OKLAHOMA

STATUTES

TITLE 74. State Government

The Central Purchasing Act

74 O.S. §85.1 et seq

Also includes the Online Bidding Act, 74 O.S. 85.45o et seq and other statutes related to state procurement.

Notice: These statutes have been compiled to assist trainees during the 2008 Certified procurement Officer Seminar. Although we have made every effort to assure the content of these statutes are correct, they are not warranted as to accuracy. In addition to the official published version, Oklahoma statutes may be accessed at several state websites, which include www.oscn.net and www.lsb.state.ok.us

Title 74. State Government
The Oklahoma Central Purchasing Act

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§ 85.1. Citation

Sections 85.1 through 85.45k of this title shall be known and may be cited as "The Oklahoma Central Purchasing Act."

§ 85.2. Definitions

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. <u>“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;</u>

<u>14</u>. "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.~~<u>15.</u> <u>“Electronic payment mechanism” means a method of electronic payment for authorized acquisitions;</u>

<u>16</u>. "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.~~<u>17.</u> <u>“Environmentally preferable products and services (EPPS)” means acquisitions that best meet the requirements as defined in the solicitation for human health and the environment;</u>

<u>18.</u> "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.~~<u>19.</u> "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.~~<u>20.</u> "Item" or "product" means some quantity or kind of such supplies, materials or equipment;

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

~~19.~~<u>22.</u> "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.

§ 85.3. Purchasing Division - Director - Employees - Encouragement Of Certain Purchases - Conflict Of Interest

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.

§ 85.3a. Exempted entities

Compliance with the provisions of the Oklahoma Central Purchasing Act shall not be required of:

1. County government;

2. The Oklahoma State Regents for Higher Education, the institutions, centers, or other constituent agencies of The Oklahoma State System of Higher Education; or

3. The telecommunications network known as OneNet; or

4. The Department of Public Safety gun range.

§ 85.4. Requisitions - Determination Of Quantitative Need By Agencies - Forms - Information Required - Lease-Purchase Agreements - Change Order Or Addendum - Lease of Products--Purchases from federal government

A. Except as otherwise provided by the Oklahoma Central Purchasing Act, every state agency shall make all acquisitions used, consumed or spent by the state agency in the performance of its official functions by the presentation of requisitions to the Purchasing Division.

B. The provisions of the Oklahoma Central Purchasing Act shall not preclude a state agency from:

1. Accepting gifts or donations in any manner authorized by law; or

2. Making an acquisition for itself without presentation of a requisition when an acquisition without requisition is authorized in writing by the State Purchasing Director.

C. Subject to the provisions of this section, every state agency shall determine its own quantitative needs for acquisitions and the general class or nature of the acquisitions.

D. The Director of Central Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of Central Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

E. 1. A contract that results from a requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements of this section or pursuant to Section 85.7 of this title shall be signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

a. no employee of the state agency is able and available to perform the services to be provided pursuant to the contract,
b. the state agency shall receive, review and accept a detailed work plan from the supplier for performance pursuant to the contract if requested by the State Purchasing Director,
c. the state agency has developed, and fully intends to implement, a written plan providing for the assignment of specific state agency personnel to:
   (1) monitoring and auditing supplier performance,
   (2) the periodic review of interim reports, or other indications of performance, and
   (3) if requested by the State Purchasing Director, the ultimate utilization of the final product of the nonprofessional or professional services,
d. the work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,
e. the contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,
f. no current state employee will engage in the performance of the contract, unless specifically approved by the State Purchasing Director,
g. the purchase of the nonprofessional or professional services is justified, and
h. the contract contains provisions that are required by Section 85.41 of this title.

2. a. When a state agency requisition indicates that a supplier will provide acquisitions in components or phases, the requisition shall list each component or phase, and the State Purchasing Director shall include the list in the Invitation to Bid.
b. The determination of the lowest and best bid or best value bid, as required by the Oklahoma Central Purchasing Act, shall include all component or phase deliveries and shall not be based solely on the first component or phase delivery.
c. For a purchase order or contract that includes separate component deliveries, the Purchasing Director or a state agency may issue change orders to increase a purchase order or contract for the acquisition that do not exceed

an increase of ten percent (10%) of the original purchase order or contract total price.

F. Any person certifying the information required by subsection E of this section who knows such information to be false, shall upon conviction be guilty of a misdemeanor and shall be punished by fine or imprisonment or both fine and imprisonment pursuant to the provisions of Section 85.15 of this title and shall be civilly liable for the amount of the contract.

G. The State Purchasing Director may request additional information necessary to adequately review the requisitions to ensure compliance with the Oklahoma Central Purchasing Act.

H. If the Purchasing Director determines that an acquisition is not necessary, excessive or not justified, the State Purchasing Director shall deny the requisition.

I. 1. No state agency shall enter into a lease-purchase agreement if title is acquired to tangible property of any class or nature by making lease, rental, or any other type payments, except as specifically authorized by law and except insofar as data processing equipment or other equipment is concerned; provided, however, the lease-purchase of data processing or other equipment by any state agency shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

2. The Council of Legislative Bond Oversight shall have the authority to determine the most cost-effective method for obtaining financing for lease-purchase agreements, which may be financed by either negotiated sale or competitive bid. If the Council of Legislative Bond Oversight determines that the lease-purchase of personal or real property should be financed through negotiated sale, the financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act. Unless the Council determines that the sale should be executed on a negotiated basis, such financing shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

3. Regardless of the method of financing, the acquisition price of personal property subject to a lease-purchase agreement shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

4. The State Purchasing Director may permit lease-purchasing of equipment by the Oklahoma Tourism and Recreation Commission if such leasing is determined by the State Purchasing Director to be in the best interest of the state; provided, that such leasing must be processed by competitive bids through the State Purchasing Director except as to those acquisitions exempt under Section 85.12 of this title.

J. No state agency shall enter into a lease-purchase contract between the state agency as lessee and a private party as lessor if the contract is not capable of complete performance within the current fiscal year in which the contract was entered into unless a valid nonappropriation clause is included in the contract. Such contracts shall contain the following or substantially similar language:

Lessee shall have the right to terminate the lease, in whole but not in part, at the end of any fiscal year of lessee, if the Legislature fails to allocate sufficient funds to lessee for the rental payments required under the lease.

K. 1. No change order or addendum shall be made to a lease-purchase agreement which extends the term or life of the original bid contract. Any lease-purchase

agreement requiring such extensions or refinancing shall be readvertised and processed in accordance with the provisions of the Oklahoma Central Purchasing Act.

2. Every state agency, whether or not subject to the provisions of the Oklahoma Central Purchasing Act, shall maintain a list of all tangible personal property which it is acquiring by a lease-purchase method and, prior to the renewal of a lease-purchase agreement, shall evaluate the rate being paid under the current lease-purchase agreement against rates currently being received by the Purchasing Division of the Department of Central Services on a competitive bid basis to determine whether or not refinancing of the property will benefit the state. Any state agency which elects not to submit a requisition for a possible refinancing when the existing rates are at least one percent (1%) above rates being currently bid, and when the total sum to be paid for the property including principal and interest will be reduced, shall submit a written justification to the State Purchasing Director stating the reasons for not attempting to refinance the property. The State Purchasing Director shall forward all such justifications to the Chair of the Appropriations Committee of the Senate and the Chair of the Committee on Appropriations and Budget of the House of Representatives no later than February 1 of each year.

3. Unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for real or personal property costing less than Fifty Thousand Dollars ($50,000.00).

4. a. Unless otherwise provided by law, the maximum term of a state agency lease-purchase agreement shall be the lesser of the useful life of real or personal property subject to a lease-purchase agreement as determined by the State Purchasing Director, or three (3) years for personal property and ten (10) years for real property, respectively.

b. The Council of Legislative Bond Oversight shall have the authority to extend the term of a lease-purchase agreement beyond three (3) years for personal property and ten (10) years for real property if the State Purchasing Director determines that the useful life of the property exceeds the terms and the Oklahoma State Bond Advisor recommends the extension as being in the best interests of this state.

5. Unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Acquisitions of real property authorized by the Legislature, unless otherwise exempted by the Legislature, shall be subject to the competitive bid provisions of the Oklahoma Central Purchasing Act. If a state agency is authorized to enter into a lease-purchase agreement for real property, the financing of the acquisition, including acquisitions deemed desirable for executing a lease-purchase, certificate of participation, or similar agreement or obligation, shall be obtained in accordance with the provisions of the Oklahoma Central Purchasing Act. The State Purchasing Director shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such financing. Legislative authorization shall constitute legal authorization for this state or state agencies to enter into such lease-purchase agreements.

L. The State Purchasing Director may permit leasing of products by state agencies if such leasing is determined by the State Purchasing Director to be in the best interest of the state, provided that such leasing must be processed by competitive bids

through the State Purchasing Director except as to those acquisitions exempt pursuant to Section 85.12 of this title.

M. 1. Before reoffering or remarketing an obligation, a state agency shall obtain written approval from the Oklahoma State Bond Advisor. Should a remarketing of a lease-purchase agreement be proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such remarketing that describes the state's liability under the lease-purchase agreement shall be approved in advance and in writing by the Oklahoma State Bond Advisor.

2. In no event shall a state agency enter into a lease-purchase agreement unless that agreement states that the State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism.

N. 1. 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 government of the United States of America or any agency thereof, the State Purchasing Director may execute a contract for the acquisition with the federal government or federal agency.

2. If the State Purchasing Director approves an acquisition from the federal government or agency and determines that the regulations of the federal government, or agency handling the disposition and sale require that partial or full payment be made at the time sale is effected and before the acquisition will be delivered, the State Purchasing Director, upon requisition by the requesting party, shall have a state warrant drawn against the funds of the acquiring state agency payable to the United States of America or its proper agency. The warrant shall be in such amount as may be necessary to meet the terms and conditions of sale without requiring a certificate showing that the acquisition has actually been delivered to the state agency in whose behalf the purchase is being negotiated.

§ 85.5. Powers and Duties of State Purchasing Director

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 of the Oklahoma Central Purchasing Act, or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

2. Reduce the acquisition competitive bid limit for any state agency found not to be in compliance with provisions of the Oklahoma Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

3. 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 provisions pursuant to the Oklahoma Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

4. 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 Department of Central 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; or

5. Increase the state agency acquisition purchase amount requiring competitive bid, not to exceed the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title.

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. The State Purchasing Director may utilize contracts awarded by other governmental agencies, including agencies of the United States of America.

3. The State Purchasing Director may designate contracts described in this subsection for use by state agencies.

H. The State Purchasing Director may develop and test new contracting policies and procedures that hold potential for making the Purchasing Division more effective and efficient.

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 vendors with poor delivery and 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, contract modifications, 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. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property programs; ~~and~~

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

8. In cooperation with the Office of State Finance and the State Treasurer, develop an electronic payment mechanism for use in the settlement of accounts payable invoices, with no limit, to make payment for products or services acquired in

accordance with The Oklahoma Central Purchasing Act and any rules promulgated pursuant thereto.

K. The State Purchasing Director shall, in cooperation with the Oklahoma Department of Agriculture, Food, and Forestry, identify the needs of state agencies and institutions for agricultural products grown and produced in Oklahoma.

L. The State Purchasing Director may authorize ~~state agencies to utilize~~ the use of a state purchase card for acquisitions ~~on statewide contracts issued by the State Purchasing Director with no~~ within the following parameters:

1. No limit on the amount of the transaction~~.~~ for the following:

a. purchases from statewide contracts issued by the State Purchasing Director, and

b. regulated utilities; and

2. For any other transaction with a state purchase card, the transaction shall not exceed Two Thousand Five Hundred Dollars ($2,500.00).

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

N. 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 the State of Oklahoma 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 Twenty-five Thousand Dollars ($25,000.00) or greater.

O. As a condition of awarding a contract pursuant to the Oklahoma Central Purchasing Act, the State Purchasing Director shall verify with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, whether subject to the procedures required by Section 85.7 of this title or not, has obtained a sales tax permit pursuant to the provisions of Section 1364 of Title 68 of the Oklahoma Statutes if such entity is required to do so.

P. The State Purchasing Director is hereby 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 the State of Oklahoma.

Q. ~~The Department of Central Services may finance a new heat and air system for the State Capitol.~~

~~R.~~ The Office of State Finance, with input from the State Purchasing Director, shall promulgate payment procedure rules for state agencies to adhere to regarding statewide contracts issued by the State Purchasing Director.

~~S.~~R. The Office of State Finance along with the Department of Central Services, Central Purchasing Division, shall promulgate payment procedure rules for agencies to adhere to regarding statewide contracts issued by the Division.

§ 85.5a. State purchase card.

The State Purchasing Director may authorize personnel assigned to the Office of Global Business Services of the Department of Commerce, upon a finding by the Secretary of Commerce that such personnel have a legitimate need therefore, to utilize a state purchase card for acquisitions for programs, functions or services essential to the mission of the agency while traveling on Department of Commerce business in

foreign locations with transaction limits not to exceed Thirty-five Thousand Dollars ($35,000.00). The purchase cardholders are required to sign a purchase card agreement prior to becoming a cardholder and to attend purchase card procedure training. The Department of Commerce will conduct quarterly internal auditing on all purchase card transactions associated with business and travel in foreign locations.

§ 85.6. Grade And Quality Of Merchandise Delivered

State agencies shall have the right to question the grade and quality of any merchandise delivered to the agency. The Central Purchasing Division must determine, through postaward contract administration procedures, whether the supplies and services meet the grade and quality specified in the contract, and take remedial action with the appropriate vendor if the supply or service does not.

§ 85.7. Competitive Bid Or Proposal Procedures

A. 1. Except as otherwise provided by the Oklahoma Central Purchasing Act, no state agency shall make an acquisition for an amount exceeding Twenty-five Thousand Dollars ($25,000.00) without submission of a requisition to the State Purchasing Director and submission of suppliers' competitive bids or proposals to the State Purchasing Director.

2. Any acquisition a state agency makes shall be made pursuant to the Oklahoma Central Purchasing Act and rules promulgated pursuant thereto.

a. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony.

b. The State Purchasing Director may waive or increase the limit of Twenty-five Thousand Dollars ($25,000.00) for a state agency acquisition by not more than ten percent (10%) to perfect an otherwise valid acquisition inadvertently exceeding the limit due to administrative error by the state agency or unforeseeable circumstances. The state agency shall request a waiver upon the discovery of the error or circumstance to the State Purchasing Director on a form the Director requires.

c. The State Purchasing Director shall report all requests for waivers or increases, stating the amount and whether the request was granted or denied, monthly to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

3. a. Contracts for master custodian banks or trust companies, investment managers, investment consultants, and actuaries for the state retirement systems, CompSource Oklahoma, State and Education Employees Group Insurance Board, pension fund management consultants of the Oklahoma State Pension Commission and the Commissioners of the Land Office, and other professional services as defined in Section 803 of Title 18 of the Oklahoma Statutes shall be exempt from competitive bidding procedures of Section 85.4 of this title.

b. Contracts with financial institutions to act as depositories and managers of the Oklahoma College Savings Plan accounts shall be exempt from competitive bidding procedures.

c. A state agency that makes an acquisition pursuant to this paragraph shall notify the State Purchasing Director within fifteen (15) days following

completion of the acquisition. The Department of Central Services shall compile a list of the exempt contracts and send the list to a member of the Appropriations and Budget Committee of the House of Representatives or Appropriations Committee of the Senate, if the member requests.

4. Requisitions pursuant to this section shall not be required prior to emergency acquisitions by a state agency not exceeding ~~Thirty-five Thousand Dollars ($35,000.00)~~ Fifty Thousand Dollars ($50,000.00). The state agency shall submit a requisition to the State Purchasing Director within five (5) days following the acquisition together with a statement of the emergency. The State Purchasing Director shall send the requisition and a written analysis to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives specifying the facts and circumstances giving rise to the emergency requisition.

5. Requisitions pursuant to this section for acquisitions to alleviate a serious environmental emergency shall not be required if, upon receiving a request from the Chair of the Corporation Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. For the purposes of this section, "serious environmental emergency" means a situation within the jurisdiction of the Commission:

a. in which serious damage to the environment will quickly occur if immediate action is not taken and the damage will be so significant that the urgent need for action outweighs the need for competitive bids, or
b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

6. Acquisitions for repairs of equipment in emergencies, of livestock through a market agency, dealer, commission house, or livestock auction market bonded or licensed under federal or state law, the purchase or collection of semen or embryos, and the placement of embryos into recipient livestock shall not require requisitions pursuant to this section or any other provisions of the Oklahoma Central Purchasing Act.

7. The Board of Directors of the Oklahoma Historical Society shall select suppliers for the restoration of historical sites and museums and shall not be subject to the requisition requirements of this section or any other provision of the Oklahoma Central Purchasing Act. The Board may send a requisition to the State Purchasing Director and request supplier bid or proposal submission procedures, but supplier and bid selection will be the prerogative of the Board and will be based on contractors' documented qualifications and experience.

8. Purchases of postage by state agencies shall be made pursuant to Sections 90.1 through 90.4 of this title.

9. Sole source or sole brand acquisitions by a state agency or the State Purchasing Director shall comply with Section 85.45j of this title.

10. Acquisitions for the design, development, communication, or implementation of the state employees flexible benefits plan shall not be subject to the requirements of this section; provided, that the Flexible Benefits Advisory Council shall use procedures consistent with the competitive bid requirements of the Oklahoma Central Purchasing Act.

11. a. Any acquisition of a service which the Department of Central Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions of this paragraph.
    b. The Department of Central Services shall establish criteria and guidelines for those services which may qualify for a fixed and uniform rate.
    c. Fixed and uniform rate contracts authorized by this paragraph shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by a state agency to employ consultants or to make other acquisitions.
    d. Any state agency desiring to have a service qualified for a fixed and uniform rate shall make a request for service qualification to the Department of Central Services and submit documentation to support the request. The Department of Central Services shall approve or deny the request. If the Department of Central Services approves the request, the state agency shall establish a fixed and uniform rate for the service. No contracts shall be entered into by the state agency until the rate has been approved by the state agency in a public hearing. The proposed rate shall be clearly and separately identified in the agenda of the state agency for the hearing and shall be openly and separately discussed during such hearing. The state agency shall notify the Director of the Department of Central Services of its pending consideration of the proposed rate at least thirty (30) days before the state agency is to meet on the proposed rate. The state agency shall deliver to the Director of the Department of Central Services a copy of the agenda items concerning the proposed rate with supporting documentation. The Director of the Department of Central Services shall communicate any observation, reservation, criticism, or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the state agency before or at the time of the hearing. The Director of the Department of Central Services shall specifically note in the written communications whether the Director of the Department of Central Services has determined the rate to be excessive. Any written communication presented in the absence of the Director of the Department of Central Services shall be presented orally during the public hearing. Whether made in person or in writing, any comment made by the Director of the Department of Central Services shall be made a part of the minutes of the hearing in full.
    e. Within two (2) weeks after the convening of the Legislature, the administrative officer of the state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by the member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Department of Central Services shall be specifically identified in the list by the state agency.

f. At any time, the Director of the Department of Central Services may review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Department of Central Services determines the contract is not necessary, is excessive, or is not justified.

12. Specifically prescribed nonmedical adaptive technology-related acquisitions for individuals with disabilities who are clients of the State Department of Rehabilitation Services and which are prescribed by a physician, rehabilitation engineer, qualified rehabilitation technician, speech therapist, speech pathologist, occupational therapist, physical therapist, or qualified sensory aids specialist, and other client acquisitions, shall not be subject to the requisition requirements of this section. The Commission for Rehabilitation Services shall develop standards for the purchase of such acquisitions and may elect to utilize the Purchasing Division for an acquisition. The standards shall foster economy, provide a short response time, include appropriate safeguards, require written records, ensure appropriate competition for economical and efficient purchasing, and shall be approved by the State Purchasing Director.

13. The Department of Human Services shall develop procedures for acquisitions of specifically prescribed nonmedical assistive technology-related items not exceeding the acquisition purchase amount requiring a requisition pursuant to this section for individuals under sixteen (16) years of age who are recipients of Supplemental Security Income which are prescribed by a physician, qualified sensory aids specialist or qualified special education instructor. The procedures shall reflect standards for the acquisition of such nonmedical assistive technology-related items, may provide for utilization of the Purchasing Division when appropriate, shall foster economy, provide a short response time, shall include appropriate safeguards and written records to ensure appropriate competition and economical and efficient purchasing, and shall be approved by the State Purchasing Director.

14. a. Structured settlement agreements entered into by the Attorney General's office in order to settle any lawsuit involving the state, the Legislature, any state agency or any employee or official of the state shall not be subject to the competitive bidding requirements of this section if:

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

(2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.

b. A list of any such structured settlement agreements entered into by the Attorney General with summary thereon for the previous calendar year shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on January 31 of each year.

15. Acquisitions a state agency makes pursuant to a contract the State Purchasing Director enters into or awards and designates for use by state agencies shall be exempt from competitive bidding procedures.

16. The Commission on Marginally Producing Oil and Gas Wells shall be exempt from the competitive bid requirements of this section for contracts with local vendors for the purpose of holding special events and exhibitions throughout the state.

17. Agreements entered into by any state agency with the United States Army Corp of Engineers in order to provide emergency response or to protect the public health, safety, or welfare shall not require requisitions and shall not be subject to competitive bidding requirements of this section.

B. Acquisitions shall be awarded to the lowest and best, or best value, bidder at a specified time and place, which shall be open to the public.

C. Bids for professional service contracts for an amount requiring submission of requisitions to the State Purchasing Director shall be evaluated by the State Purchasing Director and the state agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best, or best value, bid. Further, the state agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the state agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by CompSource Oklahoma, the State and Education Employees Group Insurance Board, or the governing board of a state retirement system authorized to hire investment managers, the Department of Central Services shall assist the requesting body in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Department of Central Services shall assist the Council in the process of selecting contracts for the design, development, communication, or implementation of the state employees flexible benefits plan.

E. Except as otherwise specifically provided by law, the acquisition of food items or food products by a state agency from a public trust created pursuant to Sections 176 through 180.56 of Title 60 of the Oklahoma Statutes shall comply with competitive bidding procedures pursuant to the provisions of this section.

§ 85.7a. Open Market or Statewide Contract for Supplies, Equipment or Materials--Bidders to Provide Information As To Manufacturer And Country of Origin of Supplies, Equipment and Materials

A. The Department of Central Services may require each bidder for an open market contract or a statewide contract for supplies, equipment or materials to provide information as to the manufacturer and country of origin of any such supplies, equipment or materials as specified by labels attached to the supplies, equipment or materials where such identification is required by federal or state law. If an item has more than one component part or accessory which may have been manufactured in more than one country, the bidder may specify the countries of origin for only the major component parts or accessories as determined by the Department where such identification is required by federal or state law.

B. Any open market contract or statewide contract may require the contractor to obtain from all of his subcontractors information as to the manufacturer and country or countries of origin of any supplies, equipment or materials provided to the state where such identification is required by federal or state law.

§ 85.7c. High Technology Systems and Upgrades and Enhancements

A. No state agency shall enter into a contract for the acquisition of a high technology system unless the vendors proposing to supply the acquisition:

1. Provide documentation of the projected schedule of recommended or required upgrades or improvements to the high technology system over a projected three year period following the targeted purchase date; or

2. Provide documentation that no recommended or required upgrades or improvements to the high technology system are planned over a projected three year period following the targeted purchase date.

For purposes of this subsection, vendors shall provide documentation required for all entities which will be utilized in satisfying any phase.

B. No state agency shall enter into a contract for the acquisition of an upgrade or enhancement to a high technology system unless:

1. The vendor agrees to provide the acquisition at no charge to the state;

2. The vendor previously agreed in a contract to provide the acquisition at no additional charge to the state;

3. The state agency obtains from the vendor proposing to supply the acquisition documentation that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or

4. The vendor provides documentation that the vendor wiI1 no longer supply assistance to the state agency for the purpose of maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.

C. The State Purchasing Director or the procurement officer of state agencies not subject to the Central Purchasing Act shall not process any state agency request for a high technology system acquisition unless the proposed vendor provides documentation that complies with subsections A or B of this section.

D. The State Purchasing Director shall provide such advice and assistance as may be required in order for state agencies to comply with the provisions of this section. For purposes of this section, "state agency" shall include all state agencies, whether subject to the Central Purchasing Act or not.

§ 85.7d. Information Technology Access Clause

The Director of the Department of Central Services shall promulgate rules prescribing an information technology access clause which shall require compliance with the accessibility to information technology standards of Section 508 of the Workforce Investment Act of 1998 and as developed pursuant to Section 2 of this act. The clause shall be included in all contracts for the procurement of information technology by, or for the use of, state agencies, as defined in Section 3 of this act, on or after January 1, 2005.

§ 85.8. Testing

The State Purchasing Director, on approval by the Director of Public Affairs, is hereby authorized to make use of any state laboratories for the tests and analyses authorized in Section 85.5 of this title wherever practicable and to use private laboratories or the laboratories of another government agency if it is impracticable to

use state laboratories; and he 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.

§ 85.9, 85.9A. Renumbered as §§ 62.4, 62.5 of this title by Laws 1995, c. 342, § 9, emerg. eff. June 9, 1995.

§ 85.9B. Purchase of Supplies and Equipment from Surplus Property Program

Each chief administrative officer of any state agency is encouraged to make needed purchases of office furniture or equipment, of other equipment or machinery, and of tools and hardware from the surplus property program operated by the Office of Public Affairs.

§ 85.9C. Renumbered as Title 74, § 62.7 by Laws 1999, c. 289. § 16, eff. July 1, 1999

§ 85.9D. Contracts for Computer Software and Hardware Maintenance--Coordination through Central Purchasing

A. Except as otherwise provided in subsection B of this section, agencies within the executive branch shall coordinate acquisition of computer software maintenance and hardware maintenance contracts through the Purchasing Division of the Department of Central Services. The Purchasing Division may establish consolidation contracts and enterprise agreements for state agencies. The State Purchasing Director may negotiate consolidation contracts, enterprise agreements and high technology system contracts in lieu of or in conjunction with bidding procedures to reduce acquisition cost.

§ 85.9E. OneNet--Statewide Contract--GSA Schedule or Contract Purchases--Negotiation for Education or Government Discounts

A. The Department of Central Services shall recognize as a statewide contract an unencumbered contract consummated in behalf of the telecommunications network known as OneNet by the Oklahoma State Regents for Higher Education or any other state entity assigned responsibility for OneNet; provided, said recognition shall require recommendation by the Information Services Division of the Office of State Finance. The Department of Central Services shall not subject purchases pursuant to said contracts to any quantity limit.

B. For purchases that require review of the purchase requisition by the Information Services Division of the Office of State Finance and that are not available on a statewide contract but are available from a General Services Administration (GSA) schedule or contract, or are available from a GSA schedule or contract at a lesser price than from a state contract, state agencies may, with the approval of the Information Services Division, purchase from the vendor or vendors on the GSA schedule or contract.

C. The Oklahoma State Regents for Higher Education and any other state entity assigned responsibility for OneNet are authorized to negotiate for education or government discounts from published price listings and to make contracts at such prices subject to adjustment for price increases nationally published.

§ 85.9F. Renumbered as 74 O.S. 62.8 by Laws 1999, c. 289, § 17, eff. July 1, 1999

§ 85.9G. Behavioral Services Contract Providers--Rules Establishing Qualifications

The governing bodies of the state agencies contracting for behavioral services shall each promulgate rules establishing the qualifications for those employees of the contract providers when such agency delivers the behavioral health care services pursuant to a contract or subcontract with the state agencies.

§ 85.10. Records Open For Public Inspection

Except as otherwise provided by law, records of the State Purchasing Director pertaining to any acquisition, contract, transfer, negotiations, order, or rejection shall be open during regular office hours of the Purchasing Division to any person subject to reasonable limitations to prevent the removal of records from the Purchasing Division and to allow records to be kept current and in good order; and the acquisition records of state agencies shall be open to public inspection under the same conditions. If the State Purchasing Director requires bidders to submit bidders' financial or proprietary information with a bid, proposal, or quotation, the State Purchasing Director may designate the information confidential and reject all requests to disclose the information so designated.

§ 85.11. Publication Of Rules, Regulations And Specifications

The Purchasing Director shall publish such rules and regulations authorized hereunder as may be practicable at least once each year and is authorized to 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.

§ 85.12. Act Not to Affect Nonconflicting Procedures-Acquisitions Excluded

A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except as they may be directly in conflict herewith; and all claims, warrants, and bonds shall be examined, inspected, and approved as now provided by law.

B. Except as otherwise provided by this section, the acquisitions specified in this subsection shall be made in compliance with Section 85.39 of this title but are not subject to other provisions of The Oklahoma Central Purchasing Act:

1. Food and other products produced by state institutions and agencies;

2. The printing or duplication of publications or forms of whatsoever kind or character by state agencies if the work is performed upon their own equipment by their own employees. Pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of The Oklahoma Central Purchasing Act;

3. Department of Transportation and Transportation Commission contractual services or right-of-way purchases; contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts; and contracts for public service type announcements initiated by the Department of Transportation; but not contractual services for advertising or public relations or employment services;

4. Utility services where rates therefore are regulated by a state or federal regulatory commission, or by municipal ordinance, or by an Indian Tribal Council for use by the Department of Corrections only;

5. Acquisitions by the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize the Purchasing Division. The standards shall foster economy and short response time and shall include appropriate safeguards and record-keeping requirements to ensure appropriate competition and economical and efficient purchasing;

6. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

7. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

8. Acquisitions by the Oklahoma Municipal Power Authority;

9. Acquisitions by the Grand River Dam Authority;

10. Acquisitions by rural water, sewer, gas, or solid waste management districts created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

11. Acquisitions by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, or the Midwestern Oklahoma Development Authority;

12. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and contracts for the services of legal counsel when approved by the Attorney General;

13. Expenditure of monies appropriated to the State Board of Education for Local and State Supported Financial Support of Public Schools, except monies allocated therefrom for the Administrative and Support Functions of the State Department of Education;

14. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

15. Contracts entered into by the Oklahoma Department of Career and Technology Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Career and Technology Education for training and supportive services that address the needs of new or expanding industries;

16. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

17. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

18. Acquisitions made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

19. Acquisitions available to an agency through a General Services Administration (GSA) contract or other federal contract if the acquisition is on current statewide contract and the terms of the GSA or other federal contract, as determined by the State Purchasing Director, are more favorable to the agency than the terms of a statewide contract for the same products;

20. Purchases of pharmaceuticals available through a multistate or multigovernmental contract if such pharmaceuticals are or have been on state contract within the last fiscal year, and the terms of such contract are more favorable to the state or agency than the terms of a state contract for the same products, as determined by the State Purchasing Director. 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 contracts;

21. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

22. Acquisitions by the Forestry Service of the Oklahoma Department of Agriculture, Food, and Forestry as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the acquisitions are not on current statewide contract or the terms of the federal contract are more favorable to the agency than the terms of a statewide contract for the same products;

23. Acquisitions of clothing for clients of the Department of Human Services and acquisitions of food for group homes operated by the Department of Human Services;

24. Acquisitions by the Oklahoma Energy Resources Board;

25. Acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and acquisitions of food for group homes operated by the Office of Juvenile Affairs;

26. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title;

27. Acquisitions by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction;

28. Acquisitions by the Native America Cultural and Educational Authority and acquisitions by the Oklahoma Department of Commerce to assist the Native American Cultural and Educational Authority pursuant to Section 5017 of this title;

29. Acquisitions for resale in and through canteens operated pursuant to Section 537 of Title 57 of the Oklahoma Statutes;

30. Acquisitions by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for acquiring sprayers, blowers, traps, and attractants related to the eradication of boll weevils in this state or as part of a national or regional boll weevil eradication program;

31. Contracts entered into by the Oklahoma Indigent Defense System for expert services pursuant to the provisions of subsection D of Section 1355.4 of Title 22 of the Oklahoma Statutes;

32. Acquisitions by the Oklahoma Correctional Industries and the Agri-Services programs of the Department of Corrections of raw materials, component parts and other products, any equipment excluding vehicles, and any services excluding computer consultant services used to produce goods or services for resale and for the production of agricultural products; and

33. Contracts entered into by the Department of Human Services for provision of supported living services to members of the plaintiff class in Homeward Bound, Inc., et. al., v. The Hissom Memorial Center, et. al., Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma.

C. Pursuant to the terms of a contract the State Purchasing Director enters into or awards, a state agency, common school, municipality, rural fire protection district, county officer, or any program contract, purchase, acquisition or expenditure that is not subject to the provisions of The Oklahoma Central Purchasing Act, may, unless acting pursuant to a contract with the state that specifies otherwise, make use of statewide contracts and the services of the Purchasing Division and the State Purchasing Director. Any political subdivision or rural fire protection district may designate the State Purchasing Director as its agent for any acquisition from a statewide contract or otherwise available to the state.

D. The State Purchasing Director shall make periodic audits of the purchasing procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that the procedures are being followed.

§ 85.12a. Requisitions for Insurance

Any state agency that purchases insurance through the Purchasing Division of the Office of Public Affairs shall submit a requisition form to acquire or maintain insurance to the Purchasing Division not less than forty-five (45) days prior to the expiration date of the existing insurance policy held by the agency. The time requirement for the submission of a requisition form, as provided for in this section, shall not apply to any state agency that:

1. has no existing insurance policy covering the property sought to be insured; or

2. must acquire insurance expediently due to some exigent circumstance as determined by the Purchasing Director of the Purchasing Division of the Office of Public Affairs.

§ 85.12b. Leasing, Chartering or Contracting for Aircraft

All agencies or departments of this state shall lease, charter or contract for the use of any aircraft pursuant to the provisions of the Oklahoma Central Purchasing Act, except aircraft owned and operated by another agency or department of this state. The Office of Public Affairs shall develop and implement guidelines for the use of such aircraft.

§ 85.12c. Department of Human Services--Local Fund-Raising Activities--Purchases Made from Funds

A. Purchases made from funds received by local offices administered by the Department of Human Services for fund-raising activities and donations for the benefit of clients and potential clients at the local offices where such purchases may not otherwise be paid for from appropriated funds, shall not be subject to requirements of the Oklahoma Central Purchasing Act. Monies received by such fund-raising activities or donations shall be maintained in an Agency Special Account, and expenditure control shall reside at the local offices. Monies received by such fund-raising activities or donations from the local office, vending operations administered by employees of the Department of Human Services, and all other nonrestricted cash and cash-equivalent items received by employees of the Department of Human Services shall be deposited in the Agency Special Account established for this purpose. Such deposits shall be made at local banking institutions approved by the State Treasurer.

B. Purchases made from funds received by local offices administered by the Office of Juvenile Affairs for fund-raising activities and donations for the benefit of clients and potential clients at the local offices where such purchases may not otherwise be paid for from appropriated funds shall not be subject to requirements of the Oklahoma Central Purchasing Act. Monies received by such fund-raising activities or donations shall be maintained in an agency special account, and expenditure control shall reside at the local offices. Monies received by such fund-raising activities or donations from the local office, vending operations administered by employees of the Office of Juvenile Affairs, and all other nonrestricted cash and cash-equivalent items received by employees of the Office of Juvenile Affairs shall be deposited in the agency special account established for this purpose. The deposits shall be made at local banking institutions approved by the State Treasurer.

C. Merchandise for resale purchased and sold through a canteen established at an institution or facility operated by the Office of Juvenile Affairs shall be exempt from the requirements of the Oklahoma Central Purchasing Act.

§ 85.13. Accepting Or Giving Of Gratuities Prohibited – Penalty

It shall be unlawful for the State Purchasing Director or any buyer or any officer of the ~~Office of Public Affairs~~ Department of Central Services, or any member of their immediate family, under the Oklahoma Central Purchasing Act to accept any gift, donation, or gratuity for himself or any member of his immediate family from any seller or prospective seller of any property covered by the Oklahoma Central Purchasing Act; and it shall further be unlawful for any seller or any prospective seller to give or donate anything of value to the State Purchasing Director or any buyer or officer of the ~~Office of Public Affairs~~ Department of Central Services or any buyer under the Oklahoma Central Purchasing Act or any member of the immediate family of the State Purchasing Director or buyer or officer of the ~~Office of Public Affairs~~ Department of Central Services.

The violation of any provision of this section shall constitute a misdemeanor and in the event the State Purchasing Director or any buyer or any officer of the ~~Office of Public Affairs~~ Department of Central Services is convicted for the violation of this section he shall forfeit his position immediately in addition to the penalty provided in this section.

§ 85.14. Federal Laws To Govern

Notwithstanding any provision of this act to the contrary, in all cases where federal granted funds are involved, the federal laws, rules and regulations thereto shall govern to the extent necessary to insure the benefit of such funds to the State of Oklahoma.

§ 85.15. Strict Conformity – Penalties

All persons, agents, officers and employees of the state included within the provisions of this act are required to conform strictly to the provisions of this act, and any such persons, agents, officers or employees violating any provision of this act, shall be deemed guilty of a misdemeanor unless herein otherwise provided, and upon conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or be imprisoned in the county jail not to exceed six (6) months or by both such fine and imprisonment.

§ 85.16. Repealed by Laws 1980, c. 68, § 1, eff. April 10, 1980

§ 85.17. Repealed by Laws 1999, SB 508 c. 289. § 19, eff. November 1, 1999

§ 85.17A. Bidding Preferences—Reciprocity

State agencies shall not discriminate against bidders from states or nations outside Oklahoma, except as provided by this section. State agencies shall reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions for acquisitions pursuant to the Oklahoma Central Purchasing Act. The State Purchasing Director shall annually prepare and distribute to certified procurement officers a schedule providing which states give bidders in their states a preference and the extent of the preference. This schedule shall be used by state agencies in evaluating bids.

§ 85.18. Repealed by Laws 1980, c. 68, § 1, eff. April 10, 1980

§ 85.19. Department For Analyzing And Evaluating Goods And Services

The Director of Central Purchasing shall create a department for analyzing and evaluating goods and services bought through Central Purchasing Agency using state owned laboratories and independent testing laboratories as needed.

§ 85.20. Repealed by Laws 1981, c. 340, § 28, eff. July, 1, 1981

§ 85.21. Repealed by Laws 1985, c. 43, § 6, operative July, 1, 1985

§ 85.22. Notarized Sworn Statement Attached To Competitive Bid

~~A notarized sworn statement shall be attached to any~~ Any competitive bid submitted to the State of Oklahoma or contract executed by the state for goods or services shall contain a certification, which shall be in substantially the following form:

STATE OF OKLAHOMA ~~)~~
~~) ss~~
COUNTY OF ~~)~~

_____, of lawful age, being first duly sworn, on oath says A. For purposes of competitive bids, I certify:

1. (s)he is I am the duly authorized agent of _____, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;

2. (s)he is I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and has have been personally and directly involved in the proceedings leading to the submission of such bid; and

3. neither the bidder nor anyone subject to the bidder's direction or control has been a party:

   a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
   b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
   c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

_____

Subscribed and sworn to before me

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement is attached.

Certified this _____ day of _____, 19 20__.

_____

Notary Public (or Clerk or Judge)

§ 85.23. Repealed by Laws 2008, c. 96, § 7, eff. November 1, 2008.

§ 85.24. Redesignated to 61, § 138 by Laws 1999, c. 289, § 18, eff. July 1, 1999

§ 85.25. Repealed by Laws 1980, c. 126, § 10, eff. April 10, 1980.

§ 85.26. Purchase Of Blanket Bond For State Officers And Employees - Definition--Bond—Exclusive

The Purchasing Division of the Office of Public Affairs is directed to purchase from the lowest bidder a surety contract or contracts in the form known as a "blanket bond" to cover all elective state officers, appointive officers, and employees in the manner provided in this section. No other bond shall be acceptable as surety for any elected or appointed officer or employee of this state in lieu of said blanket bond. For purposes of Sections 85.26 through 85.31 of this title, a "blanket bond" is defined as a public

employees' blanket position bond which covers all employees up to the penalty of the bond for each employee and the full penalty of the bond is always in force during its term and no restoration is necessary and there is no additional premium after a loss is paid.

§ 85.27. Elective State Officers--Blanket Bond

Each elective state officer shall, before entering office, give surety in an amount and upon terms and conditions as may be specified and provided by this act. Such blanket bond shall be furnished by a company duly qualified under the insurance laws of this state. The blanket bond shall be payable to the State of Oklahoma and, whenever possible, conditioned on the faithful performance of the duties of the individuals covered by the provisions of this act during their employment or term of office and that they will properly account for all monies and property received by virtue of their position or employment.

§ 85.28. Classification Of Officers And Employees For Coverage Under Bond

A. For purposes of this act, each head of a department, institution, agency, commission, authority or other body of state government shall determine and classify the officers or employees under his jurisdiction and control who are required to give surety to the state, having due regard for the duties and responsibilities of any such office or employment and shall require such surety in such amounts and upon such terms and conditions as may be specified and provided by this act.

B. In determining which officers or employees shall be bonded, the head of the department, agency, institution, commission, authority or other body of state government may make such determination by classes of employees with due regard to the duties and responsibilities of officers and employees falling within such class.

§ 85.29. Schedule of Amounts of Surety Required

The amount of surety required for each state officer or employee pursuant to Sections 85.26 through 85.31 of this title is as follows:

DEPARTMENT	AMOUNT OF BOND
Office of the State Treasurer	$300,000.00
Oklahoma Employment Security Commission	$150,000.00
Office of Public Affairs	$100,000.00
Insurance Commission	$100,000.00
Office of the State Auditor and Inspector	$50,000.00
Office of State Finance	$50,000.00
Bank Commissioner	$50,000.00
CompSource Oklahoma President and Chief Executive Officer	$50,000.00
Commissioners of the Land Office	$50,000.00
Oklahoma Securities Commission	$50,000.00
Oklahoma Tax Commission	$50,000.00
Department of Human Services	$50,000.00
Oklahoma Public Employees Retirement System	$50,000.00

DEPARTMENT	AMOUNT OF BOND
Oklahoma Corporation Commission	$50,000.00
State Board of Education	$50,000.00
Finance Division	$150,000.00
All Others	$25,000.00
Department of Transportation	$25,000.00
Boards of Regents of Oklahoma Universities and Colleges	$50,000.00
Office of Attorney General	$10,000.00
The University Hospitals	$50,000.00
All Other State Departments, Agencies, Institutions, Commissions, Authorities, and other bodies of state government	$10,000.00

Provided, however, that nothing in the Oklahoma Central Purchasing Act shall prohibit any head of a department, institution, agency, commission, authority or other body of state government from requiring the Central Purchasing Division to purchase increased amounts of blanket bond coverage for his employees up to a total maximum coverage of Fifty Thousand Dollars ($50,000.00) when the listed amount is deemed inadequate. The cost of increased coverage shall be borne by the department, institution, agency, commission, authority or other body of state government requesting the increased coverage.

§ 85.30. Statutorily Required Bonds

Whenever, by any presently existing law of this state or by any law hereafter enacted, any officer or employee is required to furnish bond as a prerequisite to employment, such requirement as to terms, conditions, penalty, amount or quality or type of surety shall be and is hereby deemed and defined to mean the furnishing of a bond or surety contract in the manner and amount under the provisions and requirements of this act.

§ 85.31. Purchasing Division to Purchase All Bonds--Payment of Premiums—Approval

A. Whenever any officer, statutory board, commission, committee, department, authority, or any state agent or agency by whatever name called, is authorized by any law of this state to purchase any official bond, surety bond, blanket bond, or surety contract upon any state officer or employee, the authority is hereby transferred and conferred upon the Purchasing Division of the Department of Central Services. The authority shall be exercised by the Purchasing Division in the manner pursuant to the provisions and requirements prescribed by Section 85.58A of this title.

B. The premium for a bond will be invoiced to the Purchasing Division and paid for by legislative appropriation set aside for that specific purpose.

C. If the legislative appropriation is insufficient to meet the cost of a bond, the State Purchasing Director in conjunction with the State Risk Administrator shall assess each entity covered by the bond a pro rata share of the excess cost amount.

D. A blanket bond shall be approved as to form and legal sufficiency by the general counsel of the Department of Central Services and shall be filed with the Director of Central Services.

§ 85.32. Repealed by Laws 1996, c. 316, § 7, eff. July 1, 1996

§ 85.33. Registration Of State Vendors Revolving Fund

A. There is hereby created in the State Treasury a revolving fund for the Department of Central Services to be designated the "Registration of State Vendors Revolving Fund". The fund shall consist of any monies received from fees collected in accordance with subsection B of this section. The revolving fund shall be a continuing fund, without legislative appropriation, not subject to fiscal year limitations, and shall be under the control and management of the Department of Central Services. Expenditures from the Registration of State Vendors Revolving Fund shall be budgeted and expended pursuant to the laws of the state and the statutes relating to public finance. The fund shall be used to defray the costs of the Purchasing Division for commodity research, classification, and analysis and expenses the Department incurs to support Purchasing Division operations. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the Department, and approved for payment by the Director of State Finance.

B. The Department of Central Services shall collect a fee of Twenty-five Dollars ($25.00) to register suppliers that desire to do business with this state through the Purchasing Division. The suppliers shall register separately for each commodity list. Each registration shall entitle the supplier to be on that list for one (1) year, to receive all bid notices in that classification for that period, and to receive one copy of the State's Commodity Classification Manual when published. All fees collected in accordance with this section shall be deposited in the revolving fund created in subsection A of this section.

§ 85.33A. Contract Management Revolving Fund

A. There is hereby created in the State Treasury a revolving fund for the Department of Central Services to be designated the "Contract Management Revolving Fund". The fund shall consist of any monies received from fees, levies or rebates the Department receives in accordance with subsection B of this section. The revolving fund shall be a continuing fund, without legislative appropriation, not subject to fiscal year limitations, and shall be under the control and management of the Department of Central Services. Expenditures from the Contract Management Revolving Fund shall be budgeted and expended pursuant to the laws of the state and the statutes relating to public finance. The fund shall be used to defray the costs of the Purchasing Division for operations of the Purchasing Division and expenses the Department of Central Services incurs to support operation of the Purchasing Division. Warrants for expenditures from the fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the Department, and approved for payment by the Director of State Finance.

B. The State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department of Central Services. The State Purchasing Director shall ensure that a contract that provides a management fee, levy or rebate provides value to acquiring agencies exceeding open market acquisition costs.

§ 85.34 to 85.35. Renumbered as Title 74, §§ 85.58A to 85.58K by Laws 1998, c. 371, § 15, eff. November 1, 1998

§ 85.36. Repealed by Laws 1994, c. 329, § 13, eff. July 1, 1994

§ 85.36A to 85.38. Renumbered as Title 74, §§ 85.58L to 85.58N by Laws 1998, c. 371, § 15, eff. November 1, 1998

§ 85.39. Agency Internal Purchasing Procedures

A. 1. Each state agency shall develop internal purchasing procedures for acquisitions by the state agency. Procedures shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations. Following development, the state agency shall submit the procedures to the State Purchasing Director.

2. The State Purchasing Director shall review the procedures submitted pursuant to paragraph 1 of this subsection to determine compliance with the Oklahoma Central Purchasing Act, rules promulgated pursuant thereto, Sections 3001 through 3010 of this title, and provisions of paragraph 1 of this subsection. The State Purchasing Director shall provide written findings, including details of noncompliance, if any, to the Director of the Department of Central Services.

3. The Director of the Department of Central Services shall, within fifteen (15) days after the procedures are submitted, notify the state agency that the procedures are in compliance or indicate revisions necessary to bring the procedures into compliance.

B. A state agency shall not make acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) pursuant to Section 85.5 of this title, unless the Director of the Department of Central Services provides notice of compliance.

C. Each state agency shall maintain a document file for each acquisition the state agency makes which shall include, at a minimum, justification for the acquisition, supporting documentation, copies of all contracts, if any, pertaining to the acquisition, evaluations, written reports if required by contract, and any other information the State Purchasing Director requires be kept.

§ 85.40. Travel Expenses to be Included in Bid, Proposal, or Quotation

Suppliers that may incur travel expenses pursuant to an acquisition by a state agency from the supplier shall include travel expenses in the total acquisition price in the supplier's bid, proposal, or quotation. A state agency shall not pay any supplier travel expenses in addition to the total price of the acquisition.

§ 85.41. Professional Services Contracts

A. A state agency that acquires professional services shall comply with the provisions of this section.

B. The state agency shall evaluate the performance of the professional services provided pursuant to a professional services contract. The performance evaluation shall indicate the quality of service or work product of the supplier. The state agency shall retain the evaluation in the document file the state agency maintains for the acquisition pursuant to Section 85.39 of this title. If the evaluation indicates deficiencies with the supplier's work, the state agency shall send a copy of the evaluation to the State Purchasing Director.

C. If the work product of the contract is a report, the state agency shall file the report with the State Librarian and Archivist.

D. A state agency shall administer, monitor, and audit the professional services contract. The State Purchasing Director may require the state agency to report to the State Purchasing Director the status of an unfinished professional services contract.

E. A professional services contract shall include an audit clause which provides that all items of the supplier that relate to the professional services are subject to examination by the state agency, the State Auditor and Inspector and the State Purchasing Director.

F. 1. If the final product of the professional services contract is a written proposal, report, or study, the professional services contract shall require the supplier to sign a sworn statement certifying that the supplier has not previously provided the state agency or another state agency with a final product that is a substantial duplication of the final product of the proposed contract.

2. Any state agency renewing a contract with a supplier shall not be subject to the provisions of paragraph 1 of this subsection.

G. 1. Contracts for professional services shall provide for payment for services at a uniform rate throughout the duration of the contract if the services throughout the duration of the contract are similar and consistent.

2. No state agency shall execute a contract for professional services providing for nonuniform payments throughout the duration of the contract without authorization of the State Purchasing Director.

§ 85.42. One Year Limitation on Entering Contracts with Certain Persons—Exceptions

A. Except as otherwise provided for in this section, any agency, whether or not such agency is subject to the Oklahoma Central Purchasing Act, is prohibited from entering into a sole source contract or a contract for professional services with or for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. The provisions of this subsection shall not prohibit an agency from hiring or rehiring such person as a state employee.

B. Each contract entered into by any person or firm with the State of Oklahoma shall include an affidavit certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. This subsection shall not preclude faculty and staff of the institutions within The State System of Higher Education from negotiating and participating in research grants and educational contracts. Nor shall this subsection apply to personnel of the Capital Resources Division

of the Oklahoma Department of Commerce who contract to provide services to the Oklahoma Capital Investment Board.

C. As used in this section, person is defined as any state official or employee of a department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust, school district, fair board, court, executive office, advisory group, task force, study group, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof, judges, justices, and state legislators.

D. An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf.

E. The Department of Transportation, Oklahoma Water Resources Board, Department of Environmental Quality, Oklahoma Tourism and Recreation Department, the Oklahoma Transportation Authority and the Oklahoma Department of Agriculture, Food, and Forestry may enter into a contract for professional services at any time with a person who has retired from state service, provided the provisions specified in subsection B of this section are satisfied.

F. The Department of Human Services may enter into a contract for professional services related to computer application development support and network engineering at any time with a person who has separated from state service, provided the provisions specified in subsection B of this section are satisfied.

G. To maintain public health infrastructure and preparedness, the State Department of Health and city-county health departments may enter into a contract for professional services at any time with a physicians assistant, registered nurse, advanced practice nurse, nurse midwife, registered dietician, occupational therapist, physical therapist, or speech-language pathologist who has retired from state service; provided, the provisions specified in subsection B of this section are also satisfied.

H. The Department of Mental Health and Substance Abuse Services may enter into a contract for professional services at any time with a physician who has separated and/or retired from state service; provided that the provisions specified in subsection B of this section are satisfied.

§ 85.43. Annual Report of Acquisitions

A. Each chief administrative officer of a state agency shall submit to the State Purchasing Director by November 1 of each year a report listing all acquisitions exceeding Ten Thousand Dollars ($10,000.00) but not exceeding Twenty-five Thousand Dollars ($25,000.00) of the state agency for the preceding fiscal year which will include the following information:

1. Professional services contracts;
2. Nonprofessional services contracts; and
3. Contracts for the leasing of property including real property contracts and any lease agreements for products or equipment.

B. The report shall contain:

1. The name of the supplier;
2. A description of each acquisition;
3. The purchase price of the acquisition; and
4. The total amount expended to date for the preceding fiscal year for the acquisition.

C. The report shall specifically identify sole source and sole brand acquisitions.

D. The state agency shall submit the report to the State Auditor and Inspector and to the Department of Central Services. The state agency shall submit the report to any member of the Appropriations and Budget Committee of the House of Representatives or Appropriations Committee of the Senate if a member so requests.

E. The State Auditor and Inspector shall review the report for compliance with statutes and rules or other provisions of law applicable to sole source and sole brand acquisitions.

§ 85.44. Contracts Violating Full-Time Equivalent Employee Limitation Not to Be Entered Into

Any chief administrative officer of an agency, whether or not such agency is subject to the Oklahoma Central Purchasing Act, shall not enter into any contract for nonprofessional or professional services for the purpose of or which would result in the circumvention of the full-time-equivalent employee limitation established by law for such agency.

§ 85.44A. Court Order Requiring Purchases of Goods or Services

A court order requiring the purchase of certain goods or services by a state agency, whether or not such state agency is subject to the Oklahoma Central Purchasing Act, shall not invalidate competitive bidding procedures required pursuant to Section 85.7 of Title 74 of the Oklahoma Statutes if such court order does not specify specific vendors or providers. Any such purchase of goods or services shall comply with competitive bid procedures.

§ 85.44B. Payment for Goods or Services Pursuant to Contract

Payment for products or services pursuant to a contract executed by a state agency, whether or not such state agency is subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, shall be made only after products have been provided or services rendered. This section shall not prohibit the payment for subscriptions to magazines, periodicals, or books or for payment to vendors providing subscription services. This section shall not prohibit payment for services provided by the United States Army Corp of Engineers prior to the services being rendered if the action is taken pursuant to a cooperative agreement between a state agency and the Corp to provide emergency response or to protect the public health, safety, or welfare.

§ 85.44C. Contract Allowing Vendor or Service provider to Acquire Ownership of Material or Equipment Furnished Pursuant to Contract

It shall be unlawful for any state agency, whether or not such state agency is subject to the Oklahoma Central Purchasing Act, to enter into any contract which provides for the state or state agency to furnish material or equipment to be used by the vendor or service provider contracting with the state in the performance of the contract if the contract allows the vendor or service provider to acquire ownership of the material or equipment during or after the term of the contract in any manner other than through competitive bidding or a public sale procedure.

§ 85.45j. Sole Source or Sole Brand Acquisition

A. 1. Pursuant to the provisions of this section, an acquisition may be exempt from competitive bidding procedures as a sole source or sole brand acquisition.

2. If a state agency desires to make a sole source or sole brand acquisition, the state agency shall retain in the state agency's acquisition file or attach to the requisition an affidavit signed by the chief administrative officer of the state agency, in the following form:

SOLE SOURCE OR SOLE BRAND ACQUISITION AFFIDAVIT

STATE AGENCY _____

SUPPLIER NAME _____

SUPPLIER ADDRESS _____

SUPPLIER TELEPHONE _____

I hereby affirm that pursuant to the provisions of the attached requisition or contract that

(Name of Supplier)

is the only person or business entity singularly qualified to provide the acquisition, and if a product is the only brand or product which is unique, for the following reasons:

_____

_____

_____

_____

_____

The following is a brief description of all efforts which were made to verify that the services or products to be purchased pursuant to the provisions of the attached requisition or contract qualify as a sole source or sole brand acquisition:

_____

_____

_____

_____

_____

I understand that the signing of this affidavit knowing such information to be false may subject me to punishment for perjury.

_____

(Chief administrative officer)

STATE OF OKLAHOMA)

) ss.

COUNTY OF OKLAHOMA)

Subscribed and sworn to before me this __ day of _____, 19_____ or 20_____.

_____

Notary Public

My Commission expires:

_____

3. A court order requiring the purchase of specific products or services but which does not specify a brand or supplier shall not substitute for the affidavit required by this subsection or otherwise invalidate the acquisition procedures required pursuant to the Oklahoma Central Purchasing Act.

4. Any chief administrative officer of a state agency affirming the affidavit required by this subsection who knows the information to be false shall be deemed guilty of perjury and upon conviction shall be punished by fine or by imprisonment or both fine and imprisonment pursuant to law. Upon conviction or upon entering a plea of nolo contendere pursuant to this paragraph, the chief administrative officer shall immediately forfeit his or her position and shall be ineligible for appointment to or employment in the state service for a period of five (5) years after entering a plea of nolo contendere or being convicted.

5. Upon a determination by the Director of the Department of Central Services that there are reasonable grounds to believe that a violation of this subsection has occurred, the Director shall send findings to the Attorney General that support the determination. The Attorney General shall review the findings and determine whether to investigate or prosecute the person.

6. If the acquisition's purchase price is such that the state agency is required to submit a requisition to the State Purchasing Director, the State Purchasing Director shall approve or deny the requisition for a sole source or sole brand acquisition. Prior to approving a requisition pursuant to this paragraph, the State Purchasing Director shall document reasons a sole source or sole brand purchase is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

7. For sole source or sole brand acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) and not requiring submission of a requisition to the State Purchasing Director, the state agency's certified procurement officer shall document reasons a sole source or sole brand acquisition is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

8. The chief administrative officer of each state agency shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) executed by the state agency in the preceding month. The report shall indicate whether requisitions for sole source and sole brand acquisitions were disapproved or modified by the State Purchasing Director and information the State Purchasing Director requires.

9. The State Purchasing Director shall electronically provide to the Office of State Finance the information received pursuant to paragraph 8 of this subsection in machine-readable format and in the form the Office of State Finance requires.

B. By the fifteenth day of each month, or the first working day thereafter, the Office of State Finance shall provide a report from the information received pursuant to this section to:

1. The Speaker of the House of Representatives and the President Pro Tempore of the Senate;

2. The Majority and Minority Leaders of both the House of Representatives and the Senate;

3. The Chair and Vice Chair of the Appropriations and Budget Committee of the House of Representatives and the Appropriations Committee of the Senate; and

4. Any member of the Legislature requesting the report.

The report shall detail all sole source and sole brand acquisitions by state agencies for the month prior to the month preceding the submission of the report. The report shall be titled "Monthly Sole Source and Sole Brand Contracting Report of Oklahoma State Agencies" and indicate the time period of the report. The report shall be provided in physical form unless the requesting person specifies the electronic version. The report shall be signed by the Director of State Finance or the Director's designee. The report shall be in columnar database format and shall include at least the following fields of information: state agency number; state agency name; date created by the Department of Central Services for the requisition; date of either approval or disapproval of the requisition; if disapproved, the reason why such contract was disapproved; estimated amount of the requisition; purchase order amount; purchase order number; actual business name of supplier; supplier federal employer identification number; contact person; and the commodity classification listing at the appropriate level to distinguish between similar acquisitions. Information required by this subsection shall be reported and maintained on each report through the next reporting period after an acquisition is made. The applicable data in the fields of information specified in this subsection shall be listed even if the state agency requisition is disapproved.

C. The Office of State Finance shall maintain electronic historic data or any other data received pursuant to this section for at least two (2) years.

D. By August 15 of each year, from the data received pursuant to this section, the Office of State Finance shall complete and submit a report detailing the number of sole source or sole brand contracts issued by each state agency and a list of the business names of the suppliers who received sole source or sole brand awards during the previous fiscal year and if more than one such award, the number of awards so executed.

§ 85.45k. State Travel Office

A. There is hereby created the State Travel Office within the Purchasing Division of the Department of Central Services.

B. All state agencies and departments of this state shall make arrangements for all air travel on scheduled commercial airlines for state employees required to travel in the course of their official duties and for all other persons traveling at state expense through the State Travel Office, except when the state agency determines that:

1. The air travel services can be secured at a cost less than that which can be secured by the State Travel Office; or

2. The air travel originates from a location outside the state and it would be impractical to arrange for the air travel through the State Travel Office; or

3. The air travel is necessitated by an emergency and time does not permit utilization of the State Travel Office's services; or

4. The air travel is part of a package arrangement made by the organization scheduling the meeting or conference.

C. All claims made for reimbursement shall contain a statement showing the reason for the exemption.

D. The State Travel Office shall divide the state into high travel areas and low travel areas. A high travel area shall consist of no more than one county. Oklahoma, Tulsa, Payne and Cleveland Counties and any other county that accounts for a substantial portion of air travel at state expense shall be designated as high travel areas. The remaining counties of the state shall be designated as low travel areas. Low travel areas may consist of more than one county, as determined by the State Travel Office. The State Travel Office shall contract with no less than six private travel agencies in a high travel area and one or more private travel agencies in a low travel area to provide the scheduling and related travel services required to comply with this section. In order to take advantage of local competitive situations, institutions of The Oklahoma State System of Higher Education in high travel areas are authorized to solicit competitive bids for air travel services by travel agencies. If the bids result in greater savings than the state contract, then these institutions may issue individual contracts to not less than two travel agencies. Further, institutions of The Oklahoma State System of Higher Education in high travel areas are also authorized to solicit competitive bids for applicable city pair destination rates to airline companies. If the bids result in a greater savings than the state contract rates, these institutions may issue individual contracts to the airline companies with the lowest bids.

E. The State Travel Office shall promulgate rules and contract specifications to which the contract travel agencies shall be subject. The rules and specifications shall be drawn with the intent of obtaining the lowest available fares for scheduled commercial air travel.

F. At the end of each month the contract travel agencies shall furnish a statement, in a form approved by the State Travel Office, showing certain details of all travel arrangements handled to each state agency for which the contract travel agencies have furnished their services and shall also furnish copies of said statements to the State Travel Office.

§ 85.45o. Short Title

Sections 1 through 5 of this act shall be known and may be cited as the "Oklahoma Online Bidding Act".

§ 85.45p. Intent of Act

The intent of the Oklahoma Online Bidding Act is:

1. To provide increased economy in state government procurement activities and to maximize to the fullest extent practicable the purchasing value of state monies while ensuring that procurements are the most advantageous to state agencies;

2. To foster effective broad-based competition for state procurement within the free enterprise system;

3. To modernize state statutes governing state government procurement and permit the continued development of explicit and thoroughly considered procurement policies and practices;

4. To ensure the fair and equitable treatment of all persons who deal with state government procurement processes and to promote increased public confidence in state government procurement procedures; and

5. To provide an ongoing funding source for new and innovative electronic procurement practices that would otherwise not be possible due to previous funding practices and guidelines.

§ 85.45q. Definitions

As used in the Oklahoma Online Bidding Act:

1. "Information technology" means data processing, telecommunications, and office systems technologies and services;

2. "Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance;

3. "Construction" shall be defined as provided by Section 202 of Title 61 of the Oklahoma Statutes for online bids subject to the Public Building Construction and Planning Act;

4. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration;

5. "State agencies" or "agencies" shall be defined as provided by Section 85.2 of Title 74 of the Oklahoma Statutes for online bids subject to the Oklahoma Central Purchasing Act or as defined by Section 202 of Title 61 of the Oklahoma Statutes for online bids subject to the Public Building Construction and Planning Act;

6. "Online bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event;

7. "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web; and

8. "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 request for quotation.

§ 85.45r. Requirements of Online Bidding Process--Limitations on Application of Act--Disclosure—Remedies

A. When a state agency purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act for the purchase of goods, services, construction, or information services.

B. The online bidding process shall provide:

1. A designated opening and closing date and time. At the opening date and time, state agencies shall begin accepting online electronic bids. Online bids shall be accepted until the designated closing date and time, except as provided by paragraph 6 of this subsection;

2. The posting of all online bids electronically and updating of bids on a real-time basis by state agencies;

3. The authorization for state agencies to require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation or applicable acts;

4. The authorization for state agencies to also require potential bidders to prequalify as bidders and to restrict solicitations to prequalified online bidders;

5. The retention of the authority of state agencies to determine the criteria that will be used as the basis for making awards; and

6. The authorization for the Director of the Department of Central Services, in the event the state agency determines that a significant error or event occurred that affected the electronic receipt of any online bid by the agency, to determine it is in the best interest of the state to allow the agency to accept an electronic bid after the specified official closing date and time.

C. The provisions of the Oklahoma Online Bidding Act shall not apply to bid or proposal sealing or opening provisions found in any state law other than the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act.

D. All bids submitted electronically through the online bidding process pursuant to the Oklahoma Online Bidding Act are subject to the same public disclosure laws that govern bids received pursuant to sealed bid procurement procedures pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act.

E. All remedies available to state agencies and suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act are also available to state agencies and online bidders in an online bidding process.

§ 85.45s. Rules

The Director of the Department of Central Services shall promulgate rules to implement the Oklahoma Online Bidding Act.

§ 85.60. Patented and Copyrighted Material--Negotiation and Contracting for Retention--State Property Rights--Deposit of Sale Proceeds

A. Except as otherwise provided by Section 3206.3 of Title 70 of the Oklahoma Statutes, the Department of Central Services shall be the exclusive agency to negotiate and contract for the retention of patents and copyrights on material and property developed through state contracts subject to the Central Purchasing Act, unless an agency has been given specific authority to make such agreements by statute.

B. Except as otherwise provided by Section 3206.3 of Title 70 of the Oklahoma Statutes and Section 1365 of this title, any patented property or copyrighted material developed by contracts subject to the Central Purchasing Act, shall be the property of the State of Oklahoma under the sole management of the Department of Central Services. Such property or material may be licensed or sold by the Department of Central Services using similar procedures governing the sale of other state property but without declaring such property to be surplus.

C. Proceeds from the sale of such property or material under the jurisdiction of the Department of Central Services shall be deposited to the General Fund of the State of Oklahoma.

D. The Department of Central Services may contract with legal counsel experienced in the field of patent and copyright law to advise and assist that agency in carrying out its duties and responsibilities under this section for intellectual property under the jurisdiction of the Department of Central Services.

§ 87.1. Persons With Authority To Make State Purchases - Prohibition On Furnishing Supplies And Equipment

It shall be unlawful for the superintendent or business manager of any state agency or institution or any person with authority to purchase supplies, materials or equipment for such state agency or institution, or the spouse or child of either of them, to furnish such supplies, materials or equipment, or be interested by stock ownership or other profit sharing arrangements, in any business entity which is engaged in the furnishing of such supplies, materials or equipment to such agency, department or institution of the State of Oklahoma.

§ 87.2. Penalties

Any person violating the provisions of Section 1 of this act shall be guilty of a misdemeanor and upon conviction thereof shall be penalized by the payment of a sum of not to exceed One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not to exceed ninety (90) days or by both such fine and imprisonment and any employment of such person in any office position or capacity by the State of Oklahoma shall be terminated immediately upon such conviction whether or not any fine or confinement is imposed by the court.

§ 88.1. Inventory Of State Institution Purchases To Determine Conformity With Specifications - Dismissal For Failure To Comply

It shall be the duty of each chief administrative officer of all State institutions to make or cause to be made an inventory of all purchases made for such institution at the time of their delivery or receipt for the purpose of determining whether the items delivered are in conformity with the specifications required of such items at the time of purchase and any such chief administrative officer, who fails to make or cause to be made such inventory, shall be relieved from his position by the appointing authority.

§ 88.2. Report Of Deviation

In the event the inventory required by this act reveals that such items deviate substantially from the specifications as ordered, such facts shall be reported by the Chief Administrative Office of the Institution to the Purchasing Director of the State of Oklahoma, and failure to make such report shall constitute a misdemeanor.