

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 1774

By: Williams and Wolfley of the
House

6 and

7 Bullard of the Senate

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to the Oklahoma Central Purchasing
11 Act; amending 74 O.S. 2021, Section 85.7, as amended
12 by Section 1, Chapter 188, O.S.L. 2022 (74 O.S. Supp.
13 2022, Section 85.7), which relates to acquisition
14 initiation; adding exemption for certain contracts
15 from competitive bidding requirements; amending 74
16 O.S. 2021, Section 85.12, which relates to excluded
17 acquisitions of the Oklahoma Central Purchasing Act;
18 authorizing the Oklahoma Tourism and Recreation
19 Department to utilize certain programs associated
20 with tourism promotions; requiring the State
21 Purchasing Director to review and audit all
22 exceptions; prohibiting certain actions; updating
23 statutory references; updating statutory language;
24 and providing an effective date.

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:

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

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

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

22 3. The provisions of ~~this act~~ the Oklahoma Central Purchasing
23 Act shall not preclude a state agency from:
24

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

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

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

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

- 3 a. contracts for master custodian banks or trust
4 companies, investment managers, investment
5 consultants, and actuaries for the state retirement
6 systems, and Oklahoma Employees Insurance and Benefits
7 Board, pension fund management consultants of the
8 Oklahoma State Pension Commission and the
9 Commissioners of the Land Office, examiners, experts,
10 or consultants for the Insurance Department whose job
11 duties are tied to Market Conduct Exams, Financial
12 Exams, and Insurance Business Transfers, financial
13 institutions to act as depositories and managers of
14 the Oklahoma College Savings Plan accounts and other
15 professional services as defined in Section 803 of
16 Title 18 of the Oklahoma Statutes. When requested by
17 the Oklahoma Employees Insurance and Benefits Board or
18 the governing board of a state retirement system
19 authorized to hire investment managers, the Purchasing
20 Division shall assist in the process of selecting
21 investment managers,
- 22 b. a state agency making such an acquisition shall notify
23 the State Purchasing Director within fifteen (15) days
24 following completion of the acquisition. A list of

1 the exempt contracts shall be provided, upon request,
2 to a member of the Appropriations and Budget Committee
3 of the House of Representatives or Appropriations
4 Committee of the Senate,

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

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

9 e. an acquisition for design, development, communication
10 or implementation of the state employees flexible
11 benefits plan; provided, procedures used for the
12 acquisition are consistent with competitive bid
13 requirements of ~~this act~~ the Oklahoma Central
14 Purchasing Act and associated rules,

15 f. any acquisition of a service which the Office of
16 Management and Enterprise Services has approved as
17 qualifying for a fixed and uniform rate, subject to
18 the following:

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

22 (2) fixed and uniform rate contracts authorized by
23 this subsection shall be limited to contracts for
24 those services furnished to persons directly

1 benefiting from such services and shall not be
2 used by a state agency to employ consultants or
3 to make other acquisitions,

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

1 Purchasing Director shall communicate any
2 observation, reservation, criticism or
3 recommendation to the agency, either in person at
4 the time of the hearing or in writing delivered
5 to the state agency before or at the time of the
6 hearing. The State Purchasing Director shall
7 specifically note in the written communications
8 whether the Director has determined the rate to
9 be excessive. Any written communication
10 presented in the absence of the State Purchasing
11 Director shall be presented orally during the
12 public hearing. Whether made in person or in
13 writing, any comment made by the State Purchasing
14 Director shall be made a part of the minutes of
15 the hearing in full,

16 (4) within two (2) weeks after the convening of the
17 Legislature, the administrative officer of the
18 state agency shall furnish to the Speaker of the
19 House of Representatives, the President Pro
20 Tempore of the Senate and to any member of the
21 House or Senate, if requested by the member, a
22 complete list of all of the types of services
23 paid for by uniform fixed rates, the amount of
24 the rate last approved by the agency for the

1 service and the number of contracts then in
2 existence for each type of service. Any rate
3 which has been determined to be excessive by the
4 State Purchasing Director shall be specifically
5 identified in the list by the state agency, and
6 (5) at any time, the State Purchasing Director may
7 review, suspend or terminate a contract entered
8 into pursuant to the provisions of this paragraph
9 if the Director determines the contract is not
10 necessary, is excessive or is not justified,

11 g. an acquisition for a client of the State Department of
12 Rehabilitation Services; provided, the agency develops
13 and maintains standards for such an acquisition. The
14 agency may elect to utilize the Purchasing Division
15 for an acquisition. The standards shall foster
16 economy, provide a short response time, include
17 appropriate safeguards, require written records,
18 ensure appropriate competition for economical and
19 efficient purchasing and shall be approved by the
20 State Purchasing Director,

21 h. structured settlement agreements entered into by the
22 Attorney General's office in order to settle any
23 lawsuit involving the state, the Legislature, any
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1 state agency or any employee or official of the state
2 if:

3 (1) prior to entering into any contract for the
4 services of an entity to administer a structured
5 settlement agreement, the Attorney General
6 receives proposals from at least three entities
7 engaged in providing such services, and

8 (2) the selection of a particular entity is made on
9 the basis of the response to the request which is
10 the most economical and provides the most
11 competent service which furthers the best
12 interests of the state,

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

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

22 k. contracts for the study, analysis, and planning, as
23 reasonably necessary, to aid in determining the
24 feasibility of leasing, selling, or privately managing

1 or developing the property or facilities under control
2 of the Oklahoma Tourism and Recreation Commission.
3 The Commission shall be exempt from the competitive
4 bidding requirements of the Oklahoma Central
5 Purchasing Act for the purpose of soliciting,
6 negotiating, and effectuating such a contract or
7 contracts; provided, that the State Purchasing
8 Director shall review and audit all uses of the
9 exemptions provided in this subparagraph.

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

22 F. Notwithstanding any provision of ~~this act~~ the Oklahoma
23 Central 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 ~~this act~~ the Oklahoma
5 Central Purchasing Act, shall not invalidate competitive bidding
6 procedures required by this section if such court order does not
7 specify a specific supplier. Any such acquisition shall comply with
8 competitive bid procedures.

9 SECTION 2. AMENDATORY 74 O.S. 2021, Section 85.12, is
10 amended to read as follows:

11 Section 85.12. A. The provisions of this section shall not be
12 construed to affect any law relating to fiscal or accounting
13 procedure except as they may be directly in conflict herewith; and
14 all claims, warrants, and bonds shall be examined, inspected, and
15 approved as now provided by law.

16 B. Except as otherwise provided by this section, the
17 acquisitions specified in this subsection shall be made in
18 compliance with Section 85.39 of this title and purchasing card
19 program requirements but are not subject to other provisions of the
20 Oklahoma Central Purchasing Act:

21 1. Food and other products produced by state institutions and
22 agencies;

23 2. The printing or duplication of publications or forms of
24 whatsoever kind or character by state agencies if the work is

1 performed upon their own equipment by their own employees. Pursuant
2 to this paragraph, the state agency may only use equipment owned or
3 leased by the agency and may only utilize that equipment for
4 printing services required by the agency in performing duties
5 imposed upon the agency or functions authorized to be performed by
6 the agency. Any use of the equipment by the agency pursuant to an
7 agreement or contract with any other entity resulting in delivery of
8 intermediate or finished products to the entity purchasing or using
9 the products shall be subject to the provisions of ~~this act~~ the
10 Oklahoma Central Purchasing Act and associated rules;

11 3. Department of Transportation and Transportation Commission
12 contractual services or right-of-way acquisitions, contracts awarded
13 pursuant to bids let by the Transportation Commission for the
14 maintenance or construction of streets, roads, highways, bridges,
15 underpasses or any other transportation facilities under the control
16 of the Department of Transportation, equipment or material
17 acquisitions accruing to the Department of Transportation required
18 in Federal-Aid contracts and acquisitions for public-service-type
19 announcements initiated by the Department of Transportation, but not
20 acquisitions for advertising, public relations or employment
21 services;

22 4. Utility services regulated by a state or federal regulatory
23 commission, municipal ordinance or an Indian Tribal Council;

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1 5. Acquisitions by the University Hospitals Authority. The
2 Authority shall develop standards for the acquisition of products
3 and services and may elect to utilize the Purchasing Division. The
4 standards shall foster economy and short response time and shall
5 include appropriate safeguards and record-keeping requirements to
6 ensure appropriate competition and economical and efficient
7 purchasing;

8 6. Custom harvesting by the Department of Corrections for the
9 Department or its institutions;

10 7. Subject to prior approval of the State Purchasing Director,
11 acquisitions from private prison suppliers which are subject to the
12 contracting procedures of Section 561 of Title 57 of the Oklahoma
13 Statutes;

14 8. Acquisitions by the Oklahoma Municipal Power Authority;

15 9. Acquisitions by the Grand River Dam Authority;

16 10. Acquisitions by rural water, sewer, gas or solid waste
17 management districts created pursuant to the Rural Water, Sewer, Gas
18 and Solid Waste Management Districts Act;

19 11. Acquisitions by the Oklahoma Ordnance Works Authority, the
20 Northeast Oklahoma Public Facilities Authority or the Midwestern
21 Oklahoma Development Authority;

22 12. Expenditure of monies appropriated to the State Board of
23 Education for ~~Local and State Supported Financial Support~~ local and
24 state-supported financial support of ~~Public Schools~~ public schools,

1 except monies allocated therefrom for the Administrative and Support
2 Functions of the State Department of Education;

3 13. Expenditure of monies appropriated to the State Department
4 of Rehabilitation Services for educational programs or educational
5 materials for the Oklahoma School for the Blind and the Oklahoma
6 School for the Deaf;

7 14. Contracts entered into by the Oklahoma Department of Career
8 and Technology Education for the development, revision or updating
9 of vocational curriculum materials, and contracts entered into by
10 the Oklahoma Department of Career and Technology Education for
11 training and supportive services that address the needs of new or
12 expanding industries;

13 15. Contracts entered into by the Oklahoma Center for the
14 Advancement of Science and Technology for professional services;

15 16. Contracts entered into by the Oklahoma Department of
16 Commerce pursuant to the provisions of Section 5066.4 of this title;

17 17. Acquisitions made by the Oklahoma Historical Society from
18 monies used to administer the White Hair Memorial;

19 18. Purchases of pharmaceuticals available through a multistate
20 or multigovernmental contract if such pharmaceuticals are or have
21 been on state contract within the last fiscal year, and the terms of
22 such contract are more favorable to the state or agency than the
23 terms of a state contract for the same products, as determined by
24 the State Purchasing Director. The state entity designated by law,

1 as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes,
2 shall participate in the purchase of pharmaceuticals available
3 through such contracts;

4 19. Contracts for managed health care services entered into by
5 the state entity designated by law or the Department of Human
6 Services, as specified in paragraph 1 of subsection A of Section
7 1010.3 of Title 56 of the Oklahoma Statutes;

8 20. Acquisitions by a state agency through a General Services
9 Administration contract or other federal contract if the
10 acquisitions are not on current statewide contract or the terms of
11 the federal contract are more favorable to the agency than the terms
12 of a statewide contract for the same products;

13 21. Acquisitions of clothing for clients of the Department of
14 Human Services and acquisitions of food for group homes operated by
15 the Department of Human Services;

16 22. Acquisitions by the Oklahoma Energy Resources Board;

17 23. Acquisitions of clothing for juveniles in the custody of
18 the Office of Juvenile Affairs and acquisitions of food for group
19 homes operated by the Office of Juvenile Affairs;

20 24. State contracts for flexible benefits plans pursuant to the
21 Oklahoma State Employees Benefits Act, Section 1361 et seq. of this
22 title;

23 25. Acquisitions by the Oklahoma Department of Securities to
24 investigate, initiate, or pursue administrative, civil or criminal

1 proceedings involving potential violations of the acts under the
2 Department's jurisdiction and acquisitions by the Oklahoma
3 Department of Securities for its investor education program;

4 26. Acquisitions for resale in and through canteens operated
5 pursuant to Section 537 of Title 57 of the Oklahoma Statutes and
6 canteens established at an institution or facility operated by the
7 Office of Juvenile Affairs;

8 27. Acquisitions by the Oklahoma Boll Weevil Eradication
9 Organization for employment and personnel services, and for
10 acquiring sprayers, blowers, traps and attractants related to the
11 eradication of boll weevils in this state or as part of a national
12 or regional boll weevil eradication program;

13 28. Contracts entered into by the Oklahoma Indigent Defense
14 System for expert services pursuant to the provisions of subsection
15 D of Section 1355.4 of Title 22 of the Oklahoma Statutes;

16 29. Acquisitions by the Oklahoma Correctional Industries and
17 the Agri-Services programs of the Department of Corrections of raw
18 materials, component parts and other products, any equipment
19 excluding vehicles, and any services excluding computer consultant
20 services used to produce goods or services for resale and for the
21 production of agricultural products;

22 30. Contracts entered into by the Department of Human Services
23 for provision of supported living services to members of the
24 plaintiff class in *Homeward Bound, Inc., et al. v. The Hisson*

1 Memorial Center, et al., Case Number 85-C-437-E, United States
2 District Court for the Northern District of Oklahoma;

3 31. Contracts negotiated by the Office of Juvenile Affairs with
4 designated Youth Services Agencies and the Oklahoma Association of
5 Youth Services, or another Oklahoma nonprofit corporation whose
6 membership consists solely of Youth Services Agencies and of whom at
7 least a majority of Youth Services Agencies are members, pursuant to
8 the provisions of Section 2-7-306 of Title 10A of the Oklahoma
9 Statutes and contracts entered into by the Department of Human
10 Services pursuant to Section 1-9-110 of Title 10A of the Oklahoma
11 Statutes with designated Youth Services Agencies;

12 32. Contracts for annuities for structured settlements provided
13 for in Section 158 of Title 51 of the Oklahoma Statutes;

14 33. Subject to subsection E of this section, purchases made
15 from funds received by local offices administered by the Department
16 of Human Services or administered by the Office of Juvenile Affairs
17 for fund-raising activities and donations for the benefit of clients
18 and potential clients at the local offices where such purchases may
19 not otherwise be paid for from appropriated funds;

20 34. Acquisitions by the Oklahoma Historical Society for
21 restoration of historical sites and museums although the agency may
22 elect to utilize the Purchasing Division for an acquisition with
23 supplier and bid selection being the prerogative of the agency,

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1 based on the supplier's documented qualifications and experience;
2 and

3 35. Acquisitions of clothing and food for patients in the care
4 of the J.D. McCarty Center for Children with Developmental
5 Disabilities; and

6 36. Promotions of state-owned, -leased, or -operated facilities
7 by the Oklahoma Tourism and Recreation Commission, through the
8 Oklahoma Tourism and Recreation Department. The Department may
9 utilize the provision of complimentary rooms, package-rate plans,
10 group rates, guest incentive sales programs, entertainment of
11 prospective guests, employee information programs, or golf
12 promotional programs. Any other sales and promotion programs
13 considered acceptable in the hospitality industry, travel industry,
14 or regional magazine industry shall be approved as necessary
15 advertising and promotion expenses. The Department may enter into
16 partnerships for promotional programs and projects with a private
17 person, firm, corporation, organization, or association. The
18 Department may enter into contracts or agreements under terms to be
19 mutually agreed upon to carry out the promotional programs and
20 projects, excluding the provisions of Section 2221 of Title 74 of
21 the Oklahoma Statutes. The contracts or agreements may be
22 negotiated and shall be exempt from the Public Competitive Bidding
23 Act of 1974. All contracts or agreements entered into as

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1 partnerships for promotional projects or programs by the Department
2 shall be approved by the Commission.

3 C. Pursuant to the terms of a contract the State Purchasing
4 Director enters into or awards, a state agency, common school,
5 municipality, rural fire protection district, county officer or any
6 program contract, purchase, acquisition or expenditure that is not
7 subject to the provisions of the Oklahoma Central Purchasing Act,
8 may, unless acting pursuant to a contract with the state that
9 specifies otherwise, make use of statewide contracts and the
10 services of the Purchasing Division and the State Purchasing
11 Director. Any political subdivision or rural fire protection
12 district may designate the State Purchasing Director as its agent
13 for any acquisition from a statewide contract or otherwise available
14 to the state.

15 D. The State Purchasing Director ~~may make periodic audits of~~
16 shall review and audit all the purchasing procedures of acquisitions
17 listed in subsection B of this section to ensure that the procedures
18 are being followed. Nothing in this section shall be construed to
19 authorize bid splitting as prohibited by the Oklahoma Central
20 Purchasing Act.

21 E. With respect to the Department of Human Services or the
22 Office of Juvenile Affairs, as applicable, monies received by
23 fundraising activities or donations from the local office, vending
24 operations administered by employees of the agency and all other

1 nonrestricted cash and cash-equivalent items received by employees
2 of the agency shall be deposited in the agency special account
3 established for this purpose. The deposits shall be made at local
4 banking institutions approved by the State Treasurer.

5 F. With respect to the Oklahoma Tourism and Recreation
6 Department, no exemption provided in this section shall be construed
7 for the use of leasing or contracting for state-owned restaurants in
8 Oklahoma state parks, and the Department shall not be required to
9 purchase furniture, fixtures, and equipment, and soft goods
10 associated with decor of the state parks, lodges, golf courses, and
11 tourism information centers from Oklahoma prisons or reformatories.

12 SECTION 3. This act shall become effective November 1, 2023.

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