

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3378

By: Terrill

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5  
6 AS INTRODUCED

7 An Act relating to the Department of Corrections;  
8 amending 57 O.S. 2001, Section 549.1, as last amended  
9 by Section 39, Chapter 1, O.S.L. 2007 (57 O.S. Supp.  
10 2009, Section 549.1), which relates to the Oklahoma  
11 Corrections Act of 1967; modifying and deleting  
12 certain procedures for purchasing products and  
13 services from the Prison Industries Program of the  
14 Department of Corrections; amending 74 O.S. 2001,  
15 Section 85.12, as last amended by Section 3, Chapter  
16 273, O.S.L. 2009 (74 O.S. Supp. 2009, Section 85.12),  
17 which relates to the Oklahoma Central Purchasing Act;  
18 clarifying certain acquisition provision; and  
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 57 O.S. 2001, Section 549.1, as  
22 last amended by Section 39, Chapter 1, O.S.L. 2007 (57 O.S. Supp.  
23 2009, Section 549.1), is amended to read as follows:

24 Section 549.1 A. The Department of Corrections is authorized  
to purchase in the manner prescribed by law, facilities, equipment,  
raw materials and supplies, and to engage the supervisory personnel  
necessary to establish and maintain for this state at the penal  
institutions, now or hereafter under the control of the State Board

1 of Corrections, industries and agricultural programs for the  
2 utilization of services of prisoners in the delivery, manufacture or  
3 production of the ~~articles or~~ products and services as may be needed  
4 for the construction, operation, maintenance or use of any office,  
5 department, institution or agency supported in whole or in part by  
6 this state and the political subdivisions thereof. Upon the request  
7 of the Oklahoma Historical Society or the Oklahoma Tourism and  
8 Recreation Department, the Department of Corrections shall provide  
9 labor for and shall produce or manufacture ~~articles~~, products or  
10 materials needed for the repair, construction and maintenance of  
11 historical sites and state parks including, but not limited to, the  
12 production of materials and products needed for the reconstruction  
13 of historic forts in the state.

14 B. All ~~articles~~ products and services provided by the Prison  
15 Industries Program of the Department of Corrections ~~in the state~~  
16 ~~correctional institutions, and not required for use therein, shall~~  
17 ~~be purchased as required by all,~~ and not required for use therein,  
18 may be purchased by any office, department, institution, agency,  
19 county, city, district or political subdivision, school, college or  
20 university, or any agency thereof, or any agency of the state, which  
21 is supported in whole or in part by the state, directly without  
22 issuance of a solicitation or competitive bid.

23 C. All offices, departments, institutions, agencies, counties,  
24 schools, colleges, universities, or political subdivisions or any

1 agency ~~thereof~~ of this state which are supported in whole or in part  
2 by this state, ~~if such article or service is the lowest and best~~  
3 ~~bid, and no such article or product may be purchased by any such~~  
4 ~~office, department, institution, agency, county, school, college,~~  
5 ~~university, or political subdivisions or agency thereof from any~~  
6 ~~other source unless excepted from the provisions as hereinafter~~  
7 ~~provided. Purchases made by the above-described state agencies may~~  
8 ~~be made by submitting the proper requisition through the Department~~  
9 ~~of Central Services or by direct order to the prison industries~~  
10 ~~program of~~ shall include the Prison Industries Program of the  
11 Department of Corrections as a vendor in all solicitations for the  
12 purchase of products and services that are provided by the Prison  
13 Industries Program, and if such product or service is the lowest and  
14 best bid, the agency shall purchase the product or service from the  
15 Prison Industries Program of the Department of Corrections.

16 C. D. ~~If a requisition is received by the Department of Central~~  
17 ~~Services or a direct order is received by the Prison Industries~~  
18 ~~Program of the Department of Corrections from a state agency for any~~  
19 ~~product or service~~ is provided by the Prison Industries Program of  
20 the Department of Corrections and such product or service is also  
21 available from a severely handicapped person or a qualified  
22 nonprofit agency for the severely handicapped as provided in Section  
23 3001 et seq. of Title 74 of the Oklahoma Statutes at a comparable  
24 price, then the product or service shall be purchased from such

1 severely handicapped person or qualified nonprofit agency for the  
2 severely handicapped. If the product or service ~~is not available~~  
3 ~~within the time period required by the purchasing state agency,~~  
4 delivery dates do not meet the requirements of the agency and a  
5 waiver is obtained through the Department of Central Services, then  
6 such product or service may be purchased under the provisions of  
7 subsection B of this section or, if competitively bid, shall be  
8 purchased from the Department of Corrections under the provisions of  
9 subsection C of this section.

10 ~~D. All offices, departments, institutions, agencies, counties,~~  
11 ~~cities, districts or political subdivisions, schools, colleges, or~~  
12 ~~universities, or any agency thereof, or any agencies of the state,~~  
13 ~~which are supported in whole or in part by this state, may purchase~~  
14 ~~the goods or services produced by the prison industries of the~~  
15 ~~Department of Corrections through their properly authorized~~  
16 ~~purchasing authority, or they may place a direct order without~~  
17 ~~competitive bid, with the prison industries of the Department of~~  
18 ~~Corrections.~~

19 E. Not-for-profit corporations or charitable agencies chartered  
20 in Oklahoma or other states may purchase ~~such goods~~ products and  
21 services provided by the Prison Industries Program and agriculture  
22 programs of the Department of Corrections. Units of the federal  
23 government and units of government in other states may also purchase  
24 such ~~goods~~ products and services. All entities which contract with

1 the state, its political units, its agencies, its public  
2 institutions, not-for-profit corporations or charitable agencies  
3 chartered in Oklahoma may purchase ~~goods~~ products or services from  
4 the Department of Corrections which are used in the performance of  
5 such contracts. Any church located in the State of Oklahoma may  
6 also purchase ~~goods~~ products and services produced by the prison  
7 industries of the Department of Corrections. Any community action  
8 agency or council of governments within this state may purchase  
9 housing components produced by the prison industries of the  
10 Department of Corrections. Nothing shall prohibit the Department  
11 from bidding on portions of a state contract which are subcontracted  
12 by the primary contractor.

13 F. Others are prohibited from purchasing such ~~goods~~ products  
14 and services, with the exception that all surplus agricultural  
15 products may be sold on the open market or bartered and exchanged  
16 for other food, feed or seed products of comparable value. The  
17 Department of Corrections shall keep complete and accurate records  
18 of any such barters or exchanges in such form and manner as the  
19 Department of Central Services may prescribe. A copy of such  
20 records shall be filed with the Department of Central Services no  
21 later than March 1 of each year for all barters or exchanges  
22 occurring in the previous calendar year.

23 G. Products provided, produced, or manufactured by the  
24 Department of Corrections shall be of styles, patterns, designs and

1 quantities specified by the Department of Corrections except where  
2 the same have been or may be specified by the Department of Central  
3 Services. Products shall be provided at a fair market price for  
4 comparable quality.

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

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

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

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

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

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

20 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.12, as  
21 last amended by Section 3, Chapter 273, O.S.L. 2009 (74 O.S. Supp.  
22 2009, Section 85.12), is amended to read as follows:

23 Section 85.12 A. The provisions of this section shall not be  
24 construed to affect any law relating to fiscal or accounting

1 procedure except as they may be directly in conflict herewith; and  
2 all claims, warrants, and bonds shall be examined, inspected, and  
3 approved as now provided by law.

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

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

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

22 3. Department of Transportation and Transportation Commission  
23 contractual services or right-of-way purchases; contracts awarded  
24 pursuant to bids let by the Transportation Commission for the

1 maintenance or construction of streets, roads, highways, bridges,  
2 underpasses, or any other transportation facilities under the  
3 control of the Department of Transportation, the acquisitions of  
4 equipment or materials accruing to the Department of Transportation  
5 required in Federal-Aid contracts; and contracts for public service  
6 type announcements initiated by the Department of Transportation;  
7 but not contractual services for advertising or public relations or  
8 employment services;

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

13 5. Acquisitions by the University Hospitals Authority. The  
14 Authority shall develop standards for the acquisition of products  
15 and services and may elect to utilize the Purchasing Division. The  
16 standards shall foster economy and short response time and shall  
17 include appropriate safeguards and record-keeping requirements to  
18 ensure appropriate competition and economical and efficient  
19 purchasing;

20 6. Contracts for custom harvesting by the Department of  
21 Corrections for the Department or its institutions;

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

- 1 8. Acquisitions by the Oklahoma Municipal Power Authority;
- 2 9. Acquisitions by the Grand River Dam Authority;
- 3 10. Acquisitions by rural water, sewer, gas, or solid waste  
4 management districts created pursuant to the Rural Water, Sewer, Gas  
5 and Solid Waste Management Districts Act;
- 6 11. Acquisitions by the Oklahoma Ordnance Works Authority, the  
7 Northeast Oklahoma Public Facilities Authority, or the Midwestern  
8 Oklahoma Development Authority;
- 9 12. Contracts entered into by the Oklahoma Industrial Finance  
10 Authority for the services of an appraiser or for acquisition of  
11 insurance when the Authority's Board of Directors determines that an  
12 emergency exists, and contracts for the services of legal counsel  
13 when approved by the Attorney General;
- 14 13. Expenditure of monies appropriated to the State Board of  
15 Education for Local and State Supported Financial Support of Public  
16 Schools, except monies allocated therefrom for the Administrative  
17 and Support Functions of the State Department of Education;
- 18 14. Expenditure of monies appropriated to the State Department  
19 of Rehabilitation Services for educational programs or educational  
20 materials for the Oklahoma School for the Blind and the Oklahoma  
21 School for the Deaf;
- 22 15. Contracts entered into by the Oklahoma Department of Career  
23 and Technology Education for the development, revision, or updating  
24 of vocational curriculum materials, and contracts entered into by

1 the Oklahoma Department of Career and Technology Education for  
2 training and supportive services that address the needs of new or  
3 expanding industries;

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

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

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

10 19. Acquisitions available to an agency through a General  
11 Services Administration (GSA) contract or other federal contract if  
12 the acquisition is on current statewide contract and the terms of  
13 the GSA or other federal contract, as determined by the State  
14 Purchasing Director, are more favorable to the agency than the terms  
15 of a statewide contract for the same products;

16 20. Purchases of pharmaceuticals available through a multistate  
17 or multigovernmental contract if such pharmaceuticals are or have  
18 been on state contract within the last fiscal year, and the terms of  
19 such contract are more favorable to the state or agency than the  
20 terms of a state contract for the same products, as determined by  
21 the State Purchasing Director. The state entity designated by law,  
22 as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes,  
23 shall participate in the purchase of pharmaceuticals available  
24 through such contracts;

1        21. Contracts for managed health care services entered into by  
2 the state entity designated by law or the Department of Human  
3 Services, as specified in paragraph 1 of subsection A of Section  
4 1010.3 of Title 56 of the Oklahoma Statutes;

5        22. Acquisitions by the Forestry Service of the Oklahoma  
6 Department of Agriculture, Food, and Forestry as authorized by the  
7 federal General Services Administration through a General Services  
8 Administration contract or other federal contract if the  
9 acquisitions are not on current statewide contract or the terms of  
10 the federal contract are more favorable to the agency than the terms  
11 of a statewide contract for the same products;

12        23. Acquisitions of clothing for clients of the Department of  
13 Human Services and acquisitions of food for group homes operated by  
14 the Department of Human Services;

15        24. Acquisitions by the Oklahoma Energy Resources Board;

16        25. Acquisitions of clothing for juveniles in the custody of  
17 the Office of Juvenile Affairs and acquisitions of food for group  
18 homes operated by the Office of Juvenile Affairs;

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

22        27. Acquisitions by the Department of Securities to  
23 investigate, initiate, or pursue administrative, civil, or criminal  
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1 proceedings involving potential violations of the acts under the  
2 Department's jurisdiction;

3 28. Acquisitions by the Native America Cultural and Educational  
4 Authority and acquisitions by the Oklahoma Department of Commerce to  
5 assist the Native American Cultural and Educational Authority  
6 pursuant to Section 5017 of this title;

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

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

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

17 32. Acquisitions by the Oklahoma Correctional Industries and  
18 the Agri-Services programs of the Department of Corrections of raw  
19 materials, component parts, trailer, and other products, any  
20 equipment excluding vehicles below a gross vehicle weight of  
21 fourteen thousand (14,000) pounds, and any services excluding  
22 computer consultant services used to ~~produce~~ provide goods or  
23 services for resale and for the ~~production~~ provision of agricultural  
24 products;

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

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

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

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

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

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

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

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