

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1567

By: Rosino of the Senate

and

6 Bush of the House

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to state use; amending 74 O.S. 2021,
11 Section 3001, which relates to the State Use
12 Committee; providing entity name; modifying member of
13 Council; requiring certain meetings; directing the
14 State Purchasing Director to administer the State Use
15 Program; providing certain authority and
16 responsibilities; amending 74 O.S. 2021, Section
17 3003, which relates to definitions; modifying certain
18 definitions; amending 74 O.S. 2021, Section 3004,
19 which relates to procurement schedules; modifying
20 entity responsible for procurement schedule;
21 directing State Purchasing Director to award and
22 manage contracts to certain organizations; directing
23 deposit of certain fee; amending 74 O.S. 2021,
24 Section 3004.1, which relates to contracts;
authorizing certain contracts or awards; modifying
allowing expenditures; amending 74 O.S. 2021, Section
3004.2, which relates to the State Use Committee
Revolving Fund; allowing certain fee or levy;
amending 74 O.S. 2021, Section 3005, which relates to
fair market pricing; modifying entity responsible for
determining fair market price of certain products and
services; modifying time period for price changes to
be effective; 74 O.S. 2021, Section 3006, which
relates to distribution agency; allowing the State
Purchasing Director to contract with a third-party
for certain operations and distribution; amending 74
O.S. 2021, Section 3007, which relates to procuring a
product or service at a certain price; modifying

1 procurement source; modifying entity responsible for
2 determining fair market price; modifying procurement
3 requirements; removing certain exemption; authorizing
4 municipalities and counties to make certain purchases
5 from qualified organizations; amending 74 O.S. 2021,
6 Section 3008, which relates to exceptions; removing
7 exemption; requiring certain pricing review; allowing
8 for temporary exception under certain circumstances;
9 allowing Central Purchasing Division to prescribe
10 rules to carry out this act; amending 74 O.S. 2021,
11 Section 3009, which relates to annual reporting;
12 requiring certain report; repealing 74 O.S. 2021,
13 Section 3010, which relates to exemptions; providing
14 for codification; and providing an effective date.

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

16 SECTION 1. AMENDATORY 74 O.S. 2021, Section 3001, is
17 amended to read as follows:

18 Section 3001. A. There is hereby created in the Office of
19 Management and Enterprise Services ~~a committee~~ an advisory council
20 to be known as the "State Use ~~Committee~~ Advisory Council". The
21 ~~Committee Council~~ shall consist of seven (7) members ~~and one~~
22 ~~nonvoting member as follows:~~

23 1. A private citizen conversant with the employment needs of
24 people with ~~severe~~ significant disabilities who shall be appointed
by and serve at the pleasure of the Governor to act as an advocate
for the employment needs of people with ~~severe~~ significant
disabilities;

2. The Director of the Office of Management and Enterprise
Services or designee;

1 3. The Director of the ~~Division of Services for the Blind and~~
2 ~~Visually Impaired of the State~~ Department of Rehabilitation
3 Services, or designee;

4 4. ~~The past president of Oklahoma Community-Based Providers or~~
5 ~~designee to serve for a one-year period, who may be reappointed by~~
6 ~~the succeeding president~~ One member who shall be a state use
7 provider who shall be appointed by the President Pro Tempore of the
8 Senate;

9 5. An individual or a parent or guardian of an individual with
10 ~~severe~~ significant disabilities who participates in vocational
11 programming through a ~~sheltered environment facility~~ qualified non-
12 profit agency for individuals with disabilities, to be ~~selected by~~
13 ~~the Committee~~ appointed by the Speaker of the House of
14 Representatives;

15 6. The Director of Human Services, or designee; and

16 7. ~~A certified procurement officer from any state agency~~
17 ~~appointed by the State Purchasing Director, selected to represent~~
18 ~~the customer agencies of the State of Oklahoma; and~~

19 8. ~~As a nonvoting member, a~~ A person employed by the Office of
20 Management and Enterprise Services Central Purchasing Division as a
21 contracting officer ~~in the purchasing division,~~ appointed by the
22 State Purchasing Director ~~with the advice of the Committee and~~
23 ~~designated specifically to solicit, develop, and negotiate contracts~~
24 ~~with agencies and individuals.~~

1 B. ~~The Committee shall elect from among its membership a Chair~~
2 ~~and a Vice Chair who shall both serve for a period of one (1) year.~~

3 C. The private ~~citizen~~ citizens on the ~~Committee~~ Council shall
4 serve for a period of two (2) years and may be reappointed by the
5 appointing authority. Any private citizen appointed pursuant to
6 this section to fill a vacancy occurring prior to the expiration of
7 the term for which the predecessor was appointed shall be appointed
8 only for the remainder of the term.

9 D. ~~Any member of the Committee shall be prohibited from voting~~
10 ~~on any issue in which the member has an interest~~ The State Use
11 Advisory Council shall meet a minimum of twice a year for the
12 purpose of exchanging ideas to market and improve the State Use
13 Program.

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3001.1 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 The State Purchasing Director, under the supervision of the
18 Director of the Office of Management and Enterprise Services, shall
19 have authority and responsibility to administer and oversee the
20 State Use Program including but not limited to:

- 21 1. Promulgating rules relating to the program;
- 22 2. Qualification of organizations participating in the program;
- 23 3. Contracting with qualified organizations for products and
24 services to be included on the procurement schedule;

1 4. Determination of fair market price of all products and
2 services to be included on the procurement schedule; and

3 5. Designation and publication of a procurement schedule.

4 SECTION 3. AMENDATORY 74 O.S. 2021, Section 3003, is
5 amended to read as follows:

6 Section 3003. As used in ~~this act~~ Section 3001 et seq. of this
7 title:

8 1. "Blind person" means a person having a visual acuity not to
9 exceed 20/200 in the better eye, with correcting lenses, or visual
10 acuity greater than 20/200 but with limitation in the field of
11 vision such that the widest diameter of visual field subtends an
12 angle no greater than twenty (20) degrees;

13 2. "~~Committee~~ Council" means the State Use ~~Committee~~ Advisory
14 Council;

15 3. "Qualified nonprofit agency for ~~the severely handicapped~~
16 employment of people with significant disabilities" means a
17 nonprofit agency÷

18 a. employing ~~severely disabled~~ persons with significant
19 disabilities who constitute at least seventy-five
20 percent (75%) of the ~~personnel~~ direct labor hours
21 engaged in direct production, manufacturing,
22 processing and/or assembling of products or services
23 offered by the agency for procurement by this state
24 ~~and or~~ and who meet the definition of "~~blind person~~" blind

1 person as provided for in paragraph 1 of this section,
2 or

3 ~~b.~~ which is certified as a sheltered workshop by the Wage
4 and Hour Division of the United States Department of
5 Labor;

6 4. ~~"Severely disabled person"~~ "Person with significant
7 disabilities" means an individual with a physical or mental
8 disability constituting a substantial handicap to employment and
9 preventing the person from engaging in normal competitive employment
10 and/or includes any blind person;

11 5. "Qualified organization" means a blind person, or qualified
12 nonprofit agency for the ~~severely handicapped, or severely disabled~~
13 ~~person~~ employment of people with significant disabilities
14 contracting to supply goods or services;

15 6. "Manufactured" means goods made by manual labor;

16 7. "Produced" means to have brought into existence or created
17 from raw materials;

18 8. "Processed" means the action of taking something through an
19 established and mostly routine set of procedures or steps to
20 substantially convert a potential product from one form to another.
21 This action involves a sequence of multiple steps each requiring a
22 distinct decision-making process to evolve a potential product to
23 the next step; and
24

1 9. "Assemble" means to put or fit together or put together the
2 parts of a potential product;

3 10. "Central nonprofit agency (CNA)" means a qualified 501(c)3
4 nonprofit entity meeting the qualifications in the Request for
5 Procurement (RFP) issued by the Office of Management and Enterprise
6 Services selected to administer and oversee the State Use Program;
7 and

8 11. "Procurement schedule" means a designated schedule of
9 products and services currently approved by the Office of Management
10 and Enterprise Services Central Purchasing Division as suitable to
11 procure from qualified organizations participating in the State Use
12 Program.

13 SECTION 4. AMENDATORY 74 O.S. 2021, Section 3004, is
14 amended to read as follows:

15 Section 3004. The ~~Committee~~ Office of Management and Enterprise
16 Services Central Purchasing Division shall designate and distribute
17 by regulation a schedule, hereinafter referred to as the procurement
18 schedule, of the products directly manufactured, produced, processed
19 or assembled or services directly performed, offered or provided by
20 any ~~severely disabled~~ person with significant disabilities or
21 qualified nonprofit agency for the ~~severely disabled~~ employment of
22 people with significant disabilities, as defined ~~by this act in~~
23 Section 3003 of this title, which the ~~Committee~~ State Purchasing
24 Director determines are suitable for procurement by the state. ~~No~~

~~state agency shall purchase, pursuant to Section 3007 of this title, products or services purporting to be made by severely disabled persons in workshops which are not certified by the Committee or by severely disabled individuals who are not certified by the Committee~~
The products and services on contract will be published on the procurement schedule and will be designated as mandatory. The Office of Management and Enterprise Services Central Purchasing Division shall have the authority to qualify organizations for inclusion in the State Use Program, monitor qualified organizations for continued compliance to remain active in the program, and remove organizations from the program. Central Purchasing shall have the authority to award and manage contracts to the qualified organizations as well as to renegotiate or cancel contracts when appropriate.

SECTION 5. AMENDATORY 74 O.S. 2021, Section 3004.1, is amended to read as follows:

Section 3004.1 ~~A one-percent fee of any contract for products or services of the severely disabled shall be assessed against the qualified organization and~~ The State Purchasing Director may enter or award contracts for products or services to a qualified organization as defined in Section 3003 of this title and assess a contract management fee or levy. The contract management fee or levy shall be deposited in the State Use Committee Advisory Council Revolving Fund, as created in Section 3004.2 of this title, for the

1 salary, administrative costs, annual trainings, professional
2 association memberships, qualified agency operational improvement
3 grants, periodic economic advantage study, Annual Report
4 development, and other expenses incurred by the Central Purchasing
5 Division of the Office of Management and Enterprise Services for
6 promoting goods and services provided by qualified organizations.

7 SECTION 6. AMENDATORY 74 O.S. 2021, Section 3004.2, is
8 amended to read as follows:

9 Section 3004.2 There is hereby created in the State Treasury a
10 revolving fund for the Office of Management and Enterprise Services
11 to be designated the "State Use ~~Committee~~ Advisory Council Revolving
12 Fund". The fund shall be a continuing fund, not subject to fiscal
13 year limitations, and shall consist of all proceeds from the ~~one-~~
14 ~~percent~~ management fee or levy on contracts for purchases of
15 products or services of ~~the severely disabled~~ people with
16 significant disabilities, as provided in Section 3004.1 of this
17 title. The fund shall be invested in any of the types of
18 instruments in which the State Treasurer is authorized by law to
19 invest. Interest earned shall be retained by the fund. All monies
20 accruing to the credit of the fund are hereby appropriated and may
21 be budgeted and expended by the Office of Management and Enterprise
22 Services for the salary and other administrative expenses of the
23 buyer and clerical and technical support in the Central Purchasing
24 Division of the Office of Management and Enterprise Services

1 responsible for contracts for the products and services of ~~the~~
2 ~~severely disabled~~ people with significant disabilities and expenses
3 the Office incurs to support ~~Committee~~ State Use operations
4 including services of the Centralized Non-Profit Agency (CNA).
5 Expenditures from the fund shall be made upon warrants issued by the
6 State Treasurer against claims filed as prescribed by law with the
7 Director of the Office of Management and Enterprise Services for
8 approval and payment.

9 SECTION 7. AMENDATORY 74 O.S. 2021, Section 3005, is
10 amended to read as follows:

11 Section 3005. The ~~Committee~~ Office of Management and Enterprise
12 Services Central Purchasing Division shall determine the fair market
13 price of all products and services included in the procurement
14 schedule and shall revise such prices in accordance with changing
15 market conditions; provided, however, a change in price shall not be
16 effective prior to the expiration of ~~fifteen (15)~~ thirty (30) days
17 from the date on which such change is ~~made by the Committee~~
18 approved. Approved fair market prices shall be reflected on State
19 Use contracts and procurement schedules within thirty (30) days of
20 approval and distribution.

21 SECTION 8. AMENDATORY 74 O.S. 2021, Section 3006, is
22 amended to read as follows:

1 Section 3006. The ~~Committee~~ State Purchasing Director may
2 ~~designate contract with~~ a central nonprofit agency to facilitate
3 the:

- 4 1. Management of the day-to-day operations of the program;
- 5 2. The facilitation, promotion, and the distribution of orders
6 of the state for products or services on the procurement schedule
7 among qualified nonprofit agencies for people with ~~severe~~
8 significant disabilities;
- 9 3. Scheduling and conducting annual training sessions;
- 10 4. Publishing the approved State Use Procurement Schedule;
- 11 5. Promotion of the State Use Program through development and
12 distribution of program marketing material, promotion of program
13 through continued contact with current and future customers; and
- 14 6. All other duties assigned by the RFP through the Office of
15 Management and Enterprise Services.

16 SECTION 9. AMENDATORY 74 O.S. 2021, Section 3007, is
17 amended to read as follows:

18 Section 3007. A. Whenever ~~the State of Oklahoma~~ this state or
19 any of its agencies intends to procure any product or service
20 included in the procurement schedule, that entity shall secure the
21 product or service from a qualified nonprofit agency providing
22 employment to people with ~~severe~~ significant disabilities at the
23 fair market price determined by the ~~Committee~~ Office of Management
24 and Enterprise Services Central Purchasing Division, if the product

1 or service is available within the period required by the entity and
2 meets the specifications of the entity.

3 B. An agency of this state shall not evade the intent and
4 meaning of this section by slight variations from standards adopted
5 by the Office of Management and Enterprise Services Central
6 Purchasing Division.

7 C. Provided, the requirements of this section shall not apply
8 to the procurement of janitorial services by the Oklahoma State
9 Bureau of Investigation. The Bureau shall conduct background
10 investigations and national criminal history record checks on
11 companies and individuals with which it contracts to provide
12 janitorial services.

13 ~~D. When the fair market price for a product or service approved~~
14 ~~by the Committee exceeds a current market price for the same product~~
15 ~~or service, and such lower market price has been verified by the~~
16 ~~agency through compliance with the fair market analysis process~~
17 ~~approved by the Office of Management and Enterprise Services, the~~
18 ~~state use contracting officer may grant a temporary exception to a~~
19 ~~requesting agency so that the agency may purchase the product or~~
20 ~~service from the vendor offering the lower market price. The~~
21 ~~temporary exception shall automatically expire when a new fair~~
22 ~~market price is established by the State Use Committee~~ Any
23 municipality or county agency of this state is authorized to
24 purchase products and services from any qualified organization as

1 defined in Section 3003 of this title. The qualified organization
2 shall be able to meet the needs and specifications for the products
3 or services required by the purchasing body at the fair market
4 price. Procurements made pursuant to the provisions of this section
5 shall not be subject to competitive bid requirements.

6 SECTION 10. AMENDATORY 74 O.S. 2021, Section 3008, is
7 amended to read as follows:

8 Section 3008. A. Nothing in ~~Sections~~ Section 3001 et seq. of
9 this title pursuant to purchases of products and services from
10 people with ~~severe~~ significant disabilities shall be construed to
11 prohibit any department or agency of the state from manufacturing or
12 supplying its own products or services for its own use.
13 Procurements made pursuant to ~~this act~~ Section 3001 et seq. of this
14 title shall not be subject to the competitive bid requirements of
15 the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this
16 title.

17 B. The Office of Management and Enterprise Services Central
18 Purchasing Division shall require an annual qualified organization
19 pricing review for all products and services approved and designated
20 on the procurement schedule. The method of the pricing review shall
21 be defined in the promulgated rules.

22 C. When the fair market price for a product or service approved
23 by the Office of Management and Enterprise Services Central
24 Purchasing Division exceeds a current market price for the same

1 product or service, and such lower market price has been verified by
2 the agency through compliance with the fair market analysis process
3 approved by the Office of Management and Enterprise Services Central
4 Purchasing Division, the State Use contracting officer may grant a
5 temporary exception to a requesting agency so that the agency may
6 purchase the product or service from the supplier offering the lower
7 market price.

8 SECTION 11. AMENDATORY 74 O.S. 2021, Section 3009, is
9 amended to read as follows:

10 Section 3009. A. ~~The State Use Committee~~ Office of Management
11 and Enterprise Services Central Purchasing Division shall prescribe
12 rules to carry out the purposes of the provisions of Sections 3001
13 through 3009 of this title.

14 B. The rules shall include requirements for:

15 1. Publishing a catalog listing goods and services and jobs
16 that ~~workshops~~ qualified agencies employing people with significant
17 disabilities can provide the state, annually; and

18 2. Conducting a minimum of ~~six~~ two meetings per year of the
19 State Use Council, in compliance with the Oklahoma Open Meeting Act,
20 Section 301 et seq. of Title 25 of the Oklahoma Statutes;

21 ~~3. Making available to contractors the minutes of all meetings;~~

22 ~~4. Notifying contractors at least ten (10) days prior to~~
23 ~~meeting dates. Meetings shall be called by the Committee Chair; and~~
24

1 ~~5. Establishing guidelines by which a vendor may file a~~
2 ~~grievance.~~

3 ~~C. The Committee shall report any violations of the intent of~~
4 ~~the laws to the Attorney General's office within thirty (30) days of~~
5 ~~their determination of such violations.~~

6 ~~D. C.~~ The Committee shall file an Annual Report On an annual
7 basis, the Office of Management and Enterprise Services shall within
8 sixty (60) days after the close of the legislative fiscal year,
9 transmit a strategic plan for the State Use Program ~~with~~ to the
10 President Pro Tempore of the Senate, the Speaker of the House of
11 Representatives and the Governor.

12 SECTION 12. REPEALER 74 O.S. 2021, Section 3010, is
13 hereby repealed.

14 SECTION 13. This act shall become effective November 1, 2022.

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