

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL 267

6 By: Holt and Mazzei of the
7 Senate

8 and

9 Peterson of the House

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to The Oklahoma Central Purchasing
12 Act; amending 74 O.S. 2001, Section 85.2, as amended
13 by Section 1, Chapter 96, O.S.L. 2008 (74 O.S. Supp.
14 2010, Section 85.2), which relates to definitions;
15 modifying definition; and providing an effective
16 date.

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

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

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

23 1. "Acquisition" means items, products, materials, supplies,
24 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;

1 2. "Best value criteria" means evaluation criteria which may
2 include, but is not limited to, the following:

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

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

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

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

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

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

17 g. the bidder's financial stability,

18 ~~g.~~ h. the acquisition's adherence to the state agency's
19 planning documents and announced strategic program
20 direction,

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

24 ~~i.~~ j. the anticipated acceptance by user groups, and

1 ~~j.~~ k. the acquisition's use of proven development
2 methodology, and innovative use of current
3 technologies that lead to quality results;

4 3. "Bid" or "proposal" means an offer a bidder submits in
5 response to an invitation to bid or request for proposal;

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

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

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

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

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

21 9. "Consolidation contract" means a contract for several state
22 agencies for the purpose of purchasing computer software maintenance
23 or hardware maintenance;

1 10. "Contract" means a mutually binding legal relationship
2 obligating the seller to furnish an acquisition and the buyer to pay
3 for it. It includes all types of commitments that obligate a state
4 agency to an expenditure of funds or action that, unless otherwise
5 authorized, is in writing. In addition to bilateral instruments,
6 contracts include, but are not limited to:

- 7 a. awards and notices of awards,
- 8 b. orders issued under basic ordering agreements,
- 9 c. letter contracts,
- 10 d. orders under which the contract becomes effective by
11 written acceptance or performance, and
- 12 e. bilateral contract modifications;

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

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

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

23 14. "Electronic commerce" means the use of electronic methods
24 to enable solicitation, supplier response, notice of contract award,

1 state agency acquisition processes, or any other function to make an
2 acquisition;

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

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

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

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

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

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

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

23 22. "Lowest and best" means an acquisition based on criteria
24 which include, but are not limited to, the following:

- 1 a. the lowest total purchase price,
- 2 b. the quality and reliability of the product, and
- 3 c. the consistency of the proposed acquisition with the
- 4 state agency's planning documents and announced
- 5 strategic program direction;

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

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

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

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

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

21 28. "Professional services" means services which are
22 predominantly mental or intellectual in character rather than
23 physical or manual and which do not involve the supplying of
24 products. Professional services include services to support or

1 improve state agency policy development, decision making,
2 management, administration, or the operation of management systems;

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

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

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

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

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

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

21 35. "Split purchase" means dividing a known quantity or failing
22 to consolidate a known quantity of an acquisition for the purpose of
23 evading a competitive bidding requirement;

24

1 36. "State agency" includes any office, officer, bureau, board,
2 counsel, court, commission, institution, unit, division, body or
3 house of the executive or judicial branches of the state government,
4 whether elected or appointed, excluding only political subdivisions
5 of the state;

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

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

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

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

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

19

20 53-1-1731 JT 5/16/2011 9:51:15 AM

21

22

23

24