

**SENATE FLOOR VERSION**

March 3, 2022

**AS AMENDED**

SENATE BILL NO. 1371

By: Quinn of the Senate

and

Pfeiffer of the House

An Act relating to the Oklahoma Central Purchasing Act; amending 74 O.S. 2021, Section 85.7, which relates to competitive bidding procedures; modifying certain exceptions; 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, 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

1           Thousand Dollars (\$250,000.00), without submission of  
2           a requisition to the Purchasing Division for issuance  
3           of a solicitation for the acquisition on behalf of the  
4           agency. Any exemption from competitive bid  
5           requirements of the Oklahoma Central Purchasing Act  
6           further exempts the acquisition from requisition  
7           requirements of the act.

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

14          3. The provisions of this act shall not preclude a state agency  
15          from:

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

21          4. Any acquisition a state agency makes shall be made pursuant  
22          to this act and associated rules. No agency shall use split  
23          purchasing for the purpose of evading the requirement of competitive  
24          bidding or other requirement of this act or associated rules.

1 Violation of this provision shall be cause for discipline of a state  
2 employee up to and including termination.

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

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

16 a. contracts for master custodian banks or trust  
17 companies, investment managers, investment  
18 consultants, and actuaries for the state retirement  
19 systems, and Oklahoma Employees Insurance and Benefits  
20 Board, pension fund management consultants of the  
21 Oklahoma State Pension Commission and the  
22 Commissioners of the Land Office, examiners, experts,  
23 or consultants for the Insurance Department whose job  
24 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 ~~85.45~~ 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

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; provided, the agency develops

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

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

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

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



- 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, 2022.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM  
6 March 3, 2022 - DO PASS AS AMENDED  
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