

1 ENGROSSED HOUSE
2 BILL NO. 1034

By: Murphey and Derby of the
House

3 and

4 Aldridge of the Senate
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8 An Act relating to state government; amending 74 O.S.
9 2001, Sections 85.5, as last amended by Section 1,
10 Chapter 170, O.S.L. 2010, 85.41, as last amended by
11 Section 11, Chapter 322, O.S.L. 2009, and 85.42, as
12 last amended by Section 12, Chapter 322, O.S.L. 2009
(74 O.S. Supp. 2010, Sections 85.5, 85.41 and 85.42),
13 which relate to The Oklahoma Central Purchasing Act;
14 modifying the powers and duties of the State
15 Purchasing Director; modifying certain contracts; and
16 providing an effective date.

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

18 SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.5, as
19 last amended by Section 1, Chapter 170, O.S.L. 2010 (74 O.S. Supp.
20 2010, Section 85.5), is amended to read as follows:

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

1 established in Section 34.11.1 of Title 62 of the Oklahoma Statutes,
2 the Chief Information Officer shall have sole and exclusive
3 authority and responsibility for all acquisitions of information and
4 telecommunications technology, equipment, software, products and
5 related peripherals and services 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 Five Thousand Dollars (\$5,000.00), provided the
8 acquisition process is fair and reasonable and is
9 conducted pursuant to rules authorized pursuant to
10 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 Five Thousand Dollars (\$5,000.00) and not
16 exceeding One Hundred Thousand Dollars (\$100,000.00),
17 pursuant to rules authorized by this section;

18 12. Training by the State Purchasing Director of state agency
19 procurement officers;

20 13. Review and audit by the State Purchasing Director of state
21 agency acquisitions;

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

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

2 16. Any other matter or practice which relates to the
3 responsibilities of the Director of the Department of Central
4 Services;

5 17. Conditions for determination and authorization of
6 acquisition limits of state agencies pursuant to Section 85.7 of
7 this title; and

8 18. The form and manner of verification by suppliers that the
9 supplier is eligible to do business in the State of Oklahoma and has
10 obtained all necessary permits and licenses, pursuant to applicable
11 provisions of law.

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

1 shall assess a fee to state agencies for the training that does not
2 exceed each state agency's pro rata share of the costs the State
3 Purchasing Director incurs to provide the training.

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

6 1. Ensuring state agency compliance with provisions of The
7 Oklahoma Central Purchasing Act;

8 2. Ensuring state agency compliance with rules promulgated by
9 the Department of Central Services pursuant to The Oklahoma Central
10 Purchasing Act;

11 3. Ensuring state agency compliance with provisions of Section
12 3001 et seq. of this title pertaining to the State Use Committee;

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

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

20 F. When recommended by the State Purchasing Director, based on
21 written findings by the State Purchasing Director, the Director of
22 the Department of Central Services may:

23 1. Require retraining of state agency procurement officials and
24 other purchasing staff found not to be in compliance with provisions

1 of The Oklahoma Central Purchasing Act, or rules promulgated
2 pursuant to The Oklahoma Central Purchasing Act;

3 2. Reduce the acquisition competitive bid limit for any state
4 agency found not to be in compliance with provisions of The Oklahoma
5 Central Purchasing Act or rules promulgated pursuant to The Oklahoma
6 Central Purchasing Act;

7 3. Transmit written findings by the State Purchasing Director
8 to the State Auditor and Inspector for further investigation,
9 indicating purchasing procedures that do not conform to provisions
10 pursuant to The Oklahoma Central Purchasing Act or rules promulgated
11 pursuant to The Oklahoma Central Purchasing Act;

12 4. Transmit to the Attorney General or the State Auditor and
13 Inspector for further investigation a report made by the State
14 Purchasing Director that the Director of the Department of Central
15 Services reasonably believes indicates that an action that
16 constitutes a criminal violation pursuant to The Oklahoma Central
17 Purchasing Act or other laws has been taken by any state agency,
18 state agency official, bidder, or supplier; or

19 5. Increase the state agency acquisition purchase amount
20 requiring competitive bid, not to exceed the acquisition purchase
21 amount requiring competitive bid, pursuant to Section 85.7 of this
22 title.

23 G. 1. Pursuant to the requirements of The Oklahoma Central
24 Purchasing Act, the State Purchasing Director shall have authority

1 to enter into any statewide, multistate or multigovernmental
2 contract. The state entity designated by law, as specified in
3 Section 1010.3 of Title 56 of the Oklahoma Statutes, shall
4 participate in the purchase of pharmaceuticals available through
5 such multistate or multigovernmental contracts entered into by the
6 State Purchasing Director.

7 2. The State Purchasing Director may utilize contracts awarded
8 by other governmental agencies, including agencies of the United
9 States of America.

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

12 4. Prior to exercising the authority to cancel a contract, the
13 State Purchasing Director may authorize renegotiation of an existing
14 contract with an incumbent supplier for the purposes of obtaining
15 more favorable terms for the state provided the State Purchasing
16 Director shall not renegotiate the term of the contract.

17 5. In order to carry out the powers and duties established in
18 Section 34.11.1 of Title 62 of the Oklahoma Statutes, the Chief
19 Information Officer shall have the authority to designate certain
20 information technology and telecommunication contracts for state
21 agencies as statewide contracts and mandatory statewide contracts.

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

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

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

8 1. The use of electronic commerce pursuant to the Oklahoma
9 Online Bidding Act for solicitation, notification, and other
10 purchasing processes;

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

15 3. A program to identify vendors with poor delivery and
16 performance records;

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

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

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

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

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

15 9. Implement a policy to approve the ability of the department,
16 agencies, boards, commissions and trusts to accept the terms of
17 service for usage of social media services and contract for
18 technology products and services provided the terms of service or
19 contract contains standard language including a liability agreement
20 which is considered customary or largely similar to terms of service
21 agreed to or contracts entered into by other government entities and
22 private sector enterprises.

23 K. The State Purchasing Director shall, in cooperation with the
24 Oklahoma Department of Agriculture, Food, and Forestry, identify the

1 needs of state agencies and institutions for agricultural products
2 grown and produced in Oklahoma.

3 L. The State Purchasing Director may authorize the use of a
4 state purchase card for acquisitions within the following
5 parameters:

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

7 a. purchases from statewide contracts issued by the State
8 Purchasing Director, and

9 b. regulated utilities,

10 c. interagency payments, and

11 d. professional services as defined in Section 803 of
12 Title 18 of the Oklahoma Statutes; and

13 2. For any other transaction with a state purchase card, the
14 transaction shall not exceed Five Thousand Dollars (\$5,000.00).

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

17 N. Prior to the award of a contract to a supplier, the State
18 Purchasing Director shall verify, pursuant to applicable provisions
19 of law, that the supplier is eligible to do business in the State of
20 Oklahoma by confirming registration with the Secretary of State and
21 franchise tax payment status pursuant to Sections 1203 and 1204 of
22 Title 68 of the Oklahoma Statutes. The provisions of this
23 subsection shall be applicable only if the contract amount is
24 Twenty-five Thousand Dollars (\$25,000.00) or greater.

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

10 P. The State Purchasing Director is hereby authorized to
11 explore and investigate cost savings in energy, resource usage, and
12 maintenance contracts and to identify and negotiate contract
13 solutions including, but not limited to, pilot projects to achieve
14 cost savings for the State of Oklahoma.

15 Q. The Office of State Finance, with input from the State
16 Purchasing Director, shall promulgate payment procedure rules for
17 state agencies to adhere to regarding statewide contracts issued by
18 the State Purchasing Director.

19 R. The Office of State Finance along with the Department of
20 Central Services, Central Purchasing Division, shall promulgate
21 payment procedure rules for agencies to adhere to regarding
22 statewide contracts issued by the Division.

23 S. On an annual basis, the State Purchasing Director shall
24 transmit to the Governor, Speaker of the House of Representatives

1 and President Pro Tempore of the State Senate a report documenting
2 the savings realized by each agency through the application of best
3 spend practices including the collection and tracking of spend data,
4 strategic sourcing programs, and implementation of managed and
5 mandatory statewide contracts. The report shall document the
6 reasons for the failure to issue a mandatory statewide contract for
7 any items comprising total statewide spend in the amount of Five
8 Million Dollars (\$5,000,000.00) or greater.

9 T. The acquisition limitations provided for in subparagraph b
10 of paragraph 11 of subsection C of this section and paragraph 1 of
11 subsection A of Section 85.7 of this title shall not apply to agency
12 purchases provided the agency has subject matter experts on staff
13 having the specialized expertise to purchase said goods or services,
14 the agency possesses the necessary legal and procurement staff to
15 procure and monitor the contracts and provided the Director of
16 Central Services shall certify that the proposed purchase does not
17 conflict with consolidated statewide spend initiatives.

18 1. Nothing in this subsection shall give an agency authority to
19 issue statewide, multistate, or multigovernmental contracts.

20 2. Agencies making purchases pursuant to this subsection shall:
21 a. be responsible for contracts awarded pursuant to this
22 subsection, which includes, but may not be limited to,
23 contract management, all costs connected with or
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1 incurred as a result of the contract, including legal
2 representation,

3 b. comply with rules and policies of the Department of
4 Central Services, and

5 c. report contracts issued pursuant to this subsection to
6 the Department of Central Services, Central Purchasing
7 Division, on a quarterly basis.

8 3. Purchases made in accordance with this subsection shall be
9 made pursuant to rules authorized by this section.

10 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.41, as
11 last amended by Section 11, Chapter 322, O.S.L. 2009 (74 O.S. Supp.
12 2010, Section 85.41), is amended to read as follows:

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

15 B. The state agency shall evaluate the performance of the
16 professional services provided pursuant to a all professional
17 services ~~contract~~ contracts exceeding the "fair and reasonable"
18 dollar threshold. The performance evaluation shall indicate the
19 quality of service or work product of the supplier. The state
20 agency shall retain the evaluation in the document file the state
21 agency maintains for the acquisition pursuant to Section 85.39 of
22 this title. If the evaluation indicates deficiencies with the
23 supplier's work, the state agency shall send a copy of the
24 evaluation to the State Purchasing Director.

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

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

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

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

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

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

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

5 SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.42, as
6 last amended by Section 12, Chapter 322, O.S.L. 2009 (74 O.S. Supp.
7 2010, Section 85.42), is amended to read as follows:

8 Section 85.42 A. Except as otherwise provided for in this
9 section, any agency, whether or not such agency is subject to The
10 Oklahoma Central Purchasing Act, is prohibited from entering into a
11 sole source contract or a contract for professional services with or
12 for the services of any person, who has terminated employment with
13 or who has been terminated by that agency for one (1) year after the
14 termination date of the employee from the agency. The provisions of
15 this subsection shall not prohibit an agency from hiring or rehiring
16 such person as a state employee.

17 B. Each contract exceeding the "fair and reasonable" dollar
18 threshold entered into by any person or firm with the State of
19 Oklahoma shall include a statement certifying that no person who has
20 been involved in any manner in the development of that contract
21 while employed by the State of Oklahoma shall be employed to fulfill
22 any of the services provided for under said contract. This
23 subsection shall not preclude faculty and staff of the institutions
24 within The State System of Higher Education from negotiating and

1 participating in research grants and educational contracts. Nor
2 shall this subsection apply to personnel of the Capital Resources
3 Division of the Oklahoma Department of Commerce who contract to
4 provide services to the Oklahoma Capital Investment Board.

5 C. As used in this section, person is defined as any state
6 official or employee of a department, board, bureau, commission,
7 agency, trusteeship, authority, council, committee, trust, school
8 district, fair board, court, executive office, advisory group, task
9 force, study group, supported in whole or in part by public funds or
10 entrusted with the expenditure of public funds or administering or
11 operating public property, and all committees, or subcommittees
12 thereof, judges, justices, and state legislators.

13 D. An agency may enter into a sole source contract or a
14 contract for professional services at any time with a person who is
15 a qualified interpreter for the deaf.

16 E. The Department of Transportation, Oklahoma Water Resources
17 Board, Department of Environmental Quality, Oklahoma Tourism and
18 Recreation Department, the Oklahoma Turnpike Authority and the
19 Oklahoma Department of Agriculture, Food, and Forestry may enter
20 into a contract for professional services at any time with a person
21 who has retired from state service, provided the provisions
22 specified in subsection B of this section are satisfied.

23 F. The Department of Human Services may enter into a contract
24 for professional services related to computer application

1 development support and network engineering at any time with a
2 person who has separated from state service, provided the provisions
3 specified in subsection B of this section are satisfied.

4 G. To maintain public health infrastructure and preparedness,
5 the State Department of Health and city-county health departments
6 may enter into a contract for professional services at any time with
7 a physicians assistant, registered nurse, advanced practice nurse,
8 nurse midwife, registered dietician, occupational therapist,
9 physical therapist, or speech-language pathologist who has retired
10 from state service; provided, the provisions specified in subsection
11 B of this section are also satisfied.

12 H. The Department of Mental Health and Substance Abuse Services
13 may enter into a contract for professional services at any time with
14 a physician who has separated and/or retired from state service;
15 provided that the provisions specified in subsection B of this
16 section are satisfied.

17 SECTION 4. This act shall become effective November 1, 2011.

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1 Passed the House of Representatives the 1st day of March, 2011.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate