

**COMMITTEE AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3161 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Eric Roberts

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

PROPOSED COMMITTEE  
SUBSTITUTE  
FOR  
HOUSE BILL NO. 3161

By: Roberts

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to competitive bidding; authorizing certain entities to establish a system for prospective bidders on motor fuel contracts; amending 74 O.S. 2021, Section 85.7, as last amended by Section 1, Chapter 339, O.S.L. 2023 (74 O.S. Supp. 2023, Section 85.7), which relates to competitive bid procedures; providing for prequalification of bidders for motor fuel contracts; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4019.1 of Title 69, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Transportation Commission and the Oklahoma Transportation Authority may establish a system for prequalifying prospective bidders on motor fuel contracts to be awarded by the Commission or Authority. The Commission and the Authority shall be the sole judge of the qualifications of prospective bidders and shall ascertain, to their exclusive satisfaction, the qualifications

1 of each prequalified bidder. Any contractor or subcontractor  
2 prequalified as of the effective date of this act performing  
3 delivery of motor fuels for the Oklahoma Department of  
4 Transportation or the Oklahoma Transportation Authority shall be  
5 allowed to continue to bid and perform such work without obtaining  
6 any additional license from this state or any political subdivision  
7 of this state. However, no contractor or subcontractor may  
8 transfer, convey, or assign this exemption to any other person or  
9 entity.

10 SECTION 2. AMENDATORY 74 O.S. 2021, Section 85.7, as  
11 last amended by Section 1, Chapter 339, O.S.L. 2023 (74 O.S. Supp.  
12 2023, Section 85.7), is 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 the Oklahoma Central Purchasing Act and associated  
9 rules. If the State Purchasing Director determines that an  
10 acquisition is not necessary, excessive or not justified, the State  
11 Purchasing Director shall deny the requisition.

12 3. The provisions of the Oklahoma Central Purchasing Act shall  
13 not preclude a state agency 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 the Oklahoma Central Purchasing Act and associated rules. No  
21 agency shall use split purchasing for the purpose of evading the  
22 requirement of competitive bidding or other requirement of the  
23 Oklahoma Central Purchasing Act or associated rules. Violation of  
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1 this provision shall be cause for discipline of a state employee up  
2 to and including termination.

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

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

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

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

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

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

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

22 e. an acquisition for design, development, communication  
23 or implementation of the state employees flexible  
24 benefits plan; provided, procedures used for the

1 acquisition are consistent with competitive bid  
2 requirements of the Oklahoma Central Purchasing Act  
3 and associated rules,

4 f. 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, subject to  
7 the following:

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

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

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

contracts shall be entered into by the state agency until the rate has been approved by the 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



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,  
and

k. contracts for the study, analysis, and planning, as  
reasonably necessary, to aid in determining the  
feasibility of leasing, selling, or privately managing  
or developing the property or facilities under control  
of the Oklahoma Tourism and Recreation Commission.  
The Commission shall be exempt from the competitive  
bidding requirements of the Oklahoma Central  
Purchasing Act for the purpose of soliciting,  
negotiating, and effectuating such a contract or  
contracts; provided, that the State Purchasing  
Director shall review and audit all uses of the  
exemptions provided in this subparagraph biannually.

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

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

17        C. 1. Bids for an amount requiring submission of requisitions  
18 to the Purchasing Division shall be evaluated by the Purchasing  
19 Division and the state agency receiving the acquisition. At a  
20 minimum, cost and technical expertise shall be considered in  
21 determining the lowest and best, or best value, bid. Further, the  
22 state agency shall present its evaluation and recommendation to the  
23 State Purchasing Director. A documented evaluation report  
24 containing the evaluations of the Purchasing Division or the state

1 agency shall be completed prior to the contract award and such  
2 report shall be a matter of public record.

3 2. For motor fuel contracts, in order to determine the  
4 responsibility of bidders, the awarding public agency may require  
5 prospective bidders, general contractors, and subcontractors to  
6 prequalify as responsible bidders prior to submitting bids.  
7 Prequalification to bid or perform work pursuant to this section  
8 does not constitute a license. Prequalification shall not serve as  
9 a substitute for a license otherwise required by law. Financial  
10 information including, but not limited to, audited financial  
11 statements required by the awarding public agency as part of  
12 prequalification shall remain confidential.

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 the Oklahoma Central Purchasing  
21 Act and associated rules.

22 F. Notwithstanding any provision of the Oklahoma Central  
23 Purchasing Act, in all cases where federal granted funds are  
24 involved, the federal laws, rules and regulations thereto shall

1 govern to the extent necessary to inure to the benefit of such funds  
2 to this state.

3 G. A court order requiring an acquisition by a state agency,  
4 whether or not such state agency is subject to the Oklahoma Central  
5 Purchasing Act, shall not invalidate competitive bidding procedures  
6 required by this section if such court order does not specify a  
7 specific supplier. Any such acquisition shall comply with  
8 competitive bid procedures.

9 SECTION 3. This act shall become effective November 1, 2024.  
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11 59-2-10068 LRB 02/09/24  
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