

1 **SENATE FLOOR VERSION**

2 February 27, 2020

3 SENATE BILL NO. 1544

By: Leewright

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5  
6 An Act relating to the Oklahoma Central Purchasing  
7 Act; amending 74 O.S. 2011, Section 85.7, as last  
8 amended by Section 2, Chapter 244, O.S.L. 2013 (74  
9 O.S. Supp. 2019, Section 85.7), which relates to  
10 competitive bid procedures; providing exception for  
11 contractual agreements entered into between the  
12 Oklahoma Department of Commerce and certain third-  
13 party consultants; and providing an effective date.

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

15 SECTION 1. AMENDATORY 74 O.S. 2011, Section 85.7, as  
16 last amended by Section 2, Chapter 244, O.S.L. 2013 (74 O.S. Supp.  
17 2019, Section 85.7), is amended to read as follows:

18 Section 85.7. A. 1. Except as otherwise provided by the  
19 Oklahoma Central Purchasing Act, no state agency shall make an  
20 acquisition for an amount exceeding Fifty Thousand Dollars  
21 (\$50,000.00) or the limit determined by the State Purchasing  
22 Director pursuant to rules authorized by Section 85.5 of this title,  
23 not to exceed One Hundred Thousand Dollars (\$100,000.00), without  
24 submission of a requisition to the State Purchasing Director and  
25 submission of suppliers' competitive bids or proposals to the State  
26 Purchasing Director.

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

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

6           b. The State Purchasing Director may waive or increase  
7 the limit authorized for a state agency acquisition by  
8 not more than ten percent (10%) to perfect an  
9 otherwise valid acquisition inadvertently exceeding  
10 the limit due to administrative error by the state  
11 agency or unforeseeable circumstances. The state  
12 agency shall request a waiver upon the discovery of  
13 the error or circumstance to the State Purchasing  
14 Director on a form the Director requires.

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

20           3. a. Contracts for master custodian banks or trust  
21 companies, investment managers, investment  
22 consultants, and actuaries for the state retirement  
23 systems, CompSource Oklahoma, Oklahoma Employees  
24 Insurance and Benefits Board, pension fund management

1 consultants of the Oklahoma State Pension Commission  
2 and the Commissioners of the Land Office, and other  
3 professional services as defined in Section 803 of  
4 Title 18 of the Oklahoma Statutes shall be exempt from  
5 competitive bidding procedures of this section and  
6 requisition requirements of Section 85.4 of this  
7 title.

8 b. Contracts with financial institutions to act as  
9 depositories and managers of the Oklahoma College  
10 Savings Plan accounts shall be exempt from competitive  
11 bidding procedures.

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

21 4. Requisitions pursuant to this section shall not be required  
22 prior to emergency acquisitions by a state agency not exceeding One  
23 Hundred Thousand Dollars (\$100,000.00). The state agency shall  
24 submit a requisition to the State Purchasing Director within five

1 (5) days following the acquisition together with a statement of the  
2 emergency. The State Purchasing Director shall send the requisition  
3 and a written analysis to the Governor, the President Pro Tempore of  
4 the Senate, and the Speaker of the House of Representatives  
5 specifying the facts and circumstances giving rise to the emergency  
6 requisition.

7 5. Requisitions pursuant to this section for acquisitions to  
8 alleviate a serious environmental emergency shall not be required  
9 if, upon receiving a request from the Chair of the Corporation  
10 Commission and after having examined the facts and circumstances of  
11 the case, the Governor certifies in writing the existence of a  
12 serious environmental emergency. For the purposes of this section,  
13 "serious environmental emergency" means a situation within the  
14 jurisdiction of the Commission:

- 15 a. in which serious damage to the environment will  
16 quickly occur if immediate action is not taken and the  
17 damage will be so significant that the urgent need for  
18 action outweighs the need for competitive bids, or  
19 b. a situation in which human life or safety is in  
20 imminent danger or significant property interests are  
21 threatened with imminent destruction.

22 6. Acquisitions for repairs of equipment in emergencies, of  
23 livestock through a market agency, dealer, commission house, or  
24 livestock auction market bonded or licensed under federal or state

1 law, the purchase or collection of semen or embryos, and the  
2 placement of embryos into recipient livestock shall not require  
3 requisitions pursuant to this section or any other provisions of The  
4 Oklahoma Central Purchasing Act.

5 7. The Board of Directors of the Oklahoma Historical Society  
6 shall select suppliers for the restoration of historical sites and  
7 museums and shall not be subject to the requisition requirements of  
8 this section or any other provision of The Oklahoma Central  
9 Purchasing Act. The Board may send a requisition to the State  
10 Purchasing Director and request supplier bid or proposal submission  
11 procedures, but supplier and bid selection will be the prerogative  
12 of the Board and will be based on contractors' documented  
13 qualifications and experience.

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

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

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

- 1 11. a. Any acquisition of a service which the Office of  
2 Management and Enterprise Services has approved as  
3 qualifying for a fixed and uniform rate shall be made  
4 pursuant to provisions of this paragraph.
- 5 b. The Office of Management and Enterprise Services shall  
6 establish criteria and guidelines for those services  
7 which may qualify for a fixed and uniform rate.
- 8 c. Fixed and uniform rate contracts authorized by this  
9 paragraph shall be limited to contracts for those  
10 services furnished to persons directly benefiting from  
11 such services and shall not be used by a state agency  
12 to employ consultants or to make other acquisitions.
- 13 d. Any state agency desiring to have a service qualified  
14 for a fixed and uniform rate shall make a request for  
15 service qualification to the Office of Management and  
16 Enterprise Services and submit documentation to  
17 support the request. The Office of Management and  
18 Enterprise Services shall approve or deny the request.  
19 If the Office of Management and Enterprise Services  
20 approves the request, the state agency shall establish  
21 a fixed and uniform rate for the service. No  
22 contracts shall be entered into by the state agency  
23 until the rate has been approved by the state agency  
24 in a public hearing. The proposed rate shall be

1 clearly and separately identified in the agenda of the  
2 state agency for the hearing and shall be openly and  
3 separately discussed during such hearing. The state  
4 agency shall notify the Director of the Office of  
5 Management and Enterprise Services of its pending  
6 consideration of the proposed rate at least thirty  
7 (30) days before the state agency is to meet on the  
8 proposed rate. The state agency shall deliver to the  
9 Director of the Office of Management and Enterprise  
10 Services a copy of the agenda items concerning the  
11 proposed rate with supporting documentation. The  
12 Director of the Office of Management and Enterprise  
13 Services shall communicate any observation,  
14 reservation, criticism, or recommendation to the  
15 agency, either in person at the time of the hearing or  
16 in writing delivered to the state agency before or at  
17 the time of the hearing. The Director of the Office  
18 of Management and Enterprise Services shall  
19 specifically note in the written communications  
20 whether the Director of the Office of Management and  
21 Enterprise Services has determined the rate to be  
22 excessive. Any written communication presented in the  
23 absence of the Director of the Office of Management  
24 and Enterprise Services shall be presented orally

1 during the public hearing. Whether made in person or  
2 in writing, any comment made by the Director of the  
3 Office of Management and Enterprise Services shall be  
4 made a part of the minutes of the hearing in full.

5 e. Within two (2) weeks after the convening of the  
6 Legislature, the administrative officer of the state  
7 agency shall furnish to the Speaker of the House of  
8 Representatives, the President Pro Tempore of the  
9 Senate and to any member of the House or Senate, if  
10 requested by the member, a complete list of all of the  
11 types of services paid for by uniform fixed rates, the  
12 amount of the rate last approved by the agency for the  
13 service, and the number of contracts then in existence  
14 for each type of service. Any rate which has been  
15 determined to be excessive by the Director of the  
16 Office of Management and Enterprise Services shall be  
17 specifically identified in the list by the state  
18 agency.

19 f. At any time, the Director of the Office of Management  
20 and Enterprise Services may review, suspend, or  
21 terminate a contract entered into pursuant to the  
22 provisions of this paragraph if the Director of the  
23 Office of Management and Enterprise Services  
24

1 determines the contract is not necessary, is  
2 excessive, or is not justified.

3 12. Specifically prescribed nonmedical adaptive technology-  
4 related acquisitions for individuals with disabilities who are  
5 clients of the State Department of Rehabilitation Services and which  
6 are prescribed by a physician, rehabilitation engineer, qualified  
7 rehabilitation technician, speech therapist, speech pathologist,  
8 occupational therapist, physical therapist, or qualified sensory  
9 aids specialist, and other client acquisitions, shall not be subject  
10 to the requisition requirements of this section. The Commission for  
11 Rehabilitation Services shall develop standards for the purchase of  
12 such acquisitions and may elect to utilize the Purchasing Division  
13 for an acquisition. The standards shall foster economy, provide a  
14 short response time, include appropriate safeguards, require written  
15 records, ensure appropriate competition for economical and efficient  
16 purchasing, and shall be approved by the State Purchasing Director.

17 13. The Department of Human Services shall develop procedures  
18 for acquisitions of specifically prescribed nonmedical assistive  
19 technology-related items not exceeding the acquisition purchase  
20 amount requiring a requisition pursuant to this section for  
21 individuals under sixteen (16) years of age who are recipients of  
22 Supplemental Security Income which are prescribed by a physician,  
23 qualified sensory aids specialist or qualified special education  
24 instructor. The procedures shall reflect standards for the

1 acquisition of such nonmedical assistive technology-related items,  
2 may provide for utilization of the Purchasing Division when  
3 appropriate, shall foster economy, provide a short response time,  
4 shall include appropriate safeguards and written records to ensure  
5 appropriate competition and economical and efficient purchasing, and  
6 shall be approved by the State Purchasing Director.

7 14. a. Structured settlement agreements entered into by the  
8 Attorney General's office in order to settle any  
9 lawsuit involving the state, the Legislature, any  
10 state agency or any employee or official of the state  
11 shall not be subject to the competitive bidding  
12 requirements of this section if:

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

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

23 b. A list of any such structured settlement agreements  
24 entered into by the Attorney General with summary

1           thereon for the previous calendar year shall be  
2           submitted to the Speaker of the House of  
3           Representatives and the President Pro Tempore of the  
4           Senate on January 31 of each year.

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

9           16. The Commission on Marginally Producing Oil and Gas Wells  
10 shall be exempt from the competitive bid requirements of this  
11 section for contracts with local vendors for the purpose of holding  
12 special events and exhibitions throughout the state.

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

18           18. Notwithstanding any other provision of law, the State  
19 Purchasing Director may exempt a procurement from the requirements  
20 of this section when in the State Purchasing Director's discretion  
21 unusual, time-sensitive or unique circumstances exist which make  
22 such exemption in the best and immediate interest of the state. As  
23 used in this subsection, "State Purchasing Director" means the  
24 administrative head of the Purchasing Division of the Office of

1 Management and Enterprise Services and shall not mean a designee.  
2 Any acquisitions made pursuant to this paragraph shall be described  
3 in detail and publicly posted through the transparency portal as  
4 provided in Section 34.11.2 of Title 62 of the Oklahoma Statutes.  
5 The description shall include the name of the supplier, cost of the  
6 acquisition, reason for exemption under the provisions of this  
7 subsection, the cost savings resulting from the purchase, and a  
8 description of benefits to the state. The State Purchasing Director  
9 shall take no action under the provisions of this paragraph prior to  
10 the publication of a document describing the significant savings  
11 that will be realized by the state. The document shall provide a  
12 detailed comparison of the acquisition with comparable items and  
13 clearly detail the savings.

14 19. Contractual agreements entered into by the Oklahoma  
15 Department of Commerce and third-party consultants engaged to assist  
16 the Department's economic development efforts shall not be subject  
17 to the competitive bidding requirements of this section.

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

21 C. Bids for professional service contracts for an amount  
22 requiring submission of requisitions to the State Purchasing  
23 Director shall be evaluated by the State Purchasing Director and the  
24 state agency contracting for such service. Both cost and technical

1 expertise shall be considered in determining the lowest and best, or  
2 best value, bid. Further, the state agency shall present its  
3 evaluation and recommendation to the State Purchasing Director. A  
4 documented evaluation report containing the evaluations of the State  
5 Purchasing Director and the state agency contracting for such  
6 service shall be completed prior to the awarding of a professional  
7 service contract and such report shall be a matter of public record.

8 D. When requested by CompSource Oklahoma, the Oklahoma  
9 Employees Insurance and Benefits Board, or the governing board of a  
10 state retirement system authorized to hire investment managers, the  
11 Office of Management and Enterprise Services shall assist the  
12 requesting body in the process of selecting investment managers.  
13 When requested by the Flexible Benefits Advisory Council, the Office  
14 of Management and Enterprise Services shall assist the Council in  
15 the process of selecting contracts for the design, development,  
16 communication, or implementation of the state employees flexible  
17 benefits plan.

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

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1 F. Cooperative contracts shall not be utilized unless the  
2 purchasing cooperative and its affiliated suppliers have complied  
3 with all provisions of The Oklahoma Central Purchasing Act.

4 SECTION 2. This act shall become effective November 1, 2020.

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
6 February 27, 2020 - DO PASS  
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