



John S. Richard
Director

Brad Henry
Governor

STATE OF OKLAHOMA
DEPARTMENT OF CENTRAL SERVICES

PROCUREMENT INFORMATION MEMORANDUM 08-02

TO: All Certified Procurement Officers

DATE: June 6, 2008

SUBJECT: Oklahoma Taxpayer and Citizen Protection Act of 2007

The State of Oklahoma has been temporarily enjoined from enforcing certain provisions of House Bill 1804, the Oklahoma Taxpayer and Citizen Protection Act of 2007. This means that the State is prohibited from requiring vendors to register and participate in the Status Verification System as a condition of contracting with the State, as was required by H.B. 1804. For this reason, **PIM 2008-01 regarding the Oklahoma Taxpayer and Citizen Protection Act of 2007 is hereby withdrawn.** Further, DCS has amended its solicitation forms to remove the clause requiring compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007 (H.B. 1804). State agencies should ensure that they are using the latest version of the form (dated June 6, 2008 or later) for their solicitations.

Because of the volume of contracts and open solicitations that contain language requiring compliance with H.B. 1804, it may be difficult for agencies to amend every contract and solicitation to remove such language. In that case, agencies are advised to notify vendors and bidders that due to the injunction, the State does not intend to enforce current contract provisions requiring compliance with H.B. 1804. Central Purchasing is using the following language to notify vendors to whom it has awarded contracts that may contain language referencing H.B. 1804:

**Notice to Vendors Regarding the Oklahoma Taxpayer
and Citizen Protection Act of 2007**

Some State of Oklahoma contracts entered into in 2008 contained language requiring vendors to comply with House Bill 1804, the Oklahoma Taxpayer and Citizen Protection Act of 2007. Specifically, the clause required vendors to certify that they were registered and participating in the Status Verification System. The United States District Court for the Western District of Oklahoma has entered a preliminary injunction prohibiting the State of Oklahoma from enforcing certain provisions of H.B. 1804. Due to the high volume of State contracts, it is not possible to immediately amend every contract to remove language referencing H.B. 1804. Therefore, in compliance with the Court's order, the Central Purchasing Division of the Department of Central Services hereby advises it does not intend to enforce current contract clauses which require vendors to comply with H.B. 1804.

"SERVICE, QUALITY, INTEGRITY"

It is the understanding of the Department of Central Services that at this time, the injunction is not permanent. In the event the injunction is lifted, contracts entered into after the date of the Court order lifting the preliminary injunction will require compliance with H.B. 1804.

Central Purchasing encourages all Certified Procurement Officers to seek the advice of their agency legal counsel.

The provisions of H.B. 1804 which are affected by the Court's order are as follows:

Subsections B and C of Section 7 of House Bill 1804 (codified as Subsections B and C of Section 1313 of Title 25), which state:

B. 1. After July 1, 2008, no public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of all new employees.

2. After July 1, 2008, no contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the Status Verification System to verify information of all new employees.

3. The provisions of this subsection shall not apply to any contracts entered into prior to the effective date of this section even though such contracts may involve the physical performance of services within this state after July 1, 2008.

C. 1. It shall be a discriminatory practice for an employing entity to discharge an employee working in Oklahoma who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Oklahoma in a job category that requires equal skill, effort, and responsibility, and which is performed under similar working conditions, as defined by 29 U.S.C., Section 206(d)(1), as the job category held by the discharged employee.

2. An employing entity which, on the date of the discharge in question, was currently enrolled in and used a Status Verification System to verify the employment eligibility of its employees in Oklahoma hired after July 1, 2008, shall be exempt from liability, investigation, or suit arising from any action under this section.

3. No cause of action for a violation of this subsection shall arise anywhere in Oklahoma law but from the provisions of this subsection.

Due to the preliminary injunction, the above provisions of law will not go into effect on July 1, 2008.

Also affected by the preliminary injunction is Section 9 of H.B. 1804 (codified as 68 O.S. §2385.32) which states:

"SERVICE, QUALITY, INTEGRITY"

A. If an individual independent contractor, contracting for the physical performance of services in this state, fails to provide to the contracting entity documentation to verify the independent contractor's employment authorization, pursuant to the prohibition against the use of unauthorized alien labor through contract set forth in 8 U.S.C., Section 1324a(a)(4), the contracting entity shall be required to withhold state income tax at the top marginal income tax rate as provided in Section 2355 of Title 68 of the Oklahoma Statutes as applied to compensation paid to such individual for the performance of such services within this state which exceeds the minimum amount of compensation the contracting entity is required to report as income on United States Internal Revenue Service Form 1099.

B. Any contracting entity who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such contracting entity is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 or its equivalent.

C. Nothing in this section is intended to create, or should be construed as creating, an employer-employee relationship between a contracting entity and an individual independent contractor.

The Department of Central Services will continue to monitor the court cases regarding H.B. 1804 and will advise agencies as soon as possible regarding any developments affecting procurement.

For additional information regarding this memorandum, contact Lee Johnson at 405-522-5395 or Lee.Johnson@dcs.state.ok.us.

A handwritten signature in cursive script that reads "Betty Cairns".

Betty Cairns
State Purchasing Director