



## Central Purchasing

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### PROCUREMENT INFORMATION MEMORANDUM

Subject: Confidentiality of ARPA Documents  
Effective Date: October 1, 2023  
Issued by: Amanda Otis, Esq., State Purchasing Director

As a means of disseminating relevant state procurement information to state entities, the Central Purchasing division of the Office of Management and Enterprise Services periodically issues Procurement Information Memoranda. To the extent any information in this Procurement Information Memorandum (“PIM”) conflicts with information in a previously issued memorandum, the information in this PIM controls. This PIM specifically addresses the confidentiality of documents submitted for projects/procurements potentially receiving American Rescue Plan Act (ARPA) funds.

#### **Summary**

Pursuant to 74 O.S. § 85.5 (J)(9) the State Purchasing Director has determined that all documents received by the State of Oklahoma relating to the use and distribution of ARPA funds are confidential information and not subject to open record requests.

#### **1. Legal framework and background**

The State Purchasing Director, under the supervision of the Director of the Office of Management and Enterprise Services, has the sole and exclusive authority for all acquisitions used or consumed by State agencies [74 O.S. §85.5 A]. The State Purchasing Director also has the responsibility to promulgate rules pursuant to provisions of the Oklahoma Central Purchasing Act [74 O.S. §85.5 C].

One such rule is OAC 260:115-1-1(c): Official directives. The State Purchasing Director shall issue directives, instructions, or written communications to state agencies regarding required procurement practices and procedures to ensure compliance with provisions of the Central Purchasing Act, procurement rules, and any other matter relating to state agency acquisitions.

As such, PIMs issued by the State Purchasing Director are official directives dealing with specific practices and procedures governing agency procurement and are not advisory in nature. They are authoritative directives toward agencies that focus on best practices and procedures relating to procurement matters.

This PIM will serve as the authority for maintaining the confidentiality of documents and records received in connection with the receipt and/or distribution of ARPA funds.

The authority for the State Purchasing Director to make this determination is found in Title 74 O.S. §85.5 (J)(9) to wit:

**The State Purchasing Director shall undertake the following:**

**9. Determine whether and to what extent information included in a bid or similar offer is confidential and reject all requests to disclose the information so designated.**

The State Purchasing Director has determined that information received in connection with the receipt and/or distribution of ARPA funds is an “offer” initiating the procurement process and therefore such information is determined to be confidential and not subject to release from an open record request.

**2. Practitioner comments/conclusions**

Requests asking for any documents, including but not limited to, books, papers, photographs, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, coming into the custody, control or possession of public officials, public bodies or their representatives in connection with the receipt or distribution of ARPA funds shall be denied and the requested materials shall be maintained as confidential.