

ENROLLED HOUSE
BILL NO. 2332

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

and

Jolley of the Senate

An Act relating to state government; amending 74 O.S. 2001, Sections 85.5, as last amended by Section 96 of Enrolled Senate Bill No. 2113 of the 2nd Session of the 52nd Oklahoma Legislature, 85.22, as last amended by Section 9, Chapter 322, O.S.L. 2009, Section 3, Chapter 322, O.S.L. 2009 and 90.2 (74 O.S. Supp. 2009, Sections 85.22 and 85.33B), which relate to The Oklahoma Central Purchasing Act; modifying duties of State Purchasing Director; modifying provisions related to certain dollar limit; imposing duties on institutions of higher education; modifying procedures with respect to payment for postal services; amending Section 1, Chapter 340, O.S.L. 2008, as amended by Section 6, Chapter 451, O.S.L. 2009 (62 O.S. Supp. 2009, Section 41.5a-4), which relates to the Information Services Division of the Office of State Finance; clarifying type of 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 2nd Session of the 52nd Oklahoma Legislature, is amended to read as follows:

Section 85.5. A. Except as otherwise provided in this section, 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. In order to carry out the powers and duties established in Section 34.11.1 of Title 62 of the Oklahoma Statutes, the Chief Information Officer shall have sole and exclusive authority and responsibility for all acquisitions of information and telecommunications technology, equipment, software, products and related peripherals and services 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 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 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;

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.

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

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; and

9. Implement a policy to approve the ability of the department, agencies, boards, commissions and trusts to accept the terms of

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

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 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 in excess of the dollar amount prescribed by subparagraph 11 of subsection C of this section 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 2. AMENDATORY 74 O.S. 2001, Section 85.22, as last amended by Section 9, Chapter 322, O.S.L. 2009 (74 O.S. Supp. 2009, 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 in excess of Five Thousand Dollars (\$5,000.00) shall contain a certification, which shall be in substantially the following form:

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

Section 85.33B A. On a monthly basis the Director of Central Purchasing and institutions of higher education 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 74 O.S. 2001, Section 90.2, is amended to read as follows:

Section 90.2 ~~No money shall be expended~~ Expenditures by any agency, board, commission, department or institution of the state for postage stamps or post office box rent ~~except on vouchers shall only be made payable to United States Post Office and the warrant or check shall be endorsed by the postmaster from where the purchase is made.~~

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

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

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

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

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

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

C. The Department of Central Services shall remove all data from electronic storage media from all surplus information technology and telecommunication equipment before it is sold, donated, stored or destroyed. A state agency may remove electronic storage media from their surplus information technology and telecommunication equipment prior to sending the surplus to the Department of Central Services, so long as the agency has the technical expertise for removal and that the electronic storage media is sent for destruction or disposal pursuant to this subsection.

D. The Department of Central Services shall use existing and future funds from the sale of state surplus equipment and appropriations, as necessary, to pay for the destruction of

electronic storage media of equipment processed through the Department of Central Services.

SECTION 6. AMENDATORY 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), is amended to read as follows:

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

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

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 9th day of March, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 20th day of April, 2010.

Presiding Officer of the Senate