STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 267

By: Holt and Mazzei of the Senate

and

Peterson of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to The Oklahoma Central Purchasing Act; amending 74 O.S. 2001, Section 85.2, as amended by Section 1, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2010, Section 85.2), which relates to definitions; modifying definition; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.2, as amended by Section 1, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2010, Section 85.2), is amended to read as follows:

Section 85.2 As used in The Oklahoma Central Purchasing Act, unless the context otherwise requires:

1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease-purchase, lease with option to purchase, or rental pursuant to The Oklahoma Central Purchasing Act unless the items, products, supplies, services, or equipment are exempt pursuant to The Oklahoma Central Purchasing Act;
2. "Best value criteria" means evaluation criteria which may include, but is not limited to, the following:

a. the acquisition's operational cost a state agency would incur,

b. the quality of the acquisition, or its technical competency,

c. the reliability of the bidder's delivery and implementation schedules,

d. the acquisition's facilitation of data transfer and systems integration,

e. the acquisition's warranties and guarantees and the bidder's return policy,

f. the economic impact of the acquisition on the Oklahoma and any local community economy if the purchase was made from an Oklahoma-based company as opposed to an out-of-state company,

g. the bidder's financial stability,

h. the acquisition's adherence to the state agency's planning documents and announced strategic program direction,

i. the bidder's industry and program experience and record of successful past performance with acquisitions of similar scope and complexity,

j. the anticipated acceptance by user groups, and
3. "Bid" or "proposal" means an offer a bidder submits in response to an invitation to bid or request for proposal;

4. "Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal;

5. "Business entity" means individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm, group or concern which functions as a separate entity for business purposes;

6. "Change order" means a unilateral written order directing a supplier to make a change;

7. "Chief administrative officer" means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency;

8. "Component" means any item supplied as part of an end item or of another component;

9. "Consolidation contract" means a contract for several state agencies for the purpose of purchasing computer software maintenance or hardware maintenance;
10. "Contract" means a mutually binding legal relationship obligating the seller to furnish an acquisition and the buyer to pay for it. It includes all types of commitments that obligate a state agency to an expenditure of funds or action that, unless otherwise authorized, is in writing. In addition to bilateral instruments, contracts include, but are not limited to:

a. awards and notices of awards,

b. orders issued under basic ordering agreements,

c. letter contracts,

d. orders under which the contract becomes effective by written acceptance or performance, and

e. bilateral contract modifications;

11. "Contract modification" means any written change in the terms of the contract;

12. "Contracting" means purchasing, renting, leasing, or otherwise obtaining acquisitions from private sources. Contracting includes description, but not determination, of acquisitions required, selection and solicitation of sources, preparation and award of contracts, and contract administration;

13. "Contractor" means an individual or business entity entering into a contract for goods and/or services with the state as a result of a solicitation;

14. "Electronic commerce" means the use of electronic methods to enable solicitation, supplier response, notice of contract award,
state agency acquisition processes, or any other function to make an acquisition;

15. "Electronic payment mechanism" means a method of electronic payment for authorized acquisitions;

16. "Enterprise agreement" means an agreement for computer hardware, software, and service that a supplier manufactures, develops, and designs, and that one or more state agencies use;

17. "Environmentally preferable products and services (EPPS)" means acquisitions that best meet the requirements as defined in the solicitation for human health and the environment;

18. "Equipment" means personal property a state agency acquires for its use which is an item or product and shall include all personal property used or consumed by a state agency that is not included within the category of materials and supplies;

19. "High technology system" means advanced technological equipment, software, communication lines, and services for the processing, storing, and retrieval of information by a state agency;

20. "Item" or "product" means some quantity or kind of such supplies, materials or equipment;

21. "Local governmental entity" means any unit of local government including, but not limited to, any school district, county, or municipality of this state;

22. "Lowest and best" means an acquisition based on criteria which include, but are not limited to, the following:
a. the lowest total purchase price,

b. the quality and reliability of the product, and

c. the consistency of the proposed acquisition with the
   state agency's planning documents and announced
   strategic program direction;

23. "Materials" or "supplies" includes all property except real
    property or equipment that a state agency acquires for its use or
    consumption;

24. "Multistate contract" or "multigovernmental contract" means
    an agreement entered into between two or more entities of government
    for acquisitions pursuant to a single contract;

25. "Nonprofessional services" means services which are
    predominantly physical or manual in character and may involve the
    supplying of products;

26. "Political subdivision" means local governmental entities
    and such other entities specified as political subdivisions pursuant
    to The Governmental Tort Claims Act;

27. "Open market contract" means a contract for a one-time
    acquisition not exceeding the acquisition amount requiring
    competitive bid pursuant to Section 85.7 of this title;

28. "Professional services" means services which are
    predominantly mental or intellectual in character rather than
    physical or manual and which do not involve the supplying of
    products. Professional services include services to support or
improve state agency policy development, decision making, management, administration, or the operation of management systems;

29. "Purchase order" means an offer by a state agency to make an acquisition utilizing simplified procedures;

30. "Requisition" means a written request by a state agency for an acquisition;

31. "Services" or "contractual services" means direct engagement of the time and effort of a contractor for the primary purpose of performing an identifiable task rather than for the furnishing of an end item of supply;

32. "Sole brand acquisition" means an acquisition that by specification restricts the acquisition to one manufacturer or brand name;

33. "Sole source acquisition" means an acquisition which, by specification, restricts the acquisition to one supplier;

34. "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation;

35. "Split purchase" means dividing a known quantity or failing to consolidate a known quantity of an acquisition for the purpose of evading a competitive bidding requirement;
36. "State agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only political subdivisions of the state;

37. "State purchase card" means an electronic transaction device used for making acquisitions;

38. "State Purchasing Director" or "Director of Central Purchasing" includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority;

39. "Statewide contract" means a contract for specific acquisitions for a specified period with a provision allowing the agencies and local governmental entities to place orders as the acquisitions are needed for delivery during the period specified;

and

40. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

SECTION 2. This act shall become effective November 1, 2011.