STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1464 By: Murphey of the House

and

Brecheen of the Senate

COMMITTEE SUBSTITUTE

An Act relating to state government; creating the Innovation, Efficiency and Reform Act of 2013; amending 74 O.S. 2011, Sections 85.7 and 85.33, as amended by Sections 738 and 752, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2012, Sections 85.7 and 85.33), which relate to The Oklahoma Central Purchasing Act; authorizing State Purchasing Director to exempt procurement of certain preowned items; defining term; requiring acquisitions be publically posted; providing for description of acquisition; prohibiting Director from certain action prior to publication; authorizing Office of Management and Enterprise Services to collect certain fee; amending 74 O.S. 2011, Section 500.9, as amended by Section 855, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2012, Section 500.9), which relates to the State Travel Reimbursement Act; allowing Director of the Office of Management and Enterprise Services to authorize certain reimbursement for overnight lodging; requiring certification of certain efforts to obtain lodging; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Innovation, Efficiency and Reform Act of 2013".

SECTION 2. AMENDATORY 74 O.S. 2011, Section 85.7, as amended by Section 738, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2012, Section 85.7), is amended to read as follows:

Section 85.7 A. 1. Except as otherwise provided by The Oklahoma Central Purchasing Act, no state agency shall make an acquisition for an amount exceeding Fifty Thousand Dollars ($50,000.00) or the limit determined by the State Purchasing Director pursuant to rules authorized by Section 85.5 of this title, not to exceed One Hundred Thousand Dollars ($100,000.00), without submission of a requisition to the State Purchasing Director and submission of suppliers' competitive bids or proposals to the State Purchasing Director.

2. Any acquisition a state agency makes shall be made pursuant to The Oklahoma Central Purchasing Act and rules promulgated pursuant thereto.

a. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony.

b. The State Purchasing Director may waive or increase the limit authorized for a state agency acquisition by not more than ten percent (10%) to perfect an otherwise valid acquisition inadvertently exceeding the limit due to administrative error by the state

agency or unforeseeable circumstances. The state agency shall request a waiver upon the discovery of the error or circumstance to the State Purchasing Director on a form the Director requires.

c. The State Purchasing Director shall report all requests for waivers or increases, stating the amount and whether the request was granted or denied, monthly to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

3. a. Contracts for master custodian banks or trust companies, investment managers, investment consultants, and actuaries for the state retirement systems, CompSource Oklahoma, Oklahoma Employees Insurance and Benefits Board, pension fund management consultants of the Oklahoma State Pension Commission and the Commissioners of the Land Office, and other professional services as defined in Section 803 of Title 18 of the Oklahoma Statutes shall be exempt from competitive bidding procedures of this section and requisition requirements of Section 85.4 of this title.

b. Contracts with financial institutions to act as depositories and managers of the Oklahoma College

Savings Plan accounts shall be exempt from competitive bidding procedures.

c. A state agency that makes an acquisition pursuant to this paragraph shall notify the State Purchasing Director within fifteen (15) days following completion of the acquisition. The Office of Management and Enterprise Services shall compile a list of the exempt contracts and send the list to a member of the Appropriations and Budget Committee of the House of Representatives or Appropriations Committee of the Senate, if the member requests.

4. Requisitions pursuant to this section shall not be required prior to emergency acquisitions by a state agency not exceeding One Hundred Thousand Dollars ($100,000.00). The state agency shall submit a requisition to the State Purchasing Director within five (5) days following the acquisition together with a statement of the emergency. The State Purchasing Director shall send the requisition and a written analysis to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives specifying the facts and circumstances giving rise to the emergency requisition.

5. Requisitions pursuant to this section for acquisitions to alleviate a serious environmental emergency shall not be required if, upon receiving a request from the Chair of the Corporation

Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. For the purposes of this section, "serious environmental emergency" means a situation within the jurisdiction of the Commission:

a. in which serious damage to the environment will quickly occur if immediate action is not taken and the damage will be so significant that the urgent need for action outweighs the need for competitive bids, or

b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

6. Acquisitions for repairs of equipment in emergencies, of livestock through a market agency, dealer, commission house, or livestock auction market bonded or licensed under federal or state law, the purchase or collection of semen or embryos, and the placement of embryos into recipient livestock shall not require requisitions pursuant to this section or any other provisions of The Oklahoma Central Purchasing Act.

7. The Board of Directors of the Oklahoma Historical Society shall select suppliers for the restoration of historical sites and museums and shall not be subject to the requisition requirements of this section or any other provision of The Oklahoma Central Purchasing Act. The Board may send a requisition to the State

Purchasing Director and request supplier bid or proposal submission procedures, but supplier and bid selection will be the prerogative of the Board and will be based on contractors' documented qualifications and experience.

8. Purchases of postage by state agencies shall be made pursuant to Sections 90.1 through 90.4 of this title.

9. Sole source or sole brand acquisitions by a state agency or the State Purchasing Director shall comply with Section 85.45j of this title.

10. Acquisitions for the design, development, communication, or implementation of the state employees flexible benefits plan shall not be subject to the requirements of this section; provided, that the Flexible Benefits Advisory Council shall use procedures consistent with the competitive bid requirements of The Oklahoma Central Purchasing Act.

11. a. Any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions of this paragraph.

b. The Office of Management and Enterprise Services shall establish criteria and guidelines for those services which may qualify for a fixed and uniform rate.

c. Fixed and uniform rate contracts authorized by this paragraph shall be limited to contracts for those

services furnished to persons directly benefiting from such services and shall not be used by a state agency to employ consultants or to make other acquisitions.

d. Any state agency desiring to have a service qualified for a fixed and uniform rate shall make a request for service qualification to the Office of Management and Enterprise Services and submit documentation to support the request. The Office of Management and Enterprise Services shall approve or deny the request. If the Office of Management and Enterprise Services approves the request, the state agency shall establish a fixed and uniform rate for the service. No contracts shall be entered into by the state agency until the rate has been approved by the state agency in a public hearing. The proposed rate shall be clearly and separately identified in the agenda of the state agency for the hearing and shall be openly and separately discussed during such hearing. The state agency shall notify the Director of the Office of Management and Enterprise Services of its pending consideration of the proposed rate at least thirty (30) days before the state agency is to meet on the proposed rate. The state agency shall deliver to the Director of the Office of Management and Enterprise

Services a copy of the agenda items concerning the proposed rate with supporting documentation. The Director of the Office of Management and Enterprise Services shall communicate any observation, reservation, criticism, or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the state agency before or at the time of the hearing. The Director of the Office of Management and Enterprise Services shall specifically note in the written communications whether the Director of the Office of Management and Enterprise Services has determined the rate to be excessive. Any written communication presented in the absence of the Director of the Office of Management and Enterprise Services shall be presented orally during the public hearing. Whether made in person or in writing, any comment made by the Director of the Office of Management and Enterprise Services shall be made a part of the minutes of the hearing in full.

e. Within two (2) weeks after the convening of the Legislature, the administrative officer of the state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if

requested by the member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Office of Management and Enterprise Services shall be specifically identified in the list by the state agency.

f. At any time, the Director of the Office of Management and Enterprise Services may review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Office of Management and Enterprise Services determines the contract is not necessary, is excessive, or is not justified.

12. Specifically prescribed nonmedical adaptive technology-related acquisitions for individuals with disabilities who are clients of the State Department of Rehabilitation Services and which are prescribed by a physician, rehabilitation engineer, qualified rehabilitation technician, speech therapist, speech pathologist, occupational therapist, physical therapist, or qualified sensory aids specialist, and other client acquisitions, shall not be subject to the requisition requirements of this section. The Commission for

Rehabilitation Services shall develop standards for the purchase of such acquisitions and may elect to utilize the Purchasing Division for an acquisition. The standards shall foster economy, provide a short response time, include appropriate safeguards, require written records, ensure appropriate competition for economical and efficient purchasing, and shall be approved by the State Purchasing Director.

13. The Department of Human Services shall develop procedures for acquisitions of specifically prescribed nonmedical assistive technology-related items not exceeding the acquisition purchase amount requiring a requisition pursuant to this section for individuals under sixteen (16) years of age who are recipients of Supplemental Security Income which are prescribed by a physician, qualified sensory aids specialist or qualified special education instructor. The procedures shall reflect standards for the acquisition of such nonmedical assistive technology-related items, may provide for utilization of the Purchasing Division when appropriate, shall foster economy, provide a short response time, shall include appropriate safeguards and written records to ensure appropriate competition and economical and efficient purchasing, and shall be approved by the State Purchasing Director.

14. a. Structured settlement agreements entered into by the Attorney General's office in order to settle any lawsuit involving the state, the Legislature, any state agency or any employee or official of the state

shall not be subject to the competitive bidding requirements of this section if:

(1) prior to entering into any contract for the services of an entity to administer a structured settlement agreement, the Attorney General receives proposals from at least three entities engaged in providing such services, and

(2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.

b. A list of any such structured settlement agreements entered into by the Attorney General with summary thereon for the previous calendar year shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on January 31 of each year.

15. Acquisitions a state agency makes pursuant to a contract the State Purchasing Director enters into or awards and designates for use by state agencies shall be exempt from competitive bidding procedures.

16. The Commission on Marginally Producing Oil and Gas Wells shall be exempt from the competitive bid requirements of this

section for contracts with local vendors for the purpose of holding special events and exhibitions throughout the state.

17. Agreements entered into by any state agency with the United States Army Corps of Engineers in order to provide emergency response or to protect the public health, safety, or welfare shall not require requisitions and shall not be subject to competitive bidding requirements of this section.

18. Notwithstanding any other provision of law, the State Purchasing Director may exempt a procurement from the requirements of this section when in the State Purchasing Director's discretion unusual, time-sensitive or unique circumstances exist which make such exemption in the best and immediate interest of the state. As used in this subsection, "State Purchasing Director" means the administrative head of the Purchasing Division of the Office of Management and Enterprise Services and shall not mean a designee. Any acquisitions made pursuant to this subsection shall be described in detail and publically posted through the transparency portal as provided in Section 34.11.2 of Title 62 of the Oklahoma Statutes. The description shall include the name of the supplier, cost of the acquisition, reason for exemption under the provisions of this subsection, the cost savings resulting from the purchase, and a description of benefits to the state. The State Purchasing Director shall take no action under the provisions of this subsection prior to the publication of a document describing the significant savings

that will be realized by the state. The document shall provide a detailed comparison of the acquisition with comparable items and clearly detail the savings.

B. Acquisitions shall be awarded to the lowest and best, or best value, bidder at a specified time and place, which shall be open to the public.

C. Bids for professional service contracts for an amount requiring submission of requisitions to the State Purchasing Director shall be evaluated by the State Purchasing Director and the state agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best, or best value, bid. Further, the state agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the state agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by CompSource Oklahoma, the Oklahoma Employees Insurance and Benefits Board, or the governing board of a state retirement system authorized to hire investment managers, the Office of Management and Enterprise Services shall assist the requesting body in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Office of Management and Enterprise Services shall assist the Council in

the process of selecting contracts for the design, development, communication, or implementation of the state employees flexible benefits plan.

E. Except as otherwise specifically provided by law, the acquisition of food items or food products by a state agency from a public trust created pursuant to Sections 176 through 180.56 of Title 60 of the Oklahoma Statutes shall comply with competitive bidding procedures pursuant to the provisions of this section.

SECTION 3. AMENDATORY 74 O.S. 2011, Section 85.33, as amended by Section 752, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2012, Section 85.33), is amended to read as follows:

Section 85.33 A. There is hereby created in the State Treasury a revolving fund for the Office of Management and Enterprise Services to be designated the "Registration of State Vendors Revolving Fund". The fund shall consist of any monies received from fees collected in accordance with subsection B of this section. The revolving fund shall be a continuing fund, without legislative appropriation, not subject to fiscal year limitations, and shall be under the control and management of the Office of Management and Enterprise Services. Expenditures from the Registration of State Vendors Revolving Fund shall be budgeted and expended pursuant to the laws of the state and the statutes relating to public finance. The fund shall be used to defray the costs of the Purchasing Division for commodity research, classification, and analysis and

expenses the Office incurs to support Purchasing Division operations. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the Office, and approved for payment by the Director of the Office of Management and Enterprise Services.

B. The Office of Management and Enterprise Services ~~shall~~ may collect a fee of Twenty-five Dollars ($25.00) to register suppliers that desire to do business with this state through the Purchasing Division. The suppliers shall register separately for each commodity list. Each registration shall entitle the supplier to be on that list for one (1) year, to receive all bid notices in that classification for that period, and to receive one copy of the State's Commodity Classification Manual when published. All fees collected in accordance with this section shall be deposited in the revolving fund created in subsection A of this section.

SECTION 4. AMENDATORY 74 O.S. 2011, Section 500.9, as amended by Section 855, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2012, Section 500.9), is amended to read as follows:

Section 500.9 A. Reimbursement for overnight lodging, while in official travel status, may be made at not to exceed an amount authorized by the provisions of the Internal Revenue Code of 1986, as amended, for deductibility of expenses for travel while away from home without additional documentation or the actual cost, if lower, per night except as provided in subsections C, D ~~and~~, F and H of

this section and Section 500.9A of this title. Receipts issued by the hotel, motel or other public lodging place shall accompany claims for reimbursement.

B. A per diem allowance in lieu of subsistence may be authorized by a travel claim issued in accordance with Section 500.3 of this title, which shall include all charges for meals and lodging. Not to exceed an amount authorized by the provisions of the Internal Revenue Code of 1986, as amended, for deductibility of expenses for travel while away from home without additional documentation may be authorized on the travel claim for the performance of travel within the State of Oklahoma and not to exceed Thirty-six Dollars ($36.00) per diem may be authorized for the performance of travel outside the State of Oklahoma. In computing the per diem allowance, a day shall be a period of twenty-four (24) hours. Reimbursement for each one-fourth (1/4) day consisting of six (6) hours or major fraction thereof, more than three (3) hours, may be made at the rate of the daily allowable rate. Provided, however, that no per diem shall be allowed pursuant to this section for periods of less than overnight in travel status. Reimbursement for expenses other than meals and lodging may also be made in accordance with the provisions of this act.

C. State officers or employees attending meetings, workshops, conferences or other objectives of trips which are conducted at a designated hotel, motel or other public lodging place or where

lodging has been arranged for by the blocking of rooms or by rate reductions for the participants by the sponsor as evidenced by the announcement or notice of the meeting, workshop, conference or other objective shall be reimbursed the actual lodging expense not to exceed the single occupancy room rate charged by the designated hotel, motel or other public lodging place, provided that the officials or employees are in official travel status approved by the agency head or designee. Provided further, those state officers or employees attending meetings, workshops, conferences or other objectives of trips, which are conducted at a designated hotel, motel or other public lodging place as provided by this subsection, who choose to acquire less expensive lodging at another hotel, motel or other public lodging place shall be reimbursed the actual lodging expense not to exceed the single occupancy room rate charged by the designated hotel, motel or other public lodging place. Provided further, those state officers or employees so choosing this option shall be reimbursed for local transportation costs incurred traveling between such optional lodging and the designated hotel, motel or other public lodging place not to exceed the difference between the cost of the designated lodging and the cost of the optional lodging. Receipts issued by the hotel, motel or other public lodging place shall accompany claims for reimbursement.

D. State officers and employees who have been required to attend hearings or meetings of any congressional committee or

subcommittee or any federal agency, board or commission shall be reimbursed for their actual and necessary travel and lodging expenses; however, the agency head must approve any claims in connection with such expenses.

E. Reimbursement for meals and lodging on out-of-state trips shall not begin more than twenty-four (24) hours before the meeting, workshop, conference or other objective of trip begins and shall not continue more than twenty-four (24) hours after said meeting, workshop, conference or other objective of trip ends.

F. Reimbursement for meals and lodging incurred in official travel in areas outside of the United States to implement the objectives of contracts, grants, agreements or gifts for which funds from these sources are furnished shall be reimbursed from said funds at actual cost not to exceed the amount authorized United States Government employees in its periodical publication entitled "Standard Regulations (Government Civilians, Foreign Areas), Department of State, Washington, DC". Provided, however, travel to points outside of the United States, whether performed under authority of contract, grant, agreement or otherwise, shall not begin more than forty-eight (48) hours before or end more than forty-eight (48) hours after the objective of the trip.

G. Claims submitted to the Director of the Office of Management and Enterprise Services for payment under the provisions of this section shall be certified to by the principal fiscal officer or

contract and grant administrator of each agency. Such officer shall certify that such claim complies with and is authorized under this section.

H. The Director of the Office of Management and Enterprise Services may authorize reimbursement for overnight lodging while in official travel status within the State of Oklahoma at a rate of up to one hundred fifty percent (150%) of the amount authorized in subsection A of this section if it is determined that no lodging was available at the maximum rate set out in subsection A of this section. Prior to authorizing such payment, the state officer or employee shall certify the efforts made to obtain lodging at the rate set out in subsection A of this section and the reasons why such lodging was not available within a reasonable distance from the state officer's or employee's work location.

SECTION 5. This act shall become effective November 1, 2013.

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