



# Rapid Response Evaluation: Exemptions to the Central Purchasing Act

Report: 23-090-01



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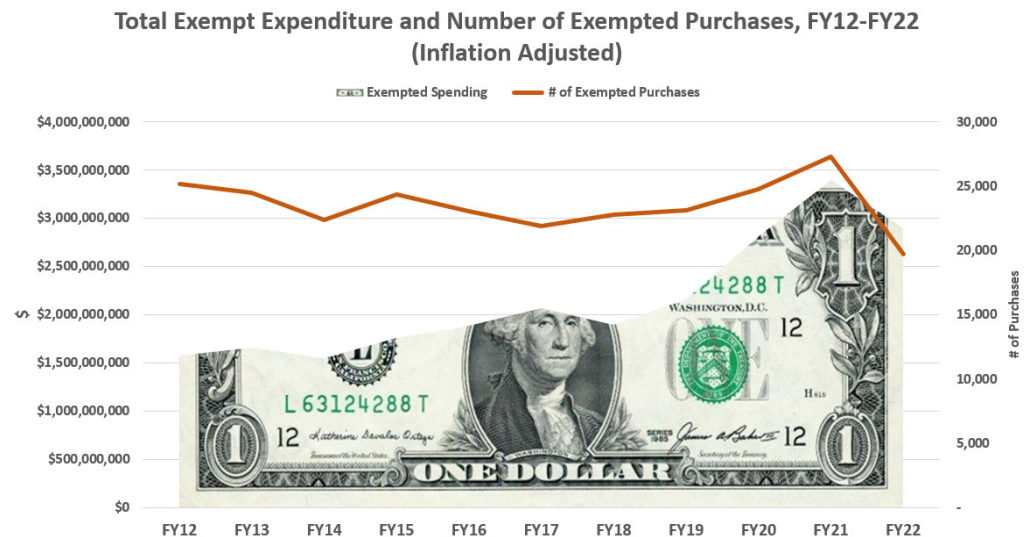
### Key Objectives:

- Describe and evaluate the process for State agencies' use of purchasing exemptions
- Analyze agency usage of exemptions
- Identify exemption processes that may put the State at financial or legal risk
- Assess the authority and effectiveness of the Central Purchasing Division in administering the Central Purchasing Act and ensuring agency compliance with the Act

## Executive Summary

In 1959, the Oklahoma Legislature instituted a centralized purchasing division to ensure oversight, transparency, and accountability over purchases made by state executive agencies. In response to allegations of corruption in the awarding of State contracts, the Central Purchasing Act created a single point of accountability for State purchasing and standardized acquisition procedures.

Today, purchasing by State agencies is very much decentralized, with just a fraction of State spending overseen by the State's Central Purchasing Division. **In FY22, State agency purchasing outside of Central Purchasing's oversight exceeded \$3 billion while an estimated \$538 million in purchases was overseen by the Division.**



Source: OMES Central Purchasing Division.

Statute provides exceptions to the State's centralized purchasing process, allowing agencies either complete exemption or exemption from specific requirements of the Act. While exemptions are often used to expedite purchasing, many of these transactions lack external accountability and oversight before the purchase is made.

In its original iteration, the Central Purchasing Act allowed all purchase records to be viewed by the public during regular business hours. Additionally, the original Act provided for only seven exemptions. **Today, LOFT estimates there are over 87 full or partial exemptions from the Central Purchasing Act granted in statute.**

With this evaluation, LOFT sought to examine agencies' use of purchasing exemptions, identify potential financial or legal risks to the State, and assess the Central Purchasing Division's effectiveness in ensuring agency compliance with the Central Purchasing Act.

This evaluation resulted in three key findings:



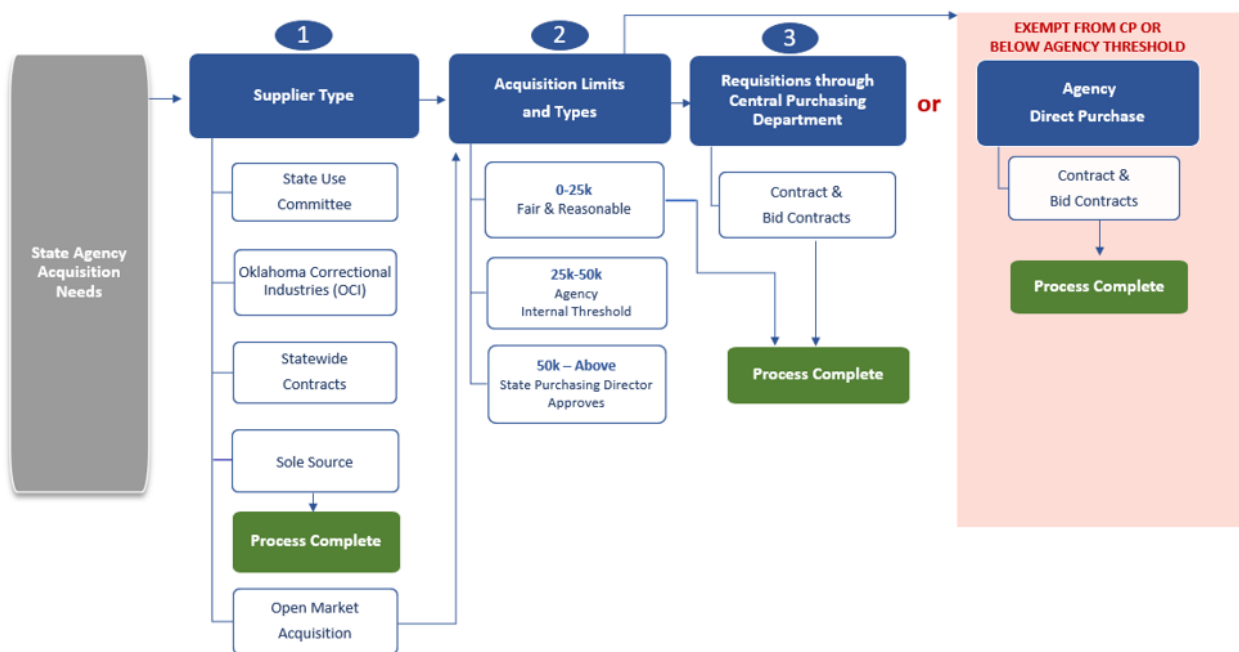
### Finding 1: The State's Purchasing Processes Are Time Consuming and Vague on Exemption Use

The Central Purchasing Division – which is housed within the Office of Management and Enterprise Services (OMES) - functions both as an oversight agency and a procurement resource for State agencies. The Central Purchasing Act requires agencies making acquisitions over a certain dollar threshold to process their purchase with the oversight of the Central Purchasing Division.

The processes in the Central Purchasing Act are designed to allow time for review and to ensure fair and competitive purchasing of quality products and services. Purchases made with oversight are inherently more time-consuming, however, there is a point at which procedures may unintentionally encourage agencies to circumvent the process to speed up purchasing.

The Division has a 61-point requisition checklist used to oversee agencies using Central Purchasing, and depending on the complexity of the procurement, it may take up to 150 days from the agency's initiation to award. Data maintained by OMES reflects an average of 95.8 business days from requisition to award for agency purchasing transactions.

### Agency Procurement Process

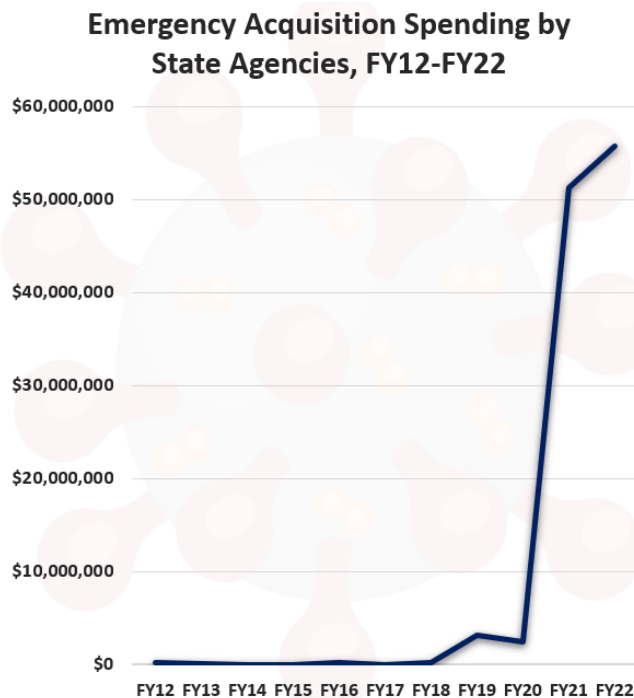


Source: LOFT's creation based on Central Purchasing CPO Training Modules.

Over the past three decades, the Legislature has raised certain purchasing limits for agencies and allowed agencies to utilize purchase cards (similar to a credit card) to purchase smaller items and services without involving the Central Purchasing Division. However, these changes have focused on removing certain purchases from oversight rather than streamlining the process to ease the burden on agencies. LOFT found agency spending below thresholds to be functionally similar to exemptions, as purchases do not receive external review before being completed. Last, despite the number of available exemptions to the Central Purchasing Act – some purchase-specific and others agency-specific – the Division does not provide guidance on proper exemption usage as part of its standard training to agency Procurement Officers. As a result, LOFT observed inconsistent use and limited justification provided by agencies using exemptions.

## Finding 2: Lack of Oversight for Exemptions Pose Financial and Legal Risks to the State

In FY22, State agency purchasing outside of Central Purchasing’s oversight exceeded \$3 billion while an estimated \$538 million in purchases was overseen by the Central Purchasing Division. \$2.06 billion of the spending without oversight was through transactions recorded under the most commonly used exemption code. From FY12 to FY22, after adjusting for inflation, the spending for agency specific exemptions from



Source: OMES Central Purchasing Division.

Central Purchasing grew 194 percent. Other categories of exempted spending also increased significantly. For example, prior to the COVID pandemic, emergency acquisitions averaged approximately \$2 to \$3 million; in FY22, emergency purchases exceeded \$50 million, continuing to climb even after the expiration of an executive order related to pandemic spending.

Exempted purchases pose a legal and financial risk to the State. **Under the current process, an agency does not submit a request for approval or review before making an exempted purchase. Instead, the agency processes its transaction as exempt without any external confirmation that the agency is either entitled to the exemption or using it appropriately.**

Exempt purchases are not reviewed by Central Purchasing, although the Division has access to exempt entries in the State accounting system. Central Purchasing has taken the position that statute does not provide them with the authority to reject an agency’s use of exemptions. The Central Purchasing Act provides that, “The State Purchasing Director shall review state agency

acquisitions for the purposes of ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act.” This section could be interpreted as a mandate to ensure that purchases that should fall under the authority of the CPA are properly reviewed by the Purchasing Division.

A recent and well-publicized example of how exemptions can be used to evade oversight is the “Master Concession Lease” agreement between the Oklahoma Tourism and Recreation Department (OTRD) and Swadley’s. While OTRD used an exemption that was specific to their agency for the transactions, the statute cited by OTRD to justify the exemption was specific to the resale of merchandise through Department retail outlets, including restaurants. Many of the invoices from Swadley’s were for management fees, construction expenses, and equipment used to produce food – not items that were resold in a restaurant.

## Finding 3: The Central Purchasing Division Lacks Effective Enforcement of Compliance with the Central Purchasing Act

The Central Purchasing Division contends it does not have statutory authority to review exempt purchases. However, even among non-exempt transactions, LOFT found the division does not effectively use its authority to enforce agency compliance with the Central Purchasing Act. LOFT found the lack of enforcement stems from the Division’s limited interpretation of its statutory authority, combined with current management’s emphasis on the Division serving as a “partner” to agencies rather than an investigative or compliance office.



Enforcement gaps observed by LOFT include:

- The Division excludes exempted purchases from its audits of agency procurement
- Post-purchasing reviews are primarily for P-card purchases, which are already publicly available and undergo monthly review by the Division
- The Division does not exercise its statutory authority to either penalize or report to other authorities agencies found to be non-compliant with the Act, and
- The Division has not established a process to resolve cases in which an agency rejects the Division's audit findings or recommendations.

Central Purchasing uses an Audit Team (formerly OMES Audit and Administrative Investigations) to conduct post-expenditure reviews of agency purchases. Since 2012, 13 percent of state agencies have undergone a full procurement audit, and 38 percent of agencies have been subject to a purchase card audit. From a fiscal perspective, in FY22, just \$14.9 million of the \$538 million in agency purchases overseen by Central Purchasing were audited. It is Central Purchasing's policy that audits only review purchases that Central Purchasing deems subject to the Central Purchasing Act, which can exclude a significant portion of an agency's expenditures. Between 2010 and 2022, the audit team reported 218 findings. In 73 instances, the audited agency either partially or fully disagreed with the finding.

2010 – 2022 Central Purchasing Audit Team Findings				
Concur	Partially Concur	Non-Concur	No Response	Total Findings
136	51	22	9	218

Source: OMES Central Purchasing Division Audit Team Reports.

In these cases, there was no process to reconcile the agency's view with that of the audit team and no final authority to determine which party was correct. Further, in the past decade, there has been no punitive action taken against agencies found to be non-compliant by the Division. Central Purchasing has the ability to reduce an agency's P-card limits or suspend its use, reduce an agency's approved purchasing threshold, or transmit written findings to the Attorney General or Auditor Inspector. However, the agency has not taken any of these actions in the past 10 years.

During the time OTRD was making payments to Swadley's, the agency was also the subject of a P-card audit. Among the Audit Team's findings were a violation of competitive bidding requirements, split purchasing to avoid purchase limits, improper documentation of purchases, improper purchasing of IT equipment, and prohibited purchases of alcohol. Despite nine formal findings, the Audit Team found that OTRD "significantly complied with the State Purchase Card Procedures and the agency's internal purchase card procedures."

In response to the findings, the Central Purchasing Division did not suspend the agency from the purchase card program, reduce the agency's purchasing or P-card authority limits, or increase the agency's audit frequency. Additionally, the Central Purchasing Division did not transmit written findings to the Attorney General nor the State Auditor and Inspector, despite the finding of split purchasing, which was classified as a felony at the time the purchases were made.

LOFT's review of the State's central purchasing process finds much of State purchasing circumvents the State's "centralized" purchasing process. Many exempt purchases are not overseen by the Central Purchasing Division, and ones that are overseen are not well enforced. If the State is to have a central point of accountability for the State's purchasing, it first needs a uniform system for all agencies to enter expenditure data, and then uniform enforcement of agencies' compliance with purchasing rules.

## Summary of Policy Considerations

**The Legislature may consider the following policy changes:**

- Clarify within statute the State Purchasing Director shall review all exempt purchases to ensure they are validly within the claimed exemption.
- Require the director of OMES to report violations of statute found by the audit team to the Attorney General's office and legislative leadership.
- Require agencies using exemptions to post purchases publicly, similar to what is currently publicly available for P-card purchases.
- Require OMES to send a consolidated report to the Legislature of agencies that have violated statute related to agency acquisitions.
- To ensure independence of the Audit Team, remove this function from under the oversight of the Central Purchasing Division.
- Authorize the purchasing Audit Team to review purchases taking place outside of the Central Purchasing Act.
- Require Central Purchasing's audits be made publicly available on a State website.
- Require Central Purchasing to track time from agency request to purchase completion for all procurements as a key performance metric.
- Statutorily require that all audits performed by the Audit team are full procurement audits, which are to include expenditures by P-cards but not be limited to just P-card expenditures.
- Evaluate all existing exemptions within statute to determine if they are still necessary in light of recent increases in agency purchasing limits.
- Require sunset dates with the enactment of any future exemptions.
- Require agency Central Purchasing Officers to maintain a record of exemption approvals, to include identification of the CPO and the date of approval.
- Centralize all exemptions, both complete exemptions from the Central Purchasing Act and specific purchase exceptions, under the same section of statute.
- Create mandatory penalties within statute for agencies found by the purchasing Audit Team to be in violation of the Central Purchasing Act. These could include violations for purchase cards, competitive bidding, split purchasing, internal purchasing procedures, and improper exemption usage.
- Require that internal purchasing procedures be approved by the State Purchasing Director every two years and create penalties for violations.



## Summary of Agency Recommendations

### The Office of Management and Enterprise Services should:

- Create a process by which the State Purchasing Division reviews all purchase requests exceeding an agency's authorized spending thresholds to confirm whether a purchase is subject to the Central Purchasing Act or exempt from it.
- Update its compliance processes by creating a dedicated entry field within the Statewide accounting system to cite the authority for the exemption, a description of the item that qualifies for the exemption, and a process by which Central Purchasing confirms the agency is properly applying the exemption.
- Update CPO training to include training on proper use of agency exemptions.
- Make publicly available a plan to accomplish the auditing mandate issued in Executive Order 2023-04.

## Introduction

The Office of Management and Enterprise Services' Central Purchasing Division is responsible for overseeing purchasing contracts and competitive bidding for government entities and suppliers. It also provides compliance expertise and administration of procurement rules, policies, and statutes. In FY22, \$838 million in total purchases went through the Central Purchasing Division by State agencies, higher education institutions, and political subdivisions.<sup>1</sup>

State statute requires all qualifying governmental entities to make purchases through the Central Purchasing Division. However, statute provides exceptions to this rule. State agencies may qualify for complete exemption from Central Purchasing or from specific requirements of the Act. In fiscal year 2022, approximately \$3 billion of exempted purchases were processed by agencies.<sup>2</sup> Generally, exemptions allow agencies to expedite purchasing by avoiding the strict processes, requirements, and oversight provided by the Central Purchasing Division. However, exempted transactions lack external accountability and oversight and create potential risks to the State of Oklahoma.

### History of the Central Purchasing Division

Although the Central Purchasing Division's roles and responsibilities have changed over the years, the core function of the division has existed for over 100 years. In 1909, the Board of Public Affairs was created to oversee the operation of State buildings, which included purchasing furniture and supplies for use by the State or its officers, and keeping records of quality and cost for those purchases. Over the next three decades, the board's purchasing authority was increased to include goods produced at State institutions, supplies for the State Capitol Building, the State's automobile fleet, and more. The board was also authorized to audit the records and financials of all State commissions and agencies during this time. In 1939, new legislation required all purchases above a certain threshold to be competitively bid and awarded to the lowest and best bidder.<sup>3</sup>

As part of a government reform initiative to address concerns about the subjective awarding of contracts, the Central Purchasing Act was created in 1959. The Act replaced diffused purchasing authority by agency directors with standardized acquisition procedures, created the position of the Central Purchasing Director, established reporting requirements, and set penalties for violating the Act. In 1974, in response to allegations of widespread corruption in the award of state construction contracts, the Legislature enacted the Public Competitive Bidding Act and the Anti-Kickback Act.<sup>4</sup>

*The State  
Purchasing  
Director  
"Shall have  
sole and  
exclusive  
authority and  
responsibility  
for all  
acquisitions  
used or  
consumed  
by state  
agencies."*

*- 74 O.S. §  
85.5*

1. Procurement Cost Savings Report, Office of Management and Enterprise Services 2022.

2. Data from OMES Central Purchasing Division.

3. The History of Oklahoma's Central Purchasing Division, Office of Management and Enterprise Services 2014.

4. The History of Oklahoma's Central Purchasing Division, Office of Management and Enterprise Services 2014.

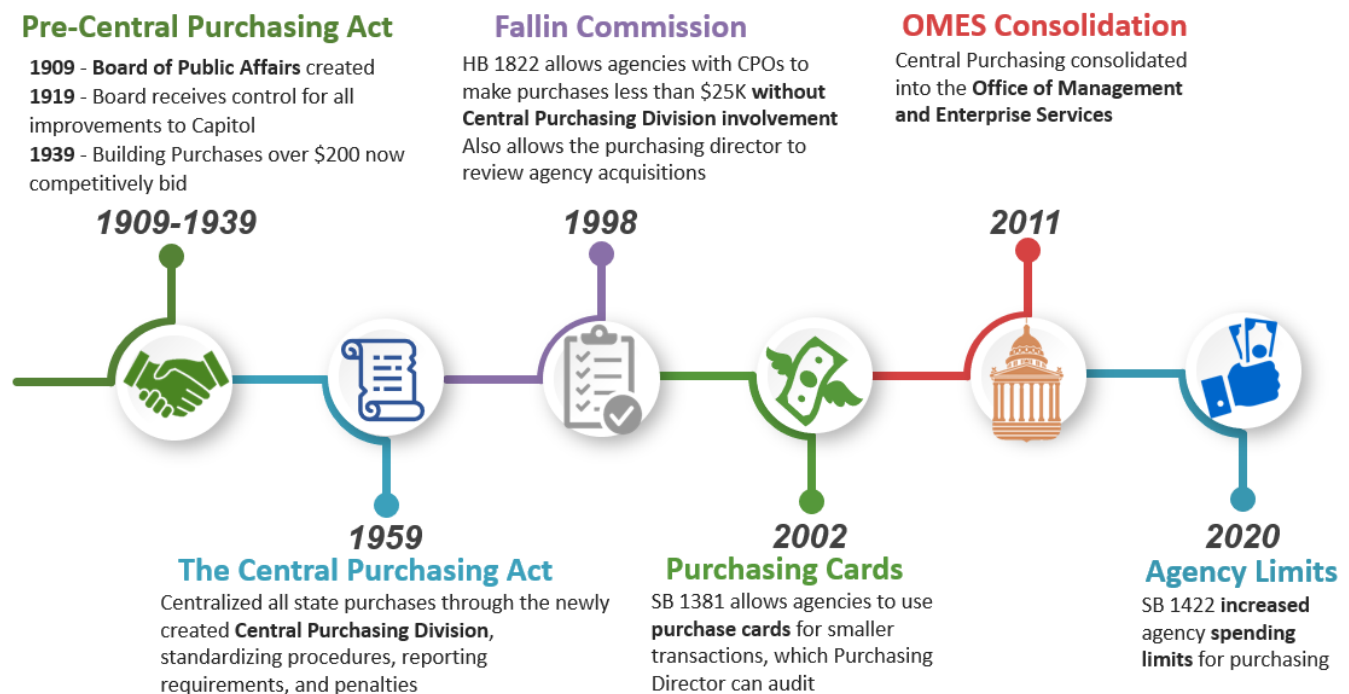


In 1992, the Board of Public Affairs' name was changed to the Department of Central Services (DCS). More purchasing reforms were introduced in 1998 with legislation that allowed agencies to make purchases under \$25,000 without the involvement of the Central Purchasing Division. It also created safeguards by allowing the Purchasing Director to review agency acquisitions, provide purchasing training to agencies, and allowed the director of the Department of Central Services to approve internal agency purchasing guidelines. Other legislation passed in 1999 consolidated exemptions for agencies exempted from the Act and gave the Purchasing Director authority to review purchases under \$25,000.

In 2011, the Department of Central Services, along with several other State agencies, were consolidated into the Office of State Finance under House Bill 2140. The Central Purchasing Division was included in this consolidation. In 2012, the consolidated agency name was changed to the Office of Management and Enterprise Services (OMES), of which Central Purchasing was a division.<sup>5</sup> Today, the Division's duties and responsibilities primarily fall under the Oklahoma Central Purchasing Act. Many of the State Purchasing Director's mandates reference broad authority and responsibilities, including the responsibility for all acquisitions made by State agencies. The Purchasing Division provides personnel to assist the purchasing activities of state agencies, departments, and institutions and is comprised of six programs:<sup>6</sup>

- State Use
- Statewide Procurement
- Agency-Specific Procurement
- Administration and CPO Training
- Audit
- Legal Services

**Exhibit 1: Oklahoma Purchasing History.** (This infographic details key State actions regarding State purchasing.)



Source: "The History of Oklahoma's Central Purchasing Division," by OMES and LOFT statutory review.

Note: In 1998 a pilot program was initiated for agency use of P-cards through HB1822.

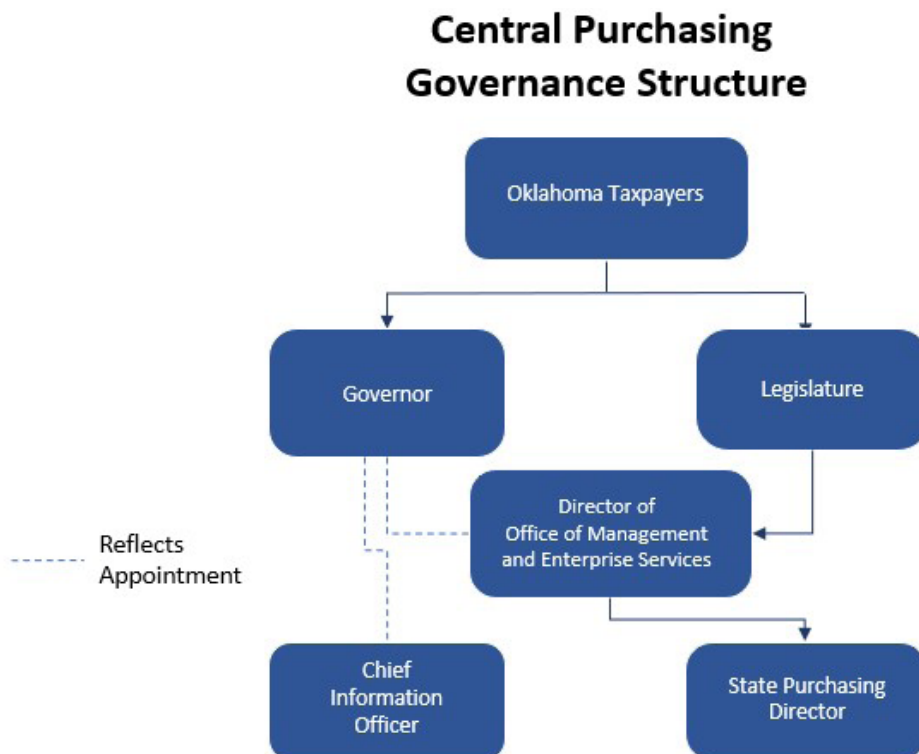
5. The History of Oklahoma's Central Purchasing Division, Office of Management and Enterprise Services 2014.

6. OMES FY24 Budget Documents.

## Governance Structure

The Governor appoints the Director of OMES and the State's Chief Information Officer (CIO).<sup>7</sup> The Director is confirmed by the Senate, but the CIO is not. The Director of OMES hires and supervises the State Purchasing Director without legislative input.<sup>8</sup> The State Purchasing Director has responsibility over all state agency acquisitions used or consumed by state agencies. The CIO has authority over the Information Services Division of the Office of Management and Enterprise Services and serves as the *de facto* purchasing director of all information technology.<sup>9</sup>

**Exhibit 2: Central Purchasing Governance Structure.** (This figure provides a hierarchical view of how Oklahoma's Central Purchasing system is governed.)



Source: Statutory review.

## Revenue and Funding

While the Legislature appropriates the majority of OMES' budget, the Central Purchasing Division and its 45 full-time employees are funded primarily by contract management fees assessed to vendors. The total FY22 operating budget for the department was \$9.4 million, representing a 117 percent increase in revenues since fiscal year 2014.<sup>10</sup> Of OMES' total FY23 appropriation (\$115.57 million), the Central Purchasing Division was allocated approximately \$27,000 to cover shared salary cost of an FTE. Since FY13, revenues for the Division have exceeded expenses by more than \$8 million.<sup>11</sup>

Contract management fees that are collected but not expended are kept in one of two revolving funds for the division. A third revolving fund houses collections for vendor registration fees, but as of October 2022, vendors are no longer charged a fee for registering to do business with the State. That fee totaled \$93,000 in fiscal year 2022.<sup>12</sup>

7. [74 O.S. § 840-1.6A](#), [62 O.S. § 34.11.1](#).

8. [74 O.S. § 85.3](#).

9. [74 O.S. § 85.5](#).

10. Data from the OMES Central Purchasing Division.

11. OMES Budget Documents.

12. Data from the OMES Central Purchasing Division.



## Definitions

The following terms related to state purchasing are frequently used throughout the report:<sup>13</sup>

- **Procurement** – The process by which government secures goods and services. In Oklahoma, procurement can be from either commercial business or other governmental entities.
- **Acquisition** - Items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease-purchase, lease with option to purchase, rental or value provided to the State.
- **Sole source acquisition** - An acquisition exempt from competitive bidding procedures due to the acquisition being limited to one person or business entity “singularly qualified to provide the acquisition,” or for products that are determined to be unique. Agencies are required to describe the reasons for the unique nature of the purchase.
- **State purchase card (P-card)** - A charge card (similar in function to a consumer credit card) used by agencies for making acquisitions within an agency’s approved threshold without involvement by the Central Purchasing Division. Agencies’ P-card usage can exceed their spending threshold if the purchases are made from Statewide contracts.
- **Statewide contract** – A pre-negotiated price for a good or service available to all State agencies, including other governmental entities. Statewide contracts may be mandatory or non-mandatory.
- **Certified Procurement Officer (CPO)** - A State agency procurement official certified by the State Purchasing Director to ensure the agency’s compliance with the Central Purchasing Act.

## State Purchasing

Procurement plays a role in nearly all State spending. State agencies spend the money they receive from appropriations, apportionments, fees, and other sources to acquire goods and services. Of the State’s \$27 billion in FY21 expenditures, the State’s Central Purchasing Division oversaw approximately \$553 million in purchases.<sup>14</sup> According to OMES, the total amount of State spending on purchases is not readily available.

There are three primary entities that make purchases on behalf of State agencies: the Central Purchasing division of OMES, the Construction and Properties division of OMES, and the agency itself. The Central Purchasing division provides compliance, oversight, and administration of the Central Purchasing Act. The division negotiates Statewide contracts with uniform rates that are used by all agencies in the State. Additionally, for acquisitions that exceed specific thresholds, the division is required to handle the purchasing and if necessary, the bidding process, on behalf of the agency. Acquisitions made below agency thresholds do not require the involvement of the Central Purchasing Division and can be completed by the agency itself.

Agencies with Certified Procurement Officers (CPO) are granted higher limits within statute to make purchases outside of the Central Purchasing Division.<sup>15</sup> However, agencies must still adhere to internal purchasing standards approved by the State Purchasing Director.

13. Where available, definitions paraphrased from the State Purchasing Act.

14. Expenditure totals from the FY21 Annual Comprehensive Financial Reports. The \$553 million estimate for purchasing made with CP oversight excludes purchases by political subdivisions and institutions of higher education. See Appendix A for complete methodology.

15. Refer to Appendix B for a list of Certified Procurement Officers by State agency.

Much of the authority within the Central Purchasing Division is with the State Purchasing Director who has “sole and exclusive authority and responsibility for all acquisitions by state agencies.”<sup>16</sup> Among the responsibilities outlined in the Central Purchasing Act, the State Purchasing Director has authority to:

- Process requisitions and ensure compliance with the CPA and deny any acquisition that is found to be unnecessary, excessive, or not justified
- Enter into Statewide contracts and develop a list of registered suppliers
- Review and approve internal agency purchasing procedures
- Provide and set training requirements for Certified Procurement Officers
- Approve or deny requests for agency purchasing threshold increases
- Decrease an agency’s purchasing threshold when found not in compliance
- Recommend violations of the CPA be submitted to the Attorney General or the State Auditor and Inspector
- Administer the State Use Program and ensure compliance with the Oklahoma Correctional Industries program (OCI).
- Grant exemptions from competitive bidding requirements when unusual time-constraints or unique circumstances exist

To make a purchase, agencies must first consider whether the goods or services are available through the two main State programs: the State Use Program or the Oklahoma Correctional Industries Program. In general, if the acquisition can be made with these programs, agencies are required to make the purchase through that program. Next, if a mandatory Statewide contract is in place for the goods or service, the agency is required to make the purchase through that contract. Last, agencies are encouraged to make purchases from the federal General Service Administration or from other State agencies if possible.<sup>17</sup> If the acquisition is not available from any of these methods, or an exemption has been granted, the agency may make the acquisition through standard purchasing methods, such as purchase cards or competitive bidding.

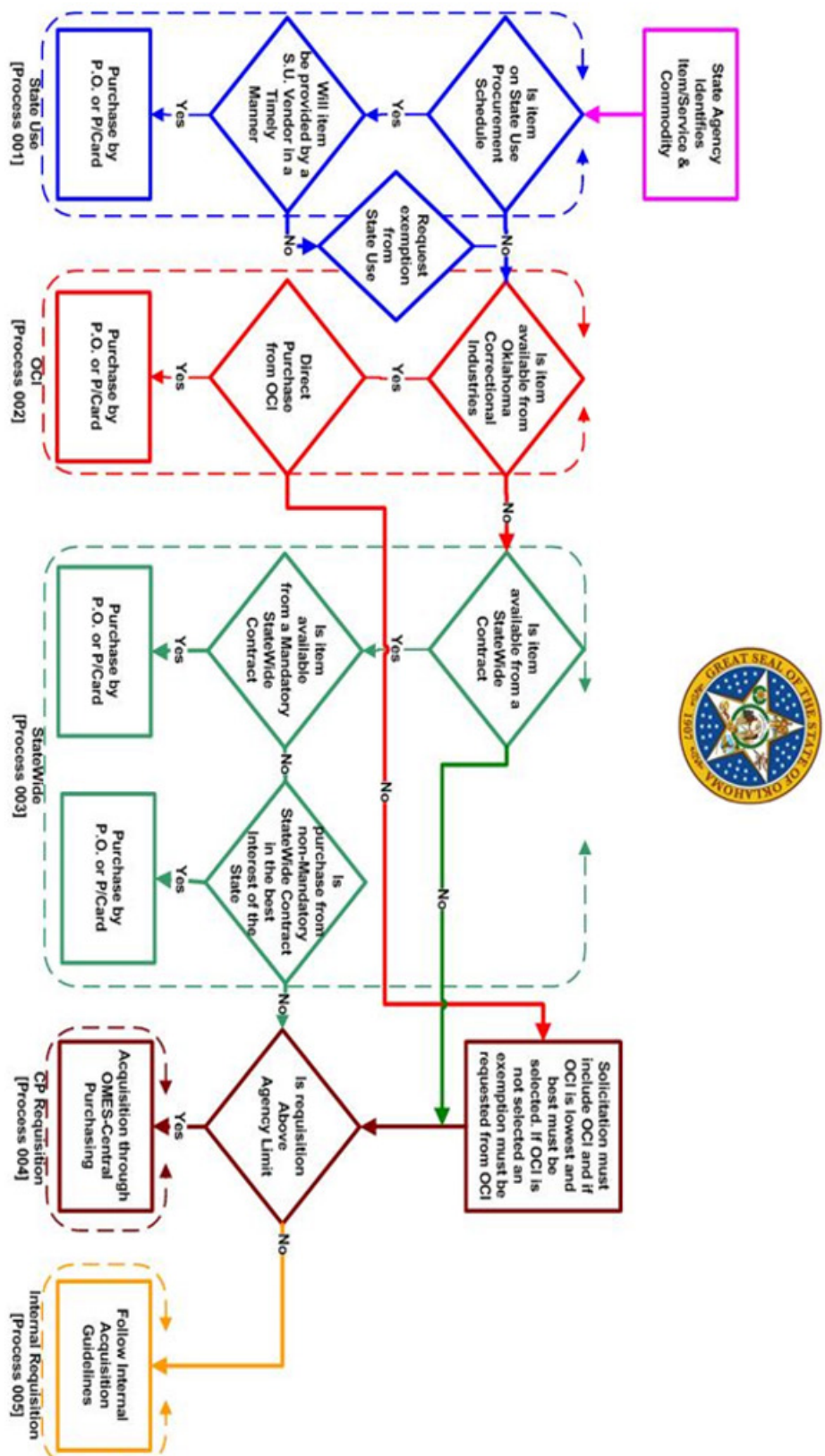
However, purchases that exceed an agency’s approved purchase limit must be made through the Central Purchasing Division of OMES. The agency submits the requisition, and then the Central Purchasing Division will evaluate supplier quotes for the purchase and work alongside the agency to determine the winning supplier(s). Exhibit 3 below shows the determination process for State agency purchasing.

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16. [74 O.S. § 85.5.](#)

17. The General Services Administration is a federal procurement administration that provides real estate, acquisition, and technology services to the government and the American people.

**Exhibit 3: Oklahoma Acquisition Processes.** This process chart delineates the type of acquisitions subject to the Central Purchasing Act. However, this process does not include exemptions, exceptions, or emergencies that would otherwise impact how a purchase is carried out.)



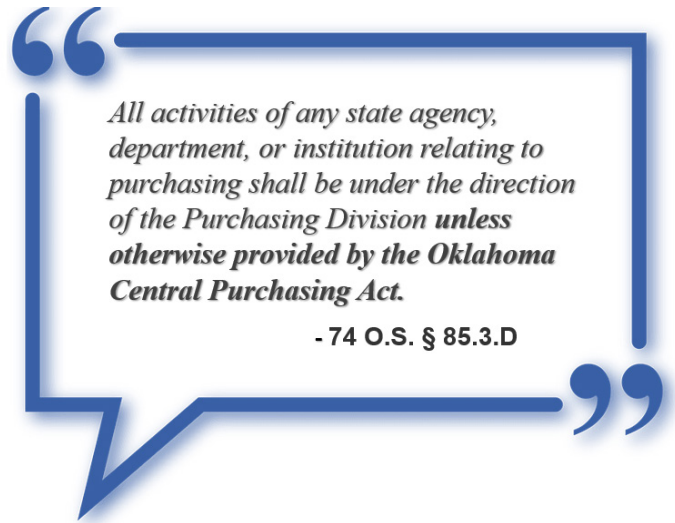
Source: Central Purchasing CPO Training Manual.

Notes: OCI and the State Use Program must provide a determination and if OCI or the State Use Supplier cannot meet the need, provide a waiver or exception. OCI and the State Use Supplier may respond to a solicitation as an eligible bidder for an acquisition.

## Central Purchasing Exemptions

A number of exemptions exist within the Central Purchasing Act. The broadest examples are entire agencies that have been completely exempted from the entire CPA. The Oklahoma State Regents for Higher Education is the only executive branch agency with this kind of blanket exemption from the Central Purchasing Act.<sup>18</sup>

More limited exceptions exist for specific types of purchases, which may be exempt from all the CPA or excepted from a portion. A specifically exempted purchase can either be defined by the type of product being purchased or the reason for the purchase, or sometimes both. An example of an agency-specific exemption for specific types of purchases is the Department of Rehabilitative Services, which has an exemption for educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf.<sup>19</sup> The CPA contains a partial list of 35 exemptions, however, exemptions are also granted throughout the Central Purchasing Act and other titles of law.<sup>20</sup>



Throughout the report, LOFT uses the term **exemption** or **exempt purchase** to describe a purchase large enough that it would normally be subject to review by Central Purchasing, but which *entirely* avoids review by Central Purchasing because a statutory provision takes it beyond what Central Purchasing interprets as the limits of its statutory authority. LOFT also uses the term **exception** or **excepted purchase** for purchases that are not subject to the entirety of the Central Purchasing Act, but which do receive some review by Central Purchasing. These terms do not match Central Purchasing's usage, but LOFT found it helpful to distinguish between purchases that avoid one part of the process and those which Central Purchasing does not review at all.

18. [74 O.S. § 85.3A.](#)

19. [74 O.S. § 85.12.](#)

20. [74 O.S. § 85.12.](#)



## Finding 1: The State's Purchasing Processes Are Time Consuming and Vague on Exemption Use

The Central Purchasing Division is tasked with oversight of procurement for nearly all State agencies, functioning both as an oversight agency and a procurement resource for State agencies. Agencies partner with the division to provide procurement functions such as posting solicitations, creating contracts, and processing change orders. The Central Purchasing Act requires agencies making acquisitions over a certain dollar amount to process their purchase with the assistance and oversight of the Central Purchasing Division. For agencies to stay compliant with the Act, they must submit to the processes, standards, and procurement timeframes of the Central Purchasing Division.

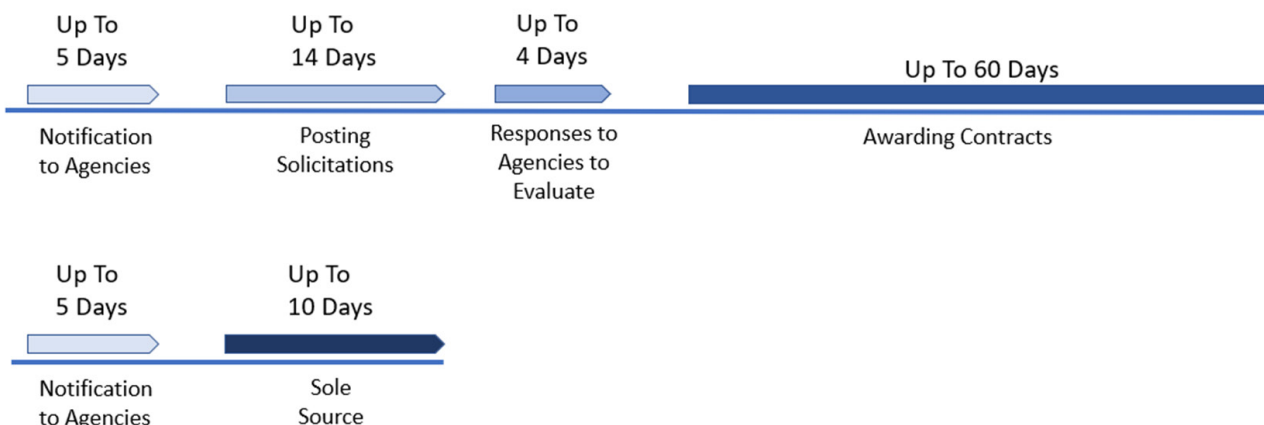
The purchasing processes prescribed by Statute are intentionally designed to allow time for review and to ensure fair and competitive purchasing of quality products and services. Purchases made with oversight are inherently more time-consuming than purchases made without it. However, there is a point at which procedures may unintentionally encourage agencies to seek ways around the process to speed up purchasing. Feedback from agencies that operate under Central Purchasing perceive the processes as slow, the Central Purchasing website cumbersome, purchasing support slow to respond to inquiries, and a general lack of urgency in addressing agency requests.<sup>21</sup> A 2017 Joint Legislative Interim Study also documented agency complaints about the onerous processes for purchasing, securing exemptions, and using Statewide contracts.<sup>22</sup>

### Procurement Process

According to Central Purchasing's 61-point requisition checklist, the total time from agency initiation to award can take up to 150 days, depending on the complexity of the procurement.<sup>23</sup> As shown in Exhibit 4 below, the general timeline for purchase completion is approximately 90 days from initiation to award. Data maintained by OMES reflects an average of 95.8 business days from requisition to award for agency purchasing transactions.

**Exhibit 4: Central Purchasing Procurement Timeline.** (The timeline below reflects Central Purchasing's time targets for various points in the purchasing process for contracts and sole source procurement. Contracts could take up to 90 days while the use of sole source procurement takes approximately 15 days.)

#### Central Purchasing's Procurement Timelines



Source: Central Purchasing Requisition Checklist.

21. LOFT survey; agency CPO responses of their interactions with central purchasing staff.

22. Oklahoma House/Senate Interim Study – 17-0472.

23. Central Purchasing Requisition Checklist; "Time Calculation" tab.

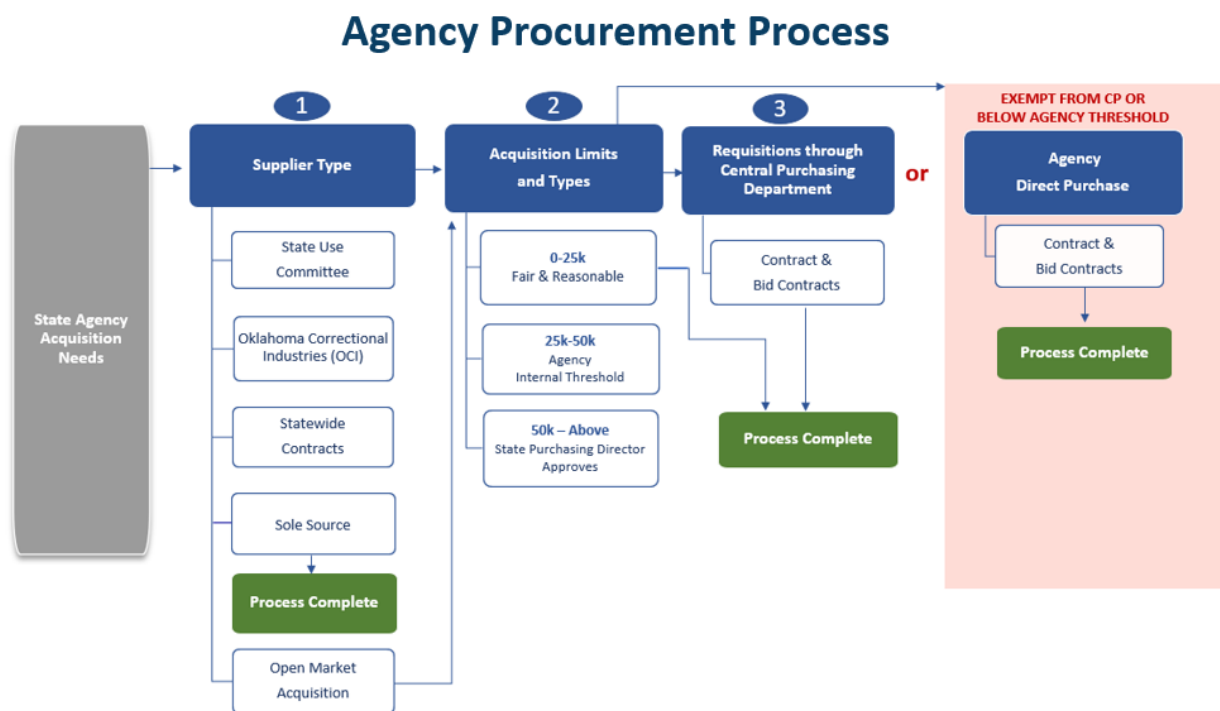
A successful acquisition program should be highly responsive and provide timely delivery of products and services. A 2019 report by a national consulting firm notes that “As private-sector companies reshape customer-experience expectations, citizens and state employees have come to expect speed, convenience, and accessibility from public-sector functions as well.”<sup>24</sup>

There are six stages in Central Purchasing’s procurement process.<sup>25</sup>

- **Need Identification:** An agency recognizes and identifies the need.
- **Solicitation Preparation:** Form an evaluation team from stakeholders and subject matter experts. Identify the specifications, statement of work, or statement of objectives. Prepare the request for proposal, invitation to bid, or request for quote.
- **Bidding Process:** Publicly advertise solicitations. Receive bidder responses and close the solicitation. Allow responding bidders to submit and respond.
- **Evaluation Process:** Verify bidder responses. Conduct clarification questions. Evaluate based on approved evaluation.
- **Award Process:** Notify recommended awarded supplier. Ensure all required checks are completed for supplier award. Post award.
- **Contract Process:** Award contract to supplier. Maintain contract.

After determining a need for a product or service, agencies are required to first assess whether it is available from the State Use Program, which consists of products and services provided by workers with severe disabilities;<sup>26</sup> Oklahoma Correctional Industries, a prison work program; or if it is under a Statewide Contract, which are specific acquisitions entered into by Central Purchasing that allow agencies to place orders as needed.

**Exhibit 5: Agency Procurement Process.** (This process displays the procurement process for state agencies for exempt and non-exempt purchases.)



Source: LOFT’s creation based on Central Purchasing CPO Training Modules.

24. A Path to Successful State Procurement Transformation, McKinsey & Company, 2019.

25. Module 4 (The Procurement Process) Central Purchasing CPO Training Presentation.

26. Central Purchasing State Use Program.

All of the above procurement methods are mandatory to consider prior to moving forward in the procurement process. Procurement from any of the existing programs listed above are exempt from public bid, as are state printing, interagency mail, property distribution, interagency acquisitions, utilities, purchases from the federal government services administration (GSA), or the agency may have exemptions mandated by federal statute.<sup>27</sup> If the product or service cannot be obtained through any of the mandatory methods or existing sources (such as Property Reutilization), and is below an agency's approved P-card threshold (\$5,000 up to \$25,000), the purchase can be made via purchase card.

However, for purchases above P-card thresholds (up to \$25,000 or the limit determined by the State Purchasing Director), the purchase must be made through requisition as a sole source or through a solicitation and contract award, unless the agency is exempt from the Central Purchasing Act or excepted from a portion of the Central Purchasing process.<sup>28</sup> Purposely evading the requirement of competitive bidding by splitting the purchase into smaller transactions is prohibited.

Solicitation Preparation: Following the determination of acquisition type and presentation of requisitions to the Purchasing Division and confirming the item or service is not available in a state exempt contract, solicitation preparation begins by determining the most appropriate method to be used, such as Request for Proposal or Invitation to Bid, which then determines steps to be taken next in the process. The Central Purchasing acquisition team receives, reviews, and approves complete solicitation packages. The review covers various approvals, justifications, and provisions/specifications for the requisition before it can be confirmed in the electronic procurement system (E-Pro). It is then approved and moves onto the next step.

Bidding Process: The lead time for the agency's procurement commences when the agency CPO receives a proposed timeline (generally within a week) from a member of the Central Purchasing acquisition team. Generally, it takes 30 days before the solicitation can be publicly posted. This gives the acquisition team time to form an evaluation team of stakeholders and subject matter experts and prepare the invitation to bid. The public bid process closes 20 days after posting to provide the acquisition team sufficient time to review and answer questions from vendors.

Evaluation Process: Bidder responses are reviewed and follow up is conducted with bidders prior to evaluating all bids. If negotiations are required, both the state and the bidder must accept the terms prior to the best and final offer proposal.

Award Process: The state and the supplier must have time to evaluate terms and negotiations prior to award. The process to evaluate the supplier includes determining if the supplier is registered with the Oklahoma Secretary of State and the Federal Government, is registered as a vendor on the Central Purchasing website, and has an active certificate of liability. For contract bids, 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.<sup>29</sup>

Contract Process: During this phase, the contract is finalized, and oversight is administered to ensure work is conducted in accordance with contractual commitments.

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27. Statewide contracts are competitively bid by OMES before an agency orders from them.

28. 74 O.S. § 85.7, Competitive Bid or Proposal Procedures, Oklahoma Central Purchasing Act.

29. 74 O.S. § 85.7.18. B - Requisitions.

## Agencies' Role in Central Purchasing

State agencies are authorized by Statute to process many of their own purchases up to their approved threshold, provided they have personnel certified in state purchasing requirements. These Certified Procurement Officers (CPOs) serve as agency-level oversight for purchasing and must be trained and certified by the Central Purchasing Division. Once they demonstrate proficiency, they are authorized to procure products and services for their agency.<sup>30</sup> State agencies with approved internal purchasing procedures and a CPO may make purchases up to their approved purchasing threshold but not exceeding \$250,000.<sup>31</sup>

Over the past three decades, the Legislature has raised certain purchasing limits for agencies and allowed agencies to utilize a P-card to purchase smaller items and services without involving the Central Purchasing Division.<sup>32</sup> **However, the changes did not streamline the steps within the process; rather, changes have focused on reducing the number of purchases that are subject to the process.**

With the increased spending thresholds, many agency exemptions may now be functionally obsolete, such as 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.<sup>33</sup>

**Exhibit 6: Agency Procurement and Purchase Card Threshold.** (The chart below shows the thresholds agencies follow when determining if an acquisition can be carried out by the agency or if it must be overseen by the Central Purchasing Division.)

	Agency Procurement Threshold	P-card Threshold	Competitive Bidding Threshold
Without CPO	Up to \$25,000	Up to \$5,000	Up to \$25,000
With CPO	Up to \$250,000*	Up to \$25,000*	

Source: 74 O.S. § 85.5.

Note: \*Agency must have a Certified Procurement Officer and internal purchasing procedures approved by the State Purchasing Director. State Purchasing Director must approve agency threshold requests above \$25,000. Only five agencies have a procurement threshold above \$50,000.

While the standard CPO training is sufficient to provide an employee a basic understanding of the process, policy, and procedures of agency procurement, it provides no information about the exemption process or how to appropriately use agency exemptions. There is no defined field to enter a statutory citation for the exemption in PeopleSoft. A CPO can enter a code indicating a purchase is exempt, but the general nature of the codes provide little information about the nature of the exemption. Furthermore, if an agency does indicate in one of the many text boxes that the purchase is exempt, there are no specific guidelines as to the appropriate documentation an agency must provide. Purchasing Officers housed within the Central Purchasing Division are directed to “Verify the reference for relevance to the request” for an exemption, but are provided no formal guidance on how to make that determination.<sup>34</sup>

In reviewing agency transactions, LOFT observed a highly inconsistent, and often conflicting method for citing statute. For example, some agencies include detailed references to the exact paragraph and location of the exemption within statute. Other agencies only write that they are exempt from central purchasing without providing any statutory reference.

30. Certified Procurement Officer Training.

31. SB1422 amending 74 O.S. § 85.5.

32. See Exhibit 1 on page 2 in the Introduction for a timeline of changes to central purchasing processes.

33. SB1422 (2020) Increasing agency purchasing thresholds from \$5,000 to \$25,000. See Appendix E for a list of agency procurement and P-card thresholds.

34. “Review and Approve REQ Process” document, Central Purchasing.



Exhibit 7 below demonstrates agencies' inconsistent application in entering references for a statutory exemption within the State's accounting system. Some agencies' entries simply claim they are exempt, others cite a title within statute, and some describe the nature of the purchase that corresponds with a cited section of statute.

**Exhibit 7: Agency Exemption Citations Within PeopleSoft.** (The graphic below depicts three different purchases, made by three different agencies. The statutory citations differ as there are no guidelines in place for consistent recording.)

No Statute Cited	OBJECT CODE █████ TRC 6/15/2018 \$500,000.00 DGO 06/18/2018 Legislation (Senate Bill 1339) Effective date: 7/1/2019 █████ IS EXEMPT FROM CP PROCESSING - OTC WILL PROCESS
Statute Fully Cited	This is an acquisition 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 which have been which have been exempted from central purchasing by 74 O.S. 85.12.32.
Only Title Cited	This is a professional Service and is exempt from the bidding process under Title 18. █████ 3/25/2022. please update the Cp-10, new PO total should be 336,186.01, and this will be a line new line & line 5 on the PO.

Source: The Oklahoma Statewide accounting system PeopleSoft.

To gain more understanding about State agencies' experience with using the Central Purchasing process, LOFT surveyed Certified Procurement Officers from 36 agencies.<sup>35</sup> Because some state agencies have more than one CPO, the total number of individual responses was 43. Most of the respondents reported that they have served as a CPO in their agency for more than 5 years. More than 90 percent said they had been a CPO for one year or longer.

Each respondent was asked to evaluate a series of statements about Central Purchasing processes on a five-point scale ranging from "Strongly Agree" to "Strongly Disagree." These statements were presented as follows:

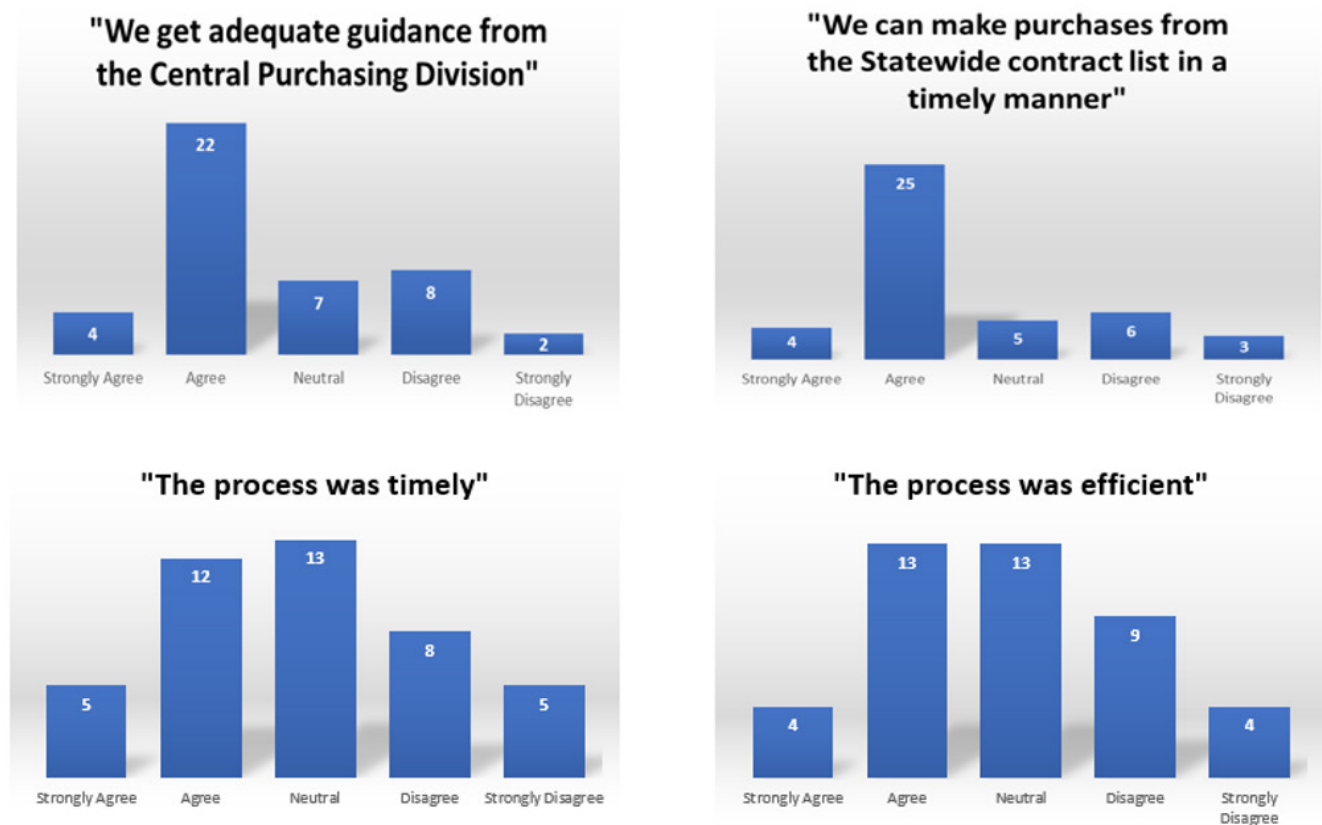
- The Central Purchasing division provides adequate guidance on purchasing rules, policies, guidelines and/or procedures.
- We are able to make purchases from the Statewide contract list in a timely manner.
- The process was timely.
- The process was efficient.
- The process was cost efficient.

The survey responses are summarized graphically on the next page.

35. LOFT's survey was conducted through email from February 8 through 21. Respondents were advised that their individual answers would be kept confidential.

**Exhibit 8: CPO Survey Responses** (The following graphs depicts responses by CPOs regarding satisfaction with the State's Central Purchasing process).

### CPO Central Purchasing Survey Responses



Source: LOFT survey of Certified Procurement Officers.

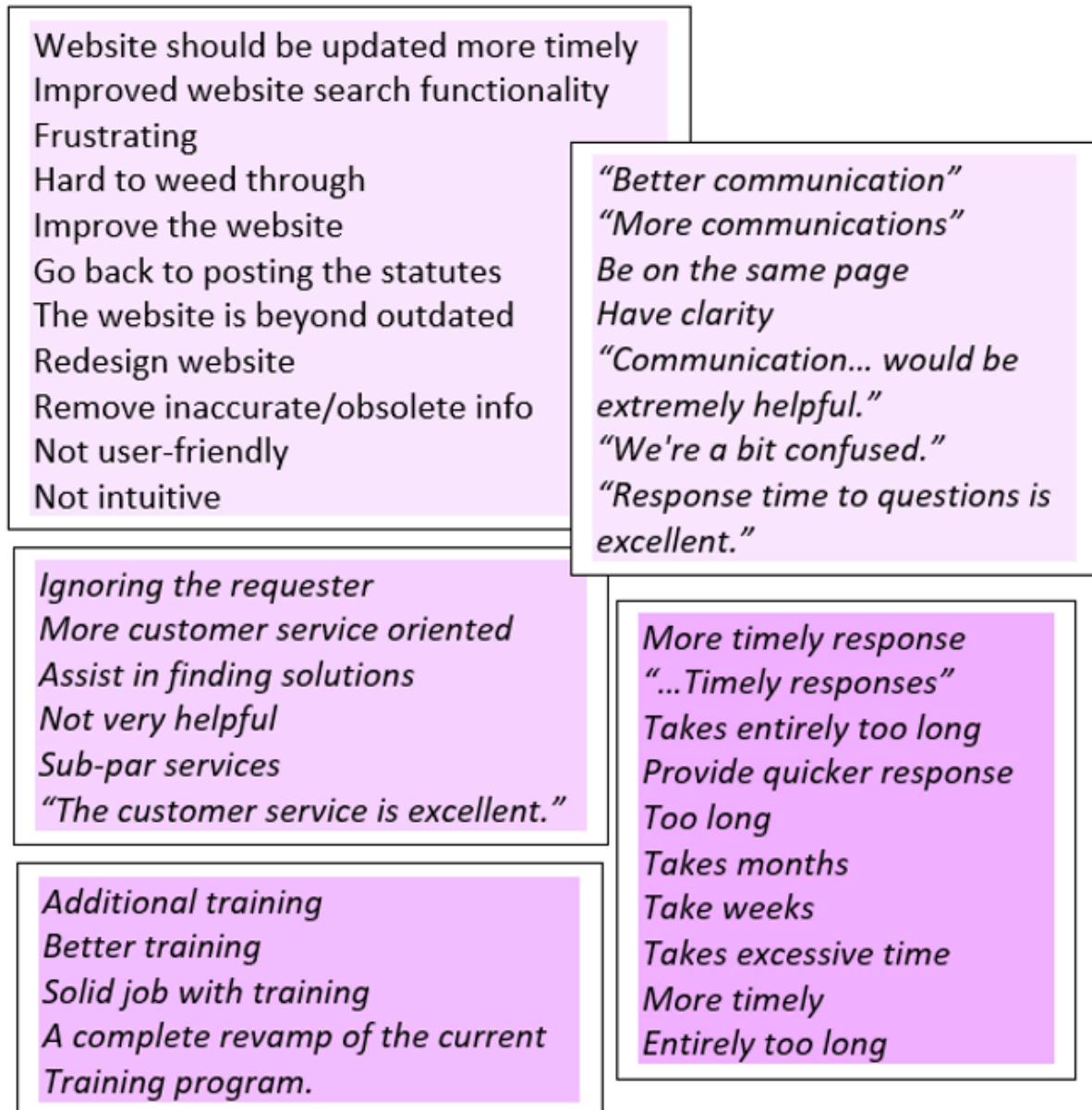
Most respondents agreed that their agency gets “adequate guidance” from the Central Purchasing Division. However, a sizeable number – about 23 percent – disagreed. Only 40 percent of respondents found the purchasing process to be timely.

To learn more about the perspective of these CPOs, the survey invited comments to the following question:

*“What, if any, improvements could be made to the purchasing process administered by the Central Purchasing Division of OMES?”*

Thirty-seven out of 43 individual respondents answered this open-ended question. Consistent themes in the responses included the amount of time the procurement process takes and the inefficient design of Central Purchasing’s website. Exhibit 9, on the next page, present examples of the responses received.

**Exhibit 9:** The image below includes selected survey responses from CPOs about opportunities to improve the purchasing process.



Source: LOFT's survey to agency Certified Procurement Officers.

The survey also asked if the agency had any statutory exemptions. Most of the respondents reported having at least one exemption, but two CPOs were not sure if their agency had any statutory exemptions.<sup>36</sup>

36. See Appendix C. for a list of agencies.

Additional questions asked by the survey include:

***“For purchases / acquisitions that are statutorily exempt from certain requirements of the Central Purchasing Act, are these items inputted into the PeopleSoft system?”***

Of the 24 survey takers who reported that their agency has an exemption, 21 of the respondents reported that the exempt purchases / acquisitions are always put into PeopleSoft. Three other respondents answered “Sometimes,” “Never,” or “N/A.”<sup>37</sup>

To better understand how purchases are marked and documented as ‘exempt’ when using the PeopleSoft system, the survey asked:

***“Do you add information about the statute justifying the exemption? For example: Do you enter a header comment, a line comment, a special code, or attach documentation?”***

The answers to this question reveal the inconsistent manner in which agencies use the features of the PeopleSoft system to describe their acquisitions. Below is a sampling of responses:

- ✓ We provide a statutory reference in the header and attach the applicable statutes.
- ✓ Attach documentation.
- ✓ PO ORIGIN setup under “EXMT” in PEOPLESOFT. Backup documents showing statute are also uploaded as PO backup documents.
- ✓ Mark a specific box in PeopleSoft, attach documentation, line comment.
- ✓ In the Header Details of the PO, the PO Type is changed to EXMT. No additional comments or documentation are attached.

In the surveyed responses and in sample PeopleSoft reports, the “EXMT” code is the most commonly used exception code. There are 31 additional exception codes in PeopleSoft, including those for interagency purchases and emergency purchases. More information about “EXMT” transactions is given in Finding 2 of this report.

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37. The “Sometimes” response was given by the Department of Human Services, which explained the agency is transitioning out of a legacy financial system. The “Never” and “N/A” responses were from an institution of higher education, which is exempt from the Central Purchasing Act. This institution was invited to respond to the survey because they have a CPO who is certified by the Central Purchasing Division, and they use the Statewide contracts.

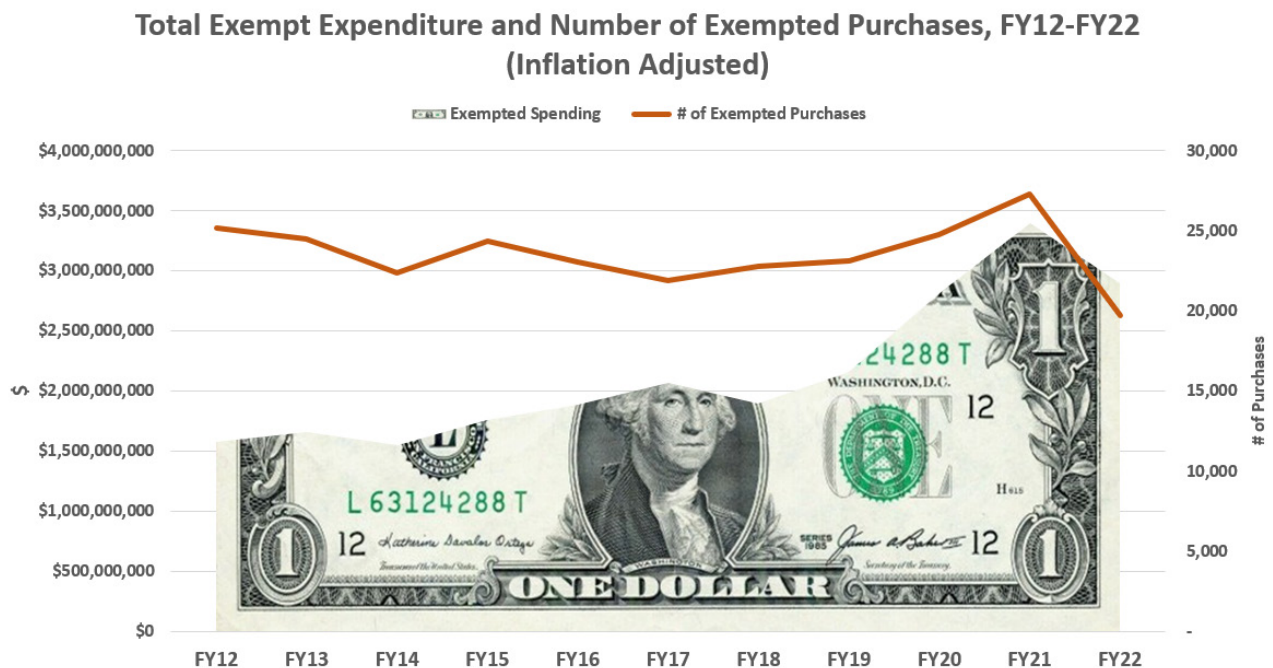


## Finding 2: Lack of Oversight for Exemptions Poses Financial and Legal Risks to the State

Exemptions typically allow agencies to procure goods and services without the involvement of the Central Purchasing Division, which would usually handle the acquisition, bidding, evaluation, and legal aspects of procurement on the agencies' behalf. Agencies utilizing exemptions may benefit from the expediency gained by going around the Central Purchasing Division's processes, but lose the benefits of the Division's purchasing expertise and the State loses external oversight of agency purchases.

Exemptions, by definition, provide a way around the central purchasing process and the oversight of the Central Purchasing Division. This is different from exceptions, which, in LOFT's usage, allow an agency to skip over a component of the process, but still be under the oversight of the Central Purchasing Division. However, LOFT found that exempted purchasing eclipses standard purchasing through the State's Central Purchasing process. In **FY22, State agency purchasing outside of Central Purchasing's oversight exceeded \$3 billion while an estimated \$538 million in purchases was overseen by the Central Purchasing Division.**<sup>38</sup> \$2.06 billion of the spending without external oversight was through transactions recorded under the most commonly used exemption code – "EXMT." LOFT was unable to determine the total amount spent on all purchases by State agencies for FY22, since some agencies do not record purchases in the statewide accounting software (PeopleSoft).<sup>39</sup>

**Exhibit 10: Total Exemption Spending and Number of Exemptions Used, FY12-FY22.** (This graph shows the total dollar amount of exempted purchases spent by agencies since Fiscal Year 12. This amount includes all exempted expenditures used by agencies but does not include agency spending below their approved thresholds. The orange line represents the total number of exempted purchases by all State agencies.)



Source: OMES Central Purchasing Division.

38. See Appendix F for chart showing agency exempted spending compared to spending overseen by the Central Purchasing Division.

39. Agencies that do not track their purchases within PeopleSoft are not reflected in these figures. See Appendix N for a list of agencies not utilizing PeopleSoft.

Even after adjusting for inflation, the spending for agency specific exemptions from Central Purchasing has grown 194 percent since Fiscal Year 2012. In the past five fiscal years, exempted spending has sharply increased. As shown in Exhibit 10 on the prior page, between FY12 and FY18, exempted spending grew 27.5 percent, whereas between FY18 and FY22 exempted spending grew 130 percent. The COVID-19 pandemic increased the amount of total dollars agencies spent, however, it is unlikely that this is the primary reason for the increase since the growth started prior to the pandemic, in Fiscal Year 2019.

In addition to the “EXMT” code, there are 31 exception codes used by agencies, including those for interagency purchases and emergency purchases.<sup>40</sup> Some of these purchasing subsets are technically exceptions, receiving some oversight from the Central Purchasing Division. Purchases made with the EXMT code represent the single largest category of exempted spending across State agencies and is the code used by agencies with statutory exemptions.

While the number of exempted transactions has remained fairly constant over the past decade, the price per exempted transaction has skyrocketed. **Between FY12 and FY22, the average exempted transaction rose from \$121,000 to \$445,000; a 265 percent increase.**

State agencies do not use exemptions proportionally, either. As shown by Exhibit 11 to the right, approximately 66 percent of exemption spending (\$1.3 billion) comes from just one agency, the Oklahoma Department of Transportation (ODOT).

**Exhibit 11: Exempted Purchases by Agency.** (This chart shows each agency’s spending on purchases exempted from the Central Purchasing Act using the “EXMT” code.)

Exempted Purchases by Agency		
Agency Name	FY22	% of Total
Department of Transportation	\$1,359,482,545	66.12%
Department of Corrections	\$158,546,669	7.71%
Capitol Improvement Authority	\$141,423,034	6.88%
OSU Medical Authority	\$69,220,427	3.37%
Health Care Authority	\$66,396,064	3.23%
Tobacco Settlement Endmt Trust	\$38,109,760	1.85%
Department of Human Services	\$35,384,964	1.72%
Office of Juvenile Affairs	\$33,597,966	1.63%
Department of Commerce	\$23,926,493	1.16%
District Attorneys Council	\$23,751,576	1.16%
Tourism and Recreation Dept.	\$14,841,031	0.72%
Ctr for Advanc of Sci & Techno	\$13,944,132	0.68%
Mgmt and Enterprise Services	\$8,590,059	0.42%
Dept of Rehabilitation Service	\$8,235,613	0.40%
Oklahoma Tax Commission	\$8,223,611	0.40%
Comm of the Land Office	\$7,303,328	0.36%
Department of Health	\$7,171,690	0.35%
Okla Law Enforce Ret System	\$5,155,815	0.25%
Department of Public Safety	\$4,518,956	0.22%
Health Care Workforce Trng Com	\$2,998,411	0.15%
Wildlife Conservation	\$2,887,505	0.14%
Conservation Commission	\$2,670,185	0.13%
Department of Agriculture	\$2,285,477	0.11%
Dept of Environmental Quality	\$2,089,922	0.10%
Historical Society	\$1,969,193	0.10%
Department of Veterans Affairs	\$1,799,639	0.09%
Mental Health & Subst Abuse Sv	\$1,535,429	0.07%
Teachers Retirement System	\$1,067,300	0.05%
Okla Public Employees Ret Sys	\$1,003,850	0.05%
All Others	\$7,951,785	0.39%

Source: OMES Central Purchasing Division.

Note: Agencies that are fully exempt from the Central Purchasing Act are not included in these figures.

40. See Appendix G for list of all exception codes and the total amounts expended for each one by fiscal year.

Statute provides a specific exemption to ODOT for the maintenance or construction of streets, roads, highways, bridges, underpasses, and other transportation related purchases.<sup>41</sup> Although such purchases are not handled directly by the Central Purchasing Division, ODOT is statutorily required to maintain competitive bidding procedures for these types of exempted purchases.<sup>42</sup> Excluding ODOT, exemption spending by State agencies represented nearly \$700 million in total purchases in FY22, an increase of 104 percent since FY12.

## Other Exemption Types

### Emergency Purchases

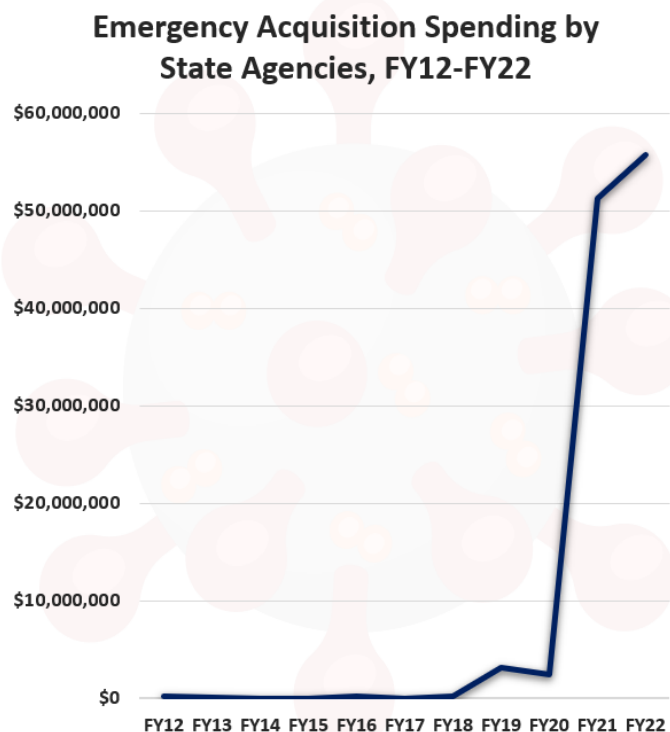
Other exemption types, such as emergency acquisitions, have also increased substantially since the COVID-19 pandemic. On March 15, 2020, the Governor issued an emergency executive order that allowed agencies to exceed their predetermined purchasing thresholds for acquisitions necessary to address the pandemic, as long as a purchase did not exceed \$250,000. The order also required such purchases to be “readily identifiable” and directed an audit be performed for such purchases at the conclusion of the threat.<sup>43</sup>

While no directive was given on which exemption code agencies should use to identify purchases exempted pursuant to the executive order, acquisitions coded as emergencies rose dramatically during this period. As shown in Exhibit 12, emergency spending averaged approximately \$2 to \$3 million in the years preceding the order and rose to more than \$50 million after the executive order.

However, these amounts do not capture the full scope of emergency spending by agencies. The executive order also allowed agencies to use purchase cards (P-cards) to make emergency acquisitions. Those purchases are reported under a different code that includes all P-card spending in the State – not just emergency acquisitions. It should be noted that P-card spending saw a small spike in FY20 and returned to normal levels in FY21 and FY22.<sup>44</sup> LOFT was not able to determine what portion of P-card expenses were used for emergency purchases granted under the order. All P-card transactions are posted on a publicly available website.

Other purchases also cite the executive order as the reason for the exemption, but do not use the emergency exemption code to identify the transaction. For example, a purchase by the Office of Educational Quality and Accountability for \$18 million included a copy of the executive order but coded the purchase as an agency exemption.<sup>45</sup> Inconsistent categorization of emergency purchases make it difficult to accurately assess the total expenditure for emergency executive order purchases.

**Exhibit 12: Emergency Acquisition Spending by State Agencies.** (The chart below shows the total amounts agencies spent on purchases using the code “EM74.”)



Source: OMES Central Purchasing Division.

41. [74 O.S. § 85.12](#).

42. [61 O.S. § 103](#). Additionally, [74 O.S. § 85.5](#) specifies that “Public construction contracts are awarded pursuant to Title 61 of the Oklahoma Statutes and are not subject to the Oklahoma Central Purchasing Act.”

43. Office of the Governor, [Executive Order 2020-07](#), Mar. 15, 2020.

44. See Appendix M for ten-year history of P-card expenses.

45. Agency exempted purchases use the code “EXMT” in the Statewide accounting system.

As stated in the executive order, purchases made under its authority are subject to audit.<sup>46</sup> On February 28, 2023, the Governor issued a new executive order which directed Central Purchasing to conduct audits of all State agencies by the end of the calendar year.<sup>47</sup> The order does not limit the audit to emergency purchases. Typically, the Central Purchasing audit team conducts less than 15 full audits every year.

### Interagency Purchases

Interagency purchases – acquisitions from other governmental entities – are fully exempted from the provisions of the Central Purchasing Act, including competitive bidding and the requirement to adhere to internal purchasing procedures.<sup>48</sup> Interagency expenditures have steadily declined over the last ten years, accounting for over \$872 million in 2013 and \$638 million in FY22.<sup>49</sup>

### Agency Purchases Below Threshold

As discussed in Finding one, agencies can make purchases below \$25,000 and if approved, purchases up to \$250,000. While these purchases are not technically exempt from the Central Purchasing Act, they are functionally the same in that they are purchases that are not required to go through the Division.

In a recent report, OMES cited agency purchases below thresholds as a vulnerability. In total, \$188.5 million was spent by agencies on purchases below thresholds.<sup>50</sup>

### Sole Source Acquisitions

Sole Source purchases allow agencies to forgo competitive bidding based on a determination that, for some purchases, a single vendor is the only qualified vendor. Sole Source transactions are submitted by agencies without a determination of validity by the State Purchasing Director or the CIO.<sup>51</sup> While agencies are required by statute to fill out a form and attach it to the purchase, no outside entity verifies Sole Source transactions.<sup>52</sup> However as mentioned above, the State Purchasing Director and the CIO have statutory authority to review transactions for compliance with the Central Purchasing Act, which includes Sole Source Acquisitions.<sup>53</sup>

Since FY12, the amount of agency spending through Sole Source acquisitions has risen from \$130 million to \$291 million, a 124 percent increase. Exhibit 13 on the next page, displays this trend for the last ten fiscal years.

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46. Executive Order 2020-07, March 15, 2020. Ended by Executive Order 2021-11, May 3, 2021.

47. Office of the Governor, [Executive Order 2023-04](#), Feb. 28, 2023.

48. [74 O.S. § 85.3A.A.6](#); Statute does not require these types of purchases follow internal purchasing procedures.

49. These amounts include both interagency purchases and IT interagency purchases. See Appendix I for a chart of interagency purchases over time.

50. OMES Internal Review of Central Purchasing Memo, pg. 3, Mar. 3, 2023.

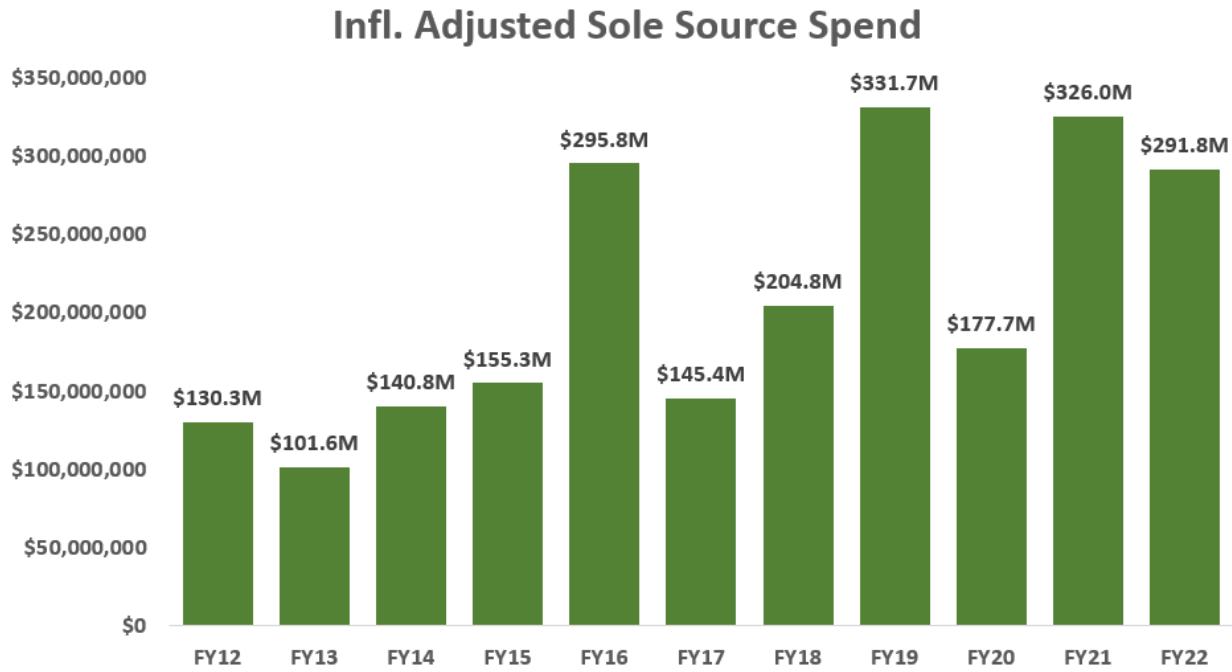
51. OMES Internal Review of Central Purchasing Memo, pg. 5, Mar. 3, 2023.

52. [74 O.S. § 85.44D.1](#).

53. [74 O.S. § 85.5](#).



**Exhibit 13: Agency Spending on Sole Source Purchases (FY12-FY22).** (The chart below displays the total dollar amounts spent by agencies on Sole Source Purchases, which are exempt from the requirements of competitive bidding. The amounts are adjusted for inflation by fiscal year.)



Source: OMES Sole Source reports from FY12 to FY22.

### Risks to the State

Exempted purchases pose a legal and financial risk to the State. Under the current process, an agency does not submit a request for approval or review before making an exempted purchase. Instead, the agency processes its transaction as exempt without any external confirmation that the agency is either entitled to the exemption or using it appropriately. According to OMES, exempt purchases are not routed through Central Purchasing. The Division has access to exempt entries in the State accounting system but does not interpret statute as providing them with the authority to reject an agency's use of those exemptions.<sup>54</sup>

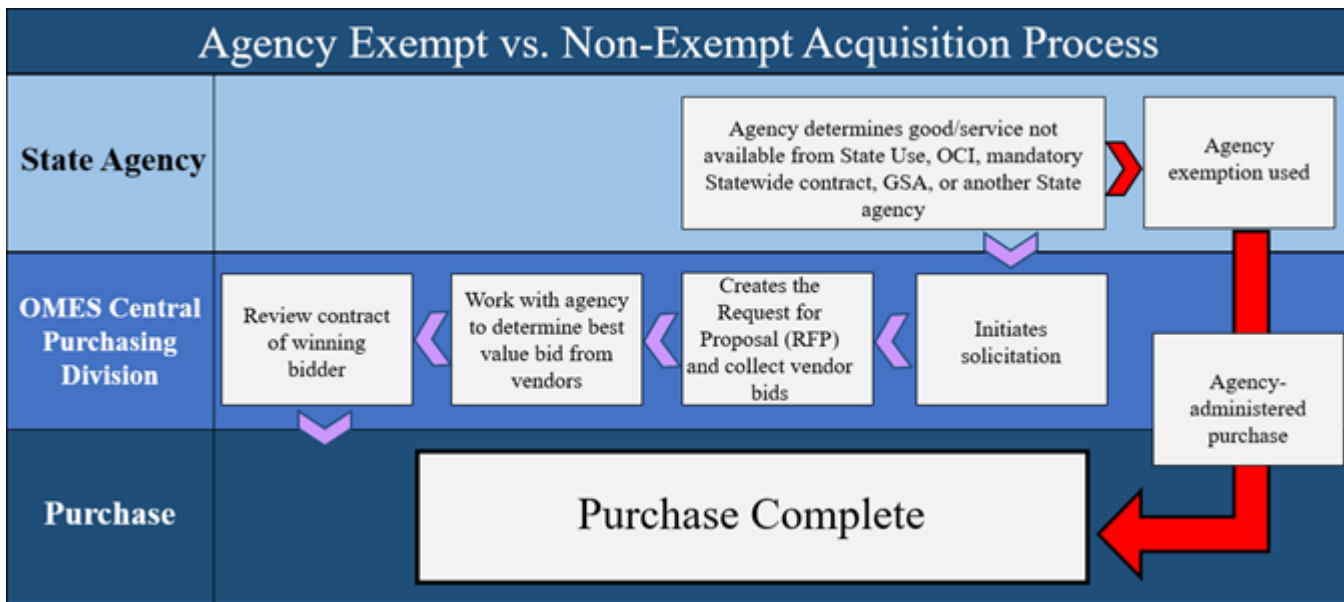
Section 85.5 specifies that, "The State Purchasing Director shall review state agency acquisitions for the purposes of ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act." **This section could be interpreted as a mandate to ensure that purchases that *should* fall under the authority of the CPA are properly reviewed by the Purchasing Division.**

**"The State Purchasing Director does not have authority over agency acquisitions where statutory exemptions are outside the Central Purchasing Act."**

- OMES Chief Operating Officer Report to the Governor and Legislature

54. See Appendix G for full list of exemption spending by type in the last ten fiscal years based on data provided by OMES Central Purchasing Division.

**Exhibit 14: Overview of Acquisition Process.** (This graphic shows an overview of the processes for exempt and non-exempt purchases by agencies.)



Source: Central Purchasing Division CPO Checklist; LOFT Statutory Review.

Note: This process shows a general overview of the acquisition process; some minor steps are excluded in the graphic.

This lack of oversight from a central authority is in direct conflict with the legislative intent of the original Central Purchasing Act of 1959. While cost savings and efficiency were desired outcomes, the impetus for the Act was concern over widespread corruption resulting from individuals being able to direct purchases. The Act intended to create a single point of accountability for State purchasing.<sup>55</sup>

In its original iteration, the Act essentially provided full transparency for State purchases. Contracts, acquisitions, and other records made by the Purchasing Director or a State agency were open to the public for viewing during all regular hours of operation. Similarly, the use of exemptions was limited as well, with only seven total listed in the original Act.<sup>56</sup> **Today, LOFT estimates there are over 87 full or partial exemptions from the Central Purchasing Act granted in statute.**<sup>57</sup>

### Consequences of Exemptions

In March 2020, the Oklahoma Tourism and Recreation Department (OTRD) executed a contract with Swadley's Foggy Bottom Kitchen (Swadley's) to operate restaurants at State parks. LOFT's 2022 evaluation into the State Park Division of OTRD identified several areas of concern regarding the agency's expenditures related to the contract, including overpayment for items, payment for excessive surcharges and fees, a lack of proper documentation for expenses, and a general lack of internal controls.<sup>58</sup>

On April 1, 2022, the Oklahoma State Bureau of Investigation (OSBI) opened an investigation into OTRD's contractual relationship with Swadley's. That same month, the State canceled the contract with Swadley's and filed suit against the company. Also in April, a Special Investigative Committee was created by the Oklahoma House of Representatives to examine whether statutory changes should be made "to protect against future abuses of resources by state agencies."<sup>59</sup>

55. Paul English, "Central Purchasing Reform Milestone 1959 Law's Impact Recalled," [The Oklahoman](#), Feb. 7, 1993.

56. Central Purchasing Act of 1959.

57. Refer to Appendix O for a list of exemptions.

58. LOFT evaluation 22-566-01, March 2022.

59. The Oklahoman, April 28, 2022. "Oklahoma House to investigate Swadley's"

Among the questions posed in those hearings was how OTRD could have made the volume of questionable purchases without the oversight of OMES. OMES' director testified that due to OTRD's use of an exemption code on invoices, they were processed without OMES oversight. "OMES didn't grant an exception because we were never presented the opportunity to."<sup>60</sup>

The "Master Concession Lease" agreement with Swadley's avoided oversight from the Central Purchasing Division because OTRD used an exemption that was specific to their agency. However, the statute cited by OTRD to justify the exemption was specific to the resale of merchandise through Department retail outlets, including restaurants.<sup>61</sup> Many of the invoices from Swadley's were for management fees, construction expenses, and equipment used to produce food – not items that were resold in the restaurant. OMES says that they are not able to interpret statute outside of the Central Purchasing Act and could not reject the use of this exemption.

"We do not have the authorization to interpret someone else's statutes," the OMES Director testified to the House committee. "I don't have the authority to tell them (OTRD) based on their statutes that apply to them what they can do."<sup>62</sup> At the conclusion of LOFT's evaluation, an Attorney General opinion was issued affirming the Central Purchasing Director's responsibility over all agency acquisitions, including verifying agencies' claims that an acquisition is statutorily exempt.<sup>63</sup> At the time of this report's publication, the OSBI investigation was still ongoing.

The OTRD example represents the best-known case in recent years where investigative authorities outside of OMES have reviewed expenditures for appropriateness and potential abuse or misuse, but there have been other inquiries pertaining to contracts and exemptions. The possibility of improper exemption usage increases when submitted exemptions are not reviewed by an outside authority. When this happens, agencies may cite statute believed to grant an exemption when in reality, the exemption may not exist or if it does exist, may not be appropriately applied. Without an additional check in place, an agency's interpretation of statute is the sole basis for its usage. Currently, there is no standard process for ensuring that exemptions used by agencies have been properly interpreted and applied. Moreover, even **when there is a dispute between Central Purchasing and an agency's interpretation of statute, there is no process for resolving the conflict.**

Even though exempted purchases are tracked within PeopleSoft, the State's accounting system, there is no uniform process for recording them. Exemption citation references can be found in multiple places, such as the main comments, specific line comments, or in a file as a separate attachment to the purchase. There is currently no uniform field that consistently tracks and records exemption citations used by agencies, making it very difficult to determine if a statute has been properly applied.

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60. Testimony from June 13, 2022 meeting of the House Investigative Committee.

61. 74 O.S. § 2239 (Superceded on 05/18/2020).

62. Testimony from June 13, 2022 meeting of the House Investigative Committee.

63. An internal legal memo provided by Central Purchasing to support its position that the Division lacks authority to review claimed exemptions, dated March 28, 2023, can be found in Appendix P. The Attorney General's opinion, issued on April 13, 2023, is in Appendix Q.

### Finding 3: The Central Purchasing Division Lacks Effective Enforcement of Compliance with the Central Purchasing Act

Statute makes clear the Central Purchasing Division is responsible for the oversight of all acquisition activities by executive branch agencies.<sup>64</sup> Specifically, statute states the State Purchasing Director has “sole and exclusive authority and responsibility for all acquisitions by state agencies” and may promulgate rules on topics related to the procurement activities of State agencies, including rules to allow for the “review and audit by the State Purchasing Director of state agency acquisitions.”<sup>65</sup>

To ensure agency compliance with the Central Purchasing Act, OMES houses an Audit Team that conducts audits of agency procurements and purchase card transactions.<sup>66</sup> According to the Central Purchasing Division, “the Audit team is viewed as a partner to state agencies to find, assist and recommend areas of their procurement processes that may potentially need to be updated.”<sup>67</sup>

Based upon past compliance with procedures regarding the Central Purchasing Act, the State Purchasing Director is responsible for approving or denying an agency’s request to increase its acquisition purchasing threshold or purchase card threshold.<sup>68</sup> As of February 2023, the Central Purchasing Division has received 29 requests from agencies to increase the agency acquisition threshold and/or purchase card threshold; eight have been approved, ten denied, and eleven requests are pending.<sup>69</sup>

The Central Purchasing Audit Team reviews and audits a selection of state agency procurements and purchase cards transactions, as well as monitors all purchase card transactions for all agencies monthly. Procurement Audits and Purchase Card Program Audits are in-depth reviews that include detailed descriptions of any significant findings. Prior to 2019, the audits were available to the public but are now available only upon an Open Records request.

To determine agency selection for audits, the Audit Team utilizes a software program to help determine risk based on certain criteria. Some of the inputs include the frequency of sole source acquisitions, amount of total expenditures, the number of findings in previous audits, and the duration of time from the last audit. Since 2012, 13 percent of all state agencies have undergone a full procurement audit. Thirty-eight percent of state agencies have been subject to a purchase card audit. Additionally, 95 percent of all state agencies are subject to continuous monitoring from the Audit Team on all purchase card transactions monthly. In 2022 alone, the Audit Team conducted three procurement audits and 11 dedicated purchase card audits across 14 agencies and commissions.<sup>70</sup> Of the nearly \$538 million in purchases overseen by Central Purchasing in FY22, \$14.9 million in purchases by agencies were subject to procurement or a purchase card program audit.<sup>71</sup>

64. [74 O.S. § 85.3.](#)

65. [74 O.S. § 85.5.](#)

66. [OAC 260: 115-5-19.](#)

67. OMES Internal Review of Central Purchasing Memo, pg. 2, Mar. 3, 2023.

68. [SB 1422](#) (2020) increased allowable purchasing limits and allowed agencies to request an increase in their acquisition threshold amount or purchasing card threshold amount.

69. LOFT correspondence with Central Purchasing Division, Jan. 13, 2023.

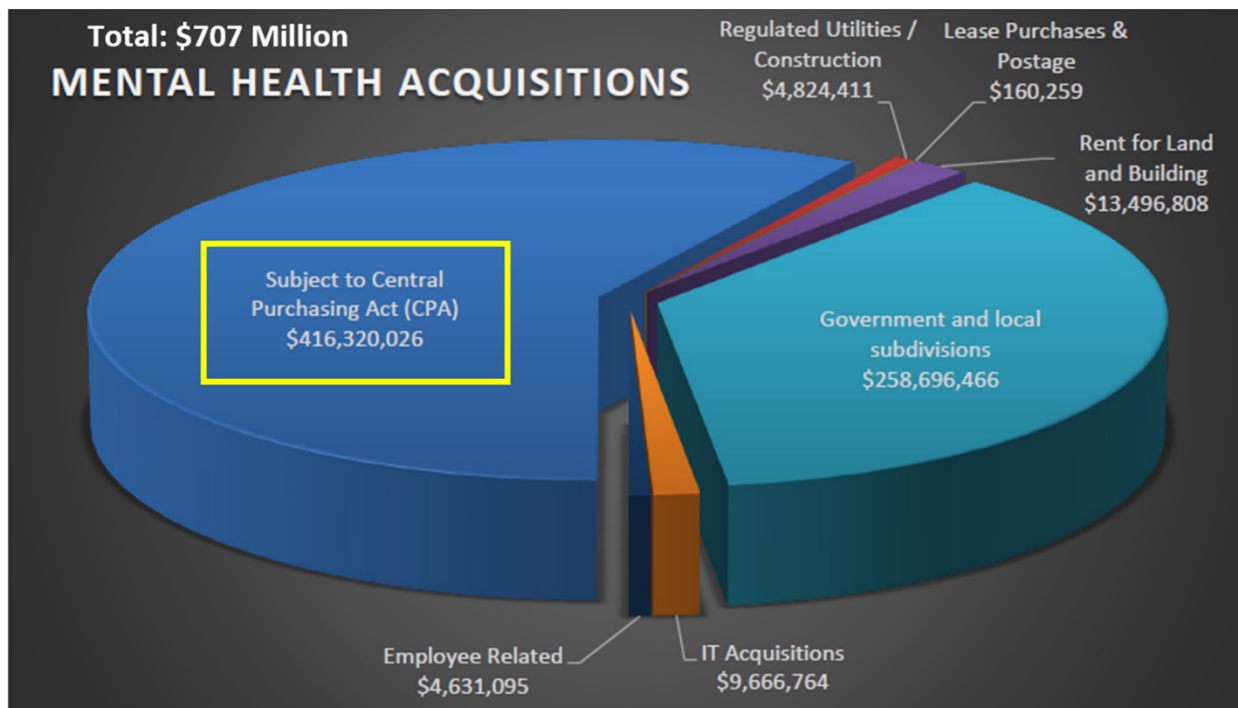
70. See Appendix K for list of all audits conducted in 2022.

71. See Appendix L for a list of transaction samples from each audit report in FY 2022.

### Scope of Audits

The Audit Team's reports begin with a statement that only purchases subject to the Central Purchasing Act are within the audit's scope. Even for agencies without a broad exemption, this may represent only a fraction of an agency's purchasing. For example, in 2020 the Audit Team conducted a procurement audit of the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).<sup>72</sup> The audit notes among the \$707 million in total acquisitions by the agency, approximately \$416 million, or 58 percent of acquisitions, were subject to the Central Purchasing Act, as shown in Exhibit 15.

**Exhibit 15: ODMHSAS Agency Acquisitions.** (This chart from the 2020 ODMHSAS Procurement Audit Report shows the categorical breakdown of \$707 million in acquisitions from Nov. 1, 2016 to Oct. 31, 2017.)



Source: 2020 ODMHSAS Procurement Audit Report.

**It is OMES' policy for its audit team to only review acquisitions deemed to fall under the Central Purchasing Act.** All other categories, as shown in the pie chart above, such as rent for buildings and regulated utilities, are not subject to any audit reviews by the Central Purchasing Division. Additionally, some purchases may be exempt from review by OMES. From 2010 to 2022 the Central Purchasing Audit Team conducted 69 Procurement and Purchase Card Program Audits that resulted in 218 Findings.<sup>73</sup>

72. Office of Management and Enterprise Services, Central Purchasing Audit – Oklahoma Department of Health and Substance Abuse Services Procurement Audit, April 2020.

73. Five reports resulted in no findings or insufficient data to conduct an audit. Performance audits were excluded in LOFT's analysis of audits.



Some of the common violations by agencies recorded by the Audit Team were:

- Outdated internal purchasing procedures. (Procedures must be submitted to State Purchasing Director for approval every two years).<sup>74</sup>
- No sign-off from the State Purchasing Director for change orders that increased the total contract to an amount greater than the agency's authority.
- Lack of approval from OMES for IT purchases.
- Lack of documentation included in a purchase order, such as sign-off from designated officials.

Agencies may respond if they concur, partially concur, do not concur, or provide no response in relation to each finding.<sup>75</sup> Among all the reports, agencies agreed with 136 Findings and did not concur with 22 Findings.

**Exhibit 16: Central Purchasing Audit Team Findings Analysis.** (This table shows the types and frequencies of responses from agencies regarding the audit findings).

2010 – 2022 Central Purchasing Audit Team Findings				
Concur	Partially Concur	Non-Concur	No Response	Total Findings
136	51	22	9	218

Source: OMES Central Purchasing Division Audit Team Reports.

### Dispute of Findings

LOFT's review of Findings showed cases of non-concurrence or partial concurrence where there was not final agreement between OMES and the agency regarding an action plan to address the issue. In a 2020 Procurement Audit, the Department of Mental Health and Substance Abuse Services (ODMHSAS) spent over \$200,000 for conferences for which the department claimed were exempt from Central Purchasing. However, OMES disputed use of this exemption, as the statutory reference that is used to justify it only empowers the agency to make purchases within the Travel Reimbursement Act and does not specifically mention any type of exemption. OMES has disputed this justification since at least 2015, claiming in part that because the Travel Reimbursement Act was enacted forty years after the Central Purchasing Act, it supersedes it. ODMHSAS has stated they will continue to use this exemption despite OMES's objections.<sup>76</sup>

In total, ODMHSAS made over \$12.5 million in exempted purchases in which OMES disputed the accuracy of the exemption's use. The purchases were made under the exemption granted for Title 18 professional services but OMES's audit team determined that the purchases "did not meet the qualifications to be a Title 18 professional service contract." ODMHSAS disagreed and said it will continue to use the exemptions in accordance with their interpretation.<sup>77</sup> In cases of disputes there is no entity acting as a final arbiter between Central Purchasing and state agencies regarding audit findings.

74. Internal purchasing procedures must be reviewed annually by every agency and submitted for approval by the State Purchasing Director every two years ([OAC 260:115-5-7](#)).

75. LOFT's analysis of audits provided by OMES Audit Team, 2010 – 2022.

76. Oklahoma Department of Mental Health and Substance Abuse Services Procurement Audit, Apr. 2020.

77. Ibid.

### Lack of Follow-Up

Exhibit 17, below, demonstrates a lack of enforceable action by OMES for repeated purchasing procedure violations by an agency. In January 2021 the Audit Team published a Purchase Card Program Audit for the Office of Juvenile Affairs (OJA). The review found OJA had not updated their purchasing procedures since 2009. Administrative code requires agencies to submit their internal purchasing procedures to the State Purchasing Director for approval every two years.<sup>78</sup> OJA Management responded the Agency would implement a plan to ensure the issue of outdated internal purchasing procedures would be addressed. However, in July 2022, a Procurement Audit of OJA found the Agency had still not updated their internal purchasing procedures since 2009.

**Exhibit 17: Audit Findings Regarding Outdated Purchasing Procedures, January 2021 and July 2022 Reports.** (These excerpts from a 2021 Purchase Card Program Audit and 2022 Procurement Audit shows OJA had not updated their internal purchasing procedures since 2009.)

#### Finding 20-400-01: Internal purchasing Procedures:

January 2021 Report

**Condition:** During the planning phase of the purchase card audit we noted that the agency's approved internal purchasing procedures have not been updated since December 2009. The procedures contain outdated information and policies not enforced by the agency.

**Recommendation:** We recommend the agency review and update its internal purchasing procedures and submit them to the state purchasing director for approval.

#### **Management's response**

**Date:** Nov. 24, 2020

**Respondent:** Chief financial officer

**Response:** OJA will create and implement a corrective action plan to ensure this issue is resolved appropriately.

July 2022 Report

#### Finding 22-400-03: Internal Purchasing Procedures

OJA's Internal Purchasing Procedures have not been updated since December 2009 and contain outdated information and policies no longer enforced by the agency. Requirements from the agency's internal purchasing procedures were tested for compliance.

#### **Management's Response**

**Date:** 06/28/2022

**Respondent:** Chief Financial Officer

**Response:** Concur - We concur that our policies are outdated and need to be revised. We will adhere to the current policy until revisions can be made (we are currently working on a revision) and update all requirements to create a system that is efficient and effective and meets all statutory and regulatory requirements.

Source: OMES 2021 Purchase Card Program Audit of OJA; OMES 2022 Procurement Audit of OJA.

78. [OAC 260:115-5-7](#).

### Lack of Enforceable Oversight

Pursuant to the Central Purchasing Act and promulgated rules, the Central Purchasing Division may take certain remedial action against agencies that consistently fail to comply with the rules and protocols of the Central Purchasing Act. Exhibit 18 below details the actions available to OMES for agency remediation and the actions taken by OMES.

**Exhibit 18: Remedial Actions Taken by OMES.** (This table shows what remedial actions for agency non-compliance are available to OMES and how they have been utilized since 2012.)

Available Remedial Actions	Action Taken	Specific Actions Taken by OMES	Notes
Increase the frequency of agency audits.	Yes	LOFT identified 15 reports of cases in which agencies underwent multiple audits. These audits included in LOFT's analysis were Procurement or Purchase Card Program Audits dedicated to one agency.	Multiple audits do not necessarily mean previous audits found serious violations.
Reduce an agency's approved purchasing authority or purchase card authority.	No	Central Purchasing Division has not reduced the purchasing authority or purchase card authority since FY 12. However, in FY 2017 based upon the Findings in a procurement audit ODOT procurement staff were required to go through six months of retraining in lieu of reducing their agency authority.	Whenever a State agency is found to be out of compliance with the Central Purchasing Act or associated rules or requirements of the Central Purchasing Division, the State Purchasing Director is empowered to unilaterally reduce a State agency's acquisition authority amount.
Suspend an agency or an agency cardholder from the state purchase card program.	No	Since FY 2012, no agency has been suspended or removed from the purchase card program.	
Revoke or suspend a CPO's certification.	Yes	The State Purchasing Director has revoked two CPO certifications since FY 2012.	The two individuals did not reapply for recertification.
Require a CPO to be retrained or recertified.	Yes	In FY 2017 the State Purchasing Director required the ODOT procurement staff to go through six months of retraining with Central Purchasing in lieu of reducing the agency's approved procurement threshold.	
Transmit written findings and reports to the State Auditor or Attorney General for further investigation.	No	Since FY 2012 no written findings have been referred to either the Attorney General's office or the State Auditor's office from the Director of OMES.	

Source: Central Purchasing Division.

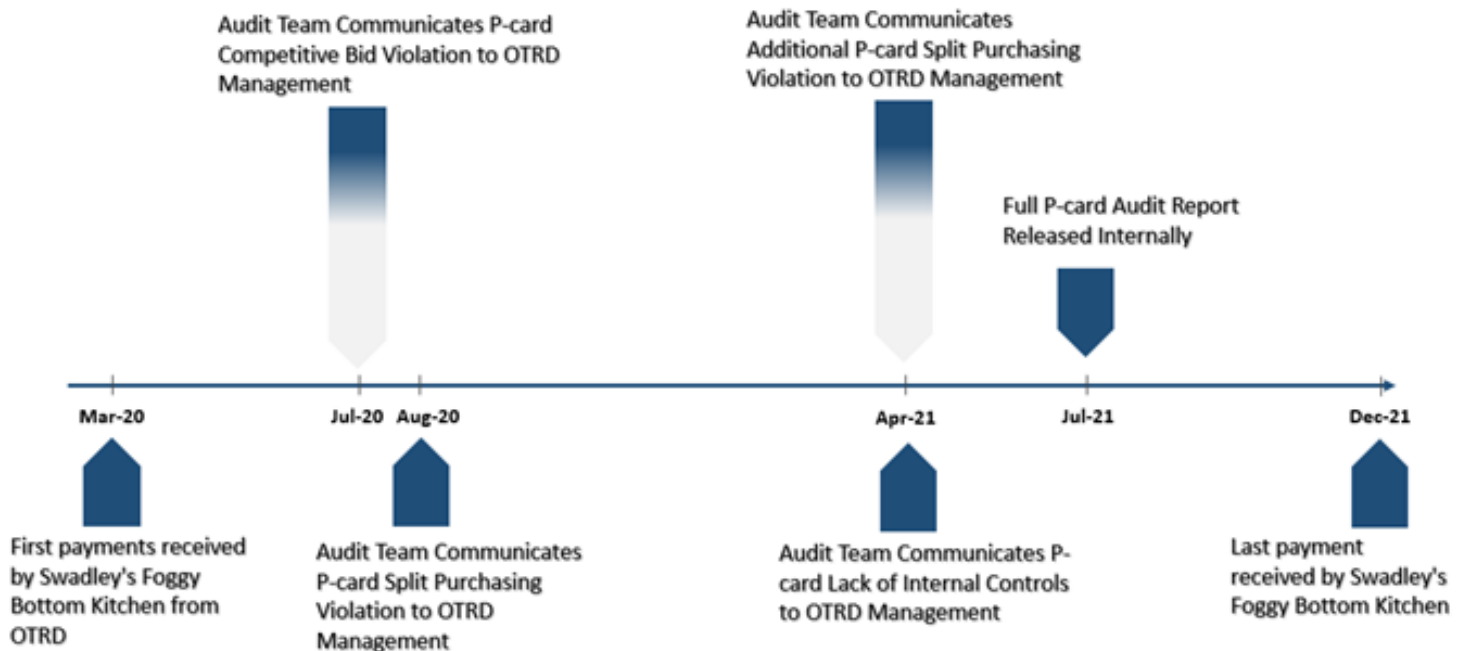
The Division's Audit team conducted a P-card audit of OTRD's purchases in 2020, which was released internally to OTRD in July 2021. The report examined Purchase Card (P-card) transactions made by the Department between January 1, 2019 and September 27, 2020. During this audit, the team became aware of OTRD violations of the Central Purchasing Act, including violation of competitive bidding, split purchasing to avoid purchase limits, improper documentation of purchases, improper purchasing of IT equipment, and prohibited purchases of alcohol. Despite the nine formal findings, the Audit team found that OTRD "significantly complied with the State Purchase Card Procedures and the agency's internal purchase card procedures."<sup>79</sup> At the time the violation occurred, split purchasing was classified as a felony.

Of the nine findings, OTRD concurred with four, partially concurred with three, and did not concur with two. When agencies are found to be in violation, and the agency agrees that the violation has occurred, agencies will provide a corrective action plan to ensure future compliance. OTRD's remedies were to update their internal policies, provide mandatory training to employees, and a 30-day purchase card suspension for some employees. Exhibit 19 below depicts the timeline for the OTRD-Swadley's contract and the P-card audit conducted by Central Purchasing's audit division.

These findings of OTRD's misconduct with P-card transactions occurred during the same period the agency was processing invoices to Swadley's. These transactions were not reviewed due to the audit scope being limited to those transactions made with a P-card.

**Exhibit 19: Timeline for Swadley's Payments from OTRD and Central Purchasing's P-card Audit of OTRD.** (This timeline shows OTRD purchasing related to Swadley's and the 2021 OTRD P-card Audit. The OTRD audit was specific to P-card purchases and was unrelated to the Swadley's contracts.)

### OTRD's Contract with Swadley's and Central Purchasing P-card Audit Timeline



Source: Data from the Statewide accounting system and from the OMES Central Purchasing Division.

79. Office of Management and Enterprise Services Central Purchasing Audit, Tourism and Recreation Department Purchase Card Program Audit, Jul. 2021.

In response to the findings, the Central Purchasing Division did not suspend the agency from the purchase card program, reduce the agency's purchasing or purchase card authority limits, or increase the agency's audit frequency. Additionally, the Central Purchasing Division did not transmit written findings to the Attorney General nor the State Auditor and Inspector despite OTRD potentially violating laws regarding split purchasing and improper alcohol use.<sup>80</sup> Even after OTRD's transactions with Swadley's were made public, Central Purchasing did not, and has yet to, reduce the agency's spending threshold.

### **Agencies' Use of Peoplesoft**

Statute provides a specific exemption to ODOT for the maintenance or construction of streets, roads, highways, bridges, underpasses, and other transportation related purchases.<sup>81</sup> However, LOFT's review of PeopleSoft records found the majority of ODOT's expenditures did not use this specific exemption, instead recording them under the general EXMT code. OMES has not enforced ODOT's proper use of an existing exemption code that would better reflect State spending.

Central Purchasing has access to agencies' purchasing transactions through PeopleSoft, but not all agencies record their purchases within this system. The Grand River Dam Authority (GRDA), the Oklahoma Turnpike Authority (OTA), and institutions of higher learning are among those agencies that do not use PeopleSoft for their procurement. The Department of Human Services (DHS) did not historically use PeopleSoft but is currently in the process of switching over to that system.

LOFT's review of the State's central purchasing process finds much of state purchasing circumvents the State's "centralized" purchasing process. Many exempt purchases are not overseen by Central Purchasing Division, and ones that are overseen are not well enforced. If the State is to have a central point of accountability for the State's purchasing, it first needs a uniform system for all agencies to enter expenditure data, and then uniform enforcement of agencies' compliance with purchasing rules.

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80. Office of Management and Enterprise Services Central Purchasing Audit, Tourism and Recreation Department Purchase Card Program Audit, Jul. 2021.

81. [74 O.S. § 85.12](#).



## About the Legislative Office of Fiscal Transparency

### Mission

To assist the Oklahoma Legislature in making informed, data-driven decisions that will serve the citizens of Oklahoma by ensuring accountability in state government, efficient use of resources, and effective programs and services.

### Vision

LOFT will provide timely, objective, factual, non-partisan, and easily understood information to facilitate informed decision-making and to ensure government spending is efficient and transparent, adds value, and delivers intended outcomes. LOFT will analyze performance outcomes, identify programmatic and operational improvements, identify duplications of services across state entities, and examine the efficacy of expenditures to an entity's mission. LOFT strives to become a foundational resource to assist the State Legislature's work, serving as a partner to both state governmental entities and lawmakers, with a shared goal of improving state government.

### Authority

With the passage of SB 1 during the 2019 legislative session, LOFT has statutory authority to examine and evaluate the finances and operations of all departments, agencies, and institutions of Oklahoma and all of its political subdivisions. Created to assist the Legislature in performing its duties, LOFT's operations are overseen by a legislative committee. The 14-member Legislative Oversight Committee (LOC) is appointed by the Speaker of the House and Senate Pro Tempore, and receives LOFT's reports of findings. The LOC may identify specific agency programs, activities, or functions for LOFT to evaluate. LOFT may further submit recommendations for statutory changes identified as having the ability to improve government effectiveness and efficiency.

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## Appendix A. Methodology

### Oklahoma Constitution, Statutes and Agency Policies

LOFT reviewed State Statute and Administrative Code pertaining to purchasing procedures, including but not limited to the Central Purchasing Act.

### Methodology

#### Survey Methodology

The survey was conducted via email using the Adobe Pro survey platform. Responses were collected from February 8 through February 17.

Respondents from 65 State agencies were invited to participate in the survey. Invitations were sent to Certified Procurement Officers and Legislative Liaisons (with a request to forward the survey to CPOs).

Our invitation message included this note: *"Your answers will be considered confidential and will not be shared with OMES or OMES Central Purchasing."*

Responses were received from 36 agencies. Because some state agencies have more than one CPO, the total number of individual responses was 43.

Our overall survey response rate was 55%.

The survey results shown in the report generally include all 43 responses.

#### State Spending on Purchases

The \$553M figure is calculated by starting with the total amount reported by the Central Purchasing Division of OMES for FY22 (\$838,826,114.19) and subtracting non-State agency spending from it. Of the total, \$212,787,696.59 was used for Purchase Cards but only \$84,081,852.02 was attributed to State agency spending. An additional \$38,360,163.37 was removed from the total as this amount reflects spending by agency CPOs outside of the Central Purchasing Division.

Lastly, of the 270,636,800.83 in Statewide contracts overseen by the Division, the State of Oklahoma's portion is \$94,542,690.34. However, the Cost Savings report says that these amounts only represent 69.10 percent of the total spending on Statewide contracts. The \$94,542,690.34 is then adjusted to include the additional 30.90 percent, which results in a total estimated Statewide contract spend by State agencies of \$136,820,101.79. When the final sum is added together, the total amount of State agency spending overseen by the Central Purchasing Division in FY22 is \$537,943,407.21.

This same process is repeated for fiscal years 17 through 21.

#### Total Exemption Spending

The \$3 billion in spending by State agencies in FY22 not overseen by the Central Purchasing Division is calculated by adding the totals for each code listed in Appendix H that has a "No" listed in the third column together. Then, the total amount of purchases agencies made below thresholds, \$188.5 million, was added to the number.

## Appendix B: Number of Certified Procurement Officers by State Agency

Accountancy Board, Oklahoma	3	Employment Security Commission, Oklahoma	5
Aeronautics Commission, Oklahoma	3	State Board of Licensure for Professional Engineers and Land Surveyors	1
Agriculture, Food and Forestry, Department of	16	Environmental Quality, Department of	14
Alcohol and Drug Influence, Board of Tests for	1	Fire Marshal Commission, State	1
Alcoholic Beverage Law Enforcement Commission	1	Firefighters Pension and Retirement System, Oklahoma	1
Arts Council, Oklahoma	2	Grand River Dam Authority	34
Attorney General	4	Health Care Authority, Oklahoma	20
Banking Department, Oklahoma State	3	Health, State Department of	45
Behavioral Health Licensure, State Board of	1	Historical Society, Oklahoma	5
Cameron University	2	Horse Racing Commission, Oklahoma	2
Career and Technology Education Department	2	Housing Finance Agency	7
Commerce, Oklahoma Department of	9	Human Services, Department of	49
Conservation Commission, Oklahoma	4	Indigent Defense System, Oklahoma	5
Consumer Credit, Department of	2	Industrial Finance Authority	1
Corporation Commission, Oklahoma	15	Insurance Commissioner and State Insurance Department	5
Corrections, State Department of	14	Investigation, Oklahoma State Bureau of	9
Dentistry, Oklahoma Board of	1	J.D. McCarty Center for Children with Developmental Disabilities	1
District Attorneys Council	3	Judicial Complaints, Council on	2
East Central University	3	Juvenile Affairs, Office of	9
Education, State Department of	9	Labor, Department of	4
Educational Quality and Accountability, Office of	1	Land Office, Commissioners of the	8
Educational Television Authority, Oklahoma	2	Law Enforcement Education and Training, Council on	1
Election Board, State	2	Law Enforcement Retirement System, Oklahoma	4
Emergency Management and Homeland Security, Oklahoma Department of	7	Libraries, Oklahoma Department of	3

Lottery Commission and Board of Trustees	2	Securities Department, Oklahoma	4
Management and Enterprise Services, Office of	74	Southeastern Oklahoma State University	3
Medical Licensure and Supervision, State Board of	3	Space Industry Development Authority, Oklahoma	2
Medical Marijuana Authority, Oklahoma	2	State Auditor and Inspector	6
Mental Health and Substance Abuse Services, Department of	29	Supreme Court	3
Military Department	11	Tax Commission, Oklahoma	8
Mines, Department of	2	Teachers' Retirement System of Oklahoma	4
Multiple Injury Trust Fund	1	Tobacco Settlement Endowment Trust Fund, Board of Directors of the	2
Narcotics and Dangerous Drugs Control, Oklahoma State Bureau of	4	Tourism and Recreation Department, Oklahoma	9
Northeastern State University	4	Transportation, Department of	40
Oklahoma State University	10	Treasurer	1
Oklahoma State University - Tulsa	2	Turnpike Authority, Oklahoma	4
Oklahoma State University - Okmulgee	1	Uniform Building Code Commission	1
OU Health Sciences Center	8	University Center of Southern Oklahoma	1
Pharmacy, Board of	2	University Hospital Authority	2
Police Pension and Retirement System, Oklahoma	2	University of Central Oklahoma	10
Public Employees Retirement System, Oklahoma	2	University of Oklahoma Health Science Center	2
Real Estate Commission, Oklahoma	2	Veterans Affairs, Oklahoma Department of	13
Redlands Community College	3	Water Resource Board, Oklahoma	3
Regents for Higher Education, Oklahoma State	3	Wildlife Conservation, Department of	4
Rehabilitation Services, Oklahoma Department of	18	Workers' Compensation Commission, Oklahoma	1
Rogers State University	1	Total	671
Safety, Department of Public	11		
School of Science and Mathematics, Oklahoma	2		
Science and Technology, Oklahoma Center for the Advancement of	3		

Source: Central Purchasing Division.



## Appendix C: Self-Reported Exemptions by State Agency (21)

- Agriculture
- Attorney General
- Banking
- Corporation Commission
- Department of Career & Technology Education
- Department of Corrections
- Department of Health
- Department of Human Services
- Department of Securities
- Insurance
- OCAST
- Office of Juvenile Affairs
- Oklahoma Lottery Commission
- Oklahoma State University
- Oklahoma Tax Commission
- OK Public Employees Retirement System
- OK Police Pension and Retirement System
- State Department of Education (SDE)
- Teachers' Retirement System
- TSET

*Source: State agency responses to LOFT survey.*

## Appendix D: Central Purchasing Division Requisition Checklist

### Central Purchasing Division Requisition Checklist

- Receive Requisition from KH
- Create the REQ folder
- Contact Agency Buyer
- Update the Metrics
- (1) Review REQ
- (2) Cabinet Secretary
- (3) Service Justification
- (4) Special Provisions and Specifications
- (5) Mandatory Statewide Check/Exceptions
- (6) Approve REQ
- Saving Copy of Requisition for File
- Verify UNSPSC Code
- Timeline Creation
- Creating an RFQ
- Update the Metrics
- Begin putting together Solicitation Package (Steps 1 thru 7)
- (1) Bidder Instructions
- (2) Responding Bidder Information
- (3) Certification for Competitive Bid
- (4) Attachment A
- (5) Attachment B
- (6) Attachment C and/or D (if needed)
- (7) All Attachments (if needed)
- Reviewing Scoring Tool
- Obtain a Vendor List
- Suggested Vendor List
- Dispatch the RFP
- Peer Review (if needed)
- Post the Solicitation (include all Attachments/Appendices)
- Create Solicitation Notification document
- Email Vendors Solicitation Notification document
- Follow up on Undeliverable Emails
- Convert All Emails to PDF and put in Email Folder
- Email Copy to Agency
- Add Closing Bid Day to Procurement Calendar
- Update the Metrics
- Amendment Form
- Obtaining a Vendor List when adding an Amendment
- Posting an Amendment
- Email Vendors
- Follow up on Undeliverable Emails
- Convert All Emails to PDF and put in Email Folder
- Gather Bids from Bid Email Box
- Bid Tab Sheet
- Bid Response Checklist
- BAFO (if applicable)
- Contact References (if applicable)
- Best Value Only: Email Agency - Non Disclosure
- Best Value Only: Email Agency - Agency Bid Evaluation (p1)
- Best Value Only: Email Agency Bid Evaluation (p2)/ Responses/Scoring Tool
- Update the Metrics
- Review the Evaluations from the Evaluators
- Review Terms & Conditions of Winning Bidder
- Award Doc Checklist
- RFQ to Award
- Dispatch PO and send to awarded vendor(s) and agency
- Post the Award
- Notify Bidders that were not awarded
- PeopleSoft attachments
- Complete Notes to File
- Update the Metrics
- Convert All Emails to PDF and put in Email Folder to PDF and put in Email Folder

*Source: OMES Central Purchasing Division.*

**Appendix E: Approved Procurement and P-card Thresholds by Agency**

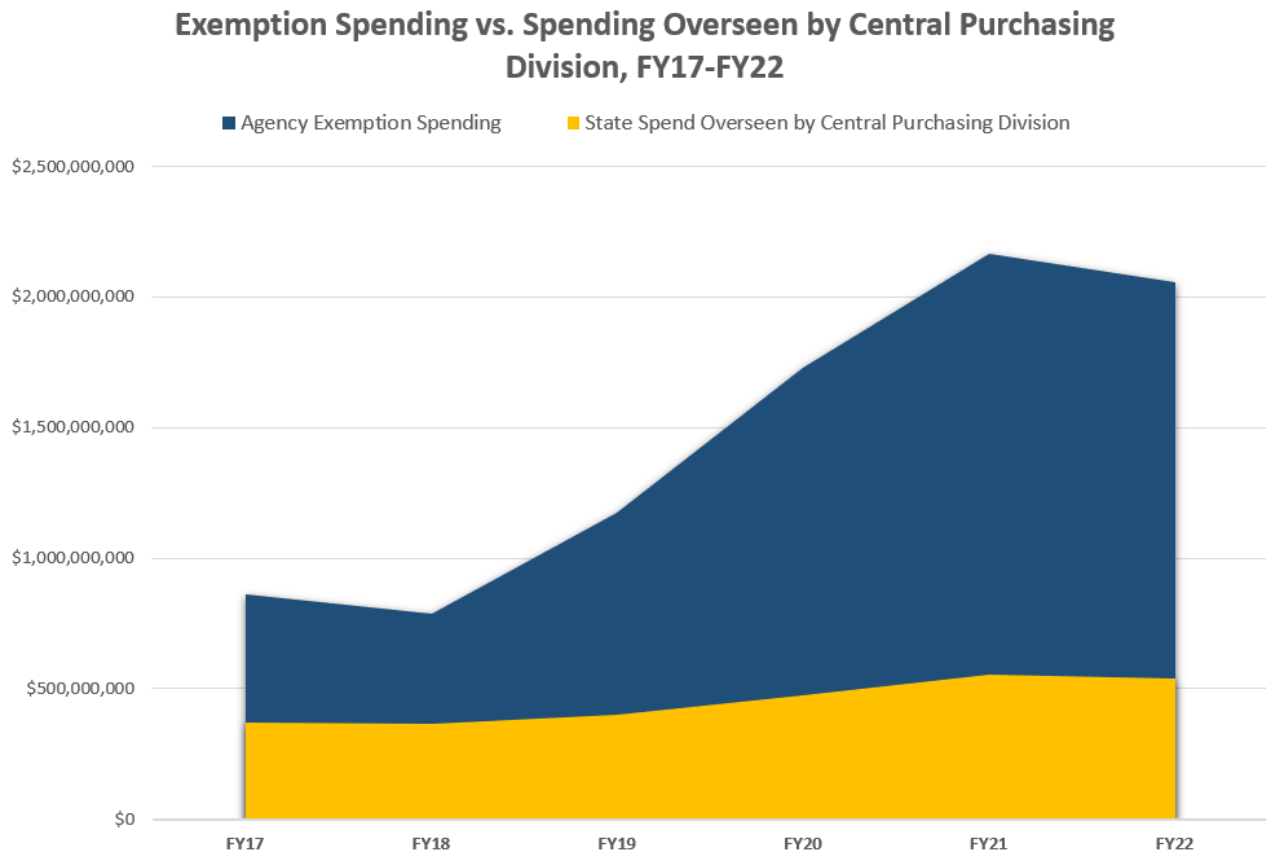
<b>Agency Name</b>	<b>Current Procurement Threshold</b>	<b>Current P-card Threshold</b>
Abstractors Board	\$50,000.00	\$5,000.00
Accountancy Board	\$50,000.00	\$5,000.00
Aeronautics Commission	\$50,000.00	\$5,000.00
Agriculture Department	\$50,000.00	\$5,000.00
Alcoholic Beverage Law Enforcement (ABLE Commission)	\$50,000.00	\$5,000.00
Arts Council	\$50,000.00	\$5,000.00
Attorney General	\$50,000.00	\$5,000.00
Auditor and Inspector, State	\$50,000.00	\$5,000.00
Banking Department, Oklahoma State	\$50,000.00	\$5,000.00
Board of Behavioral Health Licensure	\$50,000.00	N/A
Board of Examiners in Optometry	\$50,000.00	N/A
Board of Pharmacy	\$50,000.00	\$5,000.00
Board of Tests for Alcohol and Drug Influence	\$50,000.00	\$5,000.00
Boll Weevil Eradication Organization, OK	\$50,000.00	\$5,000.00
Bureau of Investigation, Oklahoma State of	\$50,000.00	\$5,000.00
Bureau of Narcotics & Dang. Drugs Cntl	\$50,000.00	\$25,000.00
Career and Technology Education, Department of	\$50,000.00	\$25,000.00
Chiropractic Examiners Board	\$50,000.00	\$5,000.00
Commerce, Dept. of	\$50,000.00	\$5,000.00
Commission on Children & Youth, Oklahoma	\$50,000.00	\$5,000.00
Conservation Commission	\$50,000.00	\$5,000.00
Construction Industries Board	\$50,000.00	N/A
Consumer Credit, Okla. Dept. of	\$50,000.00	\$5,000.00
Corporation Commission	\$150,000.00	\$25,000.00
Corrections, Dept. of (DOC)	\$50,000.00	\$5,000.00
Cosmetology Board	\$50,000.00	N/A
Council on Law Enforcement Education and Training, (CLEET)	\$50,000.00	\$5,000.00
Disability Concerns, Office of	\$50,000.00	N/A
District Attorneys Council	\$50,000.00	\$5,000.00
District Courts, Administrative Office of	\$50,000.00	N/A
Education, Dept. of (ODE)	\$50,000.00	\$5,000.00
Educational Television Authority, Oklahoma (OETA)	\$50,000.00	\$5,000.00
Election Board	\$50,000.00	\$5,000.00
Emergency Management	\$25,000.00	\$5,000.00
Employment Security Commission(OESC)	\$50,000.00	\$5,000.00
Environmental Quality, Dept. of	\$250,000.00	\$25,000.00
Ethics Commission	\$50,000.00	\$5,000.00
Firefighter's Pension/Retirement System	\$50,000.00	\$5,000.00
Funeral Board	\$50,000.00	N/A
Governor	\$50,000.00	\$5,000.00
Health, Dept. of	\$50,000.00	\$25,000.00

Historical Society	\$50,000.00	\$5,000.00
Horse Racing Commission	\$50,000.00	\$5,000.00
Housing Finance (Authority) Agency	\$50,000.00	N/A
Human Services, Dept. of (DHS)	\$50,000.00	\$25,000.00
Insurance, Dept. of	\$50,000.00	\$10,000.00
Interstate Oil Compact Commission	\$50,000.00	\$5,000.00
J.D. McCarty Center	\$50,000.00	\$5,000.00
J.M. Davis Memorial Commission	\$50,000.00	\$5,000.00
Labor, Dept. of (DOL)	\$50,000.00	\$10,000.00
Land Office, Commissioners of the	\$50,000.00	\$5,000.00
Law Enforcement Retirement System	\$50,000.00	\$5,000.00
Libraries, Dept. of	\$50,000.00	\$5,000.00
Licensed Architects, Landscape Architects, and Registered Interior Designers	\$50,000.00	\$5,000.00
Licensed Social Workers, Registration Board for	\$50,000.00	N/A
Lieutenant Governor	\$50,000.00	\$5,000.00
Liquefied Petroleum Gas Administration	\$50,000.00	\$5,000.00
Long TermCare Administrators Board (Nursing Home)	\$50,000.00	\$5,000.00
Lottery Commission	\$50,000.00	\$5,000.00
Medical Licensure & Supervision Board	\$50,000.00	\$5,000.00
Medicolegal Investigations, Board of	\$50,000.00	\$5,000.00
Mental Health, Dept. of	\$50,000.00	\$5,000.00
Merit Protection Commission	\$50,000.00	\$5,000.00
Military Dept.	\$100,000.00	\$25,000.00
Mines, Dept. of	\$50,000.00	\$5,000.00
Motor Vehicle Commission	\$50,000.00	N/A
Multiple Injury Trust Fund	\$25,000.00	\$5,000.00
Nursing, Oklahoma Board of	\$50,000.00	N/A
Office of Educational Quality and Accountability	\$25,000.00	\$5,000.00
Office of Juvenile Affairs, (OJA)	\$50,000.00	\$5,000.00
Office of Management and Enterprise Services	\$50,000.00	\$25,000.00
Oklahoma Center for Science and Technology	\$50,000.00	\$5,000.00
Oklahoma Health Care Authority	\$50,000.00	\$5,000.00
Oklahoma Indigent Defense System	\$50,000.00	\$10,000.00
Osteopathic Examiners, Board	\$50,000.00	\$5,000.00
Pardon and Parole Board	\$50,000.00	\$5,000.00
Physician Manpower Training Commission	\$50,000.00	\$5,000.00
Police Pension & Retirement System, Oklahoma	\$50,000.00	\$5,000.00
Private Vocational Schools, Board of	\$50,000.00	N/A
Professional Engineers & Land Surveyors Board	\$50,000.00	\$5,000.00
Psychologists, State Board of Examiners of	\$50,000.00	\$5,000.00
Public Employees Retirement System	\$50,000.00	\$5,000.00
Public Safety, Dept. of (DPS)	\$50,000.00	\$5,000.00
Real Estate Commission	\$50,000.00	\$5,000.00
Rehabilitation Services, State Dept. of	\$50,000.00	\$25,000.00



School of Science and Mathematics, Oklahoma	\$50,000.00	\$5,000.00
Secretary of State	\$50,000.00	N/A
Securities Commission	\$50,000.00	\$5,000.00
Sorghum Commission, Oklahoma	\$25,000.00	N/A
Space Industry Development Authority	\$50,000.00	\$5,000.00
Speech-Language Pathology & Audiology Board	\$50,000.00	\$5,000.00
State Board of Dentistry	\$50,000.00	\$5,000.00
State Fire Marshal	\$50,000.00	\$5,000.00
State Treasurer (OST)	\$50,000.00	\$5,000.00
Statewide Virtual Charter School Board	\$50,000.00	N/A
Tax Commission (OTC)	\$250,000.00	\$10,000.00
Teachers' Retirement System	\$50,000.00	\$5,000.00
Tobacco Settlement Endowment Trust	\$50,000.00	\$5,000.00
Tourism and Recreation Dept. (OTRD)	\$50,000.00	\$5,000.00
Transportation Department (ODOT)	\$50,000.00	\$5,000.00
Turnpike Authority, Oklahoma	\$50,000.00	\$5,000.00
Uniform Building Code Commission	\$50,000.00	N/A
Used Motor Vehicle & Parts Comm.	\$50,000.00	\$5,000.00
Veterans Affairs, Dept. of	\$50,000.00	\$5,000.00
Veterinary Medical Examiners, Board of	\$25,000.00	\$5,000.00
Water Resources Board	\$50,000.00	\$5,000.00
Wildlife Conservation, Dept. of	\$100,000.00	\$5,000.00
Will Rogers Memorial Commission	\$25,000.00	N/A

Source: Central Purchasing Division.

**Appendix F: Exemption Spending vs. Spending Overseen by Central Purchasing**

Source: OMES Central Purchasing Division and Cost Savings Reports from OMES.

Appendix G: Total State Agency Exemption Spending Per Exemption Type by Fiscal Year

Exemption Description	FY12	FY14	FY16	FY18	FY20	FY22
Exempt (from CP Act)	\$564,375,518.40	\$524,000,812.33	\$831,823,803.98	\$785,073,756.81	\$1,730,835,864.80	\$2,056,082,429.44
Government (interagency)	\$687,810,074.39	\$706,369,631.93	\$638,439,859.87	\$735,525,369.97	\$669,863,109.62	\$581,951,964.76
Authority Order	\$229,755,858.27	\$262,871,857.18	\$390,911,525.45	\$136,232,480.66	\$349,359,816.56	\$345,920,604.53
Title 61 Acquisitions	\$7,822.01	\$167,443.60	\$45,875,264.44	\$61,305,611.95	\$156,698,323.29	\$143,951,053.25
Fixed Rate	\$46,611,869.45	\$87,085,818.34	\$88,727,573.88	\$125,131,439.19	\$140,266,966.16	\$104,749,424.79
P-Card Authority Order	\$0.00	\$0.00	\$605,425.52	\$194,724,039.31	\$72,112,003.91	\$95,849,914.75
Release Against SW Contract	\$19,855,501.80	\$32,673,898.32	\$35,084,996.26	\$54,784,752.75	\$64,945,426.96	\$78,833,797.68
IT Government (interagency)	\$0.00	\$16,002,720.25	\$79,706,365.96	\$46,351,116.46	\$42,761,380.62	\$56,209,384.28
Emergency Title 74	\$243,931.56	\$39,184.00	\$261,156.04	\$230,080.48	\$2,516,498.30	\$55,736,001.24
Prof Services-Title 18 Non bid	\$34,212,903.96	\$29,859,594.47	\$26,722,466.95	\$32,738,478.65	\$29,994,027.53	\$42,436,678.56
Grant Payments to Subrecipients	\$0.00	\$0.00	\$0.00	\$9,091,267.14	\$13,082,225.95	\$38,677,672.95
Open Market Acquisition	\$93,355,925.99	\$157,382,380.70	\$128,958,153.47	\$70,070,951.59	\$33,619,001.23	\$35,727,226.84
Utilities	\$0.00	\$32,433.23	\$99,010.21	\$24,821,603.14	\$23,293,050.24	\$23,694,493.95
IT Release Against SW Contract	\$0.00	\$1,823,157.19	\$8,902,584.19	\$9,101,565.12	\$13,549,086.97	\$20,629,527.95
Real Property Leases	\$38,672.00	\$468,820.53	\$439,640.08	\$6,865,349.20	\$11,302,379.81	\$12,324,398.95
IT Open Market	\$0.00	\$254,313.65	\$347,805.03	\$896,933.57	\$3,294,230.13	\$9,855,913.21
General Generic Default	\$1,462,717.46	\$56,650,599.31	\$51,656,957.00	\$1,079,141.29	\$21,930,579.52	\$8,379,512.41
Land Purchase	\$2,258,367.00	\$12,054,996.07	\$1,038,786.88	\$1,285,464.31	\$8,297,709.04	\$7,900,000.00
GSA	\$10,201,167.70	\$10,928,439.15	\$10,082,752.47	\$9,231,939.46	\$10,899,232.87	\$7,259,592.98
IT Authority Order	\$0.00	\$2,501,986.54	\$4,725,418.41	\$2,687,000.00	\$2,313,436.05	\$5,165,629.38
Emergency Title 61	\$49,800.00	\$0.00	\$0.00	\$32,719.90	\$1,246,553.89	\$2,529,184.96
County Acquisitions	\$0.00	\$40,000.00	\$0.00	\$27,876,271.00	\$201,524.00	\$1,334,473.00
Dept of Transportation	\$0.00	\$0.00	\$0.00	\$41,400.00	\$265,806.01	\$1,173,018.41
Professional Services-Biddable	\$2,180,523.28	\$2,038,056.14	\$3,515,584.05	\$2,054,491.08	\$1,174,321.47	\$696,926.17
IT Exempt from ISD	\$11,415.42	\$105,345.72	\$379,896.74	\$633,758.91	\$390,171.13	\$448,854.33
IT Purchases	\$0.00	\$695,254.48	\$253,151.52	\$153,200.00	\$72,825.20	\$252,600.24
Court Orders	\$0.00	\$303,998.16	\$0.00	\$0.00	\$10,457.50	\$200,000.00
IT Prof Serv-Title 18 Non Bid	\$0.00	\$178,370.79	\$248,644.19	\$0.01	\$511,340.00	\$121,294.16
IT Prof Service Biddable	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$100,000.00
IT Equipment Leases	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,618.32
Equipment Leases	\$0.00	\$25,191.60	\$71,486.75	\$41,188.74	\$0.00	\$0.00
EPD Approved Exempt	\$0.00	\$0.00	\$0.00	\$610,934.92	\$69,957.08	\$0.00
IT GSA	\$0.00	\$162,354.50	\$555,453.08	\$739,418.50	\$342,604.55	\$0.00
Lease/Purchase Agreements	\$227,764.96	\$77,351.68	\$11,050.25	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>	<b>\$1,692,659,833.65</b>	<b>\$1,904,794,009.86</b>	<b>\$2,349,444,812.67</b>	<b>\$2,339,411,724.11</b>	<b>\$3,405,219,910.39</b>	<b>\$3,738,193,191.49</b>

Source: OMES Central Purchasing Division.

\*Additional details not available.

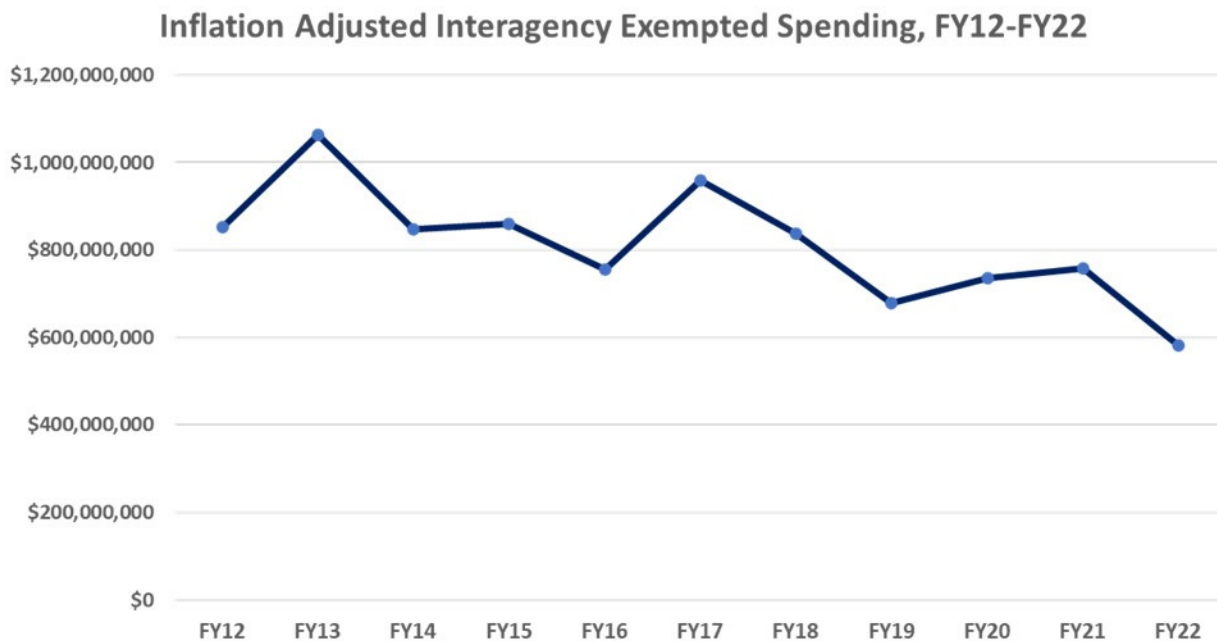


## Appendix H: Exemption Codes and Description

Exemption Code	Title	Central Purchasing	Description
CNTY	County Acquisitions	No	Interagency PO . I.e.. Heath Department PO to County Health Dept
DOT	Dept of Transportation	No	Road and Bridge construction exempt from CP
IAGY	Government (interagency)	No	No thresholds for interagency all are exempt from CP Act
ITAG	IT Government (interagency)	No	No thresholds for interagency all are exempt from CP Act
EXMT	Exempt (from CP Act)	No	Agency statute reference only
EPDA	EPD Approved Exempt	N/A	N/A
ITEL	IT Equipment Leases	No	Release off of statewide contract or come to CP for review.
ITRL	IT Release Against SW Contract	No	CP already did due diligence
LAND	Land Purchase	No	OMES CAP
PLSE	Real Property Leases	No	OMES CAP
RLSE	Release Against SW Contract	No	CP already did due diligence
CAP	Title 61 Acquisitions	No	OMES CAP
UTIL	Utilities	No	Exempt from competitive bid only
EM61	Emergency Title 61	No	OMES CAP
EM74	Emergency Title 74	No	Only notification comes to OMES CP Director but after 11/1/2020 threshold amount was removed
ELSE	Equipment Leases	No	Release off of statewide contract or come to CP for review.
AO	Authority Order	Yes	Not supplier specific, specific categories or needs for purchase made to multiple suppliers, i.e.. Regulated utilities
CRTO	Court Orders	Yes	Court ordered purchase if over agencies \$ authority
FXRT	Fixed Rate	Yes	Yes, over agencies authority exempt from competitive bid but not from the CP Act
GSA	GSA	Yes	GSA is exempt from CP Act but not exempt from internal purchasing procedures. PIM directive by the State Purchasing Director is required.
ITAO	IT Authority Order	Yes	Not supplier specific, specific categories or needs for purchase made to multiple suppliers
ITEX	IT Exempt from ISD	Yes	Exempt from ISD but not exempt from CP Act
ITGS	IT GSA	Yes	GSA is exempt from CP Act but not exempt from internal purchasing procedures. PIM directive by the State Purchasing Director is required.
ITOM	IT Open Market	Yes	Under fair and reasonable not bid, over agency amount then competitive bid occurs
ITPR	IT Prof Serv-Title 18 Non Bid	Yes	Exempt from competitive bid only
ITPB	IT Prof Service Biddable	Yes	Non-exempt from CP Act or competitive bid
ITPO	IT Purchases	Yes	Over agency threshold on PO comes to CP.
LSPU	Lease/Purchase Agreements	Yes	Over agency threshold on PO comes to CP.
OMKT	Open Market Acquisition	Yes	Under fair and reasonable not bid, over agency amount then competitive bid occurs
PCAO	P-Card Authority Order	Yes	Not supplier specific, specific categories or needs for purchase made to multiple suppliers
PROF	Prof Services-Title 18 Non bid	Yes	Exempt from competitive bid only
PRBD	Professional Services-Biddable	Yes	Non-exempt from CP Act or competitive bid
10WV	10% Wavier	Yes and No	Yes, until 11/1/2020 CP Act Monitorization removed the 10% cap on change orders
GEN	General Generic Default	Yes and No	General generic default PO Type provisioned in PeopleSoft for users. End users who have been provisioned with this generic default PO Type should be selecting the appropriate PO type in PeopleSoft when issuing a PO.
NONE/SUBR	Grant payment to Sub-recipient	Yes and No	Depends on requirements of the grant

Source: OMES Central Purchasing Division.

## Appendix I: Interagency Exempted Spending Adjusted for Inflation



Source: OMES Central Purchasing Division.



### Swadley's Foggy Bottom Kitchen



BILL TO  
Oklahoma Tourism and Recreation Department  
PO Box 248937  
Oklahoma City, Ok 73124  
United States

SHIP TO  
Quartz Mountain  
22469 Lodge Road  
Lone Wolf, Ok 73655

INVOICE	1021
DATE	06/28/2021
TERMS	Net 30
DUE DATE	07/28/2021

DATE		DESCRIPTION	QTY	RATE	AMOUNT
06/22/2021	Restaurant Equipment	Restaurant Equipment - Please see attached invoice - Quality Food Equipment - 9506	1	584,928.00	584,928.00
	Management Fee	15%	1	87,739.20	87,739.20
	Consultant Fee	5%	1	29,246.40	29,246.40

BALANCE DUE	<b>\$701,913.60</b>
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Source: Statewide accounting system.

## Appendix K: 2022 Central Purchasing Audit Team Audit Reports

PROJECT NAME	TYPE
INTERSTATE OIL COMPACT COMMISSION	PROCUREMENT AUDIT
OKLAHOMA STATE BOARD OF LICENSED SOCIAL WORKERS	PROCUREMENT AUDIT
OKLAHOMA HEALTH CARE AUTHORITY	PURCHASE CARD
TOURISM AND RECREATION DEPARTMENT	PURCHASE CARD
OKLAHOMA DEPARTMENT OF CAREER TECHNOLOGY EDUCATION	PURCHASE CARD
OKLAHOMA CORPORATION COMMISSION	PURCHASE CARD
DEPARTMENT OF ENVIRONMENTAL QUALITY	PURCHASE CARD
OKLAHOMA HISTORICAL SOCIETY	PURCHASE CARD
OKLAHOMA DEPARTMENT OF VETERAN AFFAIRS	PURCHASE CARD
OKLAHOMA DEPT OF AGRICULTURE, FOOD AND FORESTRY MARKETING	PURCHASE CARD
DEPARTMENT OF PUBLIC SAFETY	PURCHASE CARD
OKLAHOMA MILITARY DEPARTMENT	PURCHASE CARD
MAINTENANCE, REPAIR, AND OPERATIONS STATEWIDE	PERFORMANCE AUDIT
OKLAHOMA DEPARTMENT OF TRANSPORTATION	PURCHASE CARD
DEPARTMENT OF WILDLIFE CONSERVATION	PROCUREMENT AUDIT
MONTHLY PURCHASE CARD CONTINUOUS MONITORING	CONTINUOUS MONITORING

Source: Central Purchasing Audit Team.

## Appendix L: FY 2022 Transactions Samples by Audit Report

<b>Audit Type:</b>	<b>Agency:</b>	<b>Amount:</b>
Purchase Card	Oklahoma Health Care Authority	\$ 145,713.35
Purchase Card	Oklahoma Tourism and Recreation Department	\$ 319,800.71
Purchase Card	Oklahoma Department of Career Technology Education	\$ 163,328.45
Purchase Card	Oklahoma Corporation Commission	\$ 118,028.99
Purchase Card	Department of Environmental Quality	\$ 295,793.81
Purchase Card	Oklahoma Historical Society	\$ 200,267.21
Purchase Card	Oklahoma Department of Veteran Affairs	\$ 788,842.18
Purchase Card	Department of Public Safety	\$ 331,894.27
Purchase Card	Oklahoma Military Department	\$ 541,314.81
Purchase Card	Oklahoma Department of Transportation	\$ 1,941,992.90
Procurement	Oklahoma Department of Wildlife Conservation	\$ 10,025,065.56
	<b>Total:</b>	<b>\$ 14,872,042.24</b>

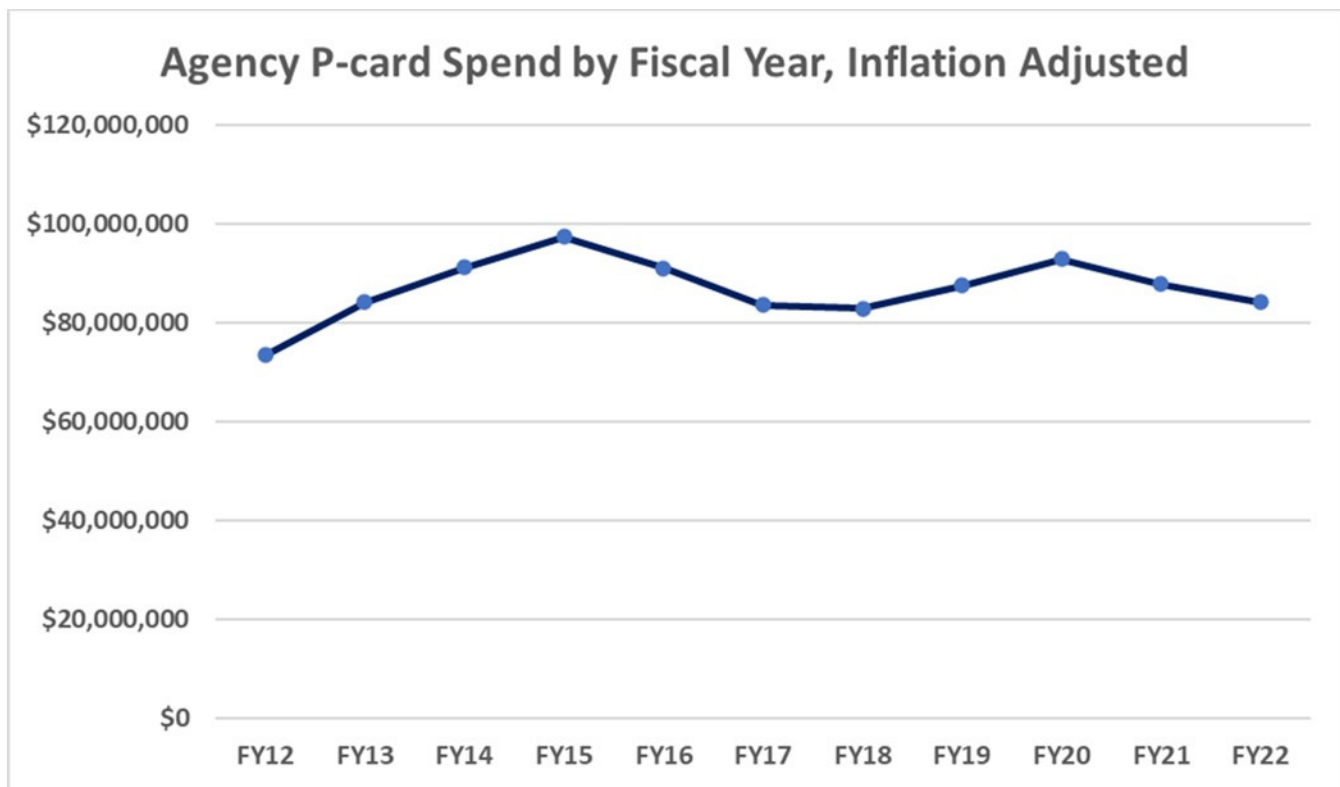
Source: OMES Central Purchasing Audit Team Reports.

Notes: Methodology Section in each report was used to obtain sample transaction amounts.

Exclusions:

- Two reports were excluded because an audit was not completed due to a lack of materiality (Interstate Oil Compact Commission, Oklahoma State Board of Licensed Social Workers).
- One report was excluded because an audit was not conducted due to time delays and implementation of new purchase thresholds (Department of Agriculture, Food and Forestry).
- One report was excluded because the audit was examining cost efficiency of statewide contracts (Maintenance, Repair, and Operations Statewide Report).

Audit Team conducts monthly monitoring of purchase cards of agencies. Those figures were not included in this analysis.

**Appendix M: Agency P-card Spending by Fiscal Year**

Source: OMES Central Purchasing Division.

## Appendix N: Agencies Not Fully Utilizing PeopleSoft

Agencies Not Fully Utilizing PeopleSoft		
Accountancy Board	Edu Quality & Accountability	Oklahoma Healthcare Authority
Alcoholic Beverage Laws Enforcement (ABLE)	Energy Resources Board, Oklahoma	Oklahoma Motor Vehicle Comm
Attorney General	Ethics Commission	Oklahoma Tax Commission
Bd of Chem Test Alcohol/Drug	Finance Authority, Oklahoma Industrial	Optometry Board
Bd of Exam for L-Term Care adm	Firefighters Pens & Ret System	Physician Manpower Trng Comm
Bd of Medicolegal Investigation	Governor, Office of the	Police Pension & Ret System
Bd of Priv Vocational Schools	House of Representatives, State	Quartz Mountain Arts and Conference Center
Bd of Psychologists Examiners	Indigent Defense System	Real Estate Commission, Oklahoma
Board of Architects	Insurance Department	Secretary of State
Board of Dentistry	J M Davis Arms & His Museum	Securities Commission, Oklahoma
Brd of Cosmetology & Barbering	JD McCarty Center	State Senate
Chiropractic Examiners, Board of	Labor, Department of	State Auditor and Inspector
Comm of Children and Youth	Land Office, Commissioners of the	State Banking Department
Commission on Consumer Credit	Legislative Service Bureau	State Bd of Osteopathic Exam
Construction Industries Board	Liquefied Petroleum Gas Board, Oklahoma	State Bureau of Investigation
Corporation Commission	Mental Health and Substance Abuse Services, Dept of	State Fire Marshal
Council on Judicial Complaints	Merit Protection Commission	State Pharmacy Board
Council on Law Enfc Ed & Trng	Multiple Injury Trust Fund	State Treasurer
Court of Criminal Appeals	Municipal Power Authority, Oklahoma	Student Load Authority, Oklahoma
Ctr for Advanc of Sci & Tech	Narc & Dangerous Drugs Control	Supreme Court
Department of Agriculture	Oklahoma Employment Security Commission	Teachers Retirement System
Department of Corrections	Office of Juvenile Affairs	Tourism and Recreation Dept.
Department of Education	Ok Dep of Emergency Management	Uniform Building Code Comm
Department of Health	Ok Conservation Commission	University Hospitals Authority
Department of Libraries	Okla Education Television Auth	Used Motor Vehicle & Parts
Dept of Career and tech Educ	Okla Space Industry Devel Auth	Veterans Affairs, Oklahoma Department of
Dept of Environmental Quality	Okla Transportation Authority	Virtual Charter School Board
Dept of Rehabilitation Service	Oklahoma Abstractors Board	Water Resources Board
District Attorneys Council	Oklahoma Aeronautic Commission	Department of Wildlife
District Courts	Oklahoma Board of Nursing	Workers Compensation Commission
Department of Public Safety	Oklahoma Funeral Board	

Source: The Central Purchasing Division of OMES.



## Appendix O: List of All Exemptions

Statute	Exemptions
<b>74 O.S. § 85.3A</b>	A. Compliance with the provisions of the Oklahoma Central Purchasing Act shall not be required of:
	County governments
	Regents, etc.
	OneNet
	DPS gun range
	State Treasurer (selected purchases)
	Interagency agreements
	ODVA (for 72 O.S. 63.22)
	Military Department (for heraldry items)
	For pass-through transactions (other than state-derived funds)
<b>74 OS § 85.7</b>	A.6. Competitive bidding requirements of this section shall not be required for the following:
	Contracts for master custodian banks or trust companies, investment managers, investment consultants, and actuaries for the state retirement systems, and Oklahoma Employees Insurance and Benefits Board, pension fund management consultants of the Oklahoma State Pension Commission and the Commissioners of the Land Office, financial institutions to act as depositories and managers of the Oklahoma College Savings Plan accounts and other professional services as defined in Section 803 of Title 18 of the Oklahoma Statutes.
	Postage
	A sole source acquisition made in compliance with Section 85.45j of this title,
	An acquisition for design, development, communication or implementation of the state employees flexible benefits plan
	Any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate
	An acquisition for a client of the State Department of Rehabilitation Services; provided
	Structured settlement agreements entered into by the Attorney General's office in order to settle any lawsuit involving the state
	An acquisition by a state agency pursuant to a contract the State Purchasing Director enters into on behalf of a state agency

	An acquisition by the Committee for Sustaining Oklahoma's Energy Resources
<b>74 O.S. § 85.12</b>	B. ...The acquisitions specified in this subsection... are not subject to other provisions of the Oklahoma Central Purchasing Act (but must comply with State Agency internal purchasing procedures).
	Food and other products produced by state institutions and agencies;
	Printing done by state agencies on their own equipment with their own employees.
	Right of way acquisitions by the Department of Transportation
	Utility services
	Acquisitions by the University Hospitals Authority
	Custom harvesting by the Department of Corrections
	Acquisitions from private prison suppliers. (See Title 57, Sec. 561)
	Acquisitions by the Oklahoma Municipal Power Authority
	Acquisitions by the Grand River Dam Authority
	Acquisitions by rural water districts, etc.
	Acquisitions by Oklahoma Ordnance Works Authority, the NE OK Public Facilities Authority or the Midwestern OK Development Authority
	Expenditure of monies appropriated to the State Board of Education for Local and State Supported Financial Support of Public Schools....
	Educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf
	Contracts entered into by the Oklahoma Department of Career and Technology Education for identified purposes
	Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services
	Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of Title 74
	Acquisitions made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial
	Purchases of pharmaceuticals available through a multistate or multigovernmental contract if
	Contracts for managed health care services entered into by the state (See paragraph 1 of subsection A of Section 1010.3 of Title 56)

	Acquisitions by a state agency through a General Services Administration contract or other federal contract if....
	Acquisitions of clothing for clients of the Department of Human Services and acquisitions of food for group homes
	Acquisitions by the Oklahoma Energy Resources Board;
	Acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs
	State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act....
	Acquisitions by the Department of Securities to investigate, initiate, or pursue administrative, <u>civil</u> or criminal proceedings....
	Acquisitions for resale in and through canteens... at an institution or facility operated by the Office of Juvenile Affairs
	Acquisitions by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for acquiring sprayers, blowers, traps and attractants
	Contracts entered into by the Oklahoma Indigent Defense System for expert services... (See 22 O.S. 1355.4(D))
	Acquisitions by the Oklahoma Correctional Industries and the Agri-Services programs of the Department of Corrections... for specified materials, parts, products, equipment
	Contracts entered into by the Department of Human Services for provision of supported living services to members of the Hissom plaintiff class
	Contracts negotiated by OJA with designated Youth Services Agencies and the Oklahoma Association of Youth Services... (See Section 2-7-306 of Title 10A) and contracts entered into by OKDHS pursuant to Section 1-9-110 of Title 10A
	Contracts for annuities for structured settlements provided for in Section 158 of Title 51 of the Oklahoma Statutes;
	Purchases made from funds received by local offices administered by OKDHS or administered by OJA for fund-raising activities ... subject to limitations
	Acquisitions by the Oklahoma Historical Society for restoration of historical sites and museums....
	Acquisitions of clothing and food for patients in the care of the J.D. McCarty Center for Children with Developmental Disabilities.
<b>Other Statutes</b>	

17 Okl. St. § 18	The selection and compensation of expert witnesses by the Corporation Commission shall be exempt from the Oklahoma Central Purchasing Act.
17 Okl. St. § 324	Petroleum Storage Reimbursements made to or for the benefit of eligible persons shall be exempt from The Oklahoma Central Purchasing Act.
34 Okl. St. § 6.1	Sec of State tangible or intangible assets
47 Okl. St. § 2-108.1	The Commissioner of Public Safety may enter into interlocal agreements with any other government agency or any state educational institution which is a member of The Oklahoma State System of Higher Education, as prescribed in Section 3201 of Title 70 of the Oklahoma Statutes, for the use of space for the purpose of providing governmental services as required by law of the Department of Public Safety.
53 Okl. St. § 1.10	Oklahoma Historical Society Purchases of merchandise for sale to visitors
56 Okl. St. § 4001.2	Office of state treasurer: selecting institutions and managers
57 Okl. St. § 537	Merchandise and services to be purchased for resale or distribution through the canteen system, inmate telephone equipment or services, and inmate electronic mail equipment and service
60 Okl. St. § 668.1	State treasurer for services and legal services
62 O.S. § 34.33	OMES exempt from CPA for IT purchases
62 O.S. § 58.C	Financial institutions arrangements from treasurer
62 O.S. § 71.2	Treasurer when purchasing software, hardware for investments
62 Okl. St. § 2306	TSET The selection of investment managers, investment consultants, auditors, and actuaries, and a custodian bank shall be exempt from the provisions of the Oklahoma Central Purchasing Act.
62 Okl. St. § 2309	TSET The selection and awarding of grants, whether in the form of professional service contracts or any other funding mechanism developed by the Board of Directors, awarded pursuant to grant programs developed under this subsection
63 Okl. St. § 1-410	The State Commissioner of Health is hereby authorized to contract with any hospital and/or physician to provide such hospitalization or treatment as required and shall be exempt from the provisions of the Oklahoma Central Purchasing Act
63 Okl. St. § 3275	Oklahoma State University Medical Authority the Authority shall be exempt from the Oklahoma Central Purchasing Act but shall be subject to the purchasing policies of Oklahoma State University Center for Health Sciences

63 Okl. St. § 3292	execution of an agreement between the Oklahoma State University Medical Trust and any entity authorized to transact business in the State of Oklahoma
63 Okl. St. § 6900	Grant Programs for Administering the National Hospital Preparedness Program The selection and awarding of grants, whether in the form of professional service contracts or any other funding mechanism developed by the Commissioner, to programs developed pursuant to this section shall be exempt from the requirements of The Oklahoma Central Purchasing Act.
64 Okl. St. § 1004	The Commissioners of the Land Office may retain realtors for the purpose of securing tenants in the commercial leasing of trust property. Realtors shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Commissioners. The process of selecting realtors shall be exempt from the Oklahoma Central Purchasing Act. The Commission may pay realtors retained to secure tenants for trust property on a commission basis.
68 Okla. St. §264	E. The Tax Commission shall enter into a contract with entities deemed to be qualified by the Tax Commission to acquire or utilize their technology systems or information and services to authenticate income tax returns and identify fraudulent refund claims and shall be exempt from the provisions of Section 85.7 of Title 74 of the Oklahoma Statutes for the purpose of implementing this section.
70 Okl. St. § 3970.5	Duties of Board of Trustees of the Oklahoma College Savings Plan Select the financial institution or institutions to act as the depositories and managers of the program accounts in accordance with this act. For the purposes of selecting such institutions and managers, the Board shall be exempt from the Oklahoma Central Purchasing Act. The Board shall develop a competitive process by which the institutions and managers will be selected;
74 O.S. § 2213	OTRD Commission Exempted
74 O.S. § 2239	OTRD Exemptions
74 O.S. § 2244	OTRD exempt from Statewide contracts
74 O.S. § 2244	Traveling employees and legislature
74 O.S. § 3317	CompSource Oklahoma Exemption
74 O.S. § 4109	Capitol Pres Comm exempt from Competitive bidding
74 O.S. § 85.7	Exempts competitive bidding under certain circumstances
74 Okl. St. § 13	Sec of state tangible or intangible assets The selection of a vendor by the Secretary of State



74 Okl. St. § 150.27	The OSBI may contract for the services of a Forensic DNA Technical Manager as reasonably necessary to ensure the continued operations of the DNA laboratory. The OSBI shall be exempt from the competitive bidding requirements of the Oklahoma Central Purchasing Act for the purpose of soliciting, negotiating, and effectuating such a contract or contracts.
74 Okl. St. § 5003.11	shall establish and develop or cause to be developed individual program budgets, work plans, and audits or each community development program established and administered. Any contract under this section shall be exempt from the Central Purchasing Act.
74 Okl. St. § 5013.2	Contracts entered into by the Oklahoma Department of Commerce for the purpose of implementing the Minority Business Development Program shall be exempt from the requirements of the Oklahoma Central Purchasing Act.
74 Okl. St. § 85.58N	Expenditures from the Quick Settlement Account
74 Okl. St. §2221	The Department may enter into contracts or agreements under terms to be mutually agreed upon to carry out the promotional programs and projects, excluding the advertising contract by the Department which utilizes the Tourism Promotion Tax or acquisition of land or buildings.
75 Okl. St. §85.58N	The Office of Management and Enterprise Services shall transfer funds as necessary from the Risk Management Revolving Fund to the Quick Settlement Account, provided that the maximum sum held in the Quick Settlement Account shall not exceed Ten Thousand Dollars (\$10,000.00), excluding funds in transit. Expenditures from the Quick Settlement Account shall be exempt from the provisions of The Oklahoma Central Purchasing Act.
2 O.S. § 16-82.	The State Department of Agriculture shall make a transfer payment from the Volunteer Firefighter Employer Contribution Payment Revolving Fund to the Oklahoma Firefighters Pension and Retirement System

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## **Appendix P: OMES Internal Legal Memo**

Please see the following pages which include the internal Legal memo for OMES:



JOHN SUTER  
DIRECTOR

KATHY PENDARVIS  
GENERAL COUNSEL  
LEGAL SERVICES

## MEMORANDUM

Date: March 28, 2023

To: Dan Sivard, State Purchasing Director

From: Amanda Otis, Deputy General Counsel

Re: Deference to Agency Interpretation of Statutes

Issue: Whether OMES should rely on an agency's interpretation of that agency's enabling statutes.

Answer: Yes. It is well established in Oklahoma law that an agency's interpretation of its own statutes are given great weight.

### Analysis:

The Oklahoma Supreme Court has stated "we ordinarily defer to the interpretation of a statute by the agency charged with its administration, particularly "when the administrative construction is definitely settled and uniformly applied for a number of years." *Oral Roberts University v. Tax Commission*, 1985 OK 97, ¶ 10, 714 P.2d 1013, 1014–1015. Further, it stated:

... The long-continued construction of a statute by a department of government charged with its execution is entitled to great weight and should not be overturned without cogent reasons; and where the legislature has convened many times during this period of administrative construction without expressing its disapproval, such silence may be regarded as acquiescence in or approval of the administrative construction.

*Peterson v. Oklahoma Tax Commission*, 1964 OK 78, 395 P.2d 388, 391; *Oral Roberts University*, 1985 OK 97, ¶ 12, 714 P.2d at 1016. When it is the case that the legislature has not expressed its disapproval by amending the statute, "the administrative construction will not be disturbed except for very cogent reasons, provided that the construction so given was reasonable." *Oral Roberts University*, 1985 OK 97, ¶ 10, 714 P.2d at 1015.

It is worth mentioning that during the 2023 Regular Legislative Session, the Senate introduced Senate Bill 192 (“SB192”). This bill would have inserted the following language into the Administrative Procedures Act:

In the interpretation of a state statute, administrative rule, or other regulation, a court of this state or an officer hearing an administrative action shall not defer to the interpretation of a state agency and shall interpret the meaning and effect de novo. In an action brought by or against a state agency, after applying all customary tools of interpretation, the court or hearing officer shall exercise any remaining doubt in favor of a reasonable interpretation which limits agency power and maximizes individual liberty.

Essentially that language would have reversed the longstanding position that an agency’s interpretation is given strong deference; however, this bill did not make it out of committee by the required date and is therefore incapable of being passed. It can be inferred that the legislative intent was for this deference to an agency’s interpretation of its statutes to continue.

Therefore, OMES may defer to an agency’s interpretation when the following four things occur: 1) that agency’s construction is well settled, 2) that construction has been “uniformly applied” for a long period of time, and 3) that construction has been maintained throughout a period where the legislature has convened, and 4) the legislature has not expressed its disapproval by amending the relevant statute.



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## **Appendix Q: Attorney General Opinion**

**Please see the following pages which include the Attorney General Opinion:**





OFFICE OF THE  
ATTORNEY GENERAL

**ATTORNEY GENERAL OPINION  
2023-4**

The Honorable Ryan Martinez  
Oklahoma House of Representatives, District 39  
2300 N. Lincoln Boulevard, Room 246  
Oklahoma City, OK 73105

April 13, 2023

Dear Representative Martinez:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

**Does the Central Purchasing Act (“Act”) require the Office of Management and Enterprise Services (“OMES”), through the State Purchasing Director, to verify that an exempt purchase fits within the scope of an exemption claimed?**

**I.  
SUMMARY**

Yes, as a part of its oversight duties, OMES is required to routinely verify an agency’s claim that an acquisition is statutorily exempt from the requirements of the Act. The plain text and legislative history of the Act charges OMES, through the State Purchasing Director (“Purchasing Director”), with the sole and exclusive authority for all state agency acquisitions. For purposes of ensuring agencies are accountable for their acquisitions, the Act provides OMES with authority to conduct agency audits and to submit findings to the State Auditor and Inspector or the Attorney General. Despite the seemingly sweeping coverage of the Act, there are a number of exemptions exist within the Act and in other titles of Oklahoma law. The Legislature should review the Act and all statutes affording exemptions to agencies and/or acquisitions to resolve existing ambiguities. Notwithstanding these ambiguities, given the entirety of the legislative scheme, the Act requires OMES to routinely verify an agency’s claim that an acquisition is statutorily exempt from the requirements of the Act.

**II.  
BACKGROUND**

The Oklahoma Legislature adopted the Act, 74 O.S.2021, §§ 85.1–85.44E, in response to calls for government reforms about the subjective awarding of contracts and purchases that were diffused between state agency officials. The Act created the position of the Purchasing Director, standardized procedures to govern governmental agencies’ acquisitions and set penalties for violations of the Act. It is intended to protect Oklahoma citizens by promoting economy in government and reducing the

likelihood of fraud. *Indiana Nat'l Bank v. State*, [1993 OK 101](#), ¶ 12, [857 P.2d 53](#), 60. The Act also “insures [sic] that government officials are accountable to the public and are discharging their duties competently and responsibly.” *Id.*

In 2011, the Department of Central Services was consolidated into the Office of State Finance, which became OMES one year later.<sup>1</sup> Despite the consolidation and name changes, the core of the Act has consistently required that “all activities of any state agency<sup>2</sup> . . . relating to purchasing shall be under the direction of the Purchasing Division unless otherwise provided by the Act.” [74 O.S.2021, § 85.3](#)(A, D).

Administrative control of OMES is under a Director who is appointed by the Governor, by and with the consent of the Senate. [62 O.S.2021, § 34.5](#); [74 O.S.2021, §§ 61.1–61.2](#). The OMES Director is charged in statute with hiring the Purchasing Director. [74 O.S.2021, § 85.3](#)(B). That Purchasing Director, in turn, has “sole and exclusive authority and responsibility for all acquisitions by state agencies.” [74 O.S.2021, § 85.5](#)(A). The Purchasing Director’s authority includes requesting additional information deemed necessary to review a proposed agency acquisition. [74 O.S.2021, § 85.7](#)(A)(2). If the Purchasing Director determines that the acquisition is unnecessary, excessive or unjustified, the Purchasing Director must deny the requisition. *Id.*

Broadly, the Purchasing Director has a duty to “review state agency acquisitions for the purposes of verifying compliance with the provisions of the Act and rules promulgated by OMES. *Id.* [§ 85.5](#)(E). If the Purchasing Director determines that an agency is not in compliance with the Act or associated rules, at a minimum, the following options exist:

- 1) reduce a state agency’s acquisition authority;
- 2) report any agency noncompliance to the OMES Director;
- 3) submit these findings to the State Auditor and Inspector for further investigation; or
- 4) transmit the information to the Attorney General for further investigation upon reasonable belief that an agency acquisition constitutes a criminal violation, such as the Act’s bid-splitting prohibitions.<sup>3</sup>

[74 O.S.2021, §85.5](#)(E), (F).

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<sup>1</sup>OMES is an executive branch department that provides a wide range of services for Oklahoma State government. [74 O.S.2021, § 61.2](#); [2003 OK AG 3](#), ¶ 1. OMES describes itself as the “state government’s backbone,” which state agencies turn to for the finance, property, human resources, and technology services they need to succeed. OKLAHOMA OFFICE OF MANAGEMENT & ENTERPRISE SERVICES, <https://oklahoma.gov/omes/about.html> (last visited Apr. 12, 2023). The self-acclaimed central finance agency for the state, OMES is responsible for the oversight of billions of dollars a year to all corners of government, and assists agencies in the management of money through budgeting, accounting and purchasing. *Id.*

<sup>2</sup>The term “state agency” is defined as “any office, officer, bureau, board, counsel, court, commission, department, 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[.]” [74 O.S.2021, § 85.2](#)(27).

<sup>3</sup>In 2020, the Act was amended to remove the felony classification for split purchasing for the purpose of evading the requirements of competitive bidding. Additionally, it does not appear that any reports of potential criminal activity have been transmitted to the Attorney General in at least the last five years.

As discussed below, there are a number of exemptions within the Act and in other titles of Oklahoma law. First, there are limited and special circumstance exemptions that are expressly left to the discretion of OMES. Then, within the Act are exemptions provided to more than forty agencies and types of acquisitions. Finally, there are additional exemptions outside of the Act, which generally provide that the specific agency's transaction is "not subject to the Central Purchasing Act."

You asked whether OMES is required to verify an agency's claim that its proposed acquisition is statutorily exempt from requirements of the Act. For the reasons set forth below, this office concludes that OMES, by and through its Director and Purchasing Director, is required to maintain oversight and responsibility for all agency acquisitions, and this includes routinely verifying an agency's claim that an acquisition is statutorily exempt.

### **III. DISCUSSION**

#### **A. OMES is required to maintain oversight and responsibility for all agency acquisitions, and this includes routinely verifying an agency's claim that an acquisition is statutorily exempt.**

##### **1. Within the Act, OMES officials are authorized to grant limited and special circumstance exemptions from the Act's requirements. In granting a limited and special circumstance exemption, OMES is affirming that the acquisition meets the requirements for the statutory exemption.**

Within the Act, certain OMES officials have specific statutory authority to exempt an agency acquisition from the Act's general requirements. Generally, these exemptions can be categorized as limited and based on special circumstances, and include the following:

- 1) an exemption is in the best and immediate interest of the state due to unusual, time-sensitive, or unique circumstances, as determined by the Purchasing Director.<sup>4</sup>
- 2) certain state agencies' contracts are mandatory statewide contracts, as designated by the Purchasing Director; and
- 3) a determination that the proposed supplier of the goods and services is the only qualified vendor.

[74 O.S.2021, § 85.7\(A\)\(7\)](#); [74 O.S.2021, § 85.5\(G\)\(5\)](#); [74 O.S.2021, § 85.44D.1](#).

In the first two special circumstances, OMES has complete discretion to grant the exemption. As such, OMES has a clear duty to ensure that the claimed exemption is lawful and properly within the category of the exemption being claimed. In the third special circumstance, the Act prohibits the Purchasing Division from "approving" the acquisition until the agency submits a signed certification and assurance that the acquisition meets the requirements of the Act. [74 O.S.2021, § 85.7\(A\)\(7\)](#).<sup>5</sup> Therefore, OMES

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<sup>4</sup>Nearly identical authority is afforded to the OMES Director pursuant to [62 O.S.2021, §34.62\(3\)](#).

<sup>5</sup>The Act further requires OMES to submit monthly reports to the Speaker of the House and the President Pro Tempore of the Senate (and any member of the Legislature requesting the report) detailing sole source acquisitions

also has a responsibility to verify the sole-source exemption is being lawfully utilized. OMES's approval requirement means that OMES officials should be regularly attempting to verify that the exemptions cited and certified are legitimate, both when the exemption is granted and when the State is billed for the allegedly exempt acquisition. Otherwise, OMES's "approval" is a mere rubber-stamp, rather than the diligent oversight the Legislature envisioned, given the above text and intent. After all, OMES has a clear duty to ensure "that government officials are accountable to the public and are discharging their duties competently and responsibly." *Indiana Nat'l Bank*, [1993 OK 101](#), ¶ 12, [857 P.2d at 60](#).

2. **Under the Act, at 74 O.S.2021, §§ 85.12 and 85.39, the Purchasing Director is solely responsible for reviewing and approving exempted agency purchasing procedures and conducting audits to ensure the purchasing procedures used by the exempted agency are followed. With this responsibility is the duty to routinely verify an agency's claim that an acquisition is statutorily exempt.**

In addition to the limited and special circumstance exemptions described above, within the Act the Legislature has specifically excluded more than forty agencies and types of acquisitions; most of the exclusions are set forth in section 85.12.<sup>6</sup> [74 O.S.2021, § 85.12](#). Here, the Act is clear in providing that the exempted agency or acquisition is not *entirely* exempt from the Act or OMES oversight. Rather, section 85.12 mandates that the agency or acquisition adhere to an agency's internal purchasing procedures, which must have been reviewed and approved by the Purchasing Director. *Id.*<sup>7</sup>

Additionally, the Act requires the exempted agency to maintain a file for each acquisition, which must contain a justification for the acquisition, supporting documentation "and any other information the State Purchasing Director requires to be kept." [74 O.S.2021, § 85.39\(C\)](#). This is significant because it furthers the requirement of the Purchasing Director to ensure agencies comply with the Act. Necessarily, this includes routinely auditing the exempted agencies' acquisitions to ensure the agency procedures are followed. [74 O.S.2021, § 85.12\(D\)](#).<sup>8</sup> If it were determined that compliance has not been achieved, OMES is authorized to reduce an agency's acquisition threshold and submit audit findings to the State Auditor and Inspector and/or the Attorney General for further investigation. [74 O.S.2021, § 85.5](#). Consistent with the intent of the Act, the Legislature has clearly entrusted OMES with routinely

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by state agencies for the prior month. [74 O.S.2021, § 85.44D.1\(B\)](#). Included in the monthly reports must be the date of either approval or disapproval, and if disapproved, the reason why the requisition was disapproved. *Id.*

<sup>6</sup>The remaining exemptions within the Act are set forth in section 85.3A. The Oklahoma State Regents for Higher Education is the only executive branch agency within these exemptions.

<sup>7</sup>The Act mandates an agency to develop internal purchasing procedures for all acquisitions and submit them to the Purchasing Director for purposes of ensuring compliance with the Act. [74 O.S.2021, § 85.39](#). The agency procedures shall, at a minimum, include provisions for the agency's needs, funding, routing, audits, monitoring and evaluations. *Id.* Until the Purchasing Director approves an agency's internal purchasing procedures, the agency is unable to, legally, make acquisitions exceeding threshold limits. *Id.* Once approved, administrative rules require internal agency purchasing procedures to be reviewed as needed, but at least annually, and that in connection with the Purchasing Director's audit responsibilities, agencies are required to promptly provide records for acquisitions for the audit period. OKLA. ADMIN. CODE § 260:115-5-7(b-d); OKLA. ADMIN. CODE § 260:115-5-19(b).

<sup>8</sup>OMES has promulgated administrative rules to establish an audit team that conducts audits of agency acquisitions and promulgated administrative rules to govern the audits. OKLA. ADMIN. CODE § 260:115-5-19.

verifying that agency purchases are made in accordance with the requirements in law, and thus provide accountability for taxpayer funds.

Nevertheless, while this analysis is conclusive as to the agencies and acquisitions expressly within the provisions of the Act, a question remains as to the scope of an exemption that is statutorily provided for outside of the Act.

**3. The Purchasing Director is responsible for routinely verifying that an exemption claimed outside of the Act is lawful.**

For an agency or acquisition not among those identified in the Act's exemptions, it has been generally stated that this demonstrates the Legislature's intent for the agency to remain subject to the Act. *Cunningham Lindsey Claims Mgmt., Inc. v. Oklahoma State Ins. Fund*, [2002 OK CIV APP 7](#), ¶ 9, [38 P.3d 248](#), ¶ 9; [2011 OK AG 9](#), ¶ 11. Outside of the Act, however, the Legislature has provided for more than thirty other limited exemptions to various agencies and their acquisitions.<sup>9</sup> For example, statutes pertaining to the Oklahoma Tourism and Recreation Department exempt from the Act certain purchases by the agency. [74 O.S.2021, §§ 2221, 2232 and 2239](#). In 2013, this office confirmed the agency's exemption when it concluded that "[s]ection 2221 of Title 74 allows the Tourism Department to enter into certain contracts that are not subject to the Central Purchasing Act." [2013 OK AG 16](#), ¶ 9. Authorizing these exemptions, or removing them, is categorically within the Legislature's sole and exclusive fiscal policymaking powers. *Oklahoma Educ. Ass'n v. State ex rel. Okla. Legislature*, 2007 OK 30, ¶ 20, 158 P.3d 1058, 1065; OKLA. CONST. art. V, §§ 1, 36. However, in authorizing these exemptions, the Legislature has arguably created ambiguities as to the scope of OMES's duties. That is, a question exists as to whether exemptions afforded outside of the Act are blanket exemptions to any and all parts of the Act—meaning that OMES is without any responsibility for them—or whether these acquisitions are to be conducted like the section 85.12 exemptions within the Act. In resolving an ambiguity in a statute, courts look to the various provisions of the relevant legislative scheme to ascertain and give effect to the legislative intent and the public policy underlying that intent. *Wilhoit v. State*, [2009 OK 83](#), ¶ 11, [226 P.3d 682](#), 685. Further, "where the statutory language is ambiguous or uncertain, a construction is applied to avoid absurdities remembering that the Legislature is not deemed to have created an absurdity or done a vain and useless act." *World Publ'g Co. v. White*, [2001 OK 48](#), ¶ 10, [32 P.3d 835](#), 842 (footnote omitted).

Here again, the Legislature has vested OMES with duties to protect taxpayer funds used in acquisitions by state agencies. These responsibilities and powers include directing the acquisition process, having the sole authority to review and approve agency acquisition procedures, and ensuring the Purchasing Director has sole and exclusive responsibility for *all* acquisitions by *all state agencies not otherwise exempt by the Act*. [74 O.S.2021, §§ 85.5\(A\), 85.7\(A\)](#). Most significantly, OMES has the power to audit agencies, reduce acquisition authority, impose consequences on procurement officer certifications, and work with investigative agencies in instances believed to be a violation of the Act or other law. [74 O.S.2021, §§ 85.5, 85.12](#).

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<sup>9</sup>Among the additional exemptions are the following: 2 O.S.2021, § 16-82; 17 O.S.2021, §§ 18, 324; 34 O.S.2021, § 6.1; 47 O.S.2021, § 2-108.1; 53 O.S.2021, § 1.10; 56 O.S.2021, § 4001.2; 57 O.S.2021, § 537; 60 O.S.2021, § 668.1; 62 O.S.2021, §§ 34.33, 71.2, 2306, 2309; 63 O.S.2021, §§ 1-410, 3275, 3292, 6900; 64 O.S.2021, § 1004; 68 O.S.2021, § 264; 70 O.S.2021, § 3970.5; 74 O.S.2021, §§ 13, 150.27, 2213, 2239, 2244, 3317, 4109, 5003.11, 5013.2, 85.58N.



For clarity, the Legislature should review the Act and all statutes affording exemptions to agencies and/or acquisitions and resolve existing ambiguities, including to make explicit any oversight role that should be performed by OMES or another entity. Notwithstanding these ambiguities, given the entirety of the legislative scheme, this office concludes that OMES is required to maintain oversight and responsibility for all agency acquisitions. This necessarily includes routinely verifying an agency's claim that an acquisition is statutorily exempt.<sup>10</sup> This determination is consistent with the intent of the Act, which ultimately is to protect the public at large by promoting economy in government and reducing the likelihood of fraud. *Indiana Nat'l Bank*, [1993 OK 101](#), ¶ 12, [857 P.2d at 60](#). To permit blanket exemptions without requiring oversight by OMES would provide sweeping and carte blanche authority to administrative agencies, risking that they might irresponsibly discharge their trusted duties to care for taxpayer funds. This was certainly not the intent of the Legislature; that intent requires concluding that OMES has a duty to ensure "that government officials are accountable to the public and are discharging their duties competently and responsibly," including by overseeing exemptions of all kinds.

**It is, therefore, the official Opinion of the Attorney General that:**

**OMES, through the Purchasing Director, is required to maintain oversight and responsibility for all agency acquisitions, and this includes routinely verifying an agency's claim that an acquisition is statutorily exempt.**



GENTNER DRUMMOND  
ATTORNEY GENERAL OF OKLAHOMA



BRAD CLARK  
DEPUTY ATTORNEY GENERAL



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<sup>10</sup>OMES has promulgated administrative rules providing that the Director will issue directives or instructions to state agencies regarding procurement to ensure "compliance with the Central Purchasing Act, procurement rules *and any other matter relating to state agency acquisitions*." OKLA. ADMIN. CODE § 260:115-1-1(C) (emphasis added). Then, OMES has promulgated rules authorizing the Director to suspend and/or revoke the certification of a Certified Procurement Officer if the Director reasonably believes the agency did not make acquisitions pursuant to the Act, "applicable rules, *other statutory provisions, or the state agency's internal purchasing procedures*." OKLA. ADMIN. CODE § 210:115-5-3(b) (emphasis added). Consequently, it appears that OMES and the Purchasing Director arguably already do interpret the Act as authorization to review and verify agency acquisitions regardless of whether an acquisition is exempt or not.

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## Agency Response

- *Legislative Office of Fiscal Transparency, March 30, 2023*
- *Oklahoma Management Enterprise Services, March 27, 2023*

March 30, 2023



## **LOFT's comments on the response from the Office of Management and Enterprise Services**

As part of LOFT's protocol, agencies are granted the opportunity to respond to the evaluation report and findings. For this limited scope rapid response evaluation, LOFT examined the process for State agencies' use of purchasing exemptions, identified exemption processes that may put the State at financial or legal risk, and assessed enforcement of agency compliance with the State Purchasing Act.

To complete this work, LOFT engaged with the Central Purchasing Division of the Office of Management and Enterprise Services (OMES). The Central Purchasing Division is the State entity responsible for overseeing and assisting purchasing by State agencies. Specifically, the State Purchasing Director is statutorily responsible for ensuring agency compliance with the Central Purchasing Act. Portions of OMES' response warrant further clarification and correction, which will be addressed. With this response LOFT seeks to address questions of fact, and not differences of opinion.

### **General clarifications and corrections to statements made by OMES-Central Purchasing Division in their response:**

There are two dominant themes underlying much of OMES' response that LOFT will address here. The first is the Division's interpretation of the authority described in the Central Purchasing Act, specifically the following sections of 74 O.S. § 85.5:

*"The State Purchasing Director shall review state agency acquisitions for the purposes of ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act."*

*"Except as otherwise provided in this section, the State Purchasing Director, under the supervision of the Director of the Office of Management and Enterprise Services, shall have sole and exclusive authority and responsibility for all acquisitions by state agencies."*

LOFT references these sections of law throughout the report as it could reasonably be interpreted as a mandate to ensure that all State agency purchases be reviewed to determine which are subject to (and subsequently compliant with) the Act.

In its response, OMES states that, "Central Purchasing has historically taken the position that it does not have the authority to interpret an agency's statute outside of the Central Purchasing Act." LOFT contends this interpretation has created legal and financial risks to the State and limited the effectiveness of the Central Purchasing Division's enforcement of the Act.

The second theme is the Division's emphasis on serving as "partner" to agencies rather than an investigative or compliance entity. While LOFT recognizes the Division's value in partnering with agencies to develop compliant purchase procedures and provide guidance as needed, there is a clear statutory obligation to enforce compliance; not just encourage it. LOFT found the Division does not effectively use the enforcement options granted to it by statute and rule. The Division rarely administers punitive actions in response to agency purchasing violations and it does not seek appropriate resolution when agencies dispute the Division's findings of purchasing violations.

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**LOFT's response to claims of inaccuracy within report:*****Finding 1: The State's Purchasing Processes are Time Consuming and Vague on Exemption Use***

In its response, OMES contests LOFT's use of an average of 95.8 business days for the total amount of time for an agency to complete a requisition. This figure was determined from data provided by OMES reflecting the time frame for each point in the process. The figure of 13 days provided by OMES is an internal metric reflecting the amount of time Central Purchasing personnel spend on specific points in the process.

***Finding 2: Lack of Oversight for Exemptions Pose Financial and Legal Risks to the State***

OMES claims as inaccurate LOFT's statement that no directive was given by Central Purchasing to agencies for proper identification of purchases exempted under the emergency executive order related to the pandemic. While the State Comptroller did issue guidance to agencies on COVID expenditures, it was limited to tracking accounting codes and included all COVID purchases and expenditures, including payroll. The communication did not create a new exemption code for purchasing nor was guidance given on which – if any – of the existing exemption codes should be used. This lack of directive will make post-audits of exemptions very challenging, as there is not currently a method within the State accounting software to isolate purchases made under the emergency exemption for review.

***Finding 3: Central Purchasing Division Lacks Effective Enforcement of Compliance with the Central Purchasing Act***

OMES objects to LOFT's presentation of the audit findings of the Oklahoma Tourism and Recreation Department's (OTRD) purchase card transactions as an indicator of other potential purchasing violations. LOFT would assert that identification of the type of violations found in the OTRD P-card audit should have been interpreted as a risk warranting further scrutiny of all the agency's purchasing. While poor purchasing procedures with one form of payment may not equate to widespread poor purchasing practices, the Central Purchasing Division took the opposite approach, assuming instead that purchase violations in one area were not an indicator of widespread purchase practices.

The Division also contends it did not take punitive action against OTRD as it was awaiting the outcome of other investigations. Central Purchasing's P-card audit preceded the criminal investigation into OTRD's restaurant vendor expenditures, and the violations observed should have resulted in punitive action as well as notification to the Attorney General.

**Additional clarifications:**

Regarding LOFT's recommendation to require Central Purchasing Officers to maintain a record of exemption approvals, both individual agencies and the Central Purchasing Division should maintain a list to allow for reconciliation of exemptions.

Regarding LOFT's recommendation regarding full procurement audits, the intent is not to limit P-card audits but to ensure the audits include more of an agency's expenditures.



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March 27, 2023

OMES Central Purchasing would like to thank the Legislative Office of Fiscal Transparency (LOFT) for their efforts in evaluating the scope of their study related to Central Purchasing Act exemptions. Exemptions, or exceptions, to the procurement process or competitive bidding requirements pose a high-risk for the state. OMES Central Purchasing welcomes a full legislative review of all exemptions, both inside and outside of the Central Purchasing Act. While some of these exemptions may be necessary, more oversight and transparency regarding all exemptions would be beneficial for the citizens of Oklahoma. Some of the LOFT recommendations are currently in place, while others will soon be in place, such as publishing of the procurement audits. While we do not agree with all findings within this report, we do believe this study will be beneficial for Central Purchasing as we continually seek to improve our operations and services to partner agencies.



## TECHNICAL RESPONSE

### **FINDING 1: The State's Purchasing Processes are Time Consuming and Vague on Exemption Use.**

#### **Does the agency agree with the facts as presented?**

OMES Central Purchasing partially agrees with the facts as presented. The process to ensure fair, competitive, and open results for public procurement can be timely, especially based on complexities of the need. Central Purchasing provided LOFT data that shows in FY22, the average total number of days that an agency acquisition is in the hands of a Central Purchasing buyer is 13 business days. The same data shows agencies utilize an average of 31 business days to review bidder responses to solicitations. Utilizing Central Purchasing's data, LOFT referenced in Finding 1 of their report an average of 95.8 business days from start to finish. This is not an accurate depiction of the data provided.

Central Purchasing does agree fully with concerns pointed out regarding outdated information on the OMES website and the reference to it being cumbersome. We would like to point out this will be updated by the end of April 2023.

Central Purchasing does agree with the finding as it relates to citing exemptions used by an agency for their procurement needs. The current system does not have an effective way for the agencies to list the citation and the process to mine that data to determine what exemptions may have been cited for use can be cumbersome. Currently Central Purchasing does review the exemption cited, if the requisition is routed in the system to Central Purchasing.

#### **Does the agency agree with the recommendations related to this finding?**

1. "Create a process by which the Central Purchasing Division reviews all purchase requests exceeding an agency's authorized spending thresholds to confirm whether a purchase is subject to the Central Purchasing Act or exempt from it."
  - Central Purchasing does agree with this finding, however there would need to be clear statute that gives Central Purchasing the ability to interpret all statutes if exemptions are not located within the sections of Title 74 known as the Central Purchasing Act.
2. "Update its compliance process by creating a dedicated entry field within the statewide accounting system to cite the authority for the exemption, a description of the item that qualifies for the exemption, and a process by which Central Purchasing confirms the agency is properly applying the exemption."
  - Central Purchasing agrees with this finding.

### **FINDING 2: Lack of Oversight for Exemptions Pose Financial and Legal Risks to the State.**

#### **Does the agency agree with the facts as presented?**

While OMES Central Purchasing agrees with the overall sentiments of the finding, there are elements within Finding number 2 that remain inaccurate. For example, the statement made by LOFT, "... no directive was given on which exemption code agencies should use to identify purchases ..." is an incorrect statement. Communications were sent out to all agencies by the State Comptroller giving guidance on coding exemptions. Additionally, Central Purchasing provides monthly webinars to agency CPOs on various procurement topics including providing directives on the overall use of exemptions.

Central Purchasing agrees with LOFT's finding that the amount of dollars spent utilizing exemptions in various forms is extremely high.

There is a reference in the LOFT report that as stated in section 85.5, "The State Purchasing Director shall review state agency acquisitions for the purposes of ensuring state agency compliance with the provisions of the Oklahoma Central Purchasing Act." This reference is used to support an idea that all purchases should fall under the authority of the Central Purchasing Act and be reviewed by the Central Purchasing Division. Central Purchasing has historically taken the position that it does not have the authority to interpret an agency's statute outside of the Central Purchasing Act. That has been and remains the position of Central Purchasing after consulting the OMES legal team. However, if the Legislature desires this, we recommend the authority be clearly outlined within statute.

### **Does the agency agree with the recommendations related to this finding?**

1. "Update CPO training to include training on proper use of agency exemptions."
  - Central Purchasing agrees with this finding and believes that enhanced and on-going training for the state CPO's is always beneficial, on all topics related to procurement.

### **FINDING 3: Central Purchasing Division Lacks Effective Enforcement of Compliance with the Central Purchasing Act.**

#### **Does the agency agree with the facts as presented?**

OMES Central Purchasing partially agrees with the facts as presented. The data provided from the procurement audits that were reviewed is accurate. One note within the LOFT report references that prior to 2019, audits were available to the public via the OMES website, but now only available upon request via an open record request. This is accurate and was a directive given by prior leadership. However, current leadership agrees with LOFT's finding and is actively working on posting the last three years of procurement audits on the OMES website.

The goal of the Central Purchasing Audit team is to perform full or limited scope audits on all agencies. Based on audit findings, this team is to partner with those agencies to help them ensure they are meeting compliance with the Central Purchasing Act and be a partner resource to the agencies. Audit findings in one area of scope does not automatically indicate all other areas of procurement within an agency may be out of compliance.

This report contains a reference to an audit being performed with the OTRD on their **P-card spend**. The audit was being conducted during the same timeframe as OTRD's contracting for various restaurants, which were performed within OTRD utilizing an exemption outside the Central Purchasing Act. While Central Purchasing agrees the timing of these two events do overlap, the scope of the p-card audit at this time was separate and any expectation that findings on a p-card audit would lead to assumptions of non-compliance in other areas is not an accurate depiction.

The report further states that "even after OTRD's transactions with Swadley's were made public, Central Purchasing did not reduce the agency's spending threshold". This is an accurate statement as Central Purchasing was awaiting the outcome of the State Auditor's office and the OSBI's investigations. While Central Purchasing did not reduce OTRD's purchasing authority, we did actively engage with their leadership on all procurement items and are doing so to this day.

**Does the agency agree with the recommendations related to this finding?**

1. "Make publicly available a plan to accomplish the auditing mandate issued in Executive Order 2023-04."
  - Central Purchasing is currently working on a plan to meet all the expectations outlined in EO 2023-04, including the agency audit mandate.

## **POLICY RESPONSE**

### **FINDING 1: The State's Purchasing Processes are Time Consuming and Vague on Exemption Use.**

1. "Require Central Purchasing to track time from agency request to purchase completion for procurements as a key performance metric."
  - This exists today, and Central Purchasing has all data to support this.
  - As stated above, Central Purchasing provided LOFT data that shows in FY22, the average total number of days that an agency acquisition is in the hands of a Central Purchasing buyer is 13 business days. The same data shows agencies utilize an average of 31 business days to review bidder responses to solicitations.
2. "Require agency Central Purchasing Officers to maintain a record of exemption approvals, to include identification of the CPO and the date of approval."
  - As it's worded, this is not fully understood as it relates to "agency central purchasing officers". If this is referring to the members of the Central Purchasing Agency team, the Procurement Specialists, then yes, Central Purchasing would agree that this is something that could be beneficial to have.
3. "Clarify within statute the Central Purchasing Director shall review all exempt purchases to ensure they are validly within the claimed exemption."
  - Central Purchasing would agree that if statute allowed for this, it would absolutely welcome the opportunity to review exemptions claimed.

### **FINDING 2: Lack of Oversight for Exemptions Pose Financial and Legal Risks to the State.**

1. "Require agencies using exemptions to post purchases publicly, similar to what is currently publicly available for P-card purchases."
  - Central Purchasing would be in support of this.
2. "Evaluate all existing exemptions within statute to determine if they are still necessary in light of recent increases in agency purchasing limits."
  - This ask is welcomed and Central Purchasing is in favor of a full legislative review of all exemptions.
3. "Require sunset dates with the enactment of any future exemptions."
  - This is welcomed and Central Purchasing is in favor.
4. "Centralize all exemptions, both complete exemptions from the Central Purchasing Act and specific purchase exemptions, under the same section of statute."
  - Central Purchasing is in favor of a review of all exemptions and consolidating the location in statute.

### **FINDING 3: Central Purchasing Division Lacks Effective Enforcement of Compliance with the Central Purchasing Act.**

1. "Require the Director of OMES to report violations of statute found by the audit team to the Attorney General's office, the State Auditor's office, and legislative leadership."
  - Central Purchasing would be in agreement with this recommendation.
2. "Require OMES to send a consolidated report to the Legislature of agencies that have violated statute related to agency acquisitions."

- Audit reports and subsequent findings will be posted on the OMES website.
3. "To ensure independence of the Audit team, remove this function from under the oversight of the Central Purchasing Division."
    - The State Purchasing Director would disagree with this recommendation. Prior to 2020, the Audit Team was separate from Central Purchasing and used only to find violations. As members of Central Purchasing their primary function has shifted to partnering with agencies to find solutions to ensure compliance. This model has proved to be successful.
  4. "Authorize the purchasing Audit Team to review purchases taking place outside of the Central Purchasing Act."
    - Central Purchasing agrees with this approach and believes it could provide a more thorough audit, whether a full audit or a limited scope performance audit.
  5. "Require Central Purchasing's audits to be made publicly available on the State website."
    - Current leadership agrees with LOFT's finding and is actively working on posting the last three years of procurement audits on the OMES website.
  6. "Statutorily require that all audits performed by the Audit team are full procurement audits, which are to include expenditures by P-cards but not be limited to just P-card expenditures."
    - Full procurement audits performed by the Central Purchasing Audit team do include all aspects, including limited scope performance aspects such P-card expenditures. This exists today. Not allowing for the Audit team to look at certain aspects or other limited scope performance items would be inefficient and not a good use of time spent. There are instances where only certain aspects need to be reviewed vs the time spent on a full procurement audit. Additionally, full procurement audits take considerable amounts of time to complete, limiting this team to only that aspect will be a risk to the state to bypass other components that may need to be viewed more frequently.
  7. "Create mandatory penalties within statute for agencies found by the purchasing Audit Team to be in violation of the Central Purchasing Act. These could include violations for purchase card, competitive bidding, split purchasing, internal purchasing procedures, and improper exemption usage."
    - Central Purchasing believes there could be benefit for this consideration, however would encourage flexibility within the language to allow for unique circumstances agencies may have.
  8. "Require that internal purchasing procedures be approved by the State Purchasing Director every two years and create penalties for violations."
    - The two-year requirement is in place and exists today.

Sincerely,



Dan Sivard

State Purchasing Director