

THE HOUSE OF REPRESENTATIVES
Wednesday, February, 24, 2010

House Bill No. 3378

As Amended

HB 3378

HOUSE BILL NO. 3378 - By: TERRILL of the House.

[Department of Corrections - modifying and deleting certain procedures for purchasing products and services from the Prison Industries Program of the Department of Corrections -
effective date]

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

1 SECTION 1. AMENDATORY 57 O.S. 2001, Section 549.1, as last amended by
2 Section 39, Chapter 1, O.S.L. 2007 (57 O.S. Supp. 2009, Section 549.1), is amended to
3 read as follows:

4 Section 549.1 A. The Department of Corrections is authorized to purchase in the
5 manner prescribed by law, facilities, equipment, raw materials and supplies, and to
6 engage the supervisory personnel necessary to establish and maintain for this state at
7 the penal institutions, now or hereafter under the control of the State Board of
8 Corrections, industries and agricultural programs for the utilization of services of
9 prisoners in the delivery, manufacture or production of the ~~articles or products~~ and
10 services as may be needed for the construction, operation, maintenance or use of any
11 office, department, institution or agency supported in whole or in part by this state and
12 the political subdivisions thereof. Upon the request of the Oklahoma Historical Society

1 or the Oklahoma Tourism and Recreation Department, the Department of Corrections
2 shall provide labor for and shall produce or manufacture ~~articles~~, products or materials
3 needed for the repair, construction and maintenance of historical sites and state parks
4 including, but not limited to, the production of materials and products needed for the
5 reconstruction of historic forts in the state.

6 B. All ~~articles~~ products and services provided by the Prison Industries Program of
7 the Department of Corrections in the state correctional institutions, and not required for
8 use therein, shall be purchased as required by all, and not required for use therein, may
9 be purchased by any office, department, institution, agency, county, city, district or
10 political subdivision, school, college or university, or any agency thereof, or any agency of
11 the state, which is supported in whole or in part by the state, directly without issuance of
12 a solicitation or competitive bid.

13 C. All offices, departments, institutions, agencies, counties, schools, colleges,
14 universities, or political subdivisions or any agency thereof of this state which are
15 supported in whole or in part by this state, ~~if such article or service is the lowest and best~~
16 ~~bid, and no such article or product may be purchased by any such office, department,~~
17 ~~institution, agency, county, school, college, university, or political subdivisions or agency~~
18 ~~thereof from any other source unless excepted from the provisions as hereinafter~~
19 ~~provided. Purchases made by the above-described state agencies may be made by~~
20 ~~submitting the proper requisition through the Department of Central Services or by~~
21 ~~direct order to the prison industries program of~~ shall include the Prison Industries
22 Program of the Department of Corrections as a vendor in all solicitations for the

1 purchase of products and services that are provided by the Prison Industries Program,
2 and if such product or service is the lowest and best bid, the agency shall purchase the
3 product or service from the Prison Industries Program of the Department of Corrections.

4 ~~C. D. If a requisition is received by the Department of Central Services or a direct~~
5 ~~order is received by the Prison Industries Program of the Department of Corrections from~~
6 ~~a state agency for any product or service is provided by the Prison Industries Program of~~
7 ~~the Department of Corrections and ~~such product or service~~ is also available from a~~
8 ~~severely handicapped person or a qualified nonprofit agency for the severely handicapped~~
9 ~~as provided in Section 3001 et seq. of Title 74 of the Oklahoma Statutes at a comparable~~
10 ~~price, then the product or service shall be purchased from such severely handicapped~~
11 ~~person or qualified nonprofit agency for the severely handicapped. If the product or~~
12 ~~service is not available within the time period required by the purchasing state agency,~~
13 ~~delivery dates do not meet the requirements of the agency and a waiver is obtained~~
14 ~~through the Department of Central Services, then such product or service may be~~
15 ~~purchased under the provisions of subsection B of this section or, if competitively bid,~~
16 ~~shall be purchased from the Department of Corrections under the provisions of~~
17 ~~subsection C of this section.~~

18 ~~D. All offices, departments, institutions, agencies, counties, cities, districts or~~
19 ~~political subdivisions, schools, colleges, or universities, or any agency thereof, or any~~
20 ~~agencies of the state, which are supported in whole or in part by this state, may purchase~~
21 ~~the goods or services produced by the prison industries of the Department of Corrections~~

1 through their properly authorized purchasing authority, or they may place a direct order
2 without competitive bid, with the prison industries of the Department of Corrections.

3 E. Not-for-profit corporations or charitable agencies chartered in Oklahoma or
4 other states may purchase ~~such goods~~ products and services provided by the Prison
5 Industries Program and agriculture programs of the Department of Corrections. Units of
6 the federal government and units of government in other states may also purchase such
7 ~~goods~~ products and services. All entities which contract with the state, its political units,
8 its agencies, its public institutions, not-for-profit corporations or charitable agencies
9 chartered in Oklahoma may purchase ~~goods~~ products or services from the Department of
10 Corrections which are used in the performance of such contracts. Any church located in
11 the State of Oklahoma may also purchase ~~goods~~ products and services produced by the
12 prison industries of the Department of Corrections. Any community action agency or
13 council of governments within this state may purchase housing components produced by
14 the prison industries of the Department of Corrections. Nothing shall prohibit the
15 Department from bidding on portions of a state contract which are subcontracted by the
16 primary contractor.

17 F. Others are prohibited from purchasing such ~~goods~~ products and services, with
18 the exception that all surplus agricultural products may be sold on the open market or
19 bartered and exchanged for other food, feed or seed products of comparable value. The
20 Department of Corrections shall keep complete and accurate records of any such barters
21 or exchanges in such form and manner as the Department of Central Services may
22 prescribe. A copy of such records shall be filed with the Department of Central Services

1 no later than March 1 of each year for all barter or exchanges occurring in the previous
2 calendar year.

3 G. Products provided, produced, or manufactured by the Department of Corrections
4 shall be of styles, patterns, designs and quantities specified by the Department of
5 Corrections except where the same have been or may be specified by the Department of
6 Central Services. Products shall be provided at a fair market price for comparable
7 quality.

8 H. State agencies shall make maximum utilization of such products and services
9 and no similar products or services shall be purchased by state agencies from any other
10 source than the Department of Corrections ~~except as provided~~ without compliance with
11 the provisions in subsections B, C and D of this section, unless the
12 Department of Corrections certifies to the State Purchasing Director that it is not able to
13 provide products, and no claim therefor shall be paid without such certification.

14 I. Exceptions from the mandatory provisions hereof may be made in any case
15 where, in the opinion of the Department of Central Services, the ~~article or~~ product or
16 service does not meet the reasonable requirements of or for such offices, departments,
17 institutions or agencies, or in any case where the requisitions made cannot be reasonably
18 complied with. No such offices, departments, institutions or agencies, shall be allowed to
19 evade the intent and meaning of this section by slight variations from standards adopted
20 by the Department of Central Services, when the ~~articles,~~ services provided or products
21 produced or manufactured by the Department of Corrections, in accordance with

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 established standards, are reasonably adapted to the actual needs of such offices,
2 departments, institutions or agencies.

3 J. In the event of disagreement between the Department of Corrections and the
4 State Purchasing Director on fairness of price, ability to comply to specifications,
5 reasonableness of specifications and timeliness of delivery of products the matter will be
6 resolved by the Central Purchasing Director.

7 K. The Department of Central Services shall cooperate with the Department of
8 Corrections in seeking to promote for use in state agencies and by all other eligible
9 customers, the products provided, produced and manufactured and services provided by
10 the ~~prison industries~~ Prison Industries Program of the Department of Corrections.

11 L. The Department of Corrections shall prepare catalogs containing the description
12 of all ~~goods~~ products and services provided, with the pricing of each item. Copies of such
13 catalog shall be sent by the Department of Corrections to all offices, departments,
14 institutions and agencies of this state, and shall be available for distribution to all other
15 eligible customers.

16 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.12, as last amended by
17 Section 3, Chapter 273, O.S.L. 2009 (74 O.S. Supp. 2009, Section 85.12), is amended to
18 read as follows:

19 Section 85.12 A. The provisions of this section shall not be construed to affect any
20 law relating to fiscal or accounting procedure except as they may be directly in conflict
21 herewith; and all claims, warrants, and bonds shall be examined, inspected, and
22 approved as now provided by law.

1 B. Except as otherwise provided by this section, the acquisitions specified in this
2 subsection shall be made in compliance with Section 85.39 of this title but are not subject
3 to other provisions of The Oklahoma Central Purchasing Act:

4 1. Food and other products produced by state institutions and agencies;

5 2. The printing or duplication of publications or forms of whatsoever kind or
6 character by state agencies if the work is performed upon their own equipment by their
7 own employees. Pursuant to this paragraph, the state agency may only use equipment
8 owned or leased by the agency and may only utilize that equipment for printing services
9 required by the agency in performing duties imposed upon the agency or functions
10 authorized to be performed by the agency. Any use of the equipment by the agency
11 pursuant to an agreement or contract with any other entity resulting in delivery of
12 intermediate or finished products to the entity purchasing or using the products shall be
13 subject to the provisions of The Oklahoma Central Purchasing Act;

14 3. Department of Transportation and Transportation Commission contractual
15 services or right-of-way purchases; contracts awarded pursuant to bids let by the
16 Transportation Commission for the maintenance or construction of streets, roads,
17 highways, bridges, underpasses, or any other transportation facilities under the control
18 of the Department of Transportation, the acquisitions of equipment or materials accruing
19 to the Department of Transportation required in Federal-Aid contracts; and contracts for
20 public service type announcements initiated by the Department of Transportation; but
21 not contractual services for advertising or public relations or employment services;

1 4. Utility services where rates therefor are regulated by a state or federal
2 regulatory commission, or by municipal ordinance, or by an Indian Tribal Council for use
3 by the Department of Corrections only;

4 5. Acquisitions by the University Hospitals Authority. The Authority shall develop
5 standards for the acquisition of products and services and may elect to utilize the
6 Purchasing Division. The standards shall foster economy and short response time and
7 shall include appropriate safeguards and record-keeping requirements to ensure
8 appropriate competition and economical and efficient purchasing;

9 6. Contracts for custom harvesting by the Department of Corrections for the
10 Department or its institutions;

11 7. Contracts with private prison contractors which are subject to the contracting
12 procedures of Section 561 of Title 57 of the Oklahoma Statutes;

13 8. Acquisitions by the Oklahoma Municipal Power Authority;

14 9. Acquisitions by the Grand River Dam Authority;

15 10. Acquisitions by rural water, sewer, gas, or solid waste management districts
16 created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts
17 Act;

18 11. Acquisitions by the Oklahoma Ordnance Works Authority, the Northeast
19 Oklahoma Public Facilities Authority, or the Midwestern Oklahoma Development
20 Authority;

21 12. Contracts entered into by the Oklahoma Industrial Finance Authority for the
22 services of an appraiser or for acquisition of insurance when the Authority's Board of

1 Directors determines that an emergency exists, and contracts for the services of legal
2 counsel when approved by the Attorney General;

3 13. Expenditure of monies appropriated to the State Board of Education for Local
4 and State Supported Financial Support of Public Schools, except monies allocated
5 therefrom for the Administrative and Support Functions of the State Department of
6 Education;

7 14. Expenditure of monies appropriated to the State Department of Rehabilitation
8 Services for educational programs or educational materials for the Oklahoma School for
9 the Blind and the Oklahoma School for the Deaf;

10 15. Contracts entered into by the Oklahoma Department of Career and Technology
11 Education for the development, revision, or updating of vocational curriculum materials,
12 and contracts entered into by the Oklahoma Department of Career and Technology
13 Education for training and supportive services that address the needs of new or
14 expanding industries;

15 16. Contracts entered into by the Oklahoma Center for the Advancement of Science
16 and Technology for professional services;

17 17. Contracts entered into by the Oklahoma Department of Commerce pursuant to
18 the provisions of Section 5066.4 of this title;

19 18. Acquisitions made by the Oklahoma Historical Society from monies used to
20 administer the White Hair Memorial;

21 19. Acquisitions available to an agency through a General Services Administration
22 (GSA) contract or other federal contract if the acquisition is on current statewide contract

1 and the terms of the GSA or other federal contract, as determined by the State
2 Purchasing Director, are more favorable to the agency than the terms of a statewide
3 contract for the same products;

4 20. Purchases of pharmaceuticals available through a multistate or
5 multigovernmental contract if such pharmaceuticals are or have been on state contract
6 within the last fiscal year, and the terms of such contract are more favorable to the state
7 or agency than the terms of a state contract for the same products, as determined by the
8 State Purchasing Director. The state entity designated by law, as specified in Section
9 1010.3 of Title 56 of the Oklahoma Statutes, shall participate in the purchase of
10 pharmaceuticals available through such contracts;

11 21. Contracts for managed health care services entered into by the state entity
12 designated by law or the Department of Human Services, as specified in paragraph 1 of
13 subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

14 22. Acquisitions by the Forestry Service of the Oklahoma Department of
15 Agriculture, Food, and Forestry as authorized by the federal General Services
16 Administration through a General Services Administration contract or other federal
17 contract if the acquisitions are not on current statewide contract or the terms of the
18 federal contract are more favorable to the agency than the terms of a statewide contract
19 for the same products;

20 23. Acquisitions of clothing for clients of the Department of Human Services and
21 acquisitions of food for group homes operated by the Department of Human Services;

22 24. Acquisitions by the Oklahoma Energy Resources Board;

1 25. Acquisitions of clothing for juveniles in the custody of the Office of Juvenile
2 Affairs and acquisitions of food for group homes operated by the Office of Juvenile
3 Affairs;

4 26. State contracts for flexible benefits plans pursuant to the Oklahoma State
5 Employees Benefits Act, Section 1361 et seq. of this title;

6 27. Acquisitions by the Department of Securities to investigate, initiate, or pursue
7 administrative, civil, or criminal proceedings involving potential violations of the acts
8 under the Department's jurisdiction;

9 28. Acquisitions by the Native America Cultural and Educational Authority and
10 acquisitions by the Oklahoma Department of Commerce to assist the Native American
11 Cultural and Educational Authority pursuant to Section 5017 of this title;

12 29. Acquisitions for resale in and through canteens operated pursuant to Section
13 537 of Title 57 of the Oklahoma Statutes;

14 30. Acquisitions by the Oklahoma Boll Weevil Eradication Organization for
15 employment and personnel services, and for acquiring sprayers, blowers, traps, and
16 attractants related to the eradication of boll weevils in this state or as part of a national
17 or regional boll weevil eradication program;

18 31. Contracts entered into by the Oklahoma Indigent Defense System for expert
19 services pursuant to the provisions of subsection D of Section 1355.4 of Title 22 of the
20 Oklahoma Statutes;

21 32. Acquisitions by the Oklahoma Correctional Industries and the Agri-Services
22 programs of the Department of Corrections of raw materials, component parts, trailer,

1 and other products, any equipment excluding vehicles below a gross vehicle weight of
2 fourteen thousand (14,000) pounds, and any services excluding computer consultant
3 services used to ~~produce~~ provide goods or services for resale and for the ~~production~~
4 provision of agricultural products;

5 33. Contracts entered into by the Department of Human Services for provision of
6 supported living services to members of the plaintiff class in Homeward Bound, Inc., et.
7 al., v. The Hissom Memorial Center, et. al., Case Number 85-C-437-E, United States
8 District Court for the Northern District of Oklahoma;

9 34. Contracts negotiated by the Office of Juvenile Affairs with designated Youth
10 Services Agencies and the Oklahoma Association of Youth Services, or another
11 Oklahoma nonprofit corporation whose membership consists solely of Youth Services
12 Agencies and of whom at least a majority of Youth Services Agencies are members,
13 pursuant to the provisions of Section 7302-3.6a of Title 10 of the Oklahoma Statutes; and

14 35. Contracts not to exceed One Hundred Thousand Dollars (\$100,000.00) entered
15 into by the Department of Environmental Quality for engineering services to assist
16 qualifying small municipalities or rural water or sewer districts with engineering reports
17 or plans and specifications needed for construction or repairs to achieve compliance with
18 federal and state public water supply or wastewater laws and regulations.

19 C. Pursuant to the terms of a contract the State Purchasing Director enters into or
20 awards, a state agency, common school, municipality, rural fire protection district,
21 county officer, or any program contract, purchase, acquisition or expenditure that is not
22 subject to the provisions of The Oklahoma Central Purchasing Act, may, unless acting

1 pursuant to a contract with the state that specifies otherwise, make use of statewide
2 contracts and the services of the Purchasing Division and the State Purchasing Director.
3 Any political subdivision or rural fire protection district may designate the State
4 Purchasing Director as its agent for any acquisition from a statewide contract or
5 otherwise available to the state.

6 D. The State Purchasing Director shall make periodic audits of the purchasing
7 procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public
8 Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma
9 Development Authority to ensure that the procedures are being followed.

10 SECTION 3. This act shall become effective November 1, 2010.

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
12 dated 02-23-10 - DO PASS, As Amended.