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DEPARTMENT OF CENTRAL SERVICES

FOR IMMEDIATE RELEASE

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House Bill 3325 effect on the Central Purchasing Act

On November 1, 2008, House Bill 3325 becomes effective and has direct impact on the Central Purchasing Act and the way procurement is currently done in the State of Oklahoma. The changes to the Act are an effort towards a more efficient way of doing business with the State recognizing industry best purchasing practices.

Please take a chance to review the attached House Bill 3325 as it adds some new definitions and some flexibility to the procurement process. The major effect of this bill is the elimination of the notarization requirement by the bidder using DCS/Purchasing Form 004 (Notarized Sworn Statement to Competitive Bid). The elimination of notarization will bring us closer to the utilization of electronic commerce when acquiring goods and services. DCS/Purchasing Form 004 will now be titled as Certification for Competitive Bid and Contract and will be signed by the bidder certifying of non-collusion in the acquisition process.

DCS/Purchasing Form 003 will no longer be used after November 1st and will be replaced with DCS/Purchasing Form 079 and titled Supplier Contract Affidavit. This affidavit is required pursuant to Title 74, O.S. § 85.42(B) and shall be utilized accordingly. The DCS/Purchasing and Agency Solicitation Packages located on the Central Purchasing website (www.dcs.ok.gov) have been revised reflecting the changes effected with House Bill 3325.

If you have any questions concerning this bill, and have any suggestions for the upcoming legislative session, call Keith Gentry at 405-522-4878 or by email at keith_gentry@dcs.state.ok.us.

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"SERVICE, QUALITY, INTEGRITY"

An Act

ENROLLED HOUSE
BILL NO. 3325

By: Murphey of the House

and

Aldridge of the Senate

An Act relating to state government; amending 74 O.S. 2001, Sections 85.2, 85.3, 85.5, as last amended by Section 126, Chapter 1, O.S.L. 2005, 85.7, as last amended by Section 2, Chapter 309, O.S.L. 2004, 85.13 and 85.22 (74 O.S. Supp. 2007, Sections 85.5 and 85.7), which relate to The Oklahoma Central Purchasing Act; modifying definitions; modifying employment of the purchasing division; modifying powers and duties of the state purchasing director; modifying competitive bidding procedures; modifying the accepting or giving of gratuities; providing for certified statement; repealing 74 O.S. 2001, Section 85.23, which relates to the notarized sworn statement attached to contract; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.2, is amended to read as follows:

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

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

2. "Best value criteria" means ~~bid or proposal~~ evaluation criteria which may include, but are is not limited to, the following:

- a. the acquisition's operational cost a state agency would incur,
- b. the quality of the acquisition, or its technical competency,
- c. the reliability of the bidder's delivery and implementation schedules,
- d. the acquisition's facilitation of data transfer and systems integration,
- e. the acquisition's warranties and guarantees and the bidder's return policy,
- f. the bidder's financial stability,
- g. the acquisition's adherence to the state agency's planning documents and announced strategic program direction,
- h. the bidder's industry and program experience and record of successful past performance with acquisitions of similar scope and complexity,
- i. the anticipated acceptance by user groups, and
- j. the acquisition's use of proven development methodology, and innovative use of current technologies that lead to quality results;

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

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

5. "Business entity" means individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm,

group or concern which functions as a separate entity for business purposes;

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

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

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

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

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

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

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

12. "Contracting" means purchasing, renting, leasing, or otherwise obtaining acquisitions from private sources. Contracting includes description, but not determination, of acquisitions required, selection and solicitation of sources, preparation and award of contracts, and contract administration;

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

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

~~14.~~ 15. "Electronic payment mechanism" means a method of electronic payment for authorized acquisitions;

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

~~15.~~ 17. "Environmentally preferable products and services (EPPS)" means acquisitions that best meet the requirements as defined in the solicitation for human health and the environment;

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

~~16.~~ 19. "High technology system" means advanced technological equipment, software, communication lines, and services for the processing, storing, and retrieval of information by a state agency;

~~17.~~ 20. "Item" or "product" means some quantity or kind of such supplies, materials or equipment;

~~18.~~ 21. "Local governmental entity" means any unit of local government including, but not limited to, any school district, county, or municipality of this state;

~~19.~~ 22. "Lowest and best" means an acquisition based on criteria which include, but are not limited to, the following:

- a. the lowest total purchase price,
- b. the quality and reliability of the product, and

c. the consistency of the proposed acquisition with the state agency's planning documents and announced strategic program direction;

~~20.~~ 23. "Materials" or "supplies" includes all property except real property or equipment that a state agency acquires for its use or consumption;

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

~~22.~~ 25. "Nonprofessional services" means services which are predominantly physical or manual in character and may involve the supplying of products;

~~23.~~ 26. "Political subdivision" means local governmental entities and such other entities specified as political subdivisions pursuant to The Governmental Tort Claims Act;

~~24.~~ 27. "Open market contract" means a contract for a one-time acquisition not exceeding the acquisition amount requiring competitive bid pursuant to Section 85.7 of this title;

~~25.~~ 28. "Professional services" means services which are predominantly mental or intellectual in character rather than physical or manual and which do not involve the supplying of products. Professional services include services to support or improve state agency policy development, decision making, management, administration, or the operation of management systems;

~~26.~~ 29. "Purchase order" means an offer by a state agency to make an acquisition utilizing simplified procedures;

~~27.~~ 30. "Requisition" means a written request by a state agency for an acquisition;

~~28.~~ 31. "Services" or "contractual services" means direct engagement of the time and effort of a contractor for the primary purpose of performing an identifiable task rather than for the furnishing of an end item of supply;

~~29.~~ 32. "Sole brand acquisition" means an acquisition that by specification restricts the acquisition to one manufacturer or brand name;

~~30.~~ 33. "Sole source acquisition" means an acquisition which, by specification, restricts the acquisition to one supplier;

~~31.~~ 34. "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation;

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

~~32.~~ 36. "State agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only political subdivisions of the state;

~~33.~~ 37. "State purchase card" means an electronic transaction device ~~issued to state agency officials~~ used for making acquisitions;

~~34.~~ 38. "State Purchasing Director" or "Director of Central Purchasing" includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority;

~~35.~~ 39. "Statewide contract" means a contract for specific acquisitions ~~entered into by state agencies during~~ for a specified period with a provision allowing the agencies and local governmental entities to place orders as the acquisitions are needed for delivery during the period specified; and

~~36.~~ 40. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.3, is amended to read as follows:

Section 85.3 A. There is hereby created and established in the Department of Central Services a Purchasing Division, the administrative head of which shall be the State Purchasing Director.

B. The Director of the Department of Central Services shall hire the State Purchasing Director. The State Purchasing Director shall:

1. Be at least twenty-eight (28) years of age;
2. Have a thorough knowledge of office practices and buying procedures in volume purchasing; and
3. Be a graduate of an accredited college or university with at least five (5) years' experience in commercial or governmental purchasing, or, in lieu of such education, have at least ten (10) years' experience in commercial or governmental purchasing.

C. The Purchasing Division ~~shall~~ may include the following employees, and employment of such employees is hereby authorized:

1. One assistant director;
2. One qualified specifications engineer;
3. Buyers who have at least three (3) years' procurement experience for:
 - a. food,
 - b. hardware,
 - c. textiles,
 - d. petroleum,
 - e. office supplies,
 - f. building materials,
 - g. pharmaceutical supplies,
 - h. automotive equipment, parts, and accessories, and
 - i. any other commodity group found by the Director of the Department of Central Services to justify special purchasing attention;

4. One buyer for products and services of the severely disabled as provided in Section 3001 et seq. of this title;

5. One dietitian, who shall have the qualifications required by the State Department of Health; and

6. Such other technical and clerical personnel as shall be assigned to the Purchasing Division by the Director of the Department of Central Services.

D. All activities of any state agency, department, or institution relating to purchasing shall be under the direction of the Purchasing Division unless otherwise provided by The Oklahoma Central Purchasing Act.

E. The Purchasing Division shall provide qualified personnel to assist the purchasing activities of state agencies, departments, and institutions.

F. Each state agency, department, and institution shall designate personnel to coordinate its purchasing functions with the Purchasing Division.

G. The Purchasing Division may, if the needs of a state agency, department, or institution are such as to so require, employ, and establish a buyer within a state agency, department, or institution.

H. No state agency, department, or institution subject to The Oklahoma Central Purchasing Act shall have or maintain a purchasing section without the prior approval in writing of the Purchasing Division unless otherwise provided in The Oklahoma Central Purchasing Act.

I. The Purchasing Division shall make acquisitions from industries operated by the ~~State~~ Department of Corrections pursuant to the provisions of Section 549.1 of Title 57 of the Oklahoma Statutes.

J. None of the personnel authorized by this section shall:

1. Sell to or otherwise provide acquisitions to any state agency subject to The Oklahoma Central Purchasing Act;

2. Be employees, partners, associates, officers, or stockholders in or with any business entity that sells to or

otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act;

3. Be employed in any of the positions authorized by this section if a spouse or child owns any stock in any business entity which sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act; or

4. Be employed in any of the positions authorized by this section if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act or is interested in any business entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars (\$5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to The Oklahoma Central Purchasing Act.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.5, as last amended by Section 126, Chapter 1, O.S.L. 2005 (74 O.S. Supp. 2007, Section 85.5), is amended to read as follows:

Section 85.5 A. Pursuant to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of the Department of Central Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies.

B. 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 Department of Central Services shall have authority and responsibility to promulgate rules pursuant to provisions of The Oklahoma Central Purchasing Act governing, providing for, prescribing, or authorizing any act, practice, or requirement for which regulatory power is delegated for:

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

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

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

4. The conditions under which the Department of Central 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. Storage and storage facilities necessary to accomplish responsibilities of the Director of the Department of Central Services;

9. 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;

10. The form of any estimate, order, or other document the Director of the Department of Central Services requires;

11. State agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid pursuant to Section 85.7 of this title to ensure competitiveness, fairness, compliance with provisions of all sections of The Oklahoma Central Purchasing Act, and compliance with provisions of Section 3001 et seq. of this title, which relate to the State Use Committee. The rules shall include separate provisions based on acquisition purchase price as follows:

- a. state agencies shall make acquisitions not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), 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 Director of the Department of Central Services pursuant to this section may make acquisitions in excess of Two Thousand Five Hundred Dollars (\$2,500.00) as provided below:
 - (1) acquisitions with a price exceeding Two Thousand Five Hundred Dollars (\$2,500.00) and not exceeding Ten Thousand Dollars (\$10,000.00), pursuant to rules authorized by this section, and
 - (2) acquisitions with a price exceeding Ten Thousand Dollars (\$10,000.00) and not exceeding the amount requiring a requisition to the State Purchasing Director, pursuant to Section 85.7 of this title, by telephone, facsimile, invitation to bid, or solicitation by means of electronic commerce, receipt of bids and bid award by the state agency;

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

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

14. The conditions for increasing acquisition limits for state agencies which have had a prior reduction in acquisition limit by the Director of the Department of Central Services;

15. ~~State agency use~~ Use of a state purchase card to make acquisitions; and

16. Any other matter or practice which relates to the responsibilities of the Director of the Department of Central Services.

D. The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff. The training shall include principles of state procurement practices, basic contracting, provisions of The Oklahoma Central Purchasing Act, rules promulgated pursuant to The Oklahoma Central Purchasing Act, provisions of Section 3001 et seq. of this title, which relate to the State Use Committee, and any other 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 rules authorized by this section. The State Purchasing Director shall 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 Department of Central 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 Department of Central Services; and

5. Recommending that the Director of the Department of Central Services reduce the acquisition competitive bid limit amount for any state agency found not to be in compliance with The Oklahoma Central Purchasing Act or rules promulgated thereto.

F. When recommended by the State Purchasing Director, based on written findings by the State Purchasing Director, the Director of the Department of Central Services may:

1. Require retraining of state agency procurement officials and other purchasing staff found not to be in compliance with provisions

