

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 ENGROSSED SENATE
5 BILL NO. 1314

By: Brecheen of the Senate

and

Gann of the House

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9 An Act relating to the Oklahoma Central Purchasing
10 Act; amending 74 O.S. 2011, Section 85.5, as last
11 amended by Section 1, Chapter 359, O.S.L. 2014 (74
12 O.S. Supp. 2017, Section 85.5), which relates to
13 powers and duties of the State Purchasing Director;
14 modifying certain reporting requirement; requiring
15 verification of certain information; amending 61 O.S.
16 Section 139, as last amended by Section 1, Chapter
17 252, O.S.L. 2017 (61 O.S. Supp. 2017, Section 139),
18 which relates to the Public Competitive Bidding Act
19 of 1974; establishing certain reporting requirements
20 relating to cooperative purchasing agreements; and
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 74 O.S. 2011, Section 85.5, as
24 last amended by Section 1, Chapter 359, O.S.L. 2014 (74 O.S. Supp.
25 2017, Section 85.5), is amended to read as follows:

26 Section 85.5. A. Except as otherwise provided in this section,
27 pursuant to the provisions of Section 85.4 of this title, the State
28 Purchasing Director, under the supervision of the Director of the

1 Office of Management and Enterprise Services, shall have sole and
2 exclusive authority and responsibility for all acquisitions used or
3 consumed by state agencies. In order to carry out the powers and
4 duties established in Section 34.11.1 of Title 62 of the Oklahoma
5 Statutes, the Chief Information Officer shall have sole and
6 exclusive authority and responsibility for all acquisitions of
7 information and telecommunications technology, equipment, software,
8 products and related peripherals and services used or consumed by
9 state agencies.

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

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

22 1. The time, manner, authentication, and form of making
23 requisitions for acquisitions;
24

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

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

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

11 5. Obtaining acquisitions produced by state institutions;

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

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

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

21 9. The manner and conditions of delivery, which shall include
22 the designation of the common carrier of property to be used to
23 transport acquisitions whenever a common carrier is used, and the
24

1 acceptance, or rejection, including check of quantities, of any
2 acquisitions;

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

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

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

19 b. state agencies with certified procurement officers and
20 internal purchasing procedures found compliant by the
21 Director of the Office of Management and Enterprise
22 Services pursuant to this section may make
23 acquisitions in excess of Five Thousand Dollars
24 (\$5,000.00) and not exceeding One Hundred Thousand

Dollars (\$100,000.00), pursuant to rules authorized by
this section;

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

1 Act, rules promulgated pursuant to The Oklahoma Central Purchasing
2 Act, provisions of Section 3001 et seq. of this title, which relate
3 to the State Use Committee, and any other matters related to state
4 procurement practices. State agency purchasing officials that
5 demonstrate proficiency shall be certified as "certified procurement
6 officers" by the State Purchasing Director and shall be authorized
7 to make acquisitions pursuant to provisions of The Oklahoma Central
8 Purchasing Act and rules authorized by this section. The State
9 Purchasing Director shall assess a fee to state agencies for the
10 training that does not exceed each state agency's pro rata share of
11 the costs the State Purchasing Director incurs to provide the
12 training.

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

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

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

20 3. Ensuring state agency compliance with provisions of Section
21 3001 et seq. of this title pertaining to the State Use Committee;

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

1 5. Recommending that the Director of the Office of Management
2 and Enterprise Services reduce the acquisition competitive bid limit
3 amount for any state agency found not to be in compliance with The
4 Oklahoma Central Purchasing Act or rules promulgated pursuant
5 thereto.

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

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

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

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

22 4. Transmit to the Attorney General or the State Auditor and
23 Inspector for further investigation a report made by the State
24 Purchasing Director that the Director of the Office of Management

1 and Enterprise Services reasonably believes indicates that an action
2 that constitutes a criminal violation pursuant to The Oklahoma
3 Central Purchasing Act or other laws has been taken by any state
4 agency, state agency official, bidder, or supplier; or

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

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

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

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

22 4. Prior to exercising the authority to cancel a contract, the
23 State Purchasing Director may authorize renegotiation of an existing
24 contract with an incumbent supplier for the purposes of obtaining

1 more favorable terms for the state provided the State Purchasing
2 Director shall not renegotiate the term of the contract.

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

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

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

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

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

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

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

3 4. Development of criteria for the use of sealed bid
4 contracting procedures, negotiated contracting procedures, selection
5 of types of contracts, ~~postaward~~ post-award administration of
6 purchase orders and contracts, contract modifications, termination
7 of contracts, and contract pricing;

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

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

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

18 8. In cooperation with the Office of Management and Enterprise
19 Services and the State Treasurer, develop an electronic payment
20 mechanism for use in the settlement of accounts payable invoices,
21 with no limit, to make payment for products or services acquired in
22 accordance with The Oklahoma Central Purchasing Act and any rules
23 promulgated pursuant thereto; and
24

1 9. Implement a policy to approve the ability of the department,
2 agencies, boards, commissions and trusts to accept the terms of
3 service for usage of social media services and contract for
4 technology products and services provided the terms of service or
5 contract contains standard language including a liability agreement
6 which is considered customary or largely similar to terms of service
7 agreed to or contracts entered into by other government entities and
8 private sector enterprises.

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

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

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

- 17 a. purchases from statewide contracts issued by the State
- 18 Purchasing Director,
- 19 b. utilities,
- 20 c. interagency payments, and
- 21 d. professional services as defined in Section 803 of
- 22 Title 18 of the Oklahoma Statutes; and

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

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

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

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

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

1 Q. The Office of Management and Enterprise Services, with input
2 from the State Purchasing Director, shall promulgate payment
3 procedure rules for state agencies to adhere to regarding statewide
4 contracts issued by the State Purchasing Director.

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

9 S. On an annual basis, the State Purchasing Director shall
10 transmit to the Governor, Speaker of the House of Representatives
11 and President Pro Tempore of the State Senate a report documenting
12 the savings realized by each agency through the application of best
13 spend practices including the collection and tracking of spend data,
14 strategic sourcing programs, cooperative purchasing agreements as
15 defined in Section 139 of Title 61 of the Oklahoma Statutes, and
16 implementation of managed and mandatory statewide contracts. The
17 report shall document the reasons for the failure to issue a
18 mandatory statewide contract for any items comprising total
19 statewide spend in the amount of Five Million Dollars
20 (\$5,000,000.00) or greater.

21 T. The acquisition limitations provided for in subparagraph b
22 of paragraph 11 of subsection C of this section and paragraph 1 of
23 subsection A of Section 85.7 of this title shall not apply to agency
24 purchases provided the agency has subject matter experts on staff

1 having the specialized expertise to purchase said goods or services,
2 the agency possesses the necessary legal and procurement staff to
3 procure and monitor the contracts and provided the Director of the
4 Office of Management and Enterprise Services shall certify that the
5 proposed purchase does not conflict with consolidated statewide
6 spend initiatives.

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

9 2. Agencies making purchases pursuant to this subsection shall:

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

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

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

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

22 U. As condition of award, the State Purchasing Director shall
23 verify a supplier's participation in cooperative purchasing
24 agreements as defined in Section 139 of Title 61 of the Oklahoma

1 Statutes and as defined in Section 85.2 of Title 74 of the Oklahoma
2 Statutes. Additionally, the State Purchasing Director shall require
3 the submission of data from participating suppliers, for inclusion
4 in the annual cost savings report. The State Purchasing Director
5 shall prescribe the report format and content required to collect
6 and report the data.

7 SECTION 2. AMENDATORY 61 O.S. 2011, Section 139, as
8 amended by Section 1, Chapter 252, O.S.L. 2017 (61 O.S. Supp. 2017,
9 Section 139), is amended to read as follows:

10 Section 139. A. In addition to any authority to enter an
11 agreement pursuant to the Interlocal Cooperation Act, any school
12 district, including a technology school district, may either
13 participate in, sponsor, conduct or administer a cooperative
14 purchasing agreement for the acquisition of any commodities or
15 services with one or more public agencies in accordance with an
16 agreement entered into between the participants. Such cooperative
17 purchasing may include, but is not limited to, joint or multiparty
18 contracts between public agencies and open-ended state public
19 procurement contracts.

20 B. Any local public procurement unit may either participate in,
21 sponsor, conduct or administer a cooperative or piggybacking
22 purchasing agreement for the acquisition of any commodities or
23 services, including construction services, with one (1) or more
24 public procurement units or external procurement units in accordance

1 with an agreement entered into between the participants. Such
2 cooperative purchasing may include, but is not limited to, joint or
3 multiparty contracts between public procurement units and open-ended
4 state public procurement unit contracts which are made available to
5 local public procurement units. Purchases made in accordance with
6 this subsection by a local public procurement unit shall be required
7 to satisfy any procurement regulation, including The Central
8 Purchasing Act, the Public Competitive Bidding Act, the Finance Act,
9 related administrative rules and federal regulations that may apply
10 due to the federal source of the funding for the anticipated
11 purchase.

12 C. For purposes of this section, the following definitions
13 apply:

14 1. "Local public procurement unit" shall mean, inter alia, any
15 county, city, town, state agency, and any other subdivision of the
16 state or public unit or agency thereof;

17 2. "External procurement unit" shall mean any buying
18 organization in the United States not located in this state which,
19 if located in this state, would qualify as a public procurement
20 unit; and

21 3. "Cooperative or piggybacking purchasing agreement" shall
22 mean an agreement between a local public procurement unit and
23 another local public procurement unit or an external procurement
24 unit to authorize the use of a contract procured by one of the

1 parties to the agreement to benefit the other party to the
2 agreement. This term shall also mean an agreement that provides
3 access to a product or service that is lower in price than a
4 comparable product or service that is available through the usage of
5 a statewide, multistate or multigovernmental contract issued by the
6 state Purchasing Division.

7 D. Nothing in this section shall supersede the obligation of a
8 state agency to adhere to rules regarding statewide contracts issued
9 by the state Purchasing Division. Neither shall any provision of
10 this section be construed to waive the obligation of a state agency
11 to utilize a mandatory purchasing contract as designated by the
12 State Purchasing Director.

13 E. Any supplier providing products or services to a state
14 entity through a cooperative or piggybacking purchasing agreement
15 shall provide, to the State Purchasing Director, in electronic
16 format, spend data for inclusion in the cost savings reports, as
17 required by Section 85.5 of Title 74 of the Oklahoma Statutes. The
18 State Purchasing Director shall prescribe the report format and
19 content required to collect and report the data.

20 SECTION 3. This act shall become effective November 1, 2018.
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22 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION, dated
23 03/28/2018 - DO PASS.
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