuant to a professional services contract. The performance evaluation shall indicate the quality of service or work product of the supplier. The state agency shall retain the evaluation in the document file the state agency maintains for the acquisition pursuant to Section 85.39 of this

title. If the evaluation indicates deficiencies with the supplier's work, the state agency shall send a copy of the evaluation to the State Purchasing Director.

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

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

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

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

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

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

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

SECTION 12. AMENDATORY 74 O.S. 2001, Section 85.42, as last amended by Section 1, Chapter 276, O.S.L. 2008 (74 O.S. Supp. 2008, Section 85.42), is amended to read as follows:

Section 85.42 A. Except as otherwise provided for in this section, any agency, whether or not such agency is subject to The

Oklahoma Central Purchasing Act, is prohibited from entering into a sole source contract or a contract for professional services with or for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. The provisions of this subsection shall not prohibit an agency from hiring or rehiring such person as a state employee.

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

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

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

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

F. The Department of Human Services may enter into a contract for professional services related to computer application development support and network engineering at any time with a

person who has separated from state service, provided the provisions specified in subsection B of this section are satisfied.

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

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

SECTION 13. AMENDATORY 74 O.S. 2001, Section 85.43, is amended to read as follows:

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

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

B. The report shall contain:

1. The name of the supplier;
2. A description of each acquisition;
3. The purchase price of the acquisition; and

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

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

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

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

SECTION 14. AMENDATORY 74 O.S. 2001, Section 85.45j, is amended to read as follows:

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

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

SOLE SOURCE OR SOLE BRAND ACQUISITION  
~~AFFIDAVIT~~ CERTIFICATION

STATE AGENCY \_\_\_\_\_  
SUPPLIER NAME \_\_\_\_\_  
SUPPLIER ADDRESS \_\_\_\_\_  
SUPPLIER TELEPHONE \_\_\_\_\_

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

(Name of Supplier)

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

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The following is a brief description of all efforts which were made to verify that the services or products to be purchased pursuant to the provisions of the attached requisition or contract qualify as a sole source or sole brand acquisition:

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

\_\_\_\_\_  
(Chief administrative officer)

~~STATE OF OKLAHOMA )~~

~~) ss.~~

~~COUNTY OF OKLAHOMA)~~

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

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Notary Public

~~My Commission expires:~~

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3. A court order requiring the purchase of specific products or services but which does not specify a brand or supplier shall not substitute for the ~~affidavit~~ certification required by this subsection or otherwise invalidate the acquisition procedures required pursuant to the Oklahoma Central Purchasing Act.

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

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

6. If the acquisition's purchase price is such that the state agency is required to submit a requisition to the State Purchasing Director, the State Purchasing Director shall approve or deny the requisition for a sole source or sole brand acquisition. Prior to approving a requisition pursuant to this paragraph, the State Purchasing Director shall document reasons a sole source or sole brand purchase is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

7. For sole source or sole brand acquisitions exceeding ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00) and not requiring submission of a requisition to the

State Purchasing Director, the state agency's certified procurement officer shall document reasons a sole source or sole brand acquisition is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

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

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

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

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

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

3. The Chair and ~~Vice-Chair~~ Vice-chair of the Appropriations and Budget Committee of the House of Representatives and the Appropriations Committee of the Senate; and

4. Any member of the Legislature requesting the report.

The report shall detail all sole source and sole brand acquisitions by state agencies for the month prior to the month preceding the submission of the report. The report shall be titled "Monthly Sole Source and Sole Brand Contracting Report of Oklahoma State Agencies" and indicate the time period of the report. The report shall be provided in physical form unless the requesting person specifies the electronic version. The report shall be signed by the Director of State Finance or the Director's designee. The report shall be in columnar database format and shall include at least the following

fields of information: state agency number; state agency name; date created by the Department of Central Services for the requisition; date of either approval or disapproval of the requisition; if disapproved, the reason why such contract was disapproved; estimated amount of the requisition; purchase order amount; purchase order number; actual business name of supplier; supplier federal employer identification number; contact person; and the commodity classification listing at the appropriate level to distinguish between similar acquisitions. Information required by this subsection shall be reported and maintained on each report through the next reporting period after an acquisition is made. The applicable data in the fields of information specified in this subsection shall be listed even if the state agency requisition is disapproved.

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

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

SECTION 15. REPEALER 40 O.S. 2001, Section 418.2, as last amended by Section 16, Chapter 354, O.S.L. 2007 (40 O.S. Supp. 2008, Section 418.2), is hereby repealed.

Passed the House of Representatives the 20th day of May, 2009.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 20th day of May, 2009.

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Presiding Officer of the Senate