

1 State of Arkansas

As Engrossed: S2/20/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

HOUSE BILL 1161

5 By: Representatives Dotson, Wardlaw

6 By: Senator Flippo

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE
10 LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES
11 CONTRACTS; TO AMEND THE LAWS CONCERNING STATE AGENCY
12 PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE
13 ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND
14 REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED
15 BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE
16 LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR
17 THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY
18 STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING
19 REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR
20 OTHER PURPOSES.

Subtitle

24 TO AMEND THE REVIEW AND REPORTING
25 REQUIREMENTS FOR SERVICE CONTRACTS; TO
26 AMEND THE LAW CONCERNING VEHICLE LEASES
27 BY STATE AGENCIES; AND TO PROVIDE FOR THE
28 TRACKING AND REPORTING OF CONTRACTS
29 PROCURED BY STATE AGENCIES.

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

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

36 (4)(A) "Commodities" means all personal property, including, ~~but~~



1 ~~not limited to, equipment, printing, stationery, supplies, and insurance, but~~
2 ~~excluding leases without limitation:~~

3 (i) Goods, as defined in § 4-2-105;

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

5 (iii) Insurance.

6 (B) "Commodities" does not include:

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

9 (ii) Exempt commodities and services, and capital;
10 and

11 (iii) Capital improvements;
12

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

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

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

20 (ii) Renewals;

21 (iii) Additional copies; and

22 (iv) License upgrades;
23

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

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

30 (B) "Services" includes without limitation:

31 (i) Consulting services;

32 (ii) Personal services;

33 (iii) Professional services;

34 (iv) Technical and general services; and

35 (v) The furnishing of labor, time, or effort by a
36 contractor for the generation, customization, configuration, or development

1 of software and other intangible property other than technical support
2 incidental to the procurement of proprietary software.

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

8
9 SECTION 4. Arkansas Code § 19-11-217(c), concerning the powers and
10 duties of the State Procurement Director, is amended to add an additional
11 subdivision to read as follows:

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

14
15 SECTION 5. Arkansas Code § 19-11-249, concerning cooperative
16 purchasing, is amended to add an additional subsection to read as follows:

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

20
21 SECTION 6. Arkansas Code § 19-11-260 is repealed.

22 ~~19-11-260. Recycled paper products Preference.~~

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

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

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

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

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

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

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

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

35 ~~(e)(1) Whenever a bid is required, a preference for recycled paper~~
36 ~~products shall be exercised if the use of the products is technically~~

1 ~~feasible and price is competitive.~~

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

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

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

11

12 SECTION 7. Arkansas Code § 19-11-265 is amended to read as follows:

13 19-11-265. Submission of contracts required.

14 (a)(1) A Except for critical emergency procurements and as otherwise
15 provided in this section, a contract requiring the service services of one
16 (1) or more individuals for regular full time or part-time weekly work
17 persons shall be presented to the Legislative Council or, if the General
18 Assembly is in session, to the Joint Budget Committee, before the execution
19 of the contract if the annual contract amount is at least fifty thousand
20 dollars (\$50,000) in any one (1) contract year or if the total initial
21 contract amount or the projected contract amount, including any amendments or
22 possible extensions, is at least one hundred thousand dollars (\$100,000)
23 three hundred fifty thousand dollars (\$350,000).

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

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

32 (4)(A)(i) A contract that does not have a material change upon
33 renewal or extension shall be included in the monthly report required under §
34 19-11-273 instead of being submitted to the Legislative Council or the Joint
35 Budget Committee for review under this subsection.

36 (ii) As used in this subdivision (a)(4), "material

1 change" includes without limitation:

2 (a) An increase in the contract amount;

3 (b) An increase in the total projected

4 contract amount;

5 (c) A change in any of the essential terms of
6 the contract;

7 (d) A change in any performance-based
8 standards stated in the contract;

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

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

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

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

22 (A) A description of the services being procured;

23 (B) A description of the procurement process followed,
24 including without limitation the method used for the procurement; and

25 (C) The outcome of any protests.

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

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

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

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

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

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

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

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

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

11 ~~(G) The procurement method;~~

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

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

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

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

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

27
28 SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
29 amended to add additional sections to read as follows:

30 19-11-273. Reporting requirements.

31 (a) The State Procurement Director shall compile a monthly report of
32 all executed contracts for services that have a total initial contract amount
33 or a total projected contract amount, including any amendments or possible
34 extensions, of at least twenty-five thousand dollars (\$25,000) but less than
35 an annual contract amount of fifty thousand dollars (\$50,000) in any one (1)
36 contract year or a total projected contract amount, including any amendments

1 or possible extensions, of three hundred fifty thousand dollars (\$350,000).

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

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

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

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

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

13 (d) It is a violation of state procurement laws, Arkansas Code Title
14 19, Chapter 11, for a state agency official to procure services in an
15 incremental or split purchase arrangement to avoid the reporting requirements
16 of this section.

17
18 19-11-274. Tracking requirements.

19 (a) The State Procurement Director, each agency procurement official,
20 and any state agency with procurement authority under a delegation order
21 shall track the following for the procurements they conduct and the contracts
22 they execute:

23 (1) Each protest received and the resolution of the protest;

24 (2) The outcome of any negotiations under this chapter; and

25 (3) The anticipated procurement needs of the state agency based
26 on the contracts that:

27 (A) Are set to expire during the next twelve (12) months;
28 and

29 (B) Will require a new solicitation in the next twelve
30 (12) months.

31 (b) Each agency procurement official and each state agency with
32 procurement authority under a delegation order shall report the information
33 obtained under subsection (a) of this section to the Office of State
34 Procurement.

35
36 SECTION 9. Arkansas Code § 19-11-1006 is repealed as duplicative.

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

~~(a)(1) A professional services contract or consultant services contract 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 professional services contract or consultant services contract 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 fifty thousand dollars (\$50,000).~~

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

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

1 ~~the total projected amount, including any amendments or possible extensions,~~
2 ~~of the professional services contract or consultant services contract is at~~
3 ~~least ten thousand dollars (\$10,000) and less than fifty thousand dollars~~
4 ~~(\$50,000).~~

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

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

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

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

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

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

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

15 ~~(G) The procurement method;~~

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

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

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

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

27 ~~(f) It is a violation of state procurement laws, Arkansas Code Title~~
28 ~~19, Chapter 11, for a state agency official to procure services in an~~
29 ~~incremental or split purchase arrangement to avoid the reporting or~~
30 ~~presentment requirements of this section.~~

31
32 SECTION 10. Arkansas Code § 22-8-102 is amended to read as follows:

33 22-8-102. Leasing and renting of vehicles by state agencies -

34 Definitions.

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

36 (1) "Lease" means obtaining the use of a motor vehicle from any

1 source for a monetary fee, for a period of thirty-one (31) days or more; and
2 (2) "Rental" means obtaining the use of a motor vehicle from any
3 source for a monetary fee for a period of thirty (30) days or less; and

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

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

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

18 (3) ~~After receiving the approval of~~ If, after the Legislative
19 Council or the Joint Budget Committee has reviewed the proposed lease of the
20 motor vehicle, the director approves the proposed lease of the motor vehicle,
21 the director shall stamp his or her approval on the request and return it to
22 the state agency, which may ~~then~~ proceed to enter into the lease as proposed
23 and approved by the director.

24 ~~(4) In emergency situations, the director may approve a~~
25 ~~temporary lease of a motor vehicle, not to exceed thirty (30) days, but only~~
26 ~~if he or she has sought the advice of the cochaIRS of the Legislative Council~~
27 ~~and scheduled the temporary lease of a motor vehicle for consideration at the~~
28 ~~next meeting of the Legislative Council.~~

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

33 (d) If federal assistance requirements or federal contract
34 requirements conflict with this section, this section shall not prevent a
35 state agency from complying with the terms and conditions of the federal
36 assistance requirements or the federal contract requirements.

1 (e) It is a violation of state procurement laws, Arkansas Code Title
2 19, Chapter 11, for a state agency official to conduct multiple rentals of a
3 motor vehicle to avoid the approval and review requirements of this section.
4

5 SECTION 11. DO NOT CODIFY. Rules.

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

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

10 (2) If approval under § 10-3-309 has not occurred by January 1,
11 2020, as soon as practicable after approval under § 10-3-309.

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

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17
18 /s/Dotson

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21 APPROVED: 3/11/19
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1 State of Arkansas

As Engrossed: S2/20/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

HOUSE BILL 1162

5 By: Representatives Dotson, Wardlaw

6 By: Senator Flippo

For An Act To Be Entitled

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

Subtitle

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

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

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

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

36 (10) Ensure that vendor performance reports are available to and



1 searchable by state agencies.

2
3 SECTION 2. Arkansas Code § 19-11-219 is amended to read as follows:
4 19-11-219. Legal counsel – Contract review.

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

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

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

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

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

16 (A) Exceed a certain dollar amount;

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

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

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

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

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

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

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

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

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

1 and the contractor may be reimbursed for the reasonable value of any
2 nonrecurring costs incurred but not amortized in the price of the commodities
3 or services delivered under the contract.

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

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

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

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

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

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

17 (a) The General Assembly finds that:

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

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

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

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

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

1 interest of the state.

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

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

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

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

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

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

19
20 19-11-268. Vendor performance reporting.

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

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

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

33 (1) Completed and submitted:

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

36 (B) At the end of the contract;

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

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

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

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

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

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

19-11-273. Compliance.

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

(b) The signature of a contractor on a contract with a state agency serves as an acknowledgement that the contractor is:

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

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

SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.
~~19-11-1010. Development and use of performance-based contracts—~~
~~Findings.~~

~~(a) Performance-based contracts provide an effective, efficient method~~

~~of monitoring and evaluating the overall quality of services provided.~~

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

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

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

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

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

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

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

~~(1) Completed and submitted:~~

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

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

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

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

SECTION 8. DO NOT CODIFY. Rules.

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

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

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

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

/s/Dotson

APPROVED: 3/11/19

State of Arkansas

As Engrossed: H2/4/19 S2/25/19

92nd General Assembly

A Bill

Regular Session, 2019

HOUSE BILL 1178

By: Representative Wardlaw

By: Senator Flippo

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
AMEND THE LAWS CONCERNING VARIOUS PROCUREMENT
METHODS; TO ALLOW FOR REQUESTS FOR INFORMATION; TO
AMEND THE LAW CONCERNING THE PROCUREMENT OF
PROFESSIONAL SERVICES; TO PROVIDE FOR THE TRAINING
AND CERTIFICATION OF PROCUREMENT OFFICIALS; TO
REQUIRE THAT COST BE WEIGHTED A CERTAIN AMOUNT IN
EVALUATING RESPONSES TO A REQUEST FOR PROPOSALS; TO
ALLOW FOR THE USE OF PRIVATE EVALUATORS IN EVALUATING
RESPONSES TO A REQUEST FOR PROPOSALS; TO REQUIRE THAT
RULES PROMULGATED BY THE STATE PROCUREMENT DIRECTOR
BE SUBMITTED TO AND REVIEWED BY THE REVIEW
SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL; TO AUTHORIZE
AND REGULATE SOLICITATION CONFERENCES UNDER THE
ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT VENDOR
TRAINING AND POLLING BE CONDUCTED UNDER THE ARKANSAS
PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE
NEGOTIATION OF COMPETITIVE SEALED BIDS AND
COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS
PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE
REJECTION OF A BID OR PROPOSAL UNDER THE ARKANSAS
PROCUREMENT LAW; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING VARIOUS
PROCUREMENT METHODS; TO PROVIDE FOR THE
TRAINING AND CERTIFICATION OF PROCUREMENT



1 OFFICIALS; AND TO REQUIRE ADDITIONAL
2 LEGISLATIVE REVIEW OF PROCUREMENT RULES.
3
4

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
6

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

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

12 (10) Shall maintain records of bids and proposals that are
13 rejected by the office for failure to adhere to the mandatory requirements of
14 a solicitation.
15

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

17 19-11-225. Regulations Rules.

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

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

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

26 (B) Reviewed and approved by the Legislative Council under
27 § 10-3-309.

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

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

35 (2) The parties to the contract may give such consent to
36 incorporation by reference at any time after the contract has been entered

1 into and without the necessity of consideration passing to either party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) A written response by a bidder under this subsection
2 shall only clarify the submitted bid and shall not add any substantive
3 language to the submitted bid or change the terms of the submitted bid.

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

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

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

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

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

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

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

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

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

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

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

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

1 (2)(A) Except as provided in subdivision (d)(2)(B) of this
2 section, cost shall be weighted at least thirty percent (30%) of the total
3 evaluation score for a proposal submitted in response to the request for
4 proposals.

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

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

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

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

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

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

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

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

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

1 (ii) In responding to a request for a best and final
2 offer, an offeror may:

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

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

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

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

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

19 (2) A written response by an offeror under this subsection shall
20 only clarify the submitted proposal and shall not add any substantive
21 language to the submitted proposal or change the terms of the submitted
22 proposal.

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

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

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

34 (2) No other factors or criteria shall be used in the
35 evaluation.

36 (3) If it is determined that two (2) or more responsible

1 offerors have tied scores after the evaluation of the proposals, the award
2 shall be made to the responsible offeror that had one (1) of the tied scores
3 and submitted the lowest price proposal.

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

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

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

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

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

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

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

25 (B) A private evaluator used under this subsection shall
26 be:

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

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

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

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

35 (D) If a state agency uses one (1) or more private
36 evaluators, the use of a private evaluator shall be disclosed in the

1 procurement file and in any information submitted to the Legislative Council
2 or, if the General Assembly is in session, the Joint Budget Committee.

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

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

9 (3) A proposal may be rejected for failure to adhere to
10 mandatory requirements.

11
12 SECTION 11. Arkansas Code § 19-11-233 is amended to read as follows:
13 19-11-233. Emergency procurements.

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

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

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

22 (B) Complete a quotation abstract that includes the:
23 (i) Names of the firms contacted;
24 (ii) Time that each firm was contacted;
25 (iii) Quoted price obtained from each contacted
26 firm; and

27 (iv) Method used for contacting each firm.

28 (2) As used in this subsection, "critical emergency" means an
29 emergency in which human life or health is imminently endangered.
30

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

33 19-11-273. Solicitation conferences.

34 (a)(1) A state agency may hold a solicitation conference before or
35 after issuing an invitation for bids, a request for proposals, or a request
36 for statements of qualifications and performance data under § 19-11-801 et

1 seq.

2 (2) A solicitation conference may be held:

3 (A) In person; or

4 (B) Online or in another virtual format.

5 (b) Attendance by a vendor at a solicitation conference is not
6 required for that vendor's bid, proposal, or statement of qualifications and
7 performance data to be accepted unless the attendance requirement is:

8 (1) Explicitly stated in the invitation for bids, request for
9 proposals, or request for statements of qualifications and performance data;
10 and

11 (2) Approved by the State Procurement Director or the head of
12 the procurement agency.

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

14 (1) For an invitation for bids or a request for proposals,
15 include the date and time of the solicitation conference in the notice
16 required under § 19-11-229;

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

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

23 (d) A statement made at a solicitation conference does not change the
24 invitation for bids, request for proposals, or request for statements of
25 qualifications and performance data unless a change is made by written
26 amendment to the invitation for bids, request for proposals, or request for
27 statements of qualifications and performance data.

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

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

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

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

1 (2) Is of strategic importance to the state.

2
3 19-11-274. Vendor training and polling.

4 The Office of State Procurement shall:

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

7 (B) The training required under subdivision (1)(A) of this
8 section shall:

9 (i) Be offered throughout the state; and

10 (ii) Be delivered as training sessions in person and
11 online or in another virtual format; and

12 (2) Periodically poll vendors that have been successful in
13 securing business with the state and vendors that have not been successful in
14 securing business with the state to solicit procurement feedback that can be
15 used to improve vendor training.

16
17 19-11-275. Requests for information.

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

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

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

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

31 (e) Information provided in response to a request for information
32 under this section is exempt from the Freedom of Information Act of 1967, §
33 25-19-101 et seq., until:

34 (1) The bids for a competitive sealed bidding procurement are
35 opened publicly;

36 (2) The notice of anticipation to award is given for a

1 competitive sealed proposal procurement; or

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

4
5 19-11-276. Training and certification of procurement personnel.

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

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

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

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

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

18 (i) Be designed to develop procurement competency;
19 and

20 (ii) Create a uniform training approach for state
21 agency employees ranging from entry-level procurement personnel to agency
22 procurement officials;

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

25 (4) May conduct, develop, and collaborate with established
26 training programs, if any, for the purpose of providing certifications of
27 proficiency to state agency employees who complete the training and
28 certification program;

29 (5) May conduct research into existing and new procurement
30 methods; and

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

32 (c)(1) Beginning July 1, 2021, a state agency employee shall not
33 conduct a procurement under this chapter unless the state agency employee is
34 certified through the training and certification program required under this
35 section.

36 (2) To maintain certification under this section, a state agency

1 employee shall complete a reasonable number of hours of continuing education,
2 as provided for by rule by the director.

3 (d)(1) The director shall revoke the certification of a state agency
4 employee who is certified under this section and who is determined to have
5 knowingly violated state procurement laws, Arkansas Code Title 19, Chapter
6 11.

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

9
10 SECTION 13. Arkansas Code § 19-11-802, concerning requests for
11 statements of qualifications and performance data, is amended to add an
12 additional subsection to read as follows:

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

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

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

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

26 (A) Why the request for qualifications is the most
27 suitable method of procurement;

28 (B) Why cost should not be considered in the procurement;
29 and

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

32
33 SECTION 14. DO NOT CODIFY. Rules.

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

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

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

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

8
9 /s/Wardlaw

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12 APPROVED: 3/11/19
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1 State of Arkansas

As Engrossed: S2/20/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

HOUSE BILL 1179

5 By: Representative Wardlaw

6 By: Senator Flippo

For An Act To Be Entitled

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

Subtitle

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

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

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

28 19-11-218. Assistants and designees - Written delegation orders.

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

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

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

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



1 regulations.

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

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

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

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

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

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

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

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

21 (b) The director shall adopt rules to:

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

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

26
27 SECTION 2. Arkansas Code § 19-11-244(a)(3), concerning the resolution
28 of protested solicitations and awards under the Arkansas Procurement Law, is
29 amended to read as follows:

30 (3) The protest shall be submitted in writing within fourteen
31 (14) calendar days after the aggrieved person knows or should have known of
32 the facts giving rise to the grievance award or notice of anticipation to
33 award has been posted.

34 (4) A protest submitted by an aggrieved person under this
35 section shall:

36 (A) Be limited to one (1) or more of the following

1 grounds:

2 (i) The award of the contract exceeded the authority
3 of the director or the procurement agency;

4 (ii) The procurement process violated a
5 constitutional, statutory, or regulatory provision;

6 (iii) The director or the procurement agency failed
7 to adhere to the rules of the procurement as stated in the solicitation, and
8 the failure to adhere to the rules of the procurement materially affected the
9 contract award;

10 (iv) The procurement process involved responses that
11 were collusive, submitted in bad faith, or not arrived at independently
12 through open competition; or

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

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

17
18 SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of
19 protested solicitations and awards under the Arkansas Procurement Law, is
20 amended to read as follows:

21 (f) In the event of a timely protest under subsection (a) of this
22 section, the state shall not ~~proceed further with the solicitation or with~~
23 ~~the award of the contract until~~ execute a contract that is the result of the
24 protested solicitation or award unless the director or the head of a the
25 relevant procurement agency makes a written determination that the ~~award~~
26 execution of the contract without delay is necessary to protect substantial
27 interests of the state.

28
29 SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of
30 protested solicitations and awards under the Arkansas Procurement Law, is
31 amended to add an additional subsection to read as follows:

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

SECTION 5. DO NOT CODIFY. Rules.

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

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

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

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

/s/Wardlaw

APPROVED: 3/11/19

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S2/20/19

A Bill

HOUSE BILL 1180

By: Representative Wardlaw
By: Senator Flippo

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
AMEND THE LAW CONCERNING STATE CONTRACTS; TO AMEND
THE LAW CONCERNING COOPERATIVE PURCHASING; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
AMEND THE LAW CONCERNING STATE CONTRACTS;
AND TO AMEND THE LAW CONCERNING
COOPERATIVE PURCHASING.

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

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

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

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

(a)(1) In addition to establishing a state contract for those commodities, technical and general services, and professional and consultant



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

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

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

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

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

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

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

12 (d) The director shall:

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

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

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

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

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

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

30
31 SECTION 3. Arkansas Code § 19-11-249 is amended to read as follows:

32 19-11-249. Cooperative purchasing.

33 (a)(1) A public procurement unit may participate in, sponsor, conduct,
34 or administer a cooperative purchasing agreement for the acquisition of
35 commodities or services ~~with one (1) or more public procurement units or~~
36 ~~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) For cooperative purchasing agreements entered into
10 by a state agency, the State Procurement Director shall consider the economic
11 justification for using a cooperative purchasing agreement when granting or
12 withholding approval for the cooperative purchasing agreement.

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

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

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

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

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

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

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

1 following:

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

11
12 SECTION 4. 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, 2020; or
17 (2) If approval under § 10-3-309 has not occurred by January 1,
18 2020, 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, 2020, so
21 that the Legislative Council may consider the rules for approval before
22 January 1, 2020.

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25 /s/Wardlaw

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28 **APPROVED: 3/11/19**
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State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1572

By: Representative Ladyman
By: Senator L. Eads

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING STATE AGENCY
CAPITAL IMPROVEMENT CONTRACTS FOR PURPOSES OF
UNIFORMITY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING STATE AGENCY
CAPITAL IMPROVEMENT CONTRACTS FOR
PURPOSES OF UNIFORMITY.

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

SECTION 1. Arkansas Code § 18-44-503(a), concerning public buildings and improvements, is amended to read as follows:

(a) No A contract in any a sum exceeding ~~twenty thousand dollars~~ (\$20,000) the amount stated in § 22-9-203 providing for the repair, alteration, or erection of any public building, public structure, or public improvement shall not be entered into by the State of Arkansas or any subdivision ~~thereof~~ of the state, by any county, municipality, school district, or other local taxing unit, or by any agency of ~~any of the foregoing the state~~, a subdivision of the state, a county, a municipality, a school district, or any other local taxing unit, unless the contractor shall furnish to the party letting the contract a bond in a sum equal to the amount of the contract.

SECTION 2. Arkansas Code § 19-4-1405(d)(1), concerning the bidding procedure for the construction of buildings and facilities, is amended to



1 read as follows:

2 (d)(1)(A) Every bid submitted on state agency construction contracts
3 for projects over the amount of ~~twenty thousand dollars (\$20,000)~~ shall be
4 stated in § 22-9-203 is void unless accompanied by a cashier's check drawn
5 upon a bank or trust company doing business in this state or by a corporate
6 bid bond and the agent's power of attorney as his or her authority.

7 (B) ~~No bid Bid~~ security ~~shall be~~ is not required for
8 projects under or equal to the amount of ~~twenty thousand dollars (\$20,000)~~
9 stated in § 22-9-203.

10
11 SECTION 3. Arkansas Code § 19-11-203(14)(Y), concerning the definition
12 of "exempt commodities and services" under the Arkansas Procurement Law, is
13 amended to read as follows:

14 (Y) Capital improvements valued at less than ~~twenty~~
15 ~~thousand dollars (\$20,000)~~ the amount stated in § 22-9-203, subject to
16 minimum standards and criteria of the Building Authority Division of the
17 Department of Finance and Administration;

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20 APPROVED: 4/2/19
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