

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1314

By: Brecheen

AS INTRODUCED

An Act relating to the Oklahoma Central Purchasing Act; amending 74 O.S. 2011, Section 85.5, as last amended by Section 1, Chapter 359, O.S.L. 2014 (74 O.S. Supp. 2017, Section 85.5), which relates to powers and duties of the State Purchasing Director; modifying certain reporting requirement; requiring verification of certain information; amending 61 O.S. Section 139, as last amended by Section 1, Chapter 252, O.S.L. 2017 (61 O.S. Supp. 2017, Section 139), which relates to the Public Competitive Bidding Act of 1974; establishing certain reporting requirements relating to cooperative purchasing agreements; 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 last amended by Section 1, Chapter 359, O.S.L. 2014 (74 O.S. Supp. 2017, 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

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

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

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

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

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

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

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

9 5. Obtaining acquisitions produced by state institutions;

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

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

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

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

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

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

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

17 b. state agencies with certified procurement officers and
18 internal purchasing procedures found compliant by the
19 Director of the Office of Management and Enterprise
20 Services pursuant to this section may make
21 acquisitions in excess of Five Thousand Dollars
22 (\$5,000.00) and not exceeding One Hundred Thousand
23 Dollars (\$100,000.00), pursuant to rules authorized by
24 this section;

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

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

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

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

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

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

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

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

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

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

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

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

18 3. Ensuring state agency compliance with provisions of Section
19 3001 et seq. of this title pertaining to the State Use Committee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 M. The State Purchasing Director may utilize and authorize
23 state agencies to utilize reverse auctions to obtain acquisitions.
24

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

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

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

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

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

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

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

19 T. The acquisition limitations provided for in subparagraph b
20 of paragraph 11 of subsection C of this section and paragraph 1 of
21 subsection A of Section 85.7 of this title shall not apply to agency
22 purchases provided the agency has subject matter experts on staff
23 having the specialized expertise to purchase said goods or services,
24 the agency possesses the necessary legal and procurement staff to

1 procure and monitor the contracts and provided the Director of the
2 Office of Management and Enterprise Services shall certify that the
3 proposed purchase does not conflict with consolidated statewide
4 spend initiatives.

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

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

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

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

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

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

20 U. As condition of award, the State Purchasing Director shall
21 verify a supplier's participation in cooperative purchasing
22 agreements as defined in Section 139 of Title 61 of the Oklahoma
23 Statutes and as defined in Section 85.2 of Title 74 of the Oklahoma
24 Statutes. Additionally, the State Purchasing Director shall require

1 the submission of data from participating suppliers, for inclusion
2 in the annual cost savings report. The State Purchasing Director
3 shall prescribe the report format and content required to collect
4 and report the data.

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

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

18 B. Any local public procurement unit may either participate in,
19 sponsor, conduct or administer a cooperative or piggybacking
20 purchasing agreement for the acquisition of any commodities or
21 services, including construction services, with one (1) or more
22 public procurement units or external procurement units in accordance
23 with an agreement entered into between the participants. Such
24 cooperative purchasing may include, but is not limited to, joint or

1 multiparty contracts between public procurement units and open-ended
2 state public procurement unit contracts which are made available to
3 local public procurement units. Purchases made in accordance with
4 this subsection by a local public procurement unit shall be required
5 to satisfy any procurement regulation, including The Central
6 Purchasing Act, the Public Competitive Bidding Act, the Finance Act,
7 related administrative rules and federal regulations that may apply
8 due to the federal source of the funding for the anticipated
9 purchase.

10 C. For purposes of this section, the following definitions
11 apply:

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

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

19 3. "Cooperative or piggybacking purchasing agreement" shall
20 mean an agreement between a local public procurement unit and
21 another local public procurement unit or an external procurement
22 unit to authorize the use of a contract procured by one of the
23 parties to the agreement to benefit the other party to the
24 agreement. This term shall also mean an agreement that provides

1 access to a product or service that is lower in price than a
2 comparable product or service that is available through the usage of
3 a statewide, multistate or multigovernmental contract issued by the
4 state Purchasing Division.

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

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

18 SECTION 3. This act shall become effective November 1, 2018.
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