

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 ENGROSSED SENATE
5 BILL NO. 1371

By: Quinn of the Senate

and

Pfeiffer of the House

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

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

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

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

18 a. every state agency shall initiate all acquisitions by
19 the submission of a requisition to the Purchasing
20 Division, and

21 b. no state agency shall make an acquisition for an
22 amount exceeding Fifty Thousand Dollars (\$50,000.00)
23 or the limit determined by the State Purchasing
24 Director pursuant to rules authorized by Section 85.5

1 of this title, not to exceed Two Hundred Fifty
2 Thousand Dollars (\$250,000.00), without submission of
3 a requisition to the Purchasing Division for issuance
4 of a solicitation for the acquisition on behalf of the
5 agency. Any exemption from competitive bid
6 requirements of the Oklahoma Central Purchasing Act
7 further exempts the acquisition from requisition
8 requirements of the act.

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

15 3. The provisions of this act shall not preclude a state agency
16 from:

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

22 4. Any acquisition a state agency makes shall be made pursuant
23 to this act and associated rules. No agency shall use split
24 purchasing for the purpose of evading the requirement of competitive

1 bidding or other requirement of this act or associated rules.

2 Violation of this provision shall be cause for discipline of a state
3 employee up to and including termination.

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

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

- 17 a. contracts for master custodian banks or trust
18 companies, investment managers, investment
19 consultants, and actuaries for the state retirement
20 systems, and Oklahoma Employees Insurance and Benefits
21 Board, pension fund management consultants of the
22 Oklahoma State Pension Commission and the
23 Commissioners of the Land Office, examiners, experts,
24 or consultants for the Insurance Department whose job

1 duties are tied to Market Conduct Exams, Financial
2 Exams, and Insurance Business Transfers, financial
3 institutions to act as depositories and managers of
4 the Oklahoma College Savings Plan accounts and other
5 professional services as defined in Section 803 of
6 Title 18 of the Oklahoma Statutes. When requested by
7 the Oklahoma Employees Insurance and Benefits Board or
8 the governing board of a state retirement system
9 authorized to hire investment managers, the Purchasing
10 Division shall assist in the process of selecting
11 investment managers,

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

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

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

23 e. an acquisition for design, development, communication
24 or implementation of the state employees flexible

benefits plan; provided, procedures used for the acquisition are consistent with competitive bid requirements of this act and associated rules,
f. any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate, subject to the following:

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

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

(3) any state agency desiring to have a service qualified for a fixed and uniform rate shall make a request for service qualification to the State Purchasing Director and submit documentation to support the request. The State Purchasing Director shall approve or deny the request. If approved, the state agency shall establish a fixed and uniform rate for the service. No

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

1 public hearing. Whether made in person or in
2 writing, any comment made by the State Purchasing
3 Director shall be made a part of the minutes of
4 the hearing in full,

- 5 (4) within two (2) weeks after the convening of the
6 Legislature, the administrative officer of the
7 state agency shall furnish to the Speaker of the
8 House of Representatives, the President Pro
9 Tempore of the Senate and to any member of the
10 House or Senate, if requested by the member, a
11 complete list of all of the types of services
12 paid for by uniform fixed rates, the amount of
13 the rate last approved by the agency for the
14 service and the number of contracts then in
15 existence for each type of service. Any rate
16 which has been determined to be excessive by the
17 State Purchasing Director shall be specifically
18 identified in the list by the state agency, and
19 (5) at any time, the State Purchasing Director may
20 review, suspend or terminate a contract entered
21 into pursuant to the provisions of this paragraph
22 if the Director determines the contract is not
23 necessary, is excessive or is not justified,
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1 g. an acquisition for a client of the State Department of
2 Rehabilitation Services; provided, the agency develops
3 and maintains standards for such an acquisition. The
4 agency may elect to utilize the Purchasing Division
5 for an acquisition. The standards shall foster
6 economy, provide a short response time, include
7 appropriate safeguards, require written records,
8 ensure appropriate competition for economical and
9 efficient purchasing and shall be approved by the
10 State Purchasing Director,

11 h. structured settlement agreements entered into by the
12 Attorney General's office in order to settle any
13 lawsuit involving the state, the Legislature, any
14 state agency or any employee or official of the state
15 if:

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

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

i. an acquisition by a state agency pursuant to a
contract the State Purchasing Director enters into on
behalf of a state agency or awards and designates for
use by state agencies,

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

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

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

3 C. Bids for an amount requiring submission of requisitions to
4 the Purchasing Division shall be evaluated by the Purchasing
5 Division and the state agency receiving the acquisition. At a
6 minimum, cost and technical expertise shall be considered in
7 determining the lowest and best, or best value, bid. Further, the
8 state agency shall present its evaluation and recommendation to the
9 State Purchasing Director. A documented evaluation report
10 containing the evaluations of the Purchasing Division or the state
11 agency shall be completed prior to the contract award and such
12 report shall be a matter of public record.

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

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

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

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

6 SECTION 2. This act shall become effective November 1, 2022.
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8 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION AND
9 EFFICIENCY, dated 04/12/2022 - DO PASS.
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