

1 **SENATE FLOOR VERSION**

2 April 11, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3623

By: Harris of the House

5 and

6 Weaver of the Senate

7
8 An Act relating to state government; amending 74 O.S.
9 2021, Section 85.5, which relates to the powers and
10 duties of the State Purchasing Director; requiring
11 submission of certain affidavit; providing for
12 penalties; and providing an effective date.

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

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

16 Section 85.5 A. Except as otherwise provided in this section,
17 the State Purchasing Director, under the supervision of the Director
18 of the Office of Management and Enterprise Services, shall have sole
19 and exclusive authority and responsibility for all acquisitions by
20 state agencies. In order to carry out the powers and duties of the
21 Chief Information Officer and the Information Services Division, the
22 Chief Information Officer shall have sole and exclusive authority
23 and responsibility for all acquisitions of information and
24 telecommunications technology, equipment, software, products and

1 related peripherals and services by state agencies. Public
2 construction contracts are awarded pursuant to Title 61 of the
3 Oklahoma Statutes and are not subject to the Oklahoma Central
4 Purchasing Act.

5 B. Every state agency shall determine its own quantitative
6 needs for acquisitions and the general class or nature of the
7 acquisitions. The State Purchasing Director, after consultation
8 with the requisitioning state agency, shall have authority to
9 determine the particular brand, model or other specific
10 classification of each acquisition and to draft or invoke pursuant
11 to the Oklahoma Central Purchasing Act specifications establishing
12 the requirements for all necessary contracts or purchase orders.

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

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

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

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

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

6 5. Obtaining acquisitions produced by state institutions;

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

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

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

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

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

3 a. state agencies shall make acquisitions not exceeding
4 Twenty-five Thousand Dollars (\$25,000.00), provided
5 the acquisition process is fair and reasonable and is
6 conducted pursuant to rules authorized pursuant to
7 this section, and

8 b. state agencies with certified procurement officers and
9 internal purchasing procedures found compliant by the
10 State Purchasing Director may make acquisitions in
11 excess of the fair and reasonable acquisition
12 threshold amount provided for in this section and not
13 exceeding Two Hundred Fifty Thousand Dollars
14 (\$250,000.00), pursuant to rules authorized by this
15 section;

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

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

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

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

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

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

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

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

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

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

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

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

8 3. Ensuring state agency compliance with provisions of Section
9 3001 et seq. of this title pertaining to the State Use Committee;

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

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

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

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

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

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

12 G. 1. Pursuant to the requirements of the Oklahoma Central
13 Purchasing Act, the State Purchasing Director shall have authority
14 to enter into any statewide, multistate or multigovernmental
15 contract. The state entity designated by law, as specified in
16 Section 1010.3 of Title 56 of the Oklahoma Statutes, shall
17 participate in the purchase of pharmaceuticals available through
18 such multistate or multigovernmental contracts entered into by the
19 State Purchasing Director.

20 2. Whenever it appears advantageous to the state or to any
21 state agency to purchase or otherwise acquire any acquisition which
22 may be offered for sale by the United States government or any
23 agency thereof, the State Purchasing Director may execute a contract
24 for the acquisition with the federal government or federal agency

1 and may also utilize contracts awarded by other governmental
2 agencies including, but not limited to, agencies of the United
3 States of America.

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

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

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

22 6. The State Purchasing Director may publish such
23 specifications relating to materials, supplies, equipment and
24 services to be acquired for the state as may best promote

1 competition and apprise potential suppliers of the type of product
2 desired.

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

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

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

21 J. The State Purchasing Director shall undertake the following:

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

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

5 3. A program to identify suppliers' performance records;

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

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

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

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

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

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

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

9 L. Prior to the award of a contract to a supplier, the State
10 Purchasing Director shall verify, pursuant to applicable provisions
11 of law, that the supplier is eligible to do business in this state
12 by confirming registration with the Secretary of State and franchise
13 tax payment status pursuant to Sections 1203 and 1204 of Title 68 of
14 the Oklahoma Statutes. The provisions of this subsection shall be
15 applicable only if the contract amount is Two Hundred Fifty Thousand
16 Dollars (\$250,000.00) or greater.

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

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

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

13 2. Agencies making purchases pursuant to this subsection shall:

14 a. be responsible for contracts awarded pursuant to this
15 subsection, which includes, but may not be limited to,
16 contract management, protest costs, all costs
17 connected with or incurred as a result of the
18 contract, including legal representation,

19 b. comply with rules and policies of the Office of
20 Management and Enterprise Services, and

21 c. report contracts issued pursuant to this subsection to
22 the Office of Management and Enterprise Services,
23 Central Purchasing Division, on a quarterly basis.

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

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

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

21 1. The contractor or subcontractor shall be liable for an
22 administrative penalty of Five Thousand Dollars (\$5,000.00) for the
23 first offense, which shall increase by Two Thousand Dollars
24 (\$2,000.00) for each subsequent offense; and

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
6 April 11, 2024 - DO PASS

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