

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 680

By: Rosino

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 2021, Section 85.7, as amended by Section 1, Chapter 188, O.S.L. 2022 (74 O.S. Supp. 2022, Section 85.7), which relates to acquisitions; modifying exception to competitive bidding requirements; updating statutory reference; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2021, Section 85.7, as amended by Section 1, Chapter 188, O.S.L. 2022 (74 O.S. Supp. 2022, Section 85.7), is amended to read as follows:

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

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

b. 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

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~~ the Oklahoma Central Purchasing Act and
12 associated rules. If the State Purchasing Director determines that
13 an acquisition is not necessary, excessive or not justified, the
14 State Purchasing Director shall deny the requisition.

15 3. The provisions of ~~this act~~ the Oklahoma Central Purchasing
16 Act shall not preclude a state agency 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~~ the Oklahoma Central Purchasing Act and associated
24 rules. No agency shall use split purchasing for the purpose of

1 evading the requirement of competitive bidding or other requirement
2 of ~~this act~~ the Oklahoma Central Purchasing Act or associated rules.
3 Violation of this provision shall be cause for discipline of a state
4 employee up to and including termination.

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

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

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

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

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

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

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

1 e. an acquisition for design, development, communication
2 or implementation of the state employees flexible
3 benefits plan; provided, procedures used for the
4 acquisition are consistent with competitive bid
5 requirements of ~~this act~~ the Oklahoma Central
6 Purchasing Act and associated rules,

7 f. any acquisition of a service which the Office of
8 Management and Enterprise Services has approved as
9 qualifying for a fixed and uniform rate, subject to
10 the following:

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

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

20 (3) any state agency desiring to have a service
21 qualified for a fixed and uniform rate shall make
22 a request for service qualification to the State
23 Purchasing Director and submit documentation to
24 support the request. The State Purchasing
25

1 Director shall approve or deny the request. If
2 approved, the state agency shall establish a
3 fixed and uniform rate for the service. No
4 contracts shall be entered into by the state
5 agency until the rate has been approved by the
6 state agency in a public hearing. The proposed
7 rate shall be clearly and separately identified
8 in the agenda of the state agency for the hearing
9 and shall be openly and separately discussed
10 during such hearing. The state agency shall
11 notify the State Purchasing Director of its
12 pending consideration of the proposed rate at
13 least thirty (30) days before the state agency is
14 to meet on the proposed rate and deliver a copy
15 of the agenda items concerning the proposed rate
16 with supporting documentation. The State
17 Purchasing Director shall communicate any
18 observation, reservation, criticism or
19 recommendation to the agency, either in person at
20 the time of the hearing or in writing delivered
21 to the state agency before or at the time of the
22 hearing. The State Purchasing Director shall
23 specifically note in the written communications
24 whether the Director has determined the rate to

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

- 8 (4) within two (2) weeks after the convening of the
9 Legislature, the administrative officer of the
10 state agency shall furnish to the Speaker of the
11 House of Representatives, the President Pro
12 Tempore of the Senate and to any member of the
13 House or Senate, if requested by the member, a
14 complete list of all of the types of services
15 paid for by uniform fixed rates, the amount of
16 the rate last approved by the agency for the
17 service and the number of contracts then in
18 existence for each type of service. Any rate
19 which has been determined to be excessive by the
20 State Purchasing Director shall be specifically
21 identified in the list by the state agency, and
22 (5) at any time, the State Purchasing Director may
23 review, suspend or terminate a contract entered
24 into pursuant to the provisions of this paragraph

- 1 if the Director determines the contract is not
2 necessary, is excessive or is not justified,
3 g. an acquisition for a client of the State Department of
4 Rehabilitation Services and acquisitions of the
5 business enterprise program; provided, the agency
6 develops and maintains standards for such an
7 acquisition. The agency may elect to utilize the
8 Purchasing Division for an acquisition. The standards
9 shall foster economy, provide a short response time,
10 include appropriate safeguards, require written
11 records, ensure appropriate competition for economical
12 and efficient purchasing and shall be approved by the
13 State Purchasing Director,
14 h. structured settlement agreements entered into by the
15 Attorney General's office in order to settle any
16 lawsuit involving the state, the Legislature, any
17 state agency or any employee or official of the state
18 if:
19 (1) prior to entering into any contract for the
20 services of an entity to administer a structured
21 settlement agreement, the Attorney General
22 receives proposals from at least three entities
23 engaged in providing such services, and
24

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

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

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

14 7. Notwithstanding any other provision of law, an acquisition
15 may be exempted from requirements of this section by the State
16 Purchasing Director when in the State Purchasing Director's
17 discretion unusual, time-sensitive or unique circumstances exist
18 which make such exemption in the best and immediate interest of the
19 state. As used in this subsection, "State Purchasing Director"
20 shall not mean a designee. Any such acquisitions shall be described
21 in detail and publicly posted as a data feed. The description shall
22 include the name of the supplier, cost of the acquisition, reason
23 for exemption and, as applicable, detailed comparison of the
24 acquisition with comparable items, any identified cost savings

1 resulting from the acquisition and a description of benefits to the
2 state. The State Purchasing Director shall take no action under the
3 provisions of this subsection prior to such public posting.

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

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

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

21 E. Cooperative contracts shall not be utilized unless the
22 purchasing cooperative and its affiliated suppliers have complied
23 with competitive bid requirements of ~~this act~~ the Oklahoma Central
24 Purchasing Act and associated rules.

1 F. Notwithstanding any provision of ~~this act~~ the Oklahoma
2 Central Purchasing Act, in all cases where federal granted funds are
3 involved, the federal laws, rules and regulations thereto shall
4 govern to the extent necessary to inure to the benefit of such funds
5 to this state.

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

12 SECTION 2. It being immediately necessary for the preservation
13 of the public peace, health or safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

17 59-1-748 KR 1/18/2023 12:23:33 PM