

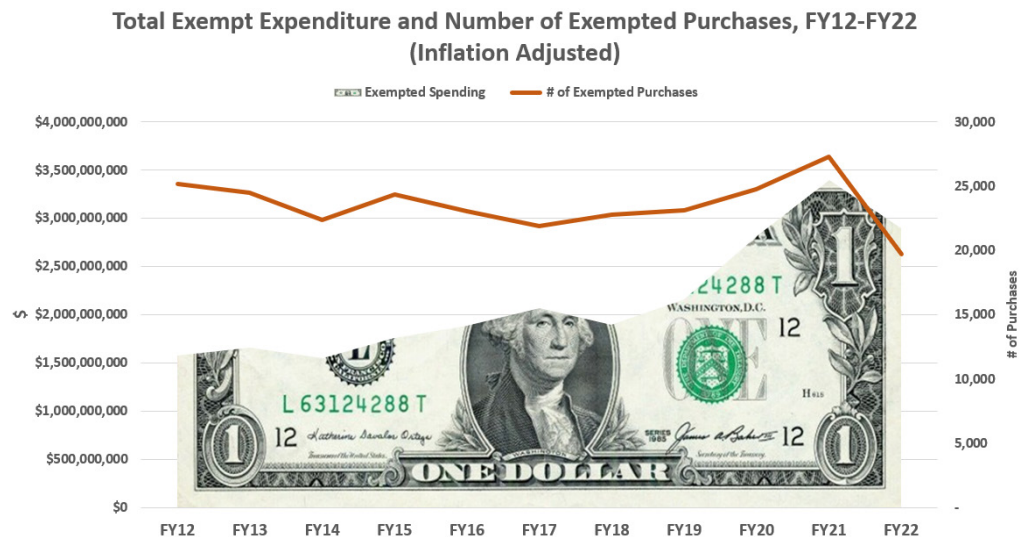
Key Objectives:

- 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:

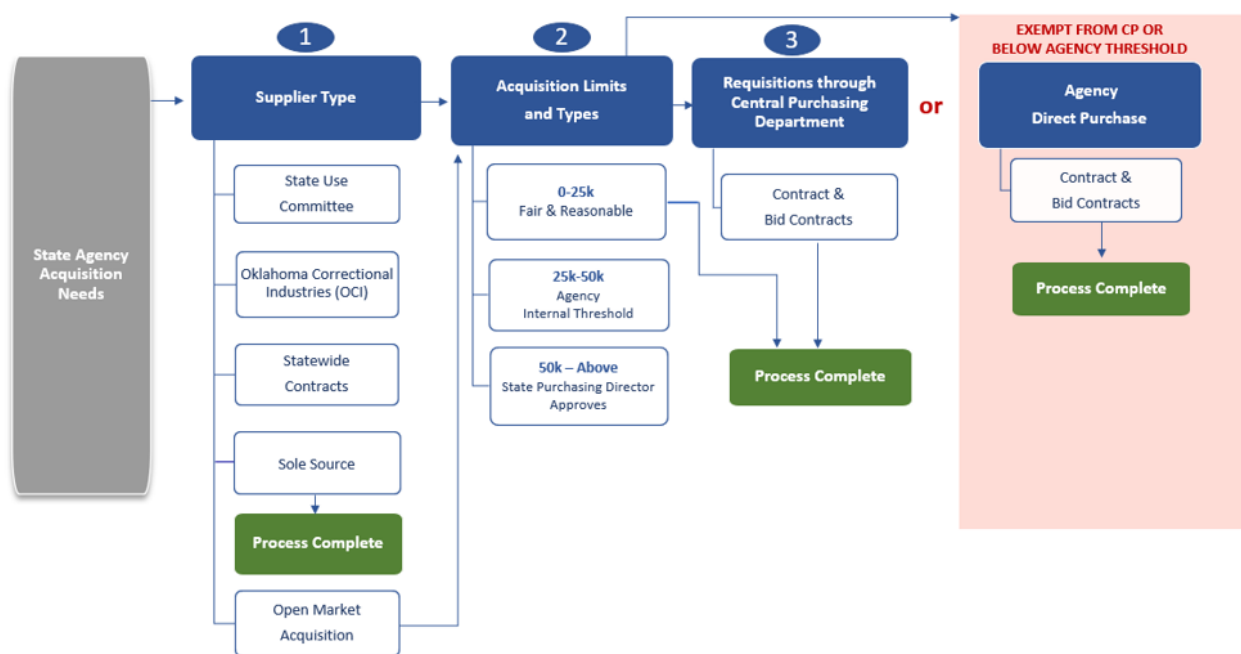
Finding 1: The State's Purchasing Processes Are Time Consuming and Vague on Exemption Use

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

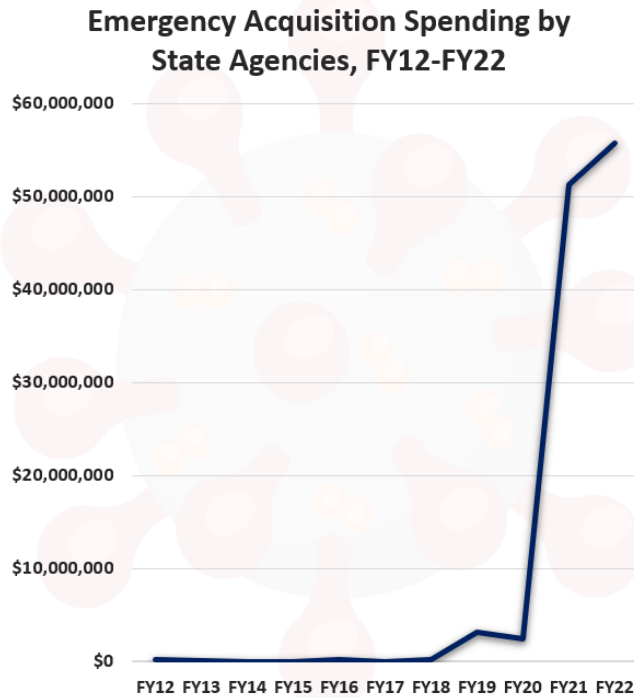


Source: LOFT's creation based on Central Purchasing CPO Training Modules.

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: 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. Audits only cover purchases 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.