

1 ENGROSSED SENATE
2 BILL NO. 1371

By: Quinn of the Senate

3 and

4 Pfeiffer of the House

5
6 An Act relating to the Oklahoma Central Purchasing
7 Act; amending 74 O.S. 2021, Section 85.7, which
8 relates to competitive bidding procedures; modifying
9 certain exceptions; and providing an effective date.

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

11 SECTION 1. AMENDATORY 74 O.S. 2021, Section 85.7, is
12 amended to read as follows:

13 Section 85.7. A. 1. Except as otherwise provided by the
14 Oklahoma Central Purchasing Act, or associated rules:

15 a. every state agency shall initiate all acquisitions by
16 the submission of a requisition to the Purchasing
17 Division, and

18 b. no state agency shall make an acquisition for an
19 amount exceeding Fifty Thousand Dollars (\$50,000.00)
20 or the limit determined by the State Purchasing
21 Director pursuant to rules authorized by Section 85.5
22 of this title, not to exceed Two Hundred Fifty
23 Thousand Dollars (\$250,000.00), without submission of
24 a requisition to the Purchasing Division for issuance

1 of a solicitation for the acquisition on behalf of the
2 agency. Any exemption from competitive bid
3 requirements of the Oklahoma Central Purchasing Act
4 further exempts the acquisition from requisition
5 requirements of the act.

6 2. The State Purchasing Director may request additional
7 information necessary to adequately review a requisition to ensure
8 compliance with this act and associated rules. If the State
9 Purchasing Director determines that an acquisition is not necessary,
10 excessive or not justified, the State Purchasing Director shall deny
11 the requisition.

12 3. The provisions of this act shall not preclude a state agency
13 from:

- 14 a. accepting gifts or donations in any manner authorized
15 by law, or
- 16 b. making an acquisition for itself without submitting a
17 requisition under this section when authorized in
18 writing by the State Purchasing Director.

19 4. Any acquisition a state agency makes shall be made pursuant
20 to this act and associated rules. No agency shall use split
21 purchasing for the purpose of evading the requirement of competitive
22 bidding or other requirement of this act or associated rules.
23 Violation of this provision shall be cause for discipline of a state
24 employee up to and including termination.

1 5. The State Purchasing Director may waive or increase the
2 limit authorized for a state agency acquisition made pursuant to its
3 own competitive procedures. To perfect an otherwise valid
4 acquisition inadvertently exceeding the limit due to administrative
5 error by a state agency or unforeseeable circumstances, the state
6 agency shall request a limited waiver or increase upon the discovery
7 of the error or circumstance to the State Purchasing Director. The
8 State Purchasing Director shall report requests for waivers or
9 increases, stating the amount and whether the request was granted or
10 denied, upon request by the Governor, President Pro Tempore of the
11 Senate or Speaker of the House of Representatives.

12 6. Competitive bidding requirements of this section shall not
13 be required for the following:

14 a. contracts for master custodian banks or trust
15 companies, investment managers, investment
16 consultants, and actuaries for the state retirement
17 systems, and Oklahoma Employees Insurance and Benefits
18 Board, pension fund management consultants of the
19 Oklahoma State Pension Commission and the
20 Commissioners of the Land Office, examiners, experts,
21 or consultants for the Insurance Department whose job
22 duties are tied to Market Conduct Exams, Financial
23 Exams, and Insurance Business Transfers, financial
24 institutions to act as depositories and managers of

1 the Oklahoma College Savings Plan accounts and other
2 professional services as defined in Section 803 of
3 Title 18 of the Oklahoma Statutes. When requested by
4 the Oklahoma Employees Insurance and Benefits Board or
5 the governing board of a state retirement system
6 authorized to hire investment managers, the Purchasing
7 Division shall assist in the process of selecting
8 investment managers,

9 b. a state agency making such an acquisition shall notify
10 the State Purchasing Director within fifteen (15) days
11 following completion of the acquisition. A list of
12 the exempt contracts shall be provided, upon request,
13 to a member of the Appropriations and Budget Committee
14 of the House of Representatives or Appropriations
15 Committee of the Senate~~;~~,;

16 c. purchases of postage by state agencies made pursuant
17 to Sections 90.1 through 90.4 of this title,

18 d. a sole source acquisition made in compliance with
19 Section ~~85.45~~ 85.44D.1 of this title,

20 e. an acquisition for design, development, communication
21 or implementation of the state employees flexible
22 benefits plan; provided, procedures used for the
23 acquisition are consistent with competitive bid
24 requirements of this act and associated rules,

1 f. 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, subject to
4 the following:

5 (1) the Purchasing Division shall establish criteria
6 and guidelines for those services which may
7 qualify for a fixed and uniform rate,

8 (2) fixed and uniform rate contracts authorized by
9 this subsection shall be limited to contracts for
10 those services furnished to persons directly
11 benefiting from such services and shall not be
12 used by a state agency to employ consultants or
13 to make other acquisitions,

14 (3) any state agency desiring to have a service
15 qualified for a fixed and uniform rate shall make
16 a request for service qualification to the State
17 Purchasing Director and submit documentation to
18 support the request. The State Purchasing
19 Director shall approve or deny the request. If
20 approved, the state agency shall establish a
21 fixed and uniform rate for the service. No
22 contracts shall be entered into by the state
23 agency until the rate has been approved by the
24 state agency in a public hearing. The proposed

rate shall be clearly and separately identified in the agenda of the state agency for the hearing and shall be openly and separately discussed during such hearing. The state agency shall notify the State Purchasing Director of its pending consideration of the proposed rate at least thirty (30) days before the state agency is to meet on the proposed rate and deliver a copy of the agenda items concerning the proposed rate with supporting documentation. The State Purchasing Director shall communicate any observation, reservation, criticism or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the state agency before or at the time of the hearing. The State Purchasing Director shall specifically note in the written communications whether the Director has determined the rate to be excessive. Any written communication presented in the absence of the State Purchasing Director shall be presented orally during the public hearing. Whether made in person or in writing, any comment made by the State Purchasing

1 Director shall be made a part of the minutes of
2 the hearing in full,

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

17 (5) at any time, the State Purchasing Director may
18 review, suspend or terminate a contract entered
19 into pursuant to the provisions of this paragraph
20 if the Director determines the contract is not
21 necessary, is excessive or is not justified,

22 g. an acquisition for a client of the State Department of
23 Rehabilitation Services; provided, the agency develops
24 and maintains standards for such an acquisition. The

1 agency may elect to utilize the Purchasing Division
2 for an acquisition. The standards shall foster
3 economy, provide a short response time, include
4 appropriate safeguards, require written records,
5 ensure appropriate competition for economical and
6 efficient purchasing and shall be approved by the
7 State Purchasing Director,

8 h. structured settlement agreements entered into by the
9 Attorney General's office in order to settle any
10 lawsuit involving the state, the Legislature, any
11 state agency or any employee or official of the state
12 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 i. an acquisition by a state agency pursuant to a
24 contract the State Purchasing Director enters into on

1 behalf of a state agency or awards and designates for
2 use by state agencies,

3 j. an acquisition by the Committee for Sustaining
4 Oklahoma's Energy Resources pursuant to a contract
5 with a local supplier for the purpose of holding a
6 special event or an exhibition throughout the state.

7 7. Notwithstanding any other provision of law, an acquisition
8 may be exempted from requirements of this section by the State
9 Purchasing Director when in the State Purchasing Director's
10 discretion unusual, time-sensitive or unique circumstances exist
11 which make such exemption in the best and immediate interest of the
12 state. As used in this subsection, "State Purchasing Director"
13 shall not mean a designee. Any such acquisitions shall be described
14 in detail and publicly posted as a data feed. The description shall
15 include the name of the supplier, cost of the acquisition, reason
16 for exemption and, as applicable, detailed comparison of the
17 acquisition with comparable items, any identified cost savings
18 resulting from the acquisition and a description of benefits to the
19 state. The State Purchasing Director shall take no action under the
20 provisions of this subsection prior to such public posting.

21 B. Competitively bid acquisitions shall be awarded to the
22 lowest and best, or best value, bidder or bidders.

23 C. Bids for an amount requiring submission of requisitions to
24 the Purchasing Division shall be evaluated by the Purchasing

1 Division and the state agency receiving the acquisition. At a
2 minimum, cost and technical expertise shall be considered in
3 determining the lowest and best, or best value, bid. Further, the
4 state agency shall present its evaluation and recommendation to the
5 State Purchasing Director. A documented evaluation report
6 containing the evaluations of the Purchasing Division or the state
7 agency shall be completed prior to the contract award and such
8 report shall be a matter of public record.

9 D. Except as otherwise specifically provided by law, the
10 acquisition of food items or food products by a state agency from a
11 public trust created pursuant to Sections 176 through 180.56 of
12 Title 60 of the Oklahoma Statutes shall comply with competitive
13 bidding requirements of this section.

14 E. Cooperative contracts shall not be utilized unless the
15 purchasing cooperative and its affiliated suppliers have complied
16 with competitive bid requirements of this act and associated rules.

17 F. Notwithstanding any provision of this act, in all cases
18 where federal granted funds are involved, the federal laws, rules
19 and regulations thereto shall govern to the extent necessary to
20 inure to the benefit of such funds to this state.

21 G. A court order requiring an acquisition by a state agency,
22 whether or not such state agency is subject to this act, shall not
23 invalidate competitive bidding procedures required by this section
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1 if such court order does not specify a specific supplier. Any such
2 acquisition shall comply with competitive bid procedures.

3 SECTION 2. This act shall become effective November 1, 2022.

4 Passed the Senate the 9th day of March, 2022.

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Presiding Officer of the Senate

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8 Passed the House of Representatives the ____ day of _____,
9 2022.

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Presiding Officer of the House
of Representatives

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