

An Act

ENROLLED HOUSE
BILL NO. 3623

By: Harris of the House

and

Weaver of the Senate

An Act relating to state government; amending 74 O.S. 2021, Section 85.5, which relates to the powers and duties of the State Purchasing Director; requiring submission of certain affidavit; providing for penalties; and providing an effective date.

SUBJECT: State government

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

SECTION 1. AMENDATORY 74 O.S. 2021, Section 85.5, is amended to read as follows:

Section 85.5 A. Except as otherwise provided in this section, the State Purchasing Director, under the supervision of the Director of the Office of Management and Enterprise Services, shall have sole and exclusive authority and responsibility for all acquisitions by state agencies. In order to carry out the powers and duties of the Chief Information Officer and the Information Services Division, the Chief Information Officer shall have sole and exclusive authority and responsibility for all acquisitions of information and telecommunications technology, equipment, software, products and related peripherals and services by state agencies. Public construction contracts are awarded pursuant to Title 61 of the Oklahoma Statutes and are not subject to the Oklahoma Central Purchasing Act.

B. Every state agency shall determine its own quantitative needs for acquisitions and the general class or nature of the acquisitions. The State Purchasing Director, after consultation with the requisitioning state agency, shall have authority to

determine the particular brand, model or other specific classification of each acquisition and to draft or invoke pursuant to the Oklahoma Central Purchasing Act specifications establishing the requirements for all necessary contracts or purchase orders.

C. The Director of the Office of Management and Enterprise Services shall have authority and responsibility to promulgate rules in connection with provisions of the Oklahoma Central Purchasing Act for:

1. The time, manner, authentication and form of making requisitions for acquisitions;

2. Inspection, analysis and testing of acquisitions or samples bidders submit prior to contract award;

3. The form and manner of submission for bids or proposals a bidder submits and the manner of accepting and opening bids or proposals;

4. The conditions under which the Office of Management and Enterprise Services shall require written contracts for acquisitions, the conditions under which acquisitions may be made on an open account basis, and the conditions and manner of negotiating such contracts;

5. Obtaining acquisitions produced by state institutions;

6. Conditions under which any of the rules herein authorized may be waived;

7. The amounts of and deposits on any bond or other surety required to be submitted with a bid or contract for the furnishing of acquisitions and the conditions under which such bond or other surety shall be required;

8. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport acquisitions whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any acquisitions;

9. The form of any estimate, order or other information required in connection with an acquisition;

10. State agency acquisitions not exceeding the acquisition threshold amount requiring competitive bid to ensure competitiveness, fairness, compliance with the Oklahoma Central Purchasing Act and Section 3001 et seq. of this title, which relates to the State Use Committee. The rules shall include separate provisions based on acquisition amounts as follows:

- a. state agencies shall make acquisitions not exceeding Twenty-five Thousand Dollars (\$25,000.00), provided the acquisition process is fair and reasonable and is conducted pursuant to rules authorized pursuant to this section, and
- b. state agencies with certified procurement officers and internal purchasing procedures found compliant by the State Purchasing Director may make acquisitions in excess of the fair and reasonable acquisition threshold amount provided for in this section and not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00), pursuant to rules authorized by this section;

11. Training by the State Purchasing Director of state agency procurement officers;

12. Review and audit by the State Purchasing Director of state agency acquisitions;

13. The conditions for increasing acquisition limits for state agencies which have had a prior reduction in acquisition limit by the Director of the Office of Management and Enterprise Services;

14. Use of a state purchase card to make acquisitions;

15. Any other matter or practice which relates to the responsibilities of the State Purchasing Director;

16. Conditions for determination and authorization of acquisition threshold amounts of state agencies;

17. The form and manner of verification by suppliers that the supplier is eligible to do business in the State of Oklahoma and has obtained all necessary permits and licenses, pursuant to applicable provisions of law; and

18. Payment procedure rules for state agencies to adhere to regarding statewide contracts.

D. The State Purchasing Director shall provide training for state agency procurement officials, and other procurement staff, and is authorized to require retraining of such procurement personnel found not to be in compliance with provisions of the Oklahoma Central Purchasing Act or associated rules. The training may include any matters related to state procurement practices. State agency purchasing officials that demonstrate proficiency shall be certified as "certified procurement officers" by the State Purchasing Director and shall be authorized to make acquisitions pursuant to provisions of the Oklahoma Central Purchasing Act and associated rules. The State Purchasing Director may assess a fee to state agencies for the training that does not exceed each state agency's pro rata share of the costs the State Purchasing Director incurs to provide the training.

E. The State Purchasing Director shall review state agency acquisitions for the purposes of:

1. Ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act;

2. Ensuring state agency compliance with rules promulgated by the Office of Management and Enterprise Services pursuant to the Oklahoma Central Purchasing Act;

3. Ensuring state agency compliance with provisions of Section 3001 et seq. of this title pertaining to the State Use Committee;

4. Reporting any acquisition by any state agency found not to be in compliance with those sections or rules to the Director of the Office of Management and Enterprise Services;

5. A determination by the State Purchasing Director to reduce a state agency's acquisition authority amount when the state agency is found not to be in compliance with the Oklahoma Central Purchasing Act or associated rules or requirements of the State Purchasing Director pursuant to this section; and

6. A determination by the State Purchasing Director to increase a state agency's acquisition authority amount after the agency cures deficiencies in connection with a prior reduction in the authority amount by the State Purchasing Director.

F. Based on written findings and when recommended by the State Purchasing Director, the Director of the Office of Management and Enterprise Services may:

1. Transmit written findings by the State Purchasing Director to the State Auditor and Inspector for further investigation, indicating purchasing procedures that do not conform to the Oklahoma Central Purchasing Act or associated rules; or

2. Transmit to the Attorney General or the State Auditor and Inspector for further investigation a report made by the State Purchasing Director that the Director of the Office of Management and Enterprise Services reasonably believes indicates that an action that constitutes a criminal violation pursuant to the Oklahoma Central Purchasing Act or other laws has been taken by any state agency, state agency official, bidder or supplier.

G. 1. Pursuant to the requirements of the Oklahoma Central Purchasing Act, the State Purchasing Director shall have authority to enter into any statewide, multistate or multigovernmental contract. 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 multistate or multigovernmental contracts entered into by the State Purchasing Director.

2. Whenever it appears advantageous to the state or to any state agency to purchase or otherwise acquire any acquisition which may be offered for sale by the United States government or any agency thereof, the State Purchasing Director may execute a contract for the acquisition with the federal government or federal agency and may also utilize contracts awarded by other governmental agencies including, but not limited to, agencies of the United States of America.

3. The State Purchasing Director may designate, for use by state agencies, contracts described in this subsection and contracts awarded on behalf of one or more state agencies.

4. Prior to exercising the authority to cancel a contract, the State Purchasing Director may authorize renegotiation of an existing contract with an incumbent supplier for the purposes of obtaining more favorable terms for the state.

5. The State Purchasing Director shall have the authority to designate certain contracts for state agencies as statewide contracts and mandatory statewide contracts. In order to carry out the powers and duties of the Chief Information Officer and Information Services Division, the Chief Information Officer shall have the authority to designate certain information technology and telecommunication contracts as statewide contracts and mandatory statewide contracts and may negotiate consolidation contracts, enterprise agreements and high technology system contracts in lieu of or in conjunction with competitive bidding procedures to reduce acquisition cost.

6. The State Purchasing Director may publish such specifications relating to materials, supplies, equipment and services to be acquired for the state as may best promote competition and apprise potential suppliers of the type of product desired.

H. 1. The State Purchasing Director may develop and test new contracting policies, procedures and innovations that hold potential for making state procurement more effective and efficient and identify, and make recommendations to the Legislature of, any appropriate changes in law. Such development and testing, proof of concept, pilot project or other similar test shall not be considered an acquisition subject to the Oklahoma Central Purchasing Act.

2. The State Purchasing Director is authorized to explore and investigate cost savings in energy, resource usage and maintenance contracts and to identify and negotiate contract solutions including, but not limited to, pilot projects to achieve cost savings for this state.

I. The State Purchasing Director shall endeavor to satisfy state agencies in terms of cost, quality and timeliness of the delivery of acquisitions by using bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs and conducting business with integrity, fairness and openness.

J. The State Purchasing Director shall undertake the following:

1. The use of electronic commerce pursuant to the Oklahoma Online Bidding Act for solicitation, notification and other purchasing processes;

2. Monitoring rules promulgated pursuant to the Oklahoma Central Purchasing Act to ensure that the rules satisfy the interests of the state, are clear and succinct and encourage efficiency in purchasing processes;

3. A program to identify suppliers' performance records;

4. Development of criteria for the use of sealed bid contracting procedures, negotiated contracting procedures, selection of types of contracts, postaward administration of purchase orders and contracts, addendums, termination of contracts and contract pricing;

5. Continual improvement in the quality of the performance of the Purchasing Division through training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;

6. The State Purchasing Director shall prescribe standardized contract forms and all other forms or certifications requisite or deemed necessary by the State Purchasing Director to effectuate the provisions of the Oklahoma Central Purchasing Act and associated rules;

7. Development of programs to improve customer relations through training, improved communications and appointment of technical representatives;

8. Provide for public two-way communication between procurement officers and potential bidders who have questions regarding a request for proposal or invitation to bid; and

9. Determine whether and to what extent information included in a bid or similar offer is confidential and reject all requests to disclose the information so designated.

K. The State Purchasing Director may utilize and authorize state agencies to utilize reverse auctions to obtain acquisitions.

L. Prior to the award of a contract to a supplier, the State Purchasing Director shall verify, pursuant to applicable provisions of law, that the supplier is eligible to do business in this state by confirming registration with the Secretary of State and franchise tax payment status pursuant to Sections 1203 and 1204 of Title 68 of the Oklahoma Statutes. The provisions of this subsection shall be

applicable only if the contract amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater.

M. On an annual basis, the State Purchasing Director shall transmit to the Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate a report documenting the savings realized by each agency through the application of best spend practices including the collection and tracking of spend data, strategic sourcing programs and implementation of managed and mandatory statewide contracts and include in the report information regarding emergency acquisitions.

N. The acquisition threshold amount applicable to an acquisition made pursuant to this act or associated rules shall not apply to state agency purchases; provided, the State Purchasing Director determines the agency has subject matter experts on staff having the specialized expertise to purchase goods or services, the agency possesses the necessary legal and procurement staff to procure and monitor the contracts and provided the Director of the Office of Management and Enterprise Services shall certify that the proposed purchase does not conflict with consolidated statewide spend initiatives.

1. Nothing in this subsection shall give an agency authority to issue statewide, multistate or multigovernmental contracts.

2. Agencies making purchases pursuant to this subsection shall:

- a. be responsible for contracts awarded pursuant to this subsection, which includes, but may not be limited to, contract management, protest costs, all costs connected with or incurred as a result of the contract, including legal representation,
- b. comply with rules and policies of the Office of Management and Enterprise Services, and
- c. report contracts issued pursuant to this subsection to the Office of Management and Enterprise Services, Central Purchasing Division, on a quarterly basis.

3. Purchases made in accordance with this subsection shall be made pursuant to rules authorized by this section.

O. The State Purchasing Director, with approval by the Director of the Office of Management and Enterprise Services, is authorized to make use of any state laboratories for the tests and analyses authorized in this section wherever practicable and to use private laboratories or the laboratories of another government agency if it is impracticable to use state laboratories. The State Purchasing Director is further authorized to cooperate in test and analysis programs or agreements with other states or the United States government and to accept federal funds and funds donated by private endowments or foundations for the purpose of participation in such testing programs.

P. The State Purchasing Director shall require all contractors or subcontractors who have entered into a contract with a public employer to submit an affidavit that the contractor or subcontractor is in compliance with the provisions of Section 1313 of Title 25 of the Oklahoma Statutes. If the State Purchasing Director determines that a contractor or subcontractor has knowingly submitted a false affidavit:

1. The contractor or subcontractor shall be liable for an administrative penalty of Five Thousand Dollars (\$5,000.00) for the first offense, which shall increase by Two Thousand Dollars (\$2,000.00) for each subsequent offense; and

2. The public employer or the Office of Management and Enterprise Services may terminate the contract with the contractor or subcontractor.

SECTION 2. This act shall become effective November 1, 2024.

Passed the House of Representatives the 12th day of March, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the 17th day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____