

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2328

By: Lawson

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5
6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.
8 2011, Section 85.7, as last amended by Section 10,
9 Chapter 98, O.S.L. 2020 (74 O.S. Supp. 2020, Section
10 85.7), which relates to acquisitions; modifying
11 exception to competitive bidding requirements; and
12 providing an effective date.

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

14 SECTION 1. AMENDATORY 74 O.S. 2011, Section 85.7, as
15 last amended by Section 10, Chapter 98, O.S.L. 2020 (74 O.S. Supp.
16 2020, Section 85.7), is amended to read as follows:

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

- 19 a. every state agency shall initiate all acquisitions by
20 the submission of a requisition to the Purchasing
21 Division, and
22 b. no state agency shall make an acquisition for an
23 amount exceeding Fifty Thousand Dollars (\$50,000.00)
24 or the limit determined by the State Purchasing

1 Director pursuant to rules authorized by Section 85.5
2 of this title, not to exceed Two Hundred Fifty
3 Thousand Dollars (\$250,000.00), without submission of
4 a requisition to the Purchasing Division for issuance
5 of a solicitation for the acquisition on behalf of the
6 agency. Any exemption from competitive bid
7 requirements of the Oklahoma Central Purchasing Act
8 further exempts the acquisition from requisition
9 requirements of the act.

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

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

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

23 4. Any acquisition a state agency makes shall be made pursuant
24 to this act and associated rules. No agency shall use split

1 purchasing for the purpose of evading the requirement of competitive
2 bidding or other requirement of this 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, financial

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

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

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

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

21 e. an acquisition for design, development, communication
22 or implementation of the state employees flexible
23 benefits plan; provided, procedures used for the
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1 acquisition are consistent with competitive bid
2 requirements of this act and associated rules,
3 f. any acquisition of a service which the Office of
4 Management and Enterprise Services has approved as
5 qualifying for a fixed and uniform rate, subject to
6 the following:

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

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

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

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

1 writing, any comment made by the State Purchasing
2 Director shall be made a part of the minutes of
3 the hearing in full,

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

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

23 g. an acquisition for a client of the State Department of
24 Rehabilitation Services and acquisitions of the

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

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

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

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

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

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

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

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

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

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

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

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

23 G. A court order requiring an acquisition by a state agency,
24 whether or not such state agency is subject to this act, shall not

1 invalidate competitive bidding procedures required by this section
2 if such court order does not specify a specific supplier. Any such
3 acquisition shall comply with competitive bid procedures.

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

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6 58-1-6588 CMA 12/18/20
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