



**OKLAHOMA**  
Office of Management  
& Enterprise Services

**Purchasing Division**

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**PROCUREMENT INFORMATION MEMORANDUM**

<b>Affected Entities/Personnel:</b> State agencies procurement staff	<b>Subject:</b> Competitive Bid Waiver(s)
<b>Effective Date of PIM:</b> 08/25/2022	<b>Point of Contact:</b> <a href="mailto:PIM@omes.ok.gov">PIM@omes.ok.gov</a>
<b>Prior PIM:</b> N/A	<b>Statutory and Rule Reference:</b> <ul style="list-style-type: none"><li>• 74 O.S. §85 7A.7.</li><li>• 74 O.S.85.5G.5</li><li>• 62 O.S. §34.11.1(H) (2)</li><li>• 62 O.S. §34.62.3</li><li>• 62 O.S. § 85.G.5</li></ul>
<b>Approved:</b> Dan Sivard, State Purchasing Director	<b>Approval Date:</b> 08/29/2022

As a means of disseminating relevant state procurement information to state entities, the Office of Management and Enterprise Services, Purchasing Division periodically issues Procurement Information Memoranda (PIM). To the extent any information in this Procurement Information Memorandum conflicts with information in a previously issued memorandum, the information in this PIM controls.

Summary

The director of the Office of Management and Enterprise Services, the State of Oklahoma purchasing director and the chief information officer for the State of Oklahoma each have specific statutory authority to waive the requirement of competitive bid for goods and/or services.

Criteria

1. State purchasing director authority [74 O.S. §85.7A.7.] : "Notwithstanding any other provision of law, an acquisition may be exempted from requirements of this section by the State Purchasing Director when in the State Purchasing Director's discretion unusual, time-sensitive or unique circumstances exist which make such exemption in the best and immediate interest of the state."

The State Purchasing Director also has the authority under 74 O.S. §85.5G.5 to designate certain contracts for state agencies as statewide contracts and mandatory statewide contracts.

2. Chief Information Officer authority [62 O.S. §34.11.1(H)(2)]: "The Chief Information Officer, or any employee or agent of the Chief information Officer acting within the scope of delegated authority, shall have the same power and authority regarding the procurement of all information technology and telecommunication products and services as outlined in paragraph 1 of this subsection for all state agencies as the State Purchasing Director has for all acquisitions used or consumed by state agencies as established in the Oklahoma Central Purchasing Act. Additionally, Chief Information Officer authority [62 O.S. § 85.5.G.5]: The Chief Information Officer shall have the authority to designate certain information technology and telecommunication contracts as statewide contracts and mandatory statewide contracts and may negotiate consolidation contracts, enterprise agreements and high technology system contracts in lieu of or in conjunction with competitive bidding procedures to reduce acquisition cost."
3. Director of the Office of Management and Enterprise Services authority [62 O.S. §34.62.3]: "The Director of the Office of Management and Enterprise Servia shall have the power to authorize agencies of the state to make acquisitions without the submission of competitive bids or compliance with the state purchase care program as otherwise required by the Oklahoma Central Purchasing Act, for or on behalf of the state whenever the Director determines that it is in the best interests of the state."

### **Practitioner Comments**

The circumstances surrounding when competitive bidding should be waived can be gleaned from the statutes themselves. Competitive bidding is not something waived in the ordinary course of business decision making. Rather, competitive bidding should be waived when scenarios arise that are unusual, time sensitive, or unique and are deemed to be in the best interests of the State of Oklahoma.

Utilizing a waiver of competitive bidding should not be without parameters. When using it under the authority of the state purchasing director it should follow the procedures laid out in Title 74 O.S. 85.7.A 7: The acquisition should be described in some detail and publicly posted as a data feed. The description shall include the name of the supplier, cost of the acquisition, reason for exemption and, as applicable, detailed comparison of the acquisition with comparable items, any identified cost saving resulting from the acquisition and a description of the benefits to the state.

Contracts exempt from competitive bidding should not be long term contracts. The unique circumstances that can suddenly occur necessitating a need for a sudden purchase in response can suddenly abate. The agreement should be reviewed at regular intervals to see if the need for the exemption still exists. A contract should have a limited term with regular monitoring intervals during the contract. This monitoring is to see if the emergency has been abated and/or if the contract remains in the best interest of the State of Oklahoma.