

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1544

By: Leewright

AS INTRODUCED

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

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

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

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

1 submission of suppliers' competitive bids or proposals to the State
2 Purchasing Director.

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

6 a. Split purchasing for the purpose of evading the
7 requirement of competitive bidding shall be a felony.

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

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

22 3. a. Contracts for master custodian banks or trust
23 companies, investment managers, investment
24 consultants, and actuaries for the state retirement
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1 systems, CompSource Oklahoma, Oklahoma Employees
2 Insurance and Benefits Board, pension fund management
3 consultants of the Oklahoma State Pension Commission
4 and the Commissioners of the Land Office, and other
5 professional services as defined in Section 803 of
6 Title 18 of the Oklahoma Statutes shall be exempt from
7 competitive bidding procedures of this section and
8 requisition requirements of Section 85.4 of this
9 title.

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

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

23 4. Requisitions pursuant to this section shall not be required
24 prior to emergency acquisitions by a state agency not exceeding One
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1 Hundred Thousand Dollars (\$100,000.00). The state agency shall
2 submit a requisition to the State Purchasing Director within five
3 (5) days following the acquisition together with a statement of the
4 emergency. The State Purchasing Director shall send the requisition
5 and a written analysis to the Governor, the President Pro Tempore of
6 the Senate, and the Speaker of the House of Representatives
7 specifying the facts and circumstances giving rise to the emergency
8 requisition.

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

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

1 6. Acquisitions for repairs of equipment in emergencies, of
2 livestock through a market agency, dealer, commission house, or
3 livestock auction market bonded or licensed under federal or state
4 law, the purchase or collection of semen or embryos, and the
5 placement of embryos into recipient livestock shall not require
6 requisitions pursuant to this section or any other provisions of The
7 Oklahoma Central Purchasing Act.

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

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

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

22 10. Acquisitions for the design, development, communication, or
23 implementation of the state employees flexible benefits plan shall
24 not be subject to the requirements of this section; provided, that

1 the Flexible Benefits Advisory Council shall use procedures
2 consistent with the competitive bid requirements of The Oklahoma
3 Central Purchasing Act.

4 11. a. Any acquisition of a service which the Office of
5 Management and Enterprise Services has approved as
6 qualifying for a fixed and uniform rate shall be made
7 pursuant to provisions of this paragraph.

8 b. The Office of Management and Enterprise Services shall
9 establish criteria and guidelines for those services
10 which may qualify for a fixed and uniform rate.

11 c. Fixed and uniform rate contracts authorized by this
12 paragraph shall be limited to contracts for those
13 services furnished to persons directly benefiting from
14 such services and shall not be used by a state agency
15 to employ consultants or to make other acquisitions.

16 d. Any state agency desiring to have a service qualified
17 for a fixed and uniform rate shall make a request for
18 service qualification to the Office of Management and
19 Enterprise Services and submit documentation to
20 support the request. The Office of Management and
21 Enterprise Services shall approve or deny the request.
22 If the Office of Management and Enterprise Services
23 approves the request, the state agency shall establish
24 a fixed and uniform rate for the service. No

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

1 excessive. Any written communication presented in the
2 absence of the Director of the Office of Management
3 and Enterprise Services shall be presented orally
4 during the public hearing. Whether made in person or
5 in writing, any comment made by the Director of the
6 Office of Management and Enterprise Services shall be
7 made a part of the minutes of the hearing in full.

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

22 f. At any time, the Director of the Office of Management
23 and Enterprise Services may review, suspend, or
24 terminate a contract entered into pursuant to the
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1 provisions of this paragraph if the Director of the
2 Office of Management and Enterprise Services
3 determines the contract is not necessary, is
4 excessive, or is not justified.

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

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

1 qualified sensory aids specialist or qualified special education
2 instructor. The procedures shall reflect standards for the
3 acquisition of such nonmedical assistive technology-related items,
4 may provide for utilization of the Purchasing Division when
5 appropriate, shall foster economy, provide a short response time,
6 shall include appropriate safeguards and written records to ensure
7 appropriate competition and economical and efficient purchasing, and
8 shall be approved by the State Purchasing Director.

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

- 15 (1) prior to entering into any contract for the
16 services of an entity to administer a structured
17 settlement agreement, the Attorney General
18 receives proposals from at least three entities
19 engaged in providing such services, and
20 (2) the selection of a particular entity is made on
21 the basis of the response to the request which is
22 the most economical and provides the most
23 competent service which furthers the best
24 interests of the state.

1 b. A list of any such structured settlement agreements
2 entered into by the Attorney General with summary
3 thereon for the previous calendar year shall be
4 submitted to the Speaker of the House of
5 Representatives and the President Pro Tempore of the
6 Senate on January 31 of each year.

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

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

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

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

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

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

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

23 C. Bids for professional service contracts for an amount
24 requiring submission of requisitions to the State Purchasing
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1 Director shall be evaluated by the State Purchasing Director and the
2 state agency contracting for such service. Both cost and technical
3 expertise shall be considered in determining the lowest and best, or
4 best value, bid. Further, the state agency shall present its
5 evaluation and recommendation to the State Purchasing Director. A
6 documented evaluation report containing the evaluations of the State
7 Purchasing Director and the state agency contracting for such
8 service shall be completed prior to the awarding of a professional
9 service contract and such report shall be a matter of public record.

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

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

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.

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