

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 2328

 By: Lawson of the House

5 and

6 **Rosino** of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to state government; amending 74 O.S.
11 2011, Section 85.7, as last amended by Section 10,
12 Chapter 98, O.S.L. 2020 (74 O.S. Supp. 2020, Section
13 85.7), which relates to acquisitions; modifying
14 exception to competitive bidding requirements; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 74 O.S. 2011, Section 85.7, as
18 last amended by Section 10, Chapter 98, O.S.L. 2020 (74 O.S. Supp.
19 2020, Section 85.7), is amended to read as follows:

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

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

1 b. no state agency shall make an acquisition for an
2 amount exceeding Fifty Thousand Dollars (\$50,000.00)
3 or the limit determined by the State Purchasing
4 Director pursuant to rules authorized by Section 85.5
5 of this title, not to exceed Two Hundred Fifty
6 Thousand Dollars (\$250,000.00), without submission of
7 a requisition to the Purchasing Division for issuance
8 of a solicitation for the acquisition on behalf of the
9 agency. Any exemption from competitive bid
10 requirements of the Oklahoma Central Purchasing Act
11 further exempts the acquisition from requisition
12 requirements of the act.

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

19 3. The provisions of this act shall not preclude a state agency
20 from:

21 a. accepting gifts or donations in any manner authorized
22 by law, or
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1 b. making an acquisition for itself without submitting a
2 requisition under this section when authorized in
3 writing by the State Purchasing Director.

4 4. Any acquisition a state agency makes shall be made pursuant
5 to this act and associated rules. No agency shall use split
6 purchasing for the purpose of evading the requirement of competitive
7 bidding or other requirement of this act or associated rules.
8 Violation of this provision shall be cause for discipline of a state
9 employee up to and including termination.

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

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

23 a. contracts for master custodian banks or trust
24 companies, investment managers, investment

1 consultants, and actuaries for the state retirement
2 systems, and Oklahoma Employees Insurance and Benefits
3 Board, pension fund management consultants of the
4 Oklahoma State Pension Commission and the
5 Commissioners of the Land Office, financial
6 institutions to act as depositories and managers of
7 the Oklahoma College Savings Plan accounts and other
8 professional services as defined in Section 803 of
9 Title 18 of the Oklahoma Statutes. When requested by
10 the Oklahoma Employees Insurance and Benefits Board or
11 the governing board of a state retirement system
12 authorized to hire investment managers, the Purchasing
13 Division shall assist in the process of selecting
14 investment managers,

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

22 c. purchases of postage by state agencies made pursuant
23 to Sections 90.1 through 90.4 of this title,
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1 d. a sole source acquisition made in compliance with
2 Section ~~85.45~~ 85.44D.1 of this title,

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

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

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

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

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

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

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

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

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

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,

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 and associated rules.

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

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

10 SECTION 2. This act shall become effective November 1, 2021.

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12 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/25/2021 - DO PASS,
13 As Coauthored.

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