

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1360

By: Sharp

AS INTRODUCED

An Act relating to the Oklahoma Central Purchasing Act; amending 74 O.S. 2011, Section 85.2, as last amended by Section 27, Chapter 358, O.S.L. 2013 (74 O.S. Supp. 2019, Section 85.2), which relates to definitions; modifying definition for limited purpose; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2011, Section 85.2, as last amended by Section 27, Chapter 358, O.S.L. 2013 (74 O.S. Supp. 2019, Section 85.2), is amended to read as follows:

Section 85.2. As used in The Oklahoma Central Purchasing Act, unless the context otherwise requires:

1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease-purchase, lease with option to purchase, or rental pursuant to The Oklahoma Central Purchasing Act unless the items, products, supplies, services, or equipment are exempt pursuant to The Oklahoma Central Purchasing Act;

1 2. "Best value criteria" means evaluation criteria which may
2 include, but is not limited to, the following:

- 3 a. the acquisition's operational cost a state agency
4 would incur,
- 5 b. the quality of the acquisition, or its technical
6 competency,
- 7 c. the reliability of the bidder's delivery and
8 implementation schedules,
- 9 d. the acquisition's facilitation of data transfer and
10 systems integration,
- 11 e. the acquisition's warranties and guarantees and the
12 bidder's return policy,
- 13 f. the bidder's financial stability,
- 14 g. the acquisition's adherence to the state agency's
15 planning documents and announced strategic program
16 direction,
- 17 h. the bidder's industry and program experience and
18 record of successful past performance with
19 acquisitions of similar scope and complexity,
- 20 i. the anticipated acceptance by user groups, and
21 j. the acquisition's use of proven development
22 methodology, and innovative use of current
23 technologies that lead to quality results;

1 3. "Bid" or "proposal" means an offer a bidder submits in
2 response to an invitation to bid or request for proposal;

3 4. "Bidder" means an individual or business entity that submits
4 a bid or proposal in response to an invitation to bid or a request
5 for proposal;

6 5. "Business entity" means individuals, partnerships, business
7 trusts, cooperatives, associates, corporations or any other firm,
8 group or concern which functions as a separate entity for business
9 purposes;

10 6. "Change order" means a unilateral written order directing a
11 supplier to make a change;

12 7. "Chief administrative officer" means an individual
13 responsible for directing the administration of a state agency. The
14 term does not mean one or all of the individuals that make policy
15 for a state agency;

16 8. "Component" means any item supplied as part of an end item
17 or of another component;

18 9. "Contract" means a mutually binding legal relationship
19 obligating the seller to furnish an acquisition and the buyer to pay
20 for it. It includes all types of commitments that obligate a state
21 agency to an expenditure of funds or action that, unless otherwise
22 authorized, is in writing. In addition to bilateral instruments,
23 contracts include, but are not limited to:

24 a. awards and notices of awards,

- b. orders issued under basic ordering agreements,
- c. letter contracts,
- d. orders under which the contract becomes effective by written acceptance or performance, and
- e. bilateral contract modifications;

10. "Contract modification" means any written change in the terms of the contract;

11. "Contracting" means purchasing, renting, leasing, or otherwise obtaining acquisitions from private sources. Contracting includes description, but not determination, of acquisitions required, selection and solicitation of sources, preparation and award of contracts, and contract administration;

12. "Contractor" means an individual or business entity entering into a contract for goods and/or services with the state as a result of a solicitation;

13. "Electronic commerce" means the use of electronic methods to enable solicitation, supplier response, notice of contract award, state agency acquisition processes, or any other function to make an acquisition;

14. "Electronic payment mechanism" means a method of electronic payment for authorized acquisitions;

15. "Environmentally preferable products and services (EPPS)" means acquisitions that best meet the requirements as defined in the solicitation for human health and the environment;

1 16. "Equipment" means personal property a state agency acquires
2 for its use which is an item or product and shall include all
3 personal property used or consumed by a state agency that is not
4 included within the category of materials and supplies;

5 17. "Item" or "product" means some quantity or kind of such
6 supplies, materials or equipment;

7 18. "Local governmental entity" means any unit of local
8 government including, but not limited to, any school district,
9 county, or municipality of this state;

10 19. "Lowest and best" means an acquisition based on criteria
11 which include, but are not limited to, the following:

- 12 a. the lowest total purchase price,
- 13 b. the quality and reliability of the product, and
- 14 c. the consistency of the proposed acquisition with the
15 state agency's planning documents and announced
16 strategic program direction;

17 20. "Materials" or "supplies" includes all property except real
18 property or equipment that a state agency acquires for its use or
19 consumption;

20 21. "Multistate contract" or "multigovernmental contract" means
21 an agreement entered into between two or more entities of government
22 for acquisitions pursuant to a single contract;
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1 22. "Nonprofessional services" means services which are
2 predominantly physical or manual in character and may involve the
3 supplying of products;

4 23. "Political subdivision" means local governmental entities
5 and such other entities specified as political subdivisions pursuant
6 to The Governmental Tort Claims Act;

7 24. "Open market contract" means a contract for a one-time
8 acquisition not exceeding the acquisition amount requiring
9 competitive bid pursuant to Section 85.7 of this title;

10 25. "Professional services" means services which are
11 predominantly mental or intellectual in character rather than
12 physical or manual and which do not involve the supplying of
13 products. Professional services include services to support or
14 improve state agency policy development, decision making,
15 management, administration, or the operation of management systems;

16 26. "Purchase order" means an offer by a state agency to make
17 an acquisition utilizing simplified procedures;

18 27. "Purchasing cooperative" means an association of public
19 entities working together to provide leverage in achieving best
20 value and/or the best terms in contracts awarded through a
21 competitive bidding process;

22 28. "Requisition" means a written request by a state agency for
23 an acquisition;

1 29. "Services" or "contractual services" means direct
2 engagement of the time and effort of a contractor for the primary
3 purpose of performing an identifiable task rather than for the
4 furnishing of an end item of supply;

5 30. "Sole brand acquisition" means an acquisition that by
6 specification restricts the acquisition to one manufacturer or brand
7 name;

8 31. "Sole source acquisition" means an acquisition which, by
9 specification, restricts the acquisition to one supplier;

10 32. "Solicitation" means a request or invitation by the State
11 Purchasing Director or a state agency for a supplier to submit a
12 priced offer to sell acquisitions to the state. A solicitation may
13 be an invitation to bid, request for proposal, or a request for
14 quotation;

15 33. "Split purchase" means dividing a known quantity or failing
16 to consolidate a known quantity of an acquisition for the purpose of
17 evading a competitive bidding requirement;

18 34. "State agency" includes any office, officer, bureau, board,
19 counsel, court, commission, institution, unit, division, body or
20 house of the executive or judicial branches of the state government,
21 whether elected or appointed, excluding only political subdivisions
22 of the state. For the purposes of the Oklahoma Central Purchasing
23 Act only, a nonprofit corporation shall be considered a state agency
24 to the extent such corporation receives any funds from the state;

1 35. "State purchase card" means an electronic transaction
2 device used for making acquisitions;

3 36. "State Purchasing Director" or "Director of Central
4 Purchasing" includes any employee or agent of the State Purchasing
5 Director, acting within the scope of delegated authority;

6 37. "Statewide contract" means a contract for specific
7 acquisitions for a specified period with a provision allowing the
8 agencies and local governmental entities to place orders as the
9 acquisitions are needed for delivery during the period specified;
10 and

11 38. "Supplier" or "vendor" means an individual or business
12 entity that sells or desires to sell acquisitions to state agencies.

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

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