

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2332

By: Murphey

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6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.
8 2001, Sections 85.5, as last amended by Section 23,
Chapter 451, O.S.L. 2009, 85.22, as last amended by
9 Section 9, Chapter 322, O.S.L. 2009, 85.41, as last
10 amended by Section 11, Chapter 322, O.S.L. 2009 and
90.2 (74 O.S. Supp. 2009, Sections 85.5, 85.22 and
11 85.41), which relate to the Oklahoma Central
Purchasing Act; modifying certain purchasing
12 procedures; modifying references to certain dollar
amounts; modifying procedures related to expenditures
for postal services; and providing an effective date.

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

16 SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.5, as
17 last amended by Section 23, Chapter 451, O.S.L. 2009 (74 O.S. Supp.
18 2009, Section 85.5), is amended to read as follows:

19 Section 85.5 A. Except as otherwise provided in this section,
20 pursuant to the provisions of Section 85.4 of this title, the State
21 Purchasing Director, under the supervision of the Director of the
22 Department of Central Services, shall have sole and exclusive
23 authority and responsibility for all acquisitions used or consumed
24 by state agencies. In order to carry out the powers and duties

1 established in Section 2 of this act, the Chief Information Officer
2 shall have sole and exclusive authority and responsibility for all
3 acquisitions of information and telecommunications technology,
4 equipment, software, products and related peripherals and services
5 used or consumed by state agencies.

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

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

17 1. The time, manner, authentication, and form of making
18 requisitions for acquisitions;

19 2. Inspection, analysis, and testing of acquisitions or samples
20 suppliers submit prior to contract award;

21 3. The form and manner of submission for bids or proposals a
22 supplier submits and the manner of accepting and opening bids or
23 proposals;

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1 4. The conditions under which the Department of Central
2 Services shall require written contracts for acquisitions, the
3 conditions under which acquisitions may be made on an open account
4 basis, and the conditions and manner of negotiating such contracts;

5 5. Obtaining acquisitions produced by state institutions;

6 6. Conditions under which any of the rules herein authorized
7 may be waived;

8 7. The amounts of and deposits on any bond or other surety
9 required to be submitted with a bid or contract for the furnishing
10 of acquisitions and the conditions under which such bond or other
11 surety shall be required;

12 8. Storage and storage facilities necessary to accomplish
13 responsibilities of the Director of the Department of Central
14 Services;

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

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

22 11. State agency acquisitions not exceeding the acquisition
23 purchase amount requiring competitive bid pursuant to Section 85.7
24 of this title to ensure competitiveness, fairness, compliance with

1 provisions of all sections of The Oklahoma Central Purchasing Act,
2 and compliance with provisions of Section 3001 et seq. of this
3 title, which relate to the State Use Committee. The rules shall
4 include separate provisions based on acquisition purchase price as
5 follows:

6 a. state agencies shall make acquisitions not exceeding
7 Two Thousand Five Hundred Dollars (\$2,500.00),
8 provided the acquisition process is fair and
9 reasonable and is conducted pursuant to rules
10 authorized pursuant to this section, and

11 b. state agencies with certified procurement officers and
12 internal purchasing procedures found compliant by the
13 Director of the Department of Central Services
14 pursuant to this section may make acquisitions in
15 excess of Two Thousand Five Hundred Dollars
16 (\$2,500.00) as provided below:

17 (1) acquisitions with a price exceeding Two Thousand
18 Five Hundred Dollars (\$2,500.00) and not
19 exceeding Ten Thousand Dollars (\$10,000.00),
20 pursuant to rules authorized by this section, and

21 (2) acquisitions with a price exceeding Ten Thousand
22 Dollars (\$10,000.00) and not exceeding the amount
23 requiring a requisition to the State Purchasing
24 Director, pursuant to Section 85.7 of this title,

1 by telephone, facsimile, invitation to bid, or
2 solicitation by means of electronic commerce,
3 receipt of bids and bid award by the state
4 agency;

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

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

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

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

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

16 D. The State Purchasing Director shall provide training for
17 state agency purchasing officials and other purchasing staff. The
18 training shall include principles of state procurement practices,
19 basic contracting, provisions of The Oklahoma Central Purchasing
20 Act, rules promulgated pursuant to The Oklahoma Central Purchasing
21 Act, provisions of Section 3001 et seq. of this title, which relate
22 to the State Use Committee, and any other matters related to state
23 procurement practices. State agency purchasing officials that
24 demonstrate proficiency shall be certified as "certified procurement

1 officers" by the State Purchasing Director and shall be authorized
2 to make acquisitions pursuant to provisions of The Oklahoma Central
3 Purchasing Act and rules authorized by this section. The State
4 Purchasing Director shall assess a fee to state agencies for the
5 training that does not exceed each state agency's pro rata share of
6 the costs the State Purchasing Director incurs to provide the
7 training.

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

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

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

15 3. Ensuring state agency compliance with provisions of Section
16 3001 et seq. of this title pertaining to the State Use Committee;

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

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

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

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

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

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

17 4. Transmit to the Attorney General or the State Auditor and
18 Inspector for further investigation a report made by the State
19 Purchasing Director that the Director of the Department of Central
20 Services reasonably believes indicates that an action that
21 constitutes a criminal violation pursuant to The Oklahoma Central
22 Purchasing Act or other laws has been taken by any state agency,
23 state agency official, bidder, or supplier; or
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1 5. Increase the state agency acquisition purchase amount
2 requiring competitive bid, not to exceed the acquisition purchase
3 amount requiring competitive bid, pursuant to Section 85.7 of this
4 title.

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

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

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

18 4. In order to carry out the powers and duties established in
19 Section 2 of this act, the Chief Information Officer shall have the
20 authority to designate certain information technology and
21 telecommunication contracts for state agencies as statewide
22 contracts and mandatory statewide contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 2. For any other transaction with a state purchase card, the
5 transaction shall not exceed Two Thousand Five Hundred Dollars
6 (\$2,500.00).

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

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

17 O. As a condition of awarding a contract in excess of the
18 dollar amount prescribed by subparagraph a of paragraph 11 of
19 subsection C of this section pursuant to The Oklahoma Central
20 Purchasing Act, the State Purchasing Director shall verify with the
21 Oklahoma Tax Commission that the business entity to which the state
22 contract is to be awarded, whether subject to the procedures
23 required by Section 85.7 of this title or not, has obtained a sales
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1 tax permit pursuant to the provisions of Section 1364 of Title 68 of
2 the Oklahoma Statutes if such entity is required to do so.

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

8 Q. The Office of State Finance, with input from the State
9 Purchasing Director, shall promulgate payment procedure rules for
10 state agencies to adhere to regarding statewide contracts issued by
11 the State Purchasing Director.

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

16 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.22, as
17 last amended by Section 9, Chapter 322, O.S.L. 2009 (74 O.S. Supp.
18 2009, Section 85.22), is amended to read as follows:

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

23 A. For purposes of competitive bids, I certify:
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1 1. I am the duly authorized agent of _____, the bidder
2 submitting the competitive bid which is attached to this statement,
3 for the purpose of certifying the facts pertaining to the existence
4 of collusion among bidders and between bidders and state officials
5 or employees, as well as facts pertaining to the giving or offering
6 of things of value to government personnel in return for special
7 consideration in the letting of any contract pursuant to the bid to
8 which this statement is attached;

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

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

15 a. to any collusion among bidders in restraint of freedom
16 of competition by agreement to bid at a fixed price or
17 to refrain from bidding,

18 b. to any collusion with any state official or employee
19 as to quantity, quality or price in the prospective
20 contract, or as to any other terms of such prospective
21 contract, nor

22 c. in any discussions between bidders and any state
23 official concerning exchange of money or other thing
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1 of value for special consideration in the letting of a
2 contract.

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

10 Certified this _____ day of _____ 20__.

11 SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.41, as
12 last amended by Section 11, Chapter 322, O.S.L. 2009 (74 O.S. Supp.
13 2009, Section 85.41), is amended to read as follows:

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

16 B. ~~The~~ If a professional services contract is in excess of the
17 dollar amount in subparagraph a of paragraph 11 of subsection C of
18 Section 85.5 of this title, the state agency shall evaluate the
19 performance of the professional services provided pursuant to a
20 professional services contract. The performance evaluation shall
21 indicate the quality of service or work product of the supplier.
22 The state agency shall retain the evaluation in the document file
23 the state agency maintains for the acquisition pursuant to Section
24 85.39 of this title. If the evaluation indicates deficiencies with

1 the supplier's work, the state agency shall send a copy of the
2 evaluation to the State Purchasing Director.

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

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

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

14 F. 1. If the final product of the professional services
15 contract is a written proposal, report, or study, the professional
16 services contract shall require the supplier to certify that the
17 supplier has not previously provided the state agency or another
18 state agency with a final product that is a substantial duplication
19 of the final product of the proposed contract.

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

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

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

7 SECTION 4. AMENDATORY 74 O.S. 2001, Section 90.2, is
8 amended to read as follows:

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

15 SECTION 5. This act shall become effective November 1, 2010.

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17 52-2-9011 MAH 01/06/10

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