An Act

ENROLLED HOUSE
BILL NO. 1774

By: Williams and Wolfley of the House

and

Bullard of the Senate

An Act relating to the Oklahoma Central Purchasing Act; 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 acquisition initiation; adding exemption for certain contracts from competitive bidding requirements; amending 74 O.S. 2021, Section 85.12, which relates to excluded acquisitions of the Oklahoma Central Purchasing Act; prohibiting certain actions; allowing for certain purchases to be exempted; authorizing audit by the State Purchasing Director for certain purchases; updating statutory references; updating statutory language; repealing 74 O.S. 2021, Sections 2213, 2221, 2239, and 2244, which relate to the Oklahoma Tourism, Parks and Recreation Enhancement Act; and providing an effective date.

SUBJECT: Oklahoma Central Purchasing Act

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 of this title, not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), without submission of a requisition to the Purchasing Division for issuance of a solicitation for the acquisition on behalf of the agency. Any exemption from competitive bid requirements of the Oklahoma Central Purchasing Act further exempts the acquisition from requisition requirements of the act.

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

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

a. accepting gifts or donations in any manner authorized by law, or

b. making an acquisition for itself without submitting a requisition under this section when authorized in writing by the State Purchasing Director.

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

5. The State Purchasing Director may waive or increase the limit authorized for a state agency acquisition made pursuant to its own competitive procedures. To perfect an otherwise valid acquisition inadvertently exceeding the limit due to administrative error by a state agency or unforeseeable circumstances, the state agency shall request a limited waiver or increase upon the discovery

of the error or circumstance to the State Purchasing Director. The State Purchasing Director shall report requests for waivers or increases, stating the amount and whether the request was granted or denied, upon request by the Governor, President Pro Tempore of the Senate or Speaker of the House of Representatives.

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

a. contracts for master custodian banks or trust companies, investment managers, investment consultants, and actuaries for the state retirement systems, and Oklahoma Employees Insurance and Benefits Board, pension fund management consultants of the Oklahoma State Pension Commission and the Commissioners of the Land Office, examiners, experts, or consultants for the Insurance Department whose job duties are tied to Market Conduct Exams, Financial Exams, and Insurance Business Transfers, financial institutions to act as depositories and managers of the Oklahoma College Savings Plan accounts and other professional services as defined in Section 803 of Title 18 of the Oklahoma Statutes. When requested by the Oklahoma Employees Insurance and Benefits Board or the governing board of a state retirement system authorized to hire investment managers, the Purchasing Division shall assist in the process of selecting investment managers,

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

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

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

e. an acquisition for design, development, communication or implementation of the state employees flexible

benefits plan; provided, procedures used for the acquisition are consistent with competitive bid requirements of ~~this act~~ the Oklahoma Central Purchasing Act and associated rules,

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

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

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

(3) any state agency desiring to have a service qualified for a fixed and uniform rate shall make a request for service qualification to the State Purchasing Director and submit documentation to support the request. The State Purchasing Director shall approve or deny the request. If approved, the state agency shall establish a 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 public hearing. Whether made in person or in writing, any comment made by the State Purchasing Director shall be made a part of the minutes of the hearing in full,

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

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

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

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

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

(2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most 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.

7. Notwithstanding any other provision of law, an acquisition may be exempted from requirements of this section by the State Purchasing Director when in the State Purchasing Director's

discretion unusual, time-sensitive or unique circumstances exist which make such exemption in the best and immediate interest of the state. As used in this subsection, "State Purchasing Director" shall not mean a designee. Any such acquisitions shall be described in detail and publicly posted as a data feed. The description shall include the name of the supplier, cost of the acquisition, reason for exemption and, as applicable, detailed comparison of the acquisition with comparable items, any identified cost savings resulting from the acquisition and a description of benefits to the state. The State Purchasing Director shall take no action under the provisions of this subsection prior to such public posting.

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

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

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

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

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

G. A court order requiring an acquisition by a state agency, whether or not such state agency is subject to ~~this act~~ the Oklahoma

Central Purchasing Act, shall not invalidate competitive bidding procedures required by this section if such court order does not specify a specific supplier. Any such acquisition shall comply with competitive bid procedures.

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

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

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

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

2. The printing or duplication of publications or forms of whatsoever kind or character by state agencies if the work is performed upon their own equipment by their own employees. Pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of ~~this act~~ the Oklahoma Central Purchasing Act and associated rules;

3. Department of Transportation and Transportation Commission contractual services or right-of-way acquisitions, contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, underpasses or any other transportation facilities under the control of the Department of Transportation, equipment or material acquisitions accruing to the Department of Transportation required in ~~Federal-Aid~~ federal aid contracts and acquisitions for public-service-type announcements initiated by the Department of

Transportation, but not acquisitions for advertising, public relations or employment services;

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

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

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

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

8. Acquisitions by the Oklahoma Municipal Power Authority;

9. Acquisitions by the Grand River Dam Authority;

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

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

12. Expenditure of monies appropriated to the State Board of Education for ~~Local and State Supported Financial Support~~ local and state-supported financial support of ~~Public Schools~~ public schools, except monies allocated therefrom for the Administrative and Support Functions of the State Department of Education;

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

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

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

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

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

18. Purchases of pharmaceuticals available through a multistate or multigovernmental contract if such pharmaceuticals are or have been on state contract within the last fiscal year, and the terms of such contract are more favorable to the state or agency than the terms of a state contract for the same products, as determined by the State Purchasing Director. The state entity designated by law, as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes, shall participate in the purchase of pharmaceuticals available through such contracts;

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

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

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

22. Acquisitions by the Oklahoma Energy Resources Board;

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

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

25. Acquisitions by the Oklahoma Department of Securities to investigate, initiate, or pursue administrative, civil or criminal proceedings involving potential violations of the acts under the Department's jurisdiction and acquisitions by the Oklahoma Department of Securities for its investor education program;

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

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

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

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

30. Contracts entered into by the Department of Human Services for provision of supported living services to members of the plaintiff class in Homeward Bound, Inc., et al. v. The Hissom Memorial Center, et al., Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma;

31. Contracts negotiated by the Office of Juvenile Affairs with designated Youth Services Agencies and the Oklahoma Association of Youth Services, or another Oklahoma nonprofit corporation whose

membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members, pursuant to the provisions of Section 2-7-306 of Title 10A of the Oklahoma Statutes and contracts entered into by the Department of Human Services pursuant to Section 1-9-110 of Title 10A of the Oklahoma Statutes with designated Youth Services Agencies;

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

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

34. Acquisitions by the Oklahoma Historical Society for restoration of historical sites and museums although the agency may elect to utilize the Purchasing Division for an acquisition with supplier and bid selection being the prerogative of the agency, based on the supplier's documented qualifications and experience; and

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

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

D. The State Purchasing Director ~~may make periodic audits of~~ shall review and audit all the purchasing procedures of acquisitions listed in subsection B of this section to ensure that the procedures are being followed. Nothing in this section shall be construed to

authorize bid splitting as prohibited by the Oklahoma Central Purchasing Act.

E. With respect to the Department of Human Services or the Office of Juvenile Affairs, as applicable, monies received by fundraising activities or donations from the local office, vending operations administered by employees of the agency and all other nonrestricted cash and cash-equivalent items received by employees of the agency shall be deposited in the agency special account established for this purpose. The deposits shall be made at local banking institutions approved by the State Treasurer.

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

Additionally, the Department shall not be required to make purchases pursuant to a statewide contract for materials, supplies, and services necessary for the efficient and economical operation of revenue-generating, Department-operated facilities, including those made to maintain or improve guest perception of quality and service; provided, that the State Purchasing Director shall review and audit all uses of the exemptions provided in this subsection biannually.

SECTION 3. REPEALER 74 O.S. 2021, Sections 2213, 2221, 2239, and 2244, are hereby repealed.

SECTION 4. This act shall become effective January 1, 2024.

Passed the House of Representatives the 23rd day of May, 2023.

Presiding Officer of the House
of Representatives

Passed the Senate the 27th day of April, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th

day of May, 20 23, at 3:03 o'clock p. M.

By: Summer Curry

Approved by the Governor of the State of Oklahoma this 7th

day of June, 20 23, at 3:51 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 7th

day of June, 20 23, at 5:15 o'clock P. M.

By: Brian Bingman