

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 267

By: Holt and Mazzei of the
Senate

and

Peterson of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to The Oklahoma Central Purchasing
12 Act; amending 74 O.S. 2001, Section 85.2, as amended
13 by Section 1, Chapter 96, O.S.L. 2008 (74 O.S. Supp.
14 2010, Section 85.2), which relates to definitions;
15 modifying definition; and providing an effective
16 date.

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

18 SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.2, as
19 amended by Section 1, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2010,
20 Section 85.2), is amended to read as follows:

21 Section 85.2 As used in The Oklahoma Central Purchasing Act,
22 unless the context otherwise requires:

1 1. "Acquisition" means items, products, materials, supplies,
2 services, and equipment a state agency acquires by purchase, lease-
3 purchase, lease with option to purchase, or rental pursuant to The
4 Oklahoma Central Purchasing Act unless the items, products,
5 supplies, services, or equipment are exempt pursuant to The Oklahoma
6 Central Purchasing Act;

7 2. "Best value criteria" means evaluation criteria which may
8 include, but is not limited to, the following:

- 9 a. the acquisition's operational cost a state agency
10 would incur,
- 11 b. the quality of the acquisition, or its technical
12 competency,
- 13 c. the reliability of the bidder's delivery and
14 implementation schedules,
- 15 d. the acquisition's facilitation of data transfer and
16 systems integration,
- 17 e. the acquisition's warranties and guarantees and the
18 bidder's return policy,
- 19 f. the economic impact of the acquisition on the Oklahoma
20 and any local community economy,
- 21 g. the bidder's financial stability,

1 ~~g.~~ h. the acquisition's adherence to the state agency's
2 planning documents and announced strategic program
3 direction,

4 ~~h.~~ i. the bidder's industry and program experience and
5 record of successful past performance with
6 acquisitions of similar scope and complexity,

7 ~~i.~~ j. the anticipated acceptance by user groups, and

8 ~~j.~~ k. the acquisition's use of proven development
9 methodology, and innovative use of current
10 technologies that lead to quality results;

11 3. "Bid" or "proposal" means an offer a bidder submits in
12 response to an invitation to bid or request for proposal;

13 4. "Bidder" means an individual or business entity that submits
14 a bid or proposal in response to an invitation to bid or a request
15 for proposal;

16 5. "Business entity" means individuals, partnerships, business
17 trusts, cooperatives, associates, corporations or any other firm,
18 group or concern which functions as a separate entity for business
19 purposes;

20 6. "Change order" means a unilateral written order directing a
21 supplier to make a change;

22 7. "Chief administrative officer" means an individual
23 responsible for directing the administration of a state agency. The
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1 term does not mean one or all of the individuals that make policy
2 for a state agency;

3 8. "Component" means any item supplied as part of an end item
4 or of another component;

5 9. "Consolidation contract" means a contract for several state
6 agencies for the purpose of purchasing computer software maintenance
7 or hardware maintenance;

8 10. "Contract" means a mutually binding legal relationship
9 obligating the seller to furnish an acquisition and the buyer to pay
10 for it. It includes all types of commitments that obligate a state
11 agency to an expenditure of funds or action that, unless otherwise
12 authorized, is in writing. In addition to bilateral instruments,
13 contracts include, but are not limited to:

- 14 a. awards and notices of awards,
- 15 b. orders issued under basic ordering agreements,
- 16 c. letter contracts,
- 17 d. orders under which the contract becomes effective by
18 written acceptance or performance, and
- 19 e. bilateral contract modifications;

20 11. "Contract modification" means any written change in the
21 terms of the contract;

22 12. "Contracting" means purchasing, renting, leasing, or
23 otherwise obtaining acquisitions from private sources. Contracting

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1 includes description, but not determination, of acquisitions
2 required, selection and solicitation of sources, preparation and
3 award of contracts, and contract administration;

4 13. "Contractor" means an individual or business entity
5 entering into a contract for goods and/or services with the state as
6 a result of a solicitation;

7 14. "Electronic commerce" means the use of electronic methods
8 to enable solicitation, supplier response, notice of contract award,
9 state agency acquisition processes, or any other function to make an
10 acquisition;

11 15. "Electronic payment mechanism" means a method of electronic
12 payment for authorized acquisitions;

13 16. "Enterprise agreement" means an agreement for computer
14 hardware, software, and service that a supplier manufactures,
15 develops, and designs, and that one or more state agencies use;

16 17. "Environmentally preferable products and services (EPPS)"
17 means acquisitions that best meet the requirements as defined in the
18 solicitation for human health and the environment;

19 18. "Equipment" means personal property a state agency acquires
20 for its use which is an item or product and shall include all
21 personal property used or consumed by a state agency that is not
22 included within the category of materials and supplies;

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1 19. "High technology system" means advanced technological
2 equipment, software, communication lines, and services for the
3 processing, storing, and retrieval of information by a state agency;

4 20. "Item" or "product" means some quantity or kind of such
5 supplies, materials or equipment;

6 21. "Local governmental entity" means any unit of local
7 government including, but not limited to, any school district,
8 county, or municipality of this state;

9 22. "Lowest and best" means an acquisition based on criteria
10 which include, but are not limited to, the following:

- 11 a. the lowest total purchase price,
- 12 b. the quality and reliability of the product, and
- 13 c. the consistency of the proposed acquisition with the
14 state agency's planning documents and announced
15 strategic program direction;

16 23. "Materials" or "supplies" includes all property except real
17 property or equipment that a state agency acquires for its use or
18 consumption;

19 24. "Multistate contract" or "multigovernmental contract" means
20 an agreement entered into between two or more entities of government
21 for acquisitions pursuant to a single contract;

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1 25. "Nonprofessional services" means services which are
2 predominantly physical or manual in character and may involve the
3 supplying of products;

4 26. "Political subdivision" means local governmental entities
5 and such other entities specified as political subdivisions pursuant
6 to The Governmental Tort Claims Act;

7 27. "Open market contract" means a contract for a one-time
8 acquisition not exceeding the acquisition amount requiring
9 competitive bid pursuant to Section 85.7 of this title;

10 28. "Professional services" means services which are
11 predominantly mental or intellectual in character rather than
12 physical or manual and which do not involve the supplying of
13 products. Professional services include services to support or
14 improve state agency policy development, decision making,
15 management, administration, or the operation of management systems;

16 29. "Purchase order" means an offer by a state agency to make
17 an acquisition utilizing simplified procedures;

18 30. "Requisition" means a written request by a state agency for
19 an acquisition;

20 31. "Services" or "contractual services" means direct
21 engagement of the time and effort of a contractor for the primary
22 purpose of performing an identifiable task rather than for the
23 furnishing of an end item of supply;

1 32. "Sole brand acquisition" means an acquisition that by
2 specification restricts the acquisition to one manufacturer or brand
3 name;

4 33. "Sole source acquisition" means an acquisition which, by
5 specification, restricts the acquisition to one supplier;

6 34. "Solicitation" means a request or invitation by the State
7 Purchasing Director or a state agency for a supplier to submit a
8 priced offer to sell acquisitions to the state. A solicitation may
9 be an invitation to bid, request for proposal, or a request for
10 quotation;

11 35. "Split purchase" means dividing a known quantity or failing
12 to consolidate a known quantity of an acquisition for the purpose of
13 evading a competitive bidding requirement;

14 36. "State agency" includes any office, officer, bureau, board,
15 counsel, court, commission, institution, unit, division, body or
16 house of the executive or judicial branches of the state government,
17 whether elected or appointed, excluding only political subdivisions
18 of the state;

19 37. "State purchase card" means an electronic transaction
20 device used for making acquisitions;

21 38. "State Purchasing Director" or "Director of Central
22 Purchasing" includes any employee or agent of the State Purchasing
23 Director, acting within the scope of delegated authority;

1 39. "Statewide contract" means a contract for specific
2 acquisitions for a specified period with a provision allowing the
3 agencies and local governmental entities to place orders as the
4 acquisitions are needed for delivery during the period specified;
5 and

6 40. "Supplier" or "vendor" means an individual or business
7 entity that sells or desires to sell acquisitions to state agencies.

8 SECTION 2. This act shall become effective November 1, 2011.

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10 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 03-31-
11 2011 - DO PASS, As Amended.

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.