

Final Report to the Legislative Council

Review Subcommittee Procurement Study 2017-2018

December 21, 2018

The Rules of the Legislative Council adopted in May 2017 directed the Review Subcommittee to undertake a study of the procurement processes and requirements in the State of Arkansas and to recommend changes to the procurement laws, regulations, and processes in a report to the full Legislative Council at its December 2018 meeting.

Pursuant to that directive, the Review Subcommittee began the process of acquiring consulting services to assist the Subcommittee with its procurement study. In September 2017, the Review Subcommittee of the Arkansas Legislative Council (ALC) selected Ikaso Consulting, LLC to perform a review of the State's procurement laws and practices. This selection was made as a result of a competitive process pursuant to a Request for Proposal (RFP).

After a detailed review of the State's statutes, rules, policies and procedures, interviews with multiple stakeholders, and analysis of available data, on April 16, 2018 Ikaso identified sixty-two (62) recommendations for the Subcommittee's consideration. The Review Subcommittee included the members of Joint Performance Review (JPR) to participate in its monthly procurement study meetings as part of the working group. A number of hearings were held to discuss the recommendations and hear responses from the Department of Finance and Administration (DFA) – Office of State Procurement (OSP) and agency procurement officials. As a result of the Subcommittee's work, fourteen (14) bills were drafted, each of which sought to implement recommendations from the Ikaso report. The fourteen (14) bills have since been consolidated into six (6) final draft bills (attached hereto).

On Monday, December 17, 2018, the Review Subcommittee met and reviewed the final six (6) bills to recommend to the Legislative Council. In the packet today you have the final drafts of the six (6) proposed bills and a summary report that tracks each proposed reform adopted from the original Ikaso report. Today's report indexes: the proposed reform's location in the final draft bill; the "old" draft bill (from among the fourteen (14)), which contained the reform as of the October 4, 2018 review; and the location of the proposed reform in the Ikaso report (if applicable).

Copies of the Ikaso report are available for members who would like to review the report and the full report is available on the General Assembly website.

Respectfully Submitted: Sen. Scott Flipppo and Rep. Jeff Wardlaw, Co-Chairs, Review Subcommittee.

Bill: JLL063

This bill makes adjustments and expansions to competitive procurement instruments and evaluations while ensuring more deference is given to cost. The bill also creates a training program through OSP to ensure Statewide compliance with procurement improvement efforts. Specifically, the bill:

Summary of Reform	Location in JLL063	Old Bill	Location in Ikaso Report
Expands the maximum posting period for Invitation to Bids from 30 to 90 days	pg. 3 lines 4-9	JLL005	n/a
Creates an option for the State to hold solicitation conferences as part of a specific procurement to provide a forum to explain the procurement process and the specific solicitation to potential vendors – encourages the conference’s use for procurements which anticipate high dollar contracts	pg. 3 lines 16-18 pg. 8 lines 31-36 pg. 9 lines 1-29	JLL005	Rec. III-1 pg. 26
Standardizes requirement to train State personnel conducting any contract negotiation	pg. 4 lines 13-19	JLL006	Rec. IX-3 pg. 62
Provides the State the opportunity to solicit a Best and Final Offer during the evaluation of an RFP	pg. 5 lines 32-36 pg. 6 lines 1-11	JLL006	Rec. IX-1 pg. 62
Creates vendor training and polling obligation on OSP	pg. 9 lines 31-36 pg. 10 lines 1-11	JLL005	Rec. III-3 pg. 26
Requires lowest cost to serve as a tie-breaker for equally scored RFPs	pg. 6 lines 34-36 pg. 7 line 1	JLL009	n/a
Expands negotiation options for contracts resulting from RFPs	pg. 7 lines 2-11	JLL006	Rec. IX-2 pg. 62
Creates the instrument Request for Information – a published, structured method to gather information that does not lead to an award or contract	pg. 10 lines 9-31	JLL009	Rec. VI-4 pg. 41

Requires OSP approval to use an RFQ outside of certain enumerated services	pg. 12 lines 28-36 pg. 13 lines 1-10	JLL009	Rec. VI-6 pg. 41
Removes legal services from the types of services required to be procured via RFQ	pg. 12 lines 7 and 22	JLL009	n/a
Empowers OSP to enhance training offerings and create a procurement training and certification program for State personnel	pg. 2 lines 9-10 pg. 10 lines 33-36 pg. 11 lines 1-36	JLL009	Rec. IV-3 pg. 31 Rec. VI-5 pg. 41 Rec. VIII-4 pg. 59 Rec. IX-2 pg. 62
Requires OSP to encourage full evaluation discussion	pg. 7 lines 13-15	JLL011	Rec. VIII-5 pg. 59
Requires OSP to develop tools and templates for proposal evaluations, optimizing the number scored attributes and range of scores	pg. 7 lines 16-19	JLL011	Rec. VIII-4 pg. 59
Requires OSP to develop rules regarding reasons and methods of rejecting bids and proposals, including requiring the verification of disqualified bids or proposals with agencies or evaluation teams, respectively	pg. 2 lines 11-13 pg. 4 lines 23-30 pg. 8 lines 1-8	JLL010	Rec. VII-1 pg. 49
Requires OSP to develop rules allowing the consideration of the State's previous experience with a vendor in an RFP if the RFP solicits references (in which case the State shall serve as a reference)	pg. 5 lines 18-27	JLL010	Rec. VII-2 pg. 50
Sets minimum cost weighting of RFP score at 30% (with exception process)	pg. 4 lines 34-36 pg. 5 lines 1-17	JLL011	Rec. VIII-3 pg. 59
Requires OSP to develop rules regarding private sector evaluators	pg. 7 lines 20-36	JLL011	Rec. VIII-2 pg. 59

Requires rules developed by OSP to be submitted and reviewed by the Subcommittee and reviewed and approved by the ALC	pg. 2 lines 17-36	JLL011	n/a
Allow for time discounts, if explicitly contemplated and requested in a solicitation for competitive sealed bidding	pg. 3 lines 20-30	JLL009	Rec. VI-7 pg. 41
Defines when and how to seek clarifications of submitted bids and proposals	pg. 3 lines 32-36 pg. 4 lines 1-8 pg. 6 lines 16-26	JLL009	Rec. VI-1 pg. 41

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND THE LAWS CONCERNING VARIOUS PROCUREMENT
10 METHODS; TO ALLOW FOR REQUESTS FOR INFORMATION; TO
11 AMEND THE LAW CONCERNING THE PROCUREMENT OF
12 PROFESSIONAL SERVICES; TO PROVIDE FOR THE TRAINING
13 AND CERTIFICATION OF PROCUREMENT OFFICIALS; TO
14 REQUIRE THAT COST BE WEIGHTED A CERTAIN AMOUNT IN
15 EVALUATING RESPONSES TO A REQUEST FOR PROPOSALS; TO
16 ALLOW FOR THE USE OF PRIVATE EVALUATORS IN EVALUATING
17 RESPONSES TO A REQUEST FOR PROPOSALS; TO REQUIRE THAT
18 RULES PROMULGATED BY THE STATE PROCUREMENT DIRECTOR
19 BE SUBMITTED TO AND REVIEWED BY THE REVIEW
20 SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL; TO AUTHORIZE
21 AND REGULATE SOLICITATION CONFERENCES UNDER THE
22 ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT VENDOR
23 TRAINING AND POLLING BE CONDUCTED UNDER THE ARKANSAS
24 PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE
25 NEGOTIATION OF COMPETITIVE SEALED BIDS AND
26 COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS
27 PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE
28 REJECTION OF A BID OR PROPOSAL UNDER THE ARKANSAS
29 PROCUREMENT LAW; AND FOR OTHER PURPOSES.
30

Subtitle

33 TO AMEND THE LAWS CONCERNING VARIOUS
34 PROCUREMENT METHODS; TO PROVIDE FOR THE
35 TRAINING AND CERTIFICATION OF PROCUREMENT
36 OFFICIALS; AND TO REQUIRE ADDITIONAL

1 LEGISLATIVE REVIEW OF PROCUREMENT RULES.

2
3
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

5
6 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and
7 duties of the State Procurement Director, is amended to add additional
8 subdivisions to read as follows:

9 (9) Shall provide for enhanced training on the drafting of
10 specifications for procurements; and

11 (10) Shall maintain records of bids and proposals that are
12 rejected by the office for failure to adhere to the mandatory requirements of
13 a solicitation.

14
15 SECTION 2. Arkansas Code § 19-11-225 is amended to read as follows:
16 19-11-225. Regulations Rules.

17 (a)~~(1)~~ ~~Regulations shall be promulgated by the~~ The State Procurement
18 Director shall adopt rules in accordance with the applicable provisions of
19 this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201
20 et seq.

21 (2) A rule promulgated by the director under this subchapter is
22 not effective until the rule is:

23 (A) Submitted to and reviewed by the Review Subcommittee
24 of the Legislative Council; and

25 (B) Reviewed and approved by the Legislative Council under
26 § 10-3-309.

27 (b) ~~No regulation~~ A rule shall not change any commitment, right, or
28 obligation of the state or of a contractor under a contract in existence on
29 the effective date of the ~~regulation~~ rule.

30 (c)(1) ~~No clause which~~ A clause that is required by ~~regulation rule~~ rule to
31 be included ~~shall be considered to be~~ is not incorporated by operation of law
32 in any state contract without the consent of both parties to the contract to
33 the incorporation.

34 (2) The parties to the contract may give such consent to
35 incorporation by reference at any time after the contract has been entered
36 into and without the necessity of consideration passing to either party.

1
2 SECTION 3. Arkansas Code § 19-11-229(d), concerning competitive sealed
3 bidding, is amended to read as follows:

4 (d)~~(1)~~ Notice inviting bids shall ~~be~~:

5 (1) Be given not fewer than five (5) calendar days nor more than
6 ~~thirty (30)~~ ninety (90) calendar days preceding the date for the opening of
7 bids by publishing the notice at least one (1) time in at least one (1)
8 newspaper having general circulation in the state or posting by electronic
9 media, but in all instances, adequate notice shall be given;

10 ~~(2)(A) The notice shall include~~ Include a general description of
11 the commodities, technical and general services, or professional and
12 consultant services to be procured; ~~and shall state~~

13 (3) State where invitations for bid bids may be obtained;

14 ~~(B) The notice also shall state~~ (4) State the date, time, and
15 place of bid opening; and

16 (5) State the time, date, and place of the solicitation
17 conference if a solicitation conference is to be held before the opening of
18 bids to provide information to prospective bidders.

19
20 SECTION 4. Arkansas Code § 19-11-229(f), concerning competitive sealed
21 bidding, is amended to add an additional subdivision to read as follows:

22 (3)(A) A time discount may be considered in the evaluation of a
23 bid only:

24 (i) If the state agency specifically solicits
25 pricing that requests a time discount; and

26 (ii) Under the structured terms of the invitation
27 for bids.

28 (B) If a bidder offers a time discount as part of its bid
29 without the solicitation of time discounts by the state agency, the state
30 agency shall not consider the time discount.

31
32 SECTION 5. Arkansas Code § 19-11-229(g), concerning competitive sealed
33 bidding, is amended to add an additional subdivision to read as follows:

34 (3)(A) The director or an agency procurement official may seek
35 the clarification of a submitted bid.

36 (B) A written response by a bidder under this subsection

1 shall not add to or enhance the submitted bid or change the terms of the
2 submitted bid.

3 (C) If the bidder fails or refuses to clarify any matter
4 questioned about the bidder's bid in writing by the deadline set by the
5 director or agency procurement official, the bid may be rejected.

6 (D) If the bidder clarifies the matter questioned under
7 this subsection in writing, the clarification shall be evaluated and become a
8 part of any contract awarded on the basis of the bidder's bid.

9
10 SECTION 6. Effective July 1, 2021, Arkansas Code § 19-11-229(h)(2),
11 concerning competitive sealed bidding under the Arkansas Procurement Law, is
12 amended to add an additional subdivision read as follows:

13 (C)(i) Negotiations under this subsection shall be
14 conducted by a person who is trained and certified in negotiation and
15 procurement processes.

16 (ii)(a) The Office of State Procurement shall
17 provide for the training and certification required under this subsection.

18 (b) The training provided by the office shall
19 be specific to Arkansas law.

20
21 SECTION 7. Arkansas Code § 19-11-229(i), concerning competitive sealed
22 bidding, is amended to read as follows:

23 (i)(1) An invitation for bid bids may be cancelled or any or all bids
24 may be rejected in writing by the director or the agency procurement
25 official.

26 (2) Before the rejection of a bid by the director, the decision
27 to reject the bid may be validated with the state agency for which the
28 procurement is being conducted.

29 (3) A bid may be rejected for failure to adhere to mandatory
30 requirements.

31
32 SECTION 8. Arkansas Code § 19-11-230(d), concerning competitive sealed
33 proposals under the Arkansas Procurement Law, is amended to read as follows:

34 (d)(1) The request for proposals shall indicate the relative
35 importance of price and other evaluation factors.

36 (2)(A) Except as provided in subdivision (d)(2)(B) of this

1 section, cost shall be weighted at least thirty percent (30%) of the total
2 evaluation score for a proposal submitted in response to the request for
3 proposals.

4 (B)(i) The State Procurement Director may approve that
5 cost be weighted at a lower percentage of the total evaluation score for a
6 proposal submitted in response to a request for proposals if the director
7 makes a written determination that the lower percentage is in the best
8 interest of the state.

9 (ii) A state agency's failure to obtain the approval
10 of the director under this subsection for a request for proposals with cost
11 weighted at a lower percentage than required under subdivision (d)(2)(A) of
12 this section is grounds for submitting a protest under § 19-11-244.

13 (C) The use of a lower percentage under subdivision
14 (d)(2)(B) of this section and the corresponding written determination by the
15 director shall be submitted to the Legislative Council or, if the General
16 Assembly is in session, the Joint Budget Committee, for review before the
17 request for proposals is issued.

18 (3) The state's prior experience with an offeror may be
19 considered and scored as part of the offeror's proposal only:

20 (A) To the extent that the request for proposals requests
21 that all offerors provide references; and

22 (B) If the offeror's past performance with the state
23 occurred no more than three (3) years before the offeror submitted the
24 proposal.

25 (4) A state agency shall not include prior experience with the
26 state as a mandatory requirement for submitting a proposal under this
27 section.

28
29 SECTION 9. Arkansas Code § 19-11-230(e)(2), concerning competitive
30 sealed proposals under the Arkansas Procurement Law, is amended to add an
31 additional subdivision to read as follows:

32 (C)(i) Before issuing the notice of award of a contract,
33 the director or the agency procurement official may request a best and final
34 offer from each responsible offeror that is reasonably susceptible of being
35 awarded the contract.

36 (ii) In responding to a request for a best and final

1 offer, an offeror may:

2 (a) Resubmit the offeror's original proposal
3 with lower pricing or additional benefits, or both, in accordance with the
4 specifications of the request for proposals; or

5 (b) Submit a written response that states that
6 the offeror's original proposal, including without limitation the pricing,
7 remains unchanged.

8 (iii) If a best and final offer is requested, the
9 director or the agency procurement official shall evaluate each proposal
10 submitted in response to the request for a best and final offer in
11 determining the proposal that is the most advantageous to the state.

12
13 SECTION 10. Arkansas Code § 19-11-230(f) and (g), concerning
14 competitive sealed proposals under the Arkansas Procurement Law, are amended
15 to read as follows:

16 (f)(1) The director or an agency procurement official may seek the
17 clarification of a submitted proposal.

18 (2) A written response by an offeror under this subsection shall
19 not add to or enhance the submitted proposal or change the terms of the
20 submitted proposal.

21 (3) If the offeror fails or refuses to clarify any matter
22 questioned about the offeror's proposal in writing by the deadline set by the
23 director or agency procurement official, the proposal may be rejected.

24 (4) If the offeror clarifies the matter questioned under this
25 subsection in writing, the clarification shall be evaluated and become a part
26 of any contract awarded on the basis of the offeror's proposal.

27 (g)(1) Award shall be made to the responsible offeror whose proposal
28 is determined in writing to be the most advantageous to the state, taking
29 into consideration price, the evaluation factors set forth in the request for
30 proposals, any best and final offers submitted, and the results of any
31 discussions conducted with responsible offerors.

32 (2) No other factors or criteria shall be used in the
33 evaluation.

34 (3) If it is determined that two (2) or more responsible
35 offerors have tied scores after the evaluation of the proposals, the award
36 shall be made to the responsible offeror that had one (1) of the tied scores

1 and submitted the lowest price proposal.

2 (4) The director or the agency procurement official may enter
3 into negotiations with the responsible offeror whose proposal is determined
4 in writing to be the most advantageous to the state when the best interests
5 of the state would be served, including without limitation when the state can
6 obtain:

7 (A) A lower price without changes to the terms or
8 specifications of the request for proposals; or

9 (B) An improvement to the terms or specifications, or
10 both, of the request for proposals without increasing the price of the
11 proposal.

12 (h)(1) The Office of State Procurement shall:

13 (A) Encourage full discussion by the evaluators who are
14 evaluating proposals submitted in response to a request for proposals under
15 this section; and

16 (B) Develop tools and templates to be used in evaluating
17 proposals submitted in response to a request for proposals under this section
18 that optimize the number of material scored attributes and provide for a
19 limited range of possible scores for each attribute.

20 (2)(A) A state agency may use one (1) or more private evaluators
21 to evaluate proposals submitted in response to a request for proposals under
22 this section.

23 (B) A private evaluator used under this subsection shall
24 be:

25 (i) Held to the same requirements and prohibitions
26 regarding conflicts of interest as state employees;

27 (ii) A qualified volunteer, unless the state does
28 not have the necessary expertise to evaluate the proposals, in which case a
29 paid private evaluator may be used; and

30 (iii) Eligible for travel reimbursement if the state
31 agency decides to make travel reimbursement available.

32 (C) The use of a private evaluator is not required.

33 (D) If a state agency uses one (1) or more private
34 evaluators, the use of a private evaluator shall be disclosed in the
35 procurement file and in any information submitted to the Legislative Council
36 or, if the General Assembly is in session, the Joint Budget Committee.

1 ~~(g)~~ (i)(1) A competitive sealed proposal may be cancelled or any or
2 all proposals may be rejected in writing by the ~~State Procurement Director~~
3 director or the agency procurement official.

4 (2) Before the rejection of a proposal by the director, the
5 decision to reject the proposal may be validated with the evaluation
6 committee that evaluated the proposal.

7 (3) A proposal may be rejected for failure to adhere to
8 mandatory requirements.

9
10 SECTION 11. Arkansas Code § 19-11-233 is amended to read as follows:
11 19-11-233. Emergency procurements.

12 (a) The State Procurement Director, the head of a procurement agency,
13 or a designee of either officer may make or authorize others to make
14 emergency procurements as defined in § 19-11-204(4) and in accordance with
15 ~~regulations~~ rules promulgated by the director.

16 (b)(1) A person or state agency that makes an emergency procurement
17 under this section shall:

18 (A) Receive at least three (3) competitive bids unless the
19 emergency is a critical emergency; and

20 (B) Complete a quotation abstract that includes the:

21 (i) Names of the firms contacted;

22 (ii) Time that each firm was contacted;

23 (iii) Quoted price obtained from each contacted
24 firm; and

25 (iv) Method used for contacting each firm.

26 (2) As used in this subsection, "critical emergency" means an
27 emergency in which human life or health is imminently endangered.

28
29 SECTION 12. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
30 amended to add additional sections to read as follows:

31 19-11-273. Solicitation conferences.

32 (a)(1) A state agency may hold a solicitation conference before or
33 after issuing an invitation for bids or a request for proposals.

34 (2) A solicitation conference may be held:

35 (A) In person; or

36 (B) Online or in another virtual format.

1 (b) Attendance by a vendor at a solicitation conference is not
2 required for that vendor's bid or proposal to be accepted unless the
3 attendance requirement is:

4 (1) Explicitly stated in the invitation for bids or request for
5 proposals; and

6 (2) Approved by the State Procurement Director or the head of
7 the procurement agency.

8 (c) A state agency holding a solicitation conference shall:

9 (1) Include the date and time of the solicitation conference in
10 the notice required under § 19-11-229;

11 (2) Require vendors in attendance at a solicitation conference
12 to sign in at the solicitation conference or provide a registration record
13 for an online or other virtual solicitation conference, regardless of whether
14 attendance is required under the solicitation; and

15 (3) Maintain the sign-in sheet or registration records with the
16 other documents related to the solicitation.

17 (d) A statement made at a solicitation conference does not change the
18 invitation for bids or request for proposals unless a change is made by
19 written amendment to the invitation for bids or request for proposals.

20 (e) A state agency is encouraged to hold a solicitation conference for
21 a procurement that:

22 (1) Has a contract amount of at least:

23 (A) Five million dollars (\$5,000,000) for a single
24 contract year; or

25 (B) Thirty-five million dollars (\$35,000,000) for the
26 total anticipated term of the contract, including any extensions, based on
27 the previous contract for the same commodities or services or, if a previous
28 contract is not available, a contract for similar commodities or services; or

29 (2) Is of strategic importance to the state.
30

31 19-11-274. Vendor training and polling.

32 The Office of State Procurement shall:

33 (1)(A) Develop and deliver vendor training to inform interested
34 vendors of how to do business with the state.

35 (B) The training required under subdivision (1)(A) of this
36 section shall:

1 (i) Be offered throughout the state; and
2 (ii) Be delivered as training sessions in person and
3 online or in another virtual format; and

4 (2) Periodically poll vendors that have been successful in
5 securing business with the state and vendors that have not been successful in
6 securing business with the state to solicit procurement feedback that can be
7 used to improve vendor training.

8
9 19-11-275. Requests for information.

10 (a) As used in this section, "request for information" means a
11 procedure for formally requesting information, data, comments, or reactions
12 from prospective bidders or offerors in contemplation of a possible
13 competitive sealed bidding procurement under § 19-11-229 or a competitive
14 sealed proposal procurement under § 19-11-230.

15 (b) The State Procurement Director, a head of a procurement agency, or
16 a designee of the director or of a head of a procurement agency, may issue or
17 authorize another person to issue a request for information.

18 (c) A request for information under this section shall be published in
19 the same manner and location as an invitation for bids, a request for
20 proposals, or a request for qualifications.

21 (d) A contract shall not be awarded directly from a request for
22 information.

23 (e) Information provided in response to a request for information
24 under this section is exempt from the Freedom of Information Act of 1967, §
25 25-19-101 et seq., until:

26 (1) The bids for a competitive sealed bidding procurement are
27 opened publicly;

28 (2) The notice of anticipation to award is given for a
29 competitive sealed proposal procurement; or

30 (3) A decision is made not to pursue a procurement based on the
31 request for information.

32
33 19-11-276. Training and certification of procurement personnel.

34 (a) The State Procurement Director shall establish a training and
35 certification program to facilitate the training, continuing education, and
36 certification of state agency procurement personnel.

1 (b) As part of the training and certification program required under
2 this section, the director:

3 (1) Shall conduct procurement education and training for state
4 agency employees and other public employees;

5 (2)(A) Shall establish a tiered core curriculum that outlines
6 the minimum procurement-related training courses a state agency employee is
7 required to complete for certification.

8 (B) The tiered core curriculum required under subdivision
9 (b)(2)(A) of this section shall:

10 (i) Be designed to develop procurement competency;
11 and

12 (ii) Create a uniform training approach for state
13 agency employees ranging from entry-level procurement personnel to agency
14 procurement officials;

15 (3) May charge a reasonable fee for each participant to cover
16 the cost of providing the training required under this section;

17 (4) May conduct, develop, and collaborate with established
18 training programs, if any, for the purpose of providing certifications of
19 proficiency to state agency employees who complete the training and
20 certification program;

21 (5) May conduct research into existing and new procurement
22 methods; and

23 (6) May establish and maintain a state procurement library.

24 (c)(1) Beginning July 1, 2021, a state agency employee shall not
25 conduct a procurement under this chapter unless the state agency employee is
26 certified through the training and certification program required under this
27 section.

28 (2) To maintain certification under this section, a state agency
29 employee shall complete a reasonable number of hours of continuing education,
30 as provided for by rule by the director.

31 (d)(1) The director shall revoke the certification of a state agency
32 employee who is certified under this section and who is determined to have
33 knowingly violated state procurement laws, Arkansas Code Title 19, Chapter
34 11.

35 (2) The director shall adopt rules regarding the procedure for
36 revoking a state agency employee's certification under this section.

1
2 SECTION 13. Arkansas Code § 19-11-801(a) and (b), concerning the
3 policy related to the procurement of professional services, are amended to
4 read as follows:

5 (a) It is the policy of the State of Arkansas that state agencies
6 shall follow the procedures stated in this section, except that competitive
7 bidding shall not be used for the procurement of ~~legal~~, architectural,
8 engineering, construction management, and land surveying professional
9 consultant services if:

10 (1) State agencies not exempt from review and approval of the
11 Building Authority Division of the Department of Finance and Administration
12 shall follow procedures established by the division for the procurement of
13 architectural, engineering, land surveying, and construction management
14 services; and

15 (2) Institutions of higher education exempt from review and
16 approval of the division shall follow procedures established by their
17 governing boards for the procurement of architectural, engineering, land
18 surveying, and construction management professional consultant services.

19 (b) It is the policy of the State of Arkansas and its political
20 subdivisions that political subdivisions shall follow the procedures stated
21 in this section, except that competitive bidding shall not be used for the
22 procurement of ~~legal~~, financial advisory, architectural, engineering,
23 construction management, and land surveying professional consultant services.
24

25 SECTION 14. Arkansas Code § 19-11-802, concerning requests for
26 statements of qualifications and performance data, is amended to add an
27 additional subsection to read as follows:

28 (e)(1) A request for statements of qualifications and performance data
29 under this section may be used for certain procurements through a request for
30 qualifications other than architectural, engineering, construction
31 management, land surveying, and interior design services if the:

32 (A) State Procurement Director approves the use of a
33 request for qualifications and determines that it is the most suitable method
34 of procurement; and

35 (B) Approval of the director under subdivision (e)(1)(A)
36 of this section is submitted to the Legislative Council for review.

1 (2) In determining whether a request for qualifications under
2 this subsection is the most suitable method of procurement, the director
3 shall consider, based on information submitted by the requesting state
4 agency:

5 (A) Why the request for qualifications is the most
6 suitable method of procurement;

7 (B) Why cost should not be considered in the procurement;
8 and

9 (C) How the cost of the contract will be controlled if
10 cost is not a factor in the procurement.

11
12 SECTION 15. DO NOT CODIFY. Rules.

13 (a) When adopting the initial rules required under this act, the State
14 Procurement Director shall file the final rules with the Secretary of State
15 for adoption under § 25-15-204(f):

16 (1) On or before January 1, 2021; or

17 (2) If approval under § 10-3-309 has not occurred by January 1,
18 2021, as soon as practicable after approval under § 10-3-309.

19 (b) The director shall file the proposed rules with the Legislative
20 Council under § 10-3-309(c) sufficiently in advance of January 1, 2021, so
21 that the Legislative Council may consider the rules for approval before
22 January 1, 2021.

Bill: JLL064

This bill revises the information that comes before the Legislative Council and Review Subcommittee, including a modification and standardization of what contracts come for review. Specifically, the bill:

Summary of Reform	Location in JLL064	Old Bill	Location in Ikaso Report
Sets a standard review threshold for all service contracts (over \$100K), eliminating a distinction for different types of service contracts	pg. 4 line 20	JLL008	Rec. XII-1 pg. 85
Removes from review contract extensions of previously reviewed contracts where there is no material modification	pg. 4-5 lines 29-14	JLL008	Rec. XII-1 pg. 85
Corrects definitions of Commodities and Services to mitigate risk of contract classification for the improper purpose of avoiding review	pg. 1 lines 33-36 pg. 2 lines 1-36 pg. 3 lines 1-6	JLL008	Rec. V-2 pg. 35
Requires each contract that is sent to review and has a total contract amount over \$350,000 to contain a coversheet or relevant information	pg. 5 lines 15-32	JLL008	Rec. XII-2 pg. 86
Standardizes the service contracts sent to the Legislative Council in a roster (report), makes that report due before contract is executed so that members of the Review Subcommittee can “call” report contracts to be reviewed - Standardizes the contracts on this report as those valued over \$25K and up to \$100K. Requires a cover sheet for the report pre-identifying certain contracts as potential review candidates based on pre-established, objective criteria	pg. 7 lines 1-32	JLL008	Rec. XII-3 pg. 87
Fixes constitutional issue with vehicle lease review program (formerly approval program) Creates exception for certain leases which are federally required, designates the stacking of short-term rentals to avoid a lease a violation of Title 19, Chapter 11	pg. 10 lines 12-36 pg. 11 lines 1-19	JLL008	n/a

Repeals obsolete recycled paper report	pg. 3 lines 20-36 pg. 4 lines 1-9	JLL0014	Rec. XIV-3 pg. 99
Puts a duty on vendors to furnish required information for cooperative purchasing reports	pg. 3 lines 16-18	JLL014	Rec. XIV-2 pg. 99
Track and report on protests and their resolution	pg. 7 lines 34-36 pg. 8 lines 1-3	JLL014	Rec. XIV-4 pg. 99
Track and report on negotiations and their outcomes	pg. 8 line 4	JLL014	Rec. XIV-5 pg. 99
Track and report on contract life cycle information	pg. 8 lines 5-10	JLL014	Rec. XIV-6 Pg. 99

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

DRAFT JLL/JLL
HOUSE BILL

By: Representative <NA>

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES CONTRACTS; TO AMEND THE LAWS CONCERNING STATE AGENCY PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE REVIEW AND REPORTING REQUIREMENTS FOR SERVICE CONTRACTS; TO AMEND THE LAW CONCERNING VEHICLE LEASES BY STATE AGENCIES; AND TO PROVIDE FOR THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY STATE AGENCIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 19-11-203(4), concerning the definitions to be used under the Arkansas Procurement Law, is amended to read as follows:

(4)(A) "Commodities" means all personal property, including, ~~but not limited to, equipment, printing, stationery, supplies, and insurance, but~~

DRAFT

1 ~~excluding leases without limitation:~~

2 (i) Goods, as defined in § 4-2-105;

3 (ii) Leases, as defined in § 4-2A-103; and

4 (iii) Insurance.

5 (B) "Commodities" does not include:

6 (i) A lease on real property, ~~real property~~, or a
 7 permanent interest in real property, ~~exempt~~;

8 (ii) ~~Exempt~~ commodities and services, ~~and capital~~;

9 and

10 (iii) Capital improvements;

11
 12 SECTION 2. Arkansas Code § 19-11-203(14)(AA), concerning the
 13 definition of "exempt commodities and services" under the Arkansas
 14 Procurement Law, is amended to read as follows:

15 (AA) The following commodities and services relating to
 16 proprietary software after the initial procurement:

17 (i) Technical support ~~incidental to supporting the~~
 18 ~~continuous operation of proprietary software~~;

19 (ii) Renewals;

20 (iii) Additional copies; and

21 (iv) License upgrades;

22
 23 SECTION 3. Arkansas Code § 19-11-203(27), concerning the definitions
 24 to be used under the Arkansas Procurement Law, is amended to read as follows:

25 (27)(A) "Services" means the furnishing of labor, time, or
 26 effort by a contractor, ~~not involving the delivery of a specific end product~~
 27 ~~other than reports which are merely incidental to the required performance~~
 28 that does not produce tangible commodities.

29 (B) "Services" includes without limitation:

30 (i) Consulting services;

31 (ii) Personal services;

32 (iii) Professional services;

33 (iv) Technical and general services; and

34 (v) The furnishing of labor, time, or effort by a
 35 contractor for the generation, customization, configuration, or development
 36 of software and other intangible property other than technical support

incidental to the procurement of proprietary software.

(C) "Services" shall does not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of the Building Authority Division of the Department of Finance and Administration or higher education;

SECTION 4. Arkansas Code § 19-11-217(c), concerning the powers and duties of the State Procurement Director, is amended to add an additional subdivision to read as follows:

(9) Shall create a roster of expiring contracts entered into by a state agency for which there is no new requisition.

SECTION 5. Arkansas Code § 19-11-249, concerning cooperative purchasing, is amended to add an additional subsection to read as follows:

(c) A contractor shall cooperate with the director in providing information necessary for the director to complete the report required under subsection (b) of this section.

SECTION 6. Arkansas Code § 19-11-260 is repealed.

~~19-11-260. Recycled paper products — Preference.~~

~~(a) The State Procurement Director shall issue a recycled paper content specification for each type of paper product.~~

~~(b)(1) The goal of state agencies for the percentage of paper products to be purchased that utilize recycled paper shall be:~~

~~(A) Ten percent (10%) in fiscal year 1991;~~

~~(B) Twenty five percent (25%) in fiscal year 1992;~~

~~(C) Forty five percent (45%) in fiscal year 1993; and~~

~~(D) Sixty percent (60%) by calendar year 2000.~~

~~(2)(A) The Office of State Procurement shall prepare a semiannual report of the state's progress in meeting the goals for the purchase of paper products with recycled content.~~

~~(B) The report shall be made to the Governor.~~

~~(c)(1) Whenever a bid is required, a preference for recycled paper products shall be exercised if the use of the products is technically feasible and price is competitive.~~

~~(2)(A) For the purpose of procurement of recycled paper products, "competitive" means the bid price does not exceed the lowest qualified bid of a vendor offering paper products manufactured or produced from virgin material by ten percent (10%).~~

~~(B) An additional one percent (1%) preference shall be allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas.~~

~~(3) A bidder receiving a preference under this section shall not be entitled to an additional preference under § 19-11-259.~~

SECTION 7. Arkansas Code § 19-11-265 is amended to read as follows:
19-11-265. Submission of contracts required.

(a)(1) A Except for critical emergency procurements and as otherwise provided in this section, a contract requiring the service services of one (1) or more ~~individuals for regular full-time or part-time weekly work~~ persons shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the contract if the total initial contract amount or the total projected contract amount, including any amendments or possible extensions, is at least one hundred thousand dollars (\$100,000).

(2) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with its review as to the propriety of the contract within thirty (30) days after receipt of the proposed contract.

(3) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Office of State Procurement has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

(4)(A)(i) A contract that does not have a material change upon renewal or extension shall be included in the monthly report required under § 19-11-273 instead of being submitted to the Legislative Council or the Joint Budget Committee for review under this subsection.

(ii) As used in this subdivision (a)(4), "material change" includes without limitation:

(a) An increase in the contract amount;

(b) An increase in the total projected

1 contract amount;

2 (c) A change in any of the essential terms of
3 the contract;

4 (d) A change in any performance-based
5 standards stated in the contract;

6 (e) The imposition of financial consequences
7 as the result of a failure to satisfy performance-based standards under § 19-
8 11-267 during the year preceding the renewal or extension of the contract;
9 and

10 (f) The submission of a vendor performance
11 report during the year preceding the renewal or extension of the contract.

12 (B) However, a state agency may elect to submit a contract
13 for review under this subsection if the state agency is uncertain whether the
14 contract has a material change.

15 (5) A contract that is submitted for review under this
16 subsection and that has a total projected contract amount of at least three
17 hundred fifty thousand dollars (\$350,000) shall have a cover sheet that
18 provides the following information:

19 (A) A description of the services being procured and their
20 criticality to the state;

21 (B) A description of the procurement process followed,
22 including without limitation the method used for the procurement;

23 (C) A summary of the scoring from the procurement;

24 (D) The vendors that participated in the procurement;

25 (E) The outcome of any protests;

26 (F) For procurements using the competitive sealed proposal
27 method;

28 (i) The qualifications of the evaluators; and

29 (ii) Whether any private evaluators were engaged;

30 and

31 (G) Any other information required by the Legislative
32 Council or the Joint Budget Committee.

33 (b) The Legislative Council or the Joint Budget Committee may review
34 or exempt from review any contract or group of contracts contemplated by this
35 section.

36 ~~(c)(1) In addition to the contracts presented to the Legislative~~

~~Council or to the Joint Budget Committee under subsection (a) of this section, the director shall compile a monthly report of all executed contracts requiring the service of one (1) or more individuals for regular full-time or part-time weekly work if the total initial contract amount or the total projected contract amount, including any amendments or possible extensions, is at least twenty five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000).~~

~~(2) The monthly report required under this subsection shall include without limitation:~~

~~(A) The name of the contractor;~~

~~(B) The state agency name;~~

~~(C) The contact information for the contractor or state agency;~~

~~(D) The total initial cost of the contract, the cost of any commodities included in the contract, and the cost of the services;~~

~~(E) The type of commodities and services contracted;~~

~~(F) The quantity of commodities and services contracted;~~

~~(G) The procurement method;~~

~~(H) The total projected contract amount that includes any amendments and all available extensions; and~~

~~(I) Any other information requested by the Legislative Council or the Joint Budget Committee.~~

~~(3) The director shall remit the report required under this subsection each month to the Legislative Council or to the Joint Budget Committee as directed by the Legislative Council.~~

~~(d)~~ (c) A contract that is procured by a state agency with that has a state agency procurement official or procurement authority under a delegation order is subject to the ~~reporting and~~ presentment requirements under this section.

~~(e)~~ (d) It is a violation of state procurement laws, Arkansas Code Title 19, Chapter 11, for a state agency official to procure services in an incremental or split purchase arrangement to avoid the ~~reporting or~~ presentment requirements of this section.

SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 2, is amended to add additional sections to read as follows:

1 19-11-273. Reporting requirements.

2 (a) The State Procurement Director shall compile a monthly report of
3 all executed contracts for services that have a total initial contract amount
4 or a total projected contract amount, including any amendments or possible
5 extensions, of at least twenty-five thousand dollars (\$25,000) but less than
6 one hundred thousand dollars (\$100,000).

7 (b) A contract that is procured by a state agency that has a state
8 agency procurement official or procurement authority under a delegation order
9 is subject to the reporting requirements under this section.

10 (c) The State Procurement Director shall adopt rules to:

11 (1) Prescribe a cover sheet for the report required under this
12 section that sorts and identifies contracts within the report that may be
13 candidates for review;

14 (2) Create instructions for completing the cover sheet
15 prescribed under subdivision (c)(1) of this section; and

16 (3) Provide for the identification of any contracts included in
17 the report that may need to be reviewed under § 19-11-265.

18 (d)(1) A primary member of the Legislative Council or the Review
19 Subcommittee of the Legislative Council or, if the General Assembly is in
20 session, the Joint Budget Committee or the PEER Review Subcommittee of the
21 Joint Budget Committee, may identify a contract included in a report under
22 this section that the primary member wants the Legislative Council or the
23 Review Subcommittee of the Legislative Council or, if the General Assembly is
24 in session, the Joint Budget Committee or the PEER Review Subcommittee of the
25 Joint Budget Committee, to review.

26 (2) A primary member shall identify a reported contract for
27 review under this section at least twenty-four (24) hours before the meeting
28 at which the contract is to be reviewed.

29 (e) It is a violation of state procurement laws, Arkansas Code Title
30 19, Chapter 11, for a state agency official to procure services in an
31 incremental or split purchase arrangement to avoid the reporting requirements
32 of this section.

33
34 19-11-274. Tracking requirements.

35 (a) The State Procurement Director, each agency procurement official,
36 and any state agency with procurement authority under a delegation order

1 shall track the following for the procurements they conduct and the contracts
 2 they execute:

3 (1) Each protest received and the resolution of the protest;
 4 (2) The outcome of any negotiations under this chapter; and
 5 (3) The anticipated procurement needs of the state agency based
 6 on the contracts that:

7 (A) Are set to expire during the next twelve (12) months;
 8 and

9 (B) Will require a new solicitation in the next twelve
 10 (12) months.

11 (b) Each agency procurement official and each state agency with
 12 procurement authority under a delegation order shall report the information
 13 obtained under subsection (a) of this section to the Office of State
 14 Procurement.

15
 16 SECTION 9. Arkansas Code § 19-11-1006 is repealed as duplicative.

17 ~~19-11-1006. Submission of contracts required.~~

18 ~~(a)(1) A professional services contract or consultant services~~
 19 ~~contract shall be presented to the Legislative Council or, if the General~~
 20 ~~Assembly is in session, to the Joint Budget Committee, before the execution~~
 21 ~~of the professional services contract or consultant services contract if the~~
 22 ~~total initial amount or the total projected amount, including any amendments~~
 23 ~~or possible extensions, of the professional services contract or consultant~~
 24 ~~services contract is at least fifty thousand dollars (\$50,000).~~

25 ~~(2) The Legislative Council or the Joint Budget Committee shall~~
 26 ~~provide the State Procurement Director with its review as to the propriety of~~
 27 ~~the professional services contract or consultant services contract within~~
 28 ~~thirty (30) days after receipt of the proposed professional services contract~~
 29 ~~or consultant services contract.~~

30 ~~(3) The professional services contract or consultant services~~
 31 ~~contract shall not be submitted to the Legislative Council or to the Joint~~
 32 ~~Budget Committee until the Department of Finance and Administration has~~
 33 ~~reviewed the professional services contract or consultant services contract~~
 34 ~~and provided the Legislative Council or the Joint Budget Committee with a~~
 35 ~~recommendation regarding the legality of the professional services contract~~
 36 ~~or consultant services contract.~~

~~(b) The Legislative Council or the Joint Budget Committee may review or exempt from review any professional services contract or consultant services contract or group of professional services contracts or consultant services contracts contemplated by this subchapter.~~

~~(c)(1) Funds from grants and contracts to a state institution of higher education may be used for the purpose of subcontracting with institutions under the performance conditions of the grants or contracts.~~

~~(2) Subcontracts for research that are derived from grants and contracts to a state institution of higher education require the prior approval of the director and a review by the Legislative Council or by the Joint Budget Committee.~~

~~(d)(1) In addition to the professional services contracts and consultant services contracts presented to the Legislative Council or to the Joint Budget Committee under subsection (a) of this section, the director shall compile a monthly report of all executed professional services contracts and consultant services contracts if the total initial amount or the total projected amount, including any amendments or possible extensions, of the professional services contract or consultant services contract is at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000).~~

~~(2) The monthly report required under this subsection shall include without limitation:~~

~~(A) The name of the contractor;~~

~~(B) The state agency name;~~

~~(C) The contact information for the contractor or state agency;~~

~~(D) The total initial cost of the professional services contract or consultant services contract;~~

~~(E) The type of services contracted;~~

~~(F) The quantity of services contracted;~~

~~(G) The procurement method;~~

~~(H) The total projected amount of the professional services contract or consultant services contract that includes any amendments and all available extensions; and~~

~~(I) Any other information requested by the Legislative Council or the Joint Budget Committee.~~

~~(3) The director shall remit the report each month to the Legislative Council or to the Joint Budget Committee as directed by the Legislative Council.~~

~~(e) A contract that is procured by a state agency with a state agency procurement official is subject to the reporting and presentment requirements under this section.~~

~~(f) It is a violation of state procurement laws, Arkansas Code Title 19, Chapter 11, for a state agency official to procure services in an incremental or split purchase arrangement to avoid the reporting or presentment requirements of this section.~~

SECTION 10. Arkansas Code § 22-8-102 is amended to read as follows:

22-8-102. Leasing and renting of vehicles by state agencies –
Definitions.

(a) ~~For purposes of~~ As used in this section:

(1) "Lease" means obtaining the use of a motor vehicle from any source for a monetary fee, for a period of thirty-one (31) days or more; ~~and~~

(2) "Rental" means obtaining the use of a motor vehicle from any source for a monetary fee for a period of thirty (30) days or less; and

(3) "State agency" means the same as defined in § 19-11-203.

(b)(1) Before any state agency ~~shall lease~~ leases any motor vehicle or ~~renew~~ renews any existing lease for a motor vehicle, the state agency shall submit a written request to the State Procurement Director identifying the motor vehicles sought to be leased by the state agency and all facts and circumstances the director may request to enable him or her to determine the economics, need, and feasibility of leasing the motor vehicle.

(2) Upon receipt, the director shall review the request to lease the motor vehicle, and if he or she determines that the lease is in the best interest of the State of Arkansas and that the state agency has adequate funds to pay the lease, he or she may approve the request but only if ~~he or she has first received the approval of~~ the proposed lease has been reviewed by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

~~(3) After receiving the approval of~~ If, after the Legislative Council or the Joint Budget Committee has reviewed the proposed lease of the motor vehicle, the director approves the proposed lease of the motor vehicle,

1 the director shall stamp his or her approval on the request and return it to
 2 the state agency, which may then proceed to enter into the lease as proposed
 3 and approved by the director.

4 ~~(4) In emergency situations, the director may approve a~~
 5 ~~temporary lease of a motor vehicle, not to exceed thirty (30) days, but only~~
 6 ~~if he or she has sought the advice of the cochaairs of the Legislative Council~~
 7 ~~and scheduled the temporary lease of a motor vehicle for consideration at the~~
 8 ~~next meeting of the Legislative Council.~~

9 (c) If the director disapproves a proposed lease of a motor vehicle,
 10 he or she shall stamp his or her disapproval on the request and return it to
 11 the state agency, and it shall be unlawful for the state agency to proceed to
 12 lease the motor vehicle.

13 (d) If federal assistance requirements or federal contract
 14 requirements conflict with this section, this section shall not prevent a
 15 state agency from complying with the terms and conditions of the federal
 16 assistance requirements or the federal contract requirements.

17 (e) It is a violation of state procurement laws, Arkansas Code Title
 18 19, Chapter 11, for a state agency official to conduct multiple rentals of a
 19 motor vehicle to avoid the approval and review requirements of this section.

20
 21 SECTION 11. DO NOT CODIFY. Rules.

22 (a) When adopting the initial rules required under this act, the State
 23 Procurement Director shall file the final rules with the Secretary of State
 24 for adoption under § 25-15-204(f):

25 (1) On or before January 1, 2020; or

26 (2) If approval under § 10-3-309 has not occurred by January 1,
 27 2020, as soon as practicable after approval under § 10-3-309.

28 (b) The director shall file the proposed rules with the Legislative
 29 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so
 30 that the Legislative Council may consider the rules for approval before
 31 January 1, 2020.

Bill: JLL065

This bill optimizes the contract development process, including contract clauses. It also creates a contract management and vendor performance reporting framework driven by contract clauses. Specifically, the bill:

Summary of Reform	Location in JLL065	Old Bill	Location in Ikaso Report
Expands the maximum allowable initial contract term to four years (the total allowable length remains unchanged)	pg. 2 lines 26-36 Pg. 3 lines 1-10	JLL007	Rec. XI-4 pg. 76
Tasks OSP with creating a program whereby certain contracts are reviewed by attorneys of the State	pg. 2 lines 2-24	JLL007	Rec. XI-2 pg. 76
Makes vendors responsible that, if it signs a contract with the State, that the contract includes any mandatory clauses and was reviewed by the Legislative Council if required	pg. 5 lines 18-33	JLL007	Rec. XI-1 pg. 75
Requires large contracts (over \$1M a year, or \$7M total) to contain objective and specifically tailored performance metrics. Contracts may also include financial consequences for failing to adhere to these metrics	pg. 3 lines 14-36 Pg. 4 lines 1-12	JLL013	Rec. XIII-1 pg. 94
Requires the State to monitor vendor performance in adherence with these metrics and report upon vendors who fail these metrics (replacing the previous vendor performance reporting system)	pg. 4 lines 19-36 pg. 5 lines 1-14 pg. 5 lines 35-36 pg. 6 lines 1-32	JLL013	Rec. XIII-2 pg. 94
Requires OSP to measure and track the contract routing process	pg. 1 lines 32-34	JLL007	Rec. XI-3 pg. 76

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND THE LAW CONCERNING THE CONTENT, TERM, AND
10 REVIEW OF CONTRACTS PROCURED BY THE STATE; TO PROVIDE
11 CERTAIN COMPLIANCE REQUIREMENTS FOR PERSONS
12 CONTRACTING WITH THE STATE; TO REQUIRE AND REGULATE
13 THE USE OF PERFORMANCE-BASED CONTRACTS; TO AMEND THE
14 REQUIREMENT CONCERNING VENDOR PERFORMANCE REPORTS; TO
15 ELIMINATE DUPLICATIVE PROVISIONS IN THE LAW; AND FOR
16 OTHER PURPOSES.

Subtitle

17
18
19
20 TO AMEND THE LAW CONCERNING THE CONTENT,
21 TERM, AND REVIEW OF CONTRACTS PROCURED BY
22 THE STATE; TO REQUIRE THE USE OF
23 PERFORMANCE-BASED CONTRACTS; AND TO AMEND
24 VENDOR PERFORMANCE REPORT REQUIREMENTS.
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and
30 duties of the State Procurement Director, is amended to add an additional
31 subdivision to read as follows:

32 (9) Shall analyze information captured in state systems to
33 measure and track the contract routing process to identify stakeholders that
34 may be contributing to the elongation of the contracting process; and

35 (10) Ensure that vendor performance reports are available to and
36 searchable by state agencies.

1
2 SECTION 2. Arkansas Code § 19-11-219 is amended to read as follows:

3 19-11-219. Legal counsel – Contract review.

4 (a) The Attorney General shall act as counsel for the State
5 Procurement Director in preparation of necessary contracts and in all legal
6 matters.

7 (b)(1) A contract that the director has designated as requiring review
8 shall be reviewed by a person employed as an attorney with a state agency.

9 (2) The review required under this subsection shall occur before
10 the contract is executed.

11 (c) The director shall adopt rules to implement this section,
12 including without limitation rules to:

13 (1) Designate contracts that require review under this section,
14 which may include without limitation contracts that:

15 (A) Exceed a certain dollar amount;

16 (B) Modify the standard state terms and conditions; and

17 (C) Are based on other stated criteria; and

18 (2) Identify the requirements for the attorneys who may review
19 contracts under this section, including without limitation:

20 (A) An attorney employed with the Office of State
21 Procurement, an institution of higher education, or the Office of the
22 Attorney General; and

23 (B) Any other attorney employed by the state and licensed
24 to practice law in Arkansas.

25
26 SECTION 3. Arkansas Code § 19-11-238(c), concerning multiyear
27 contracts, is amended to read as follows:

28 (c) Termination Due to Unavailability of Funds in Succeeding Years.

29 (1) Original terms of such multiyear contracts shall terminate
30 on the last day of the current biennium, and any renewals by the state based
31 upon continuing appropriation shall not exceed the next succeeding biennium
32 not exceed four (4) years.

33 (2) When funds are not appropriated or otherwise made available
34 to support continuation of performance in a subsequent year of a multi-year a
35 multiyear contract, the contract for such subsequent year shall be terminated
36 and the contractor may be reimbursed for the reasonable value of any

1 nonrecurring costs incurred but not amortized in the price of the commodities
2 or services delivered under the contract.

3 (3) The cost of termination under subdivision (c)(2) of this
4 section may be paid from:

5 ~~(1)~~ (A) Appropriations currently available for performance
6 of the contract;

7 ~~(2)~~ (B) Appropriations currently available for procurement
8 of similar commodities or services and not otherwise obligated; or

9 ~~(3)~~ (C) Appropriations made specifically for the payment
10 of such termination costs.

11
12 SECTION 4. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to
13 read as follows:

14 19-11-267. Development and use of performance-based contracts –
15 Findings.

16 (a) The General Assembly finds that:

17 (1) Performance-based contracts provide an effective and
18 efficient method of monitoring and evaluating the overall quality of services
19 provided; and

20 (2) The practice of including benchmark objectives that the
21 provider must attain at specific intervals during the term of the contract is
22 an essential requirement for measuring performance.

23 (b)~~(1)~~ A state agency, board, commission, or institution of higher
24 education that enters into a contract under this ~~subchapter~~ chapter to
25 procure services that has a contract amount of at least one million dollars
26 (\$1,000,000) in a single contract year or a total projected contract amount,
27 including any amendments to or possible extensions of the contract, of at
28 least seven million dollars (\$7,000,000) shall use performance-based
29 standards in the contract that are specifically tailored to the services
30 being provided under the contract.

31 (2) The performance-based standards used under this subsection
32 shall include performance measures based on objective factors.

33 (3) A state agency, board, commission, or institution of higher
34 education is encouraged to use performance-based standards that are based on
35 objective factors in any other contract in which it would serve the best
36 interest of the state.

1 (c)(1) A state agency, board, commission, or institution of higher
2 education that enters into a contract with performance-based standards:

3 (1)(A) Shall monitor the vendor's performance and adherence to
4 the performance-based standards in the contract.

5 (B) For state contracts, the Office of State Procurement
6 shall be the state agency that monitors each vendor's performance under this
7 subdivision (c)(1); and

8 (2) May impose financial consequences, as identified in the
9 contract, on a vendor that is party to a contract with performance-based
10 standards for failure to satisfy the performance-based standards, including
11 without limitation withholding payment or pursuing liquidated damages to the
12 extent allowed by law.

13 (d)(1) The State Procurement Director shall promulgate rules necessary
14 to implement and administer this section.

15 (2) Rules promulgated under this subsection are subject to
16 approval by the Legislative Council or, if the General Assembly is in
17 session, the Joint Budget Committee.

18
19 19-11-268. Vendor performance reporting.

20 (a)(1) A state agency shall report a vendor's performance under a
21 contract executed under this ~~subchapter that has a total initial contract~~
22 ~~amount or total projected contract amount, including any amendments to or~~
23 ~~possible extensions of the contract, of at least twenty five thousand dollars~~
24 ~~(\$25,000) chapter if the vendor fails to satisfy the performance-based~~
25 standards stated in the contract in a manner that represents a material
26 deviation.

27 (2) A state agency shall use ~~the~~ a form prescribed by the State
28 Procurement Director and approved by the Legislative Council or, if the
29 General Assembly is in session, the Joint Budget Committee, to report a
30 vendor's performance under this section.

31 (b) The report required under this section shall be:

32 (1) ~~Completed and submitted;~~

33 ~~(A) At least one (1) time every three (3) months for the~~
34 ~~entire term of the contract; and~~

35 ~~(B) At the end of the contract;~~

36 ~~(2)~~ Filed with the Office of State Procurement and maintained

1 for a minimum of three (3) years from the termination of the relevant
2 contract, including any extensions and amendments; ~~and~~

3 ~~(3)~~ (2) Signed by the director of the state agency or his or her
4 designee; and

5 (3) Filed monthly until the vendor has performed satisfactorily
6 under the contract for a period of at least ninety (90) consecutive days.

7 (c) A state agency may report a vendor's performance in the manner
8 prescribed under this section for any contract that would not require
9 reporting of a vendor's performance under this section if the state agency
10 encounters an issue with the vendor's performance of a contract.

11 (d) A state agency may use a vendor performance report submitted under
12 this section to evaluate an offeror to the extent that the past performance
13 of an offeror may be considered under the law and the rules adopted by the
14 office.

15
16 SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
17 amended to add an additional section to read as follows:

18 19-11-273. Compliance.

19 (a) A contractor shall ensure, in cooperation with a state agency,
20 that the contract between the contractor and the state agency adheres to the
21 requirements of this chapter, including without limitation the inclusion of
22 any mandatory language and the submission of the contract for any required
23 review.

24 (b)(1) After any required review of a contract has been completed, the
25 signature of the contractor shall be placed on the final contract between the
26 contractor and the state agency.

27 (2) The signature required under subdivision (b)(1) of this
28 section serves as an acknowledgement that the contractor is:

29 (A) Equally responsible with the state agency for adhering
30 to the requirements of this chapter related to the content and review of the
31 contract; and

32 (B) Subject to the relevant ethical provisions of § 19-11-
33 701 et seq.

34
35 SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.

36 ~~19-11-1010. Development and use of performance-based contracts~~

1 Findings.

2 ~~(a) Performance based contracts provide an effective, efficient method~~
3 ~~of monitoring and evaluating the overall quality of services provided.~~

4 ~~(b) The practice of including benchmark objectives that the provider~~
5 ~~must attain at specific intervals during the term of the contract is an~~
6 ~~essential requirement for measuring performance.~~

7 ~~(c) Under regulations promulgated by the State Procurement Director,~~
8 ~~all state agencies, boards, commissions, and institutions of higher education~~
9 ~~shall use performance based standards in professional and consultant service~~
10 ~~contracts.~~

11
12 SECTION 7. Arkansas Code § 19-11-1013 is repealed as duplicative.

13 ~~19-11-1013. Vendor performance reporting.~~

14 ~~(a)(1) A state agency shall report a vendor's performance under a~~
15 ~~contract issued under this subchapter that has a total initial contract~~
16 ~~amount or total projected contract amount, including any amendments to or~~
17 ~~possible extensions of the contract, of at least twenty-five thousand dollars~~
18 ~~(\$25,000) for contracts.~~

19 ~~(2) A state agency shall use the form prescribed by the State~~
20 ~~Procurement Director and approved by the Legislative Council or, if the~~
21 ~~General Assembly is in session, the Joint Budget Committee, to report a~~
22 ~~vendor's performance under this section.~~

23 ~~(b) The report required under this section shall be:~~

24 ~~(1) Completed and submitted:~~

25 ~~(A) At least one (1) time every three (3) months for the~~
26 ~~entire term of the contract; and~~

27 ~~(B) At the end of the contract;~~

28 ~~(2) Filed with the Office of State Procurement and maintained~~
29 ~~for a minimum of three (3) years from the termination of the relevant~~
30 ~~contract, including any extensions and amendments; and~~

31 ~~(3) Signed by the director of the state agency or his or her~~
32 ~~designee.~~

33
34 SECTION 8. DO NOT CODIFY. Rules.

35 (a) When adopting the initial rules required under this act, the State
36 Procurement Director shall file the final rules with the Secretary of State

1 for adoption under § 25-15-204(f):

2 (1) On or before January 1, 2020; or

3 (2) If approval under § 10-3-309 has not occurred by January 1,
4 2020, as soon as practicable after approval under § 10-3-309.

5 (b) The director shall file the proposed rules with the Legislative
6 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so
7 that the Legislative Council may consider the rules for approval before
8 January 1, 2020.

Bill: JLL066

This bill clarifies the bounds of discretionary authority to conduct procurement. This bill also optimizes the protest process. Specifically, this bill:

Summary of Reform	Location in JLL066	Old Bill	Location in Ikaso Report
Adds structure to OSP's current power to delegate procurement authority to other State agencies. Specifically, these delegation orders now must be for finite time periods, be publicly posted, be recorded, and be linked to procurement certification at the agency	pg. 2 lines 1-24	JLL003	Rec. IV-1 Rec. IV-2 Rec. IV-3 pg. 30-31
Clarifies who at the State may respond to a vendor's protest when authority has been delegated	pg. 3 lines 6-23	JLL004	Rec. X-6 pg. 69
Makes an aggrieved vendor's award protests due fourteen days after award posting	pg. 3 lines 1-3	JLL004	Rec. X-1 pg. 69
Sets allowable grounds for award protests (e.g. scoring error, improper conduct)	pg. 3 lines 24-36 pg. 4 lines 1-6	JLL004	Rec. X-2 pg. 69
Allows winning vendors harmed by an improper protest from a losing vendor to sue the protesting vendor for tortious interference with business expectancy	pg. 4 lines 22-26	JLL004	n/a

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND ARKANSAS PROCUREMENT LAWS CONCERNING THE
10 DELEGATION AUTHORITY OF THE STATE PROCUREMENT
11 DIRECTOR; TO AMEND THE LAW CONCERNING PROTESTS OF
12 SOLICITATIONS AND AWARDS UNDER THE ARKANSAS
13 PROCUREMENT LAW; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO AMEND THE DELEGATION AUTHORITY OF THE
17 STATE PROCUREMENT DIRECTOR; AND TO AMEND
18 THE LAW CONCERNING PROTESTS OF
19 SOLICITATIONS AND AWARDS UNDER THE
20 ARKANSAS PROCUREMENT LAW.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 19-11-218 is amended to read as follows:

27 19-11-218. Assistants and designees – Written delegation orders.

28 (a) Subject to the provisions of the Uniform Classification and
29 Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

30 (1) Employ and supervise such assistants and other persons as
31 may be necessary;

32 (2) Fix their compensation as provided by law; and

33 (3) (A) Delegate authority to ~~such~~ designees or to ~~any~~ a state
34 agency ~~as the director may deem appropriate by issuing a written delegation~~
35 order, within the limitations of state law and the state procurement
36 regulations.

1 (B) A written delegation order issued under this section
2 shall:

3 (i) Include an expiration date for the written
4 delegation order;

5 (ii) Be publicly posted on the official website of
6 the Office of State Procurement;

7 (iii) Remain in effect under the original terms
8 unless the terms of the written delegation order are modified or rescinded in
9 writing by the director;

10 (iv) Not be issued for a term that exceeds two (2)
11 years; and

12 (v) Be narrowly tailored if the written delegation
13 order is based on the type of commodity or service being procured.

14 (C) The director shall maintain records of each written
15 delegation order issued under this section.

16 (D) A person who is to be given authority under a written
17 delegation order issued under this section shall complete training on state
18 procurement laws, as provided for in this subchapter and in the rules adopted
19 by the director, before the written delegation order is issued.

20 (b) The director shall adopt rules to:

21 (1) Implement the requirements for written delegation orders
22 under this section; and

23 (2) Outline the procurement training required under this
24 section.

25
26 SECTION 2. Arkansas Code § 19-11-244(a), concerning the resolution of
27 protested solicitations and awards under the Arkansas Procurement Law, is
28 amended to read as follows:

29 (a)(1) ~~Any~~ An actual or prospective bidder, offeror, or contractor who
30 is aggrieved in connection with the solicitation of a contract may protest by
31 presenting a written notice at least seventy-two (72) hours before the filing
32 deadline for the solicitation response ~~to the State Procurement Director or~~
33 ~~the head of a procurement agency.~~

34 (2) ~~Any~~ An actual bidder, offeror, or contractor who is
35 aggrieved in connection with the award of a contract may protest ~~to the~~

36 ~~(A) Director; or~~

1 (B) Head of a procurement agency by submitting a
2 written protest within fourteen (14) calendar days after the award or the
3 notice of anticipation to award has been posted.

4 (3)(A) The protest shall be submitted in writing within fourteen
5 (14) calendar days after the aggrieved person knows or should have known of
6 the facts giving rise to the grievance. A protest submitted under this
7 section shall be submitted to the:

8 (i) State Procurement Director, if the Office of
9 State Procurement issued the solicitation; or

10 (ii) Head of the relevant procurement agency, if a
11 procurement agency issued the solicitation.

12 (B)(i) The head of the relevant procurement agency may
13 request that the director resolve a protest submitted under subdivision
14 (a)(3)(A)(ii) of this section.

15 (ii) An actual bidder, offeror, or contractor that
16 submits a protest under this subsection shall not submit a protest to the
17 director if a procurement agency issued the relevant solicitation.

18 (C) A protest resolved by the head of the relevant
19 procurement agency under this section:

20 (i) Has the same effect and finality as a protest
21 resolved by the director; and

22 (ii) Is not subject to an appeal made to the
23 director.

24 (4) A protest submitted by an aggrieved person under this
25 section shall:

26 (A) Be limited to one (1) or more of the following
27 grounds:

28 (i) The award of the contract exceeded the authority
29 of the director or the procurement agency;

30 (ii) The procurement process violated a
31 constitutional, statutory, or regulatory provision;

32 (iii) The director or the procurement agency failed
33 to adhere to the rules of the procurement as stated in the solicitation, and
34 the failure to adhere to the rules of the procurement materially affected the
35 contract award;

36 (iv) The procurement process involved responses that

1 were collusive, submitted in bad faith, or not arrived at independently
2 through open competition; or

3 (v) The award of the contract resulted from a
4 technical or mathematical error made during the evaluation process; and

5 (B) State facts that substantiate each ground on which the
6 protest is based.

7
8 SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of
9 protested solicitations and awards under the Arkansas Procurement Law, is
10 amended to read as follows:

11 (f) In the event of a timely protest under subsection (a) of this
12 section, the state shall not ~~proceed further with the solicitation or with~~
13 ~~the award of the contract until~~ execute a contract that is the result of the
14 protested solicitation or award unless the director or the head of ~~a~~ the
15 relevant procurement agency makes a written determination that the ~~award~~
16 execution of the contract without delay is necessary to protect substantial
17 interests of the state.

18
19 SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of
20 protested solicitations and awards under the Arkansas Procurement Law, is
21 amended to add an additional subsection to read as follows:

22 (h) An actual or prospective bidder, offeror, or contractor who is
23 aggrieved by a protest submitted under this section that was without merit or
24 intended purely to delay the award of a contract may bring a private cause of
25 action for tortious interference with a business expectancy against the
26 person or entity that submitted the protest.

27
28 SECTION 5. DO NOT CODIFY. Rules.

29 (a) When adopting the initial rules required under this act, the State
30 Procurement Director shall file the final rules with the Secretary of State
31 for adoption under § 25-15-204(f):

32 (1) On or before January 1, 2020; or

33 (2) If approval under § 10-3-309 has not occurred by January 1,
34 2020, as soon as practicable after approval under § 10-3-309.

35 (b) The director shall file the proposed rules with the Legislative
36 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so

1 that the Legislative Council may consider the rules for approval before
2 January 1, 2020.

Bill: JLL067

This bill improves the way the State leverages its volume to obtain better deals. It also seeks to ensure that cooperative purchasing (leveraging procurements conducted outside of the State) are in the State's best interests. Specifically, this bill:

Summary of Reform	Location in JLL067	Old Bill	Location in Ikaso Report
Empowers OSP to make participation in Statewide contracts mandatory for State agencies (with an exception application process) and charges the OSP director with finding new Statewide contract opportunities	pg. 1 lines 34-36 pg. 2 lines 1-36 pg. 3 lines 1-29	JLL001	Rec. I-2 pg. 14
Clarifies definition for "cooperative purchasing agreement"	pg. 1 lines 26-29	JLL002	Rec. II-1 pg. 21
Requires would-be cooperative using agencies to demonstrate, to OSP, that use of the cooperative results in savings, material economic value or both (not just adherence to a substantially similar procurement process with the cooperative's original procurement)	pg. 4 lines 5-19	JLL002	Rec. II-2 Rec. II-3 pg. 21
Requires OSP submit a cooperative purchasing agreement for OSP use to the Governor for approval	pg. 4 lines 20-24	JLL002	Rec. II-4 pg. 21
Creates cooperative purchase reporting obligations	pg. 4 lines 30-36 pg. 5 lines 1-9	JLL002	n/a

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND THE LAW CONCERNING STATE CONTRACTS; TO AMEND
10 THE LAW CONCERNING COOPERATIVE PURCHASING; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

14
15 TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
16 AMEND THE LAW CONCERNING STATE CONTRACTS;
17 AND TO AMEND THE LAW CONCERNING
18 COOPERATIVE PURCHASING.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 19-11-206(1), concerning the definitions
24 relating to intergovernmental relations under the Arkansas Procurement Law,
25 is amended to read as follows:

26 (1) ~~"Cooperative procurement"~~ "Cooperative purchasing agreement"
27 means an agreement entered into as the result of a procurement conducted by,
28 or on behalf of, more than one (1) public procurement unit or by a public
29 procurement unit with an external procurement activity;
30

31 SECTION 2. Arkansas Code § 19-11-223 is amended to read as follows:
32 19-11-223. Commodities, technical and general services, and
33 professional and consultant services under state contract.

34 (a)(1) In addition to establishing a state contract for those
35 commodities, technical and general services, and professional and consultant
36 services within the exclusive jurisdiction of the State Procurement Director

1 under § 19-11-222, the director may award a mandatory state contract for
2 other commodities, technical and general services, and professional and
3 consultant services ~~in those instances when substantial savings may be~~
4 ~~effected by quantity purchasing of commodities, technical and general~~
5 ~~services, or professional and consultant services in general use by several~~
6 ~~state agencies when the director determines that combining the collective~~
7 ~~purchasing power of the state would be beneficial to the state.~~

8 (2) The director shall submit a mandatory state contract that is
9 not for commodities or services within the exclusive jurisdiction of the
10 director to the Legislative Council or, if the General Assembly is in
11 session, to the Joint Budget Committee, for review before the execution of
12 the contract.

13 ~~(b)(1) State contracts shall be limited to those commodities on which,~~
14 ~~by virtue of custom or trade, substantial savings may be realized.~~

15 ~~(2) In those instances in which substantial savings are not~~
16 ~~effected, the letting of state contracts for those commodities shall be~~
17 ~~discontinued.~~

18 ~~(c)(1) Except for the procurement of commodities, technical and~~
19 ~~general services, and professional and consultant services within the~~
20 ~~exclusive jurisdiction of the director, state agencies with agency~~
21 ~~procurement officials that can demonstrate a geographical or volume buying~~
22 ~~advantage need not participate in the state contract.~~

23 ~~(2) However, if the commodities, technical and general services,~~
24 ~~or professional and consultant services obtained are procured at a~~
25 ~~substantially higher price during the same state contract period, that state~~
26 ~~agency must participate in the state contract upon expiration of the state~~
27 ~~agency's contract.~~

28 ~~(d) Except as authorized in this section, all state agencies which~~
29 ~~require (b)(1) Unless an exemption is approved by the director under~~
30 ~~subdivision (b)(2) of this section, a state agency that requires~~ commodities,
31 technical and general services, and professional and consultant services that
32 are under a mandatory state contract shall procure these commodities,
33 technical and general services, and professional and consultant services
34 exclusively under ~~such~~ the mandatory state contract.

35 (2)(A) Except as provided in § 19-11-233, the director may
36 approve an exemption from a mandatory state contract awarded under this

section only if the state agency demonstrates that substantial savings will likely be effected by purchasing outside of the mandatory state contract.

(B)(i) Approval of an exemption from a mandatory state contract under this section shall be in writing.

(ii) Denial of a request for an exemption from a mandatory state contract under this section is not required to be in writing.

~~(e)~~ (c) All contracts concerning commodities, technical and general services, and professional and consultant services shall disclose a projected total cost, including, ~~but not limited to,~~ without limitation expenditures that may be incurred under all available periods of extension if the extensions were executed.

(d) The director shall:

(1) Identify and prioritize opportunities for awarding mandatory state contracts under this section;

(2) Conduct mandatory state contract procurements under this section that would produce savings for the state;

(3) Attempt to invite the participation of the potentially affected state agencies in the development and evaluation of a mandatory state contract procurement;

(4) Post notice of his or her intent to procure a mandatory state contract on the official website of the Office of State Procurement;
and

(5)(A) Promote the use of mandatory state contracts among county and city governments, including without limitation making information about the mandatory state contracts readily available and searchable.

(B) The director shall adopt rules to include any necessary conditions, reporting, or document retention standards related to the director's duty to promote mandatory state contract use under this subsection.

SECTION 3. Arkansas Code § 19-11-249 is amended to read as follows:

19-11-249. Cooperative purchasing.

(a)(1) A public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of commodities or services ~~with one (1) or more public procurement units or external procurement activities~~ in accordance with an agreement entered into

1 between the participants.

2 (2)(A) ~~A cooperative purchasing agreement under this section may~~
3 ~~include without limitation a joint or multiparty contract between public~~
4 ~~procurement units and an open ended state public procurement unit contract~~
5 ~~that is made available to local public procurement units.~~ A cooperative
6 purchasing agreement is limited to commodities and services for which the
7 public procurement unit may realize savings or material economic value, or
8 both.

9 (B)(i) The State Procurement Director shall consider the
10 economic justification for using a cooperative purchasing agreement when
11 granting or withholding approval for the cooperative purchasing agreement.

12 (ii) The State Procurement Director shall adopt
13 rules to create a review policy outlining how the economic justification
14 required under this section may be demonstrated, including without limitation
15 a comparison of:

16 (a) Current state contract pricing and the
17 pricing under a cooperative purchasing agreement; or

18 (b) Information obtained from a request for
19 information and pricing under a cooperative purchasing agreement.

20 (C) The State Procurement Director and the Director of the
21 Department of Finance and Administration shall submit any request for the
22 Office of State Procurement or the Department of Finance and Administration,
23 respectively, to participate in a cooperative purchasing agreement to the
24 Governor for approval.

25 (b)(1)(A) ~~The State Procurement Director shall present a quarterly an~~
26 annual report of all purchases made under cooperative purchasing agreements
27 by a state agency without an agency procurement official under this section
28 to the Legislative Council or, if the General Assembly is in session, to the
29 Joint Budget Committee.

30 (B) A state agency that has an agency procurement official
31 shall present an annual report of all purchases made under cooperative
32 purchasing agreements under this section to the Legislative Council or, if
33 the General Assembly is in session, to the Joint Budget Committee.

34 (2) ~~The report~~ reports required under this subsection shall be
35 in the format required by the Legislative Council and shall include the
36 following:

- 1 (A) The name of the contractor;
2 (B) The name of the procuring agency;
3 (C) The contact information for the contractor and
4 procuring agency;
5 (D) The total cost of the contract, including all
6 available extensions;
7 (E) A description of the goods or services procured; and
8 (F) Any other information requested by the Legislative
9 Council or the Joint Budget Committee.

10
11 SECTION 4. DO NOT CODIFY. Rules.

12 (a) When adopting the initial rules required under this act, the State
13 Procurement Director shall file the final rules with the Secretary of State
14 for adoption under § 25-15-204(f):

15 (1) On or before January 1, 2020; or

16 (2) If approval under § 10-3-309 has not occurred by January 1,
17 2020, as soon as practicable after approval under § 10-3-309.

18 (b) The director shall file the proposed rules with the Legislative
19 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so
20 that the Legislative Council may consider the rules for approval before
21 January 1, 2020.

Bill: JLL068

This bill proposes minor changes to the Division of Building Authority's practices. Specifically, this bill:

Summary of Reform	Location in JLL068	Old Bill	Location in Ikaso Report
Empowers DBA to conduct state-wide "on-call" contracts for professionals to be available in case of urgent need	pg. 1 lines 23-25	JLL012	Rec. XV-2 pg. 101
Tasks DF&A to develop a program to preclude bidders who have existing contracts with the State that have "material issues" from bidding on new work until those issues are resolved	pg. 1 lines 30-34	JLL012	Rec. XV-4 pg. 101
Requires DBA, if it is setting a minimum experience threshold in a solicitation, to include that threshold in the solicitation	pg. 2 lines 8-11	JLL012	n/a

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE PROCUREMENT OF
9 DESIGN SERVICES CONTRACTS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE LAW CONCERNING THE
12 PROCUREMENT OF DESIGN SERVICES CONTRACTS.
13
14
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 22-2-108(7)(A), concerning the powers and
20 duties of the Building Authority Division of the Department of Finance and
21 Administration, is amended to read as follows:

22 (7)(A) To execute contracts necessary to accomplish the purposes
23 of this chapter, including without limitation a statewide contract for design
24 services to expedite the procurement of design services by a state agency in
25 an emergency.
26

27 SECTION 2. Arkansas Code Title 22, Chapter 9, Subchapter 1, is amended
28 to add an additional section to read as follows:

29 22-9-105. Poor contractual performance – Additional bids prohibited.

30 (a) A firm that has an existing state contract with a state agency
31 shall not bid on any additional state contracts with a state agency if the
32 firm's existing state contract with a state agency has one (1) or more
33 material issues, including without limitation a material delay in the
34 commencement or completion of a project or a breach of contract.

35 (b) As used in this section, "state agency" means the same as defined
36 in § 22-2-102.

1 (c) The Director of the Department of Finance and Administration shall
2 adopt rules to provide guidance on what is considered to be a material issue
3 under subsection (a) of this section.

4
5 SECTION 3. Arkansas Code § 22-9-203, concerning the award of contracts
6 for public improvements, is amended to add an additional subdivision to read
7 as follows:

8 (1) To the extent that the division includes minimum experience as
9 part of the evaluation of a bidder's responsiveness, the standard being
10 applied to the bidder's experience shall be stated in the invitation for
11 bids.