HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1473 By: Murphey

COMMITTEE SUBSTITUTE

An Act relating to state government; amending 74 O.S. 2011, Sections 85.5, as amended by Section 737, Chapter 304, O.S.L. 2012 and 85.12 (74 O.S. Supp. 2013, Section 85.5), which relate to The Oklahoma Central Purchasing Act; modifying provisions related to use of state purchasing card; modifying provisions related to acquisition of certain utility services; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2011, Section 85.5, as amended by Section 737, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2013, Section 85.5), is amended to read as follows:

Section 85.5 A. Except as otherwise provided in this section, pursuant to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of the Office of Management and Enterprise 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

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duties established in Section 34.11.1 of Title 62 of the Oklahoma Statutes, the Chief Information Officer shall have sole and exclusive authority and responsibility for all acquisitions of information and telecommunications technology, equipment, software, products and related peripherals and services used or consumed by state agencies.

B. The State Purchasing Director, after consultation with the requisitioning state agency, shall have authority to determine the particular brand, model, or other specific classification of each acquisition and to draft or invoke pursuant to The Oklahoma Central Purchasing Act specifications establishing the requirements for all necessary contracts or purchase orders.

C. The Director of the Office of Management and Enterprise Services shall have authority and responsibility to promulgate rules pursuant to provisions of The Oklahoma Central Purchasing Act governing, providing for, prescribing, or authorizing any act, practice, or requirement for which regulatory power is delegated for:

1. The time, manner, authentication, and form of making requisitions for acquisitions;

2. Inspection, analysis, and testing of acquisitions or samples suppliers submit prior to contract award;

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3. The form and manner of submission for bids or proposals a supplier submits and the manner of accepting and opening bids or proposals;

4. The conditions under which the Office of Management and Enterprise Services shall require written contracts for acquisitions, the conditions under which acquisitions may be made on an open account basis, and the conditions and manner of negotiating such contracts;

5. Obtaining acquisitions produced by state institutions;

6. Conditions under which any of the rules herein authorized may be waived;

7. The amounts of and deposits on any bond or other surety required to be submitted with a bid or contract for the furnishing of acquisitions and the conditions under which such bond or other surety shall be required;

8. Storage and storage facilities necessary to accomplish responsibilities of the Director of the Office of Management and Enterprise Services;

9. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport acquisitions whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any acquisitions;

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10. The form of any estimate, order, or other document the Director of the Office of Management and Enterprise Services requires;

11. State agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid pursuant to Section 85.7 of this title to ensure competitiveness, fairness, compliance with provisions of all sections of The Oklahoma Central Purchasing Act, and compliance with provisions of Section 3001 et seq. of this title, which relate to the State Use Committee. The rules shall include separate provisions based on acquisition purchase price as follows:

a. state agencies shall make acquisitions not exceeding Five Thousand Dollars ($5,000.00), provided the acquisition process is fair and reasonable and is conducted pursuant to rules authorized pursuant to this section, and

b. state agencies with certified procurement officers and internal purchasing procedures found compliant by the Director of the Office of Management and Enterprise Services pursuant to this section may make acquisitions in excess of Five Thousand Dollars ($5,000.00) and not exceeding One Hundred Thousand Dollars ($100,000.00), pursuant to rules authorized by this section;

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

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

14. The conditions for increasing acquisition limits for state agencies which have had a prior reduction in acquisition limit by the Director of the Office of Management and Enterprise Services;

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

16. Any other matter or practice which relates to the responsibilities of the Director of the Office of Management and Enterprise Services;

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

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

D. The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff. The training shall include principles of state procurement practices, basic contracting, provisions of The Oklahoma Central Purchasing Act, rules promulgated pursuant to The Oklahoma Central Purchasing Act, provisions of Section 3001 et seq. of this title, which relate

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to the State Use Committee, and any other matters related to state procurement practices. State agency purchasing officials that demonstrate proficiency shall be certified as "certified procurement officers" by the State Purchasing Director and shall be authorized to make acquisitions pursuant to provisions of The Oklahoma Central Purchasing Act and rules authorized by this section. The State Purchasing Director shall assess a fee to state agencies for the training that does not exceed each state agency's pro rata share of the costs the State Purchasing Director incurs to provide the training.

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

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

2. Ensuring state agency compliance with rules promulgated by the Office of Management and Enterprise Services pursuant to The Oklahoma Central Purchasing Act;

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

4. Reporting any acquisition by any state agency found not to be in compliance with those sections or rules to the Director of the Office of Management and Enterprise Services; and

5. Recommending that the Director of the Office of Management and Enterprise Services reduce the acquisition competitive bid limit

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amount for any state agency found not to be in compliance with The Oklahoma Central Purchasing Act or rules promulgated pursuant thereto.

F. When recommended by the State Purchasing Director, based on written findings by the State Purchasing Director, the Director of the Office of Management and Enterprise Services may:

1. Require retraining of state agency procurement officials and other purchasing staff found not to be in compliance with provisions of The Oklahoma Central Purchasing Act, or rules promulgated pursuant to The Oklahoma Central Purchasing Act;

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

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

4. Transmit to the Attorney General or the State Auditor and Inspector for further investigation a report made by the State Purchasing Director that the Director of the Office of Management and Enterprise Services reasonably believes indicates that an action that constitutes a criminal violation pursuant to The Oklahoma

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Central Purchasing Act or other laws has been taken by any state agency, state agency official, bidder, or supplier; or

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

G. 1. Pursuant to the requirements of The Oklahoma Central Purchasing Act, the State Purchasing Director shall have authority to enter into any statewide, multistate or multigovernmental contract. The state entity designated by law, as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes, shall participate in the purchase of pharmaceuticals available through such multistate or multigovernmental contracts entered into by the State Purchasing Director.

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

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

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

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

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

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

J. The State Purchasing Director shall undertake the following:

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

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

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

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

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

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

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

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

9. Implement a policy to approve the ability of the department, agencies, boards, commissions and trusts to accept the terms of service for usage of social media services and contract for

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technology products and services provided the terms of service or contract contains standard language including a liability agreement which is considered customary or largely similar to terms of service agreed to or contracts entered into by other government entities and private sector enterprises.

K. The State Purchasing Director shall, in cooperation with the Oklahoma Department of Agriculture, Food, and Forestry, identify the needs of state agencies and institutions for agricultural products grown and produced in Oklahoma.

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

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

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

b. ~~regulated~~ utilities,

c. interagency payments, and

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

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

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

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

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

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

Q. The Office of Management and Enterprise Services, with input from the State Purchasing Director, shall promulgate payment

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procedure rules for state agencies to adhere to regarding statewide contracts issued by the State Purchasing Director.

R. The Office of Management and Enterprise Services, Central Purchasing Division, shall promulgate payment procedure rules for agencies to adhere to regarding statewide contracts issued by the Division.

S. On an annual basis, the State Purchasing Director shall transmit to the Governor, Speaker of the House of Representatives and President Pro Tempore of the State Senate a report documenting the savings realized by each agency through the application of best spend practices including the collection and tracking of spend data, strategic sourcing programs, and implementation of managed and mandatory statewide contracts. The report shall document the reasons for the failure to issue a mandatory statewide contract for any items comprising total statewide spend in the amount of Five Million Dollars ($5,000,000.00) or greater.

T. The acquisition limitations provided for in subparagraph b of paragraph 11 of subsection C of this section and paragraph 1 of subsection A of Section 85.7 of this title shall not apply to agency purchases provided the agency has subject matter experts on staff having the specialized expertise to purchase said goods or services, the agency possesses the necessary legal and procurement staff to procure and monitor the contracts and provided the Director of the Office of Management and Enterprise Services shall certify that the

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proposed purchase does not conflict with consolidated statewide spend initiatives.

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

2. Agencies making purchases pursuant to this subsection shall:

a. be responsible for contracts awarded pursuant to this subsection, which includes, but may not be limited to, contract management, all costs connected with or incurred as a result of the contract, including legal representation,

b. comply with rules and policies of the Office of Management and Enterprise Services, and

c. report contracts issued pursuant to this subsection to the Office of Management and Enterprise Services, Central Purchasing Division, on a quarterly basis.

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

SECTION 2. AMENDATORY 74 O.S. 2011, Section 85.12, is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except as they may be directly in conflict herewith; and all claims, warrants, and bonds shall be examined, inspected, and approved as now provided by law.

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

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

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

3. Department of Transportation and Transportation Commission contractual services or right-of-way purchases; contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of

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equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts; and contracts for public service type announcements initiated by the Department of Transportation; but not contractual services for advertising or public relations or employment services;

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

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

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

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

8. Acquisitions by the Oklahoma Municipal Power Authority;

9. Acquisitions by the Grand River Dam Authority;

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10. Acquisitions by rural water, sewer, gas, or solid waste management districts created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

11. Acquisitions by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, or the Midwestern Oklahoma Development Authority;

12. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and contracts for the services of legal counsel when approved by the Attorney General;

13. Expenditure of monies appropriated to the State Board of Education for Local and State Supported Financial Support of Public Schools, except monies allocated therefrom for the Administrative and Support Functions of the State Department of Education;

14. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

15. Contracts entered into by the Oklahoma Department of Career and Technology Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Career and Technology Education for

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training and supportive services that address the needs of new or expanding industries;

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

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

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

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

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

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

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

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

24. Acquisitions by the Oklahoma Energy Resources Board;

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

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

27. Acquisitions by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal

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proceedings involving potential violations of the acts under the Department's jurisdiction;

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

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

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

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

32. Acquisitions by the Oklahoma Correctional Industries and the Agri-Services programs of the Department of Corrections of raw materials, component parts and other products, any equipment excluding vehicles, and any services excluding computer consultant services used to produce goods or services for resale and for the production of agricultural products;

33. Contracts entered into by the Department of Human Services for provision of supported living services to members of the

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plaintiff class in *Homeward Bound, Inc., et~~.~~ al., v. The Hissom Memorial Center, et~~.~~ al.,* Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma;

34. Contracts negotiated by the Office of Juvenile Affairs with designated Youth Services Agencies and the Oklahoma Association of Youth Services, or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members, pursuant to the provisions of Section 2-7-306 of Title 10A of the Oklahoma Statutes;

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

36. Contracts for annuities for structured settlements provided for in Section 158 of Title 51 of the Oklahoma Statutes.

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

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

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

SECTION 3. This act shall become effective November 1, 2014.

COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION, dated 02/24/2014 - DO PASS, As Amended.

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