

1 State of Arkansas As Engrossed: S4/3/19 S4/5/19 S4/8/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 409

4

5 By: Senators Flippo, Hickey

6 By: Representative Richmond

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND THE PURCHASING REQUIREMENTS AND
10 PROCEDURES FOR CERTAIN ENTITIES; TO ALLOW FOR THE
11 ELECTRONIC NOTIFICATION OF AN INVITATION FOR BIDS AND
12 THE ELECTRONIC SUBMISSION OF BIDS; TO CREATE THE FAIR
13 NOTICE AND EFFICIENCY IN PUBLIC WORKS ACT; AND FOR
14 OTHER PURPOSES.

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Subtitle

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

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SECTION 1. DO NOT CODIFY. Legislative findings.

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The General Assembly finds that:

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(1) There is a need for a statewide system for the online advertisement of notices of an intention to receive bids by local governmental units;

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(2) Legislation is necessary to provide for the efficient procurement of services to provide for the online advertisement of notices of an intention to receive bids by local governmental units;

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(3) There is a need for an impartial selection process in selecting statewide vendors to administer online advertisements of notices of

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1 an intention to receive bids by local governmental units; and
2 (4) The Office of State Procurement has the authority and
3 infrastructure to issue requests for qualifications to effectuate this act.
4

5 SECTION 2. Arkansas Code Title 22, Chapter 9, is amended to add an
6 additional subchapter to read as follows:

7 Subchapter 9 – Fair Notice and Efficiency in Public Works Act

8
9 22-9-901. Title.

10 This subchapter shall be known and may be cited as the "Fair Notice and
11 Efficiency in Public Works Act".
12

13 22-9-902. Legislative intent.

14 The General Assembly intends for this subchapter to:

15 (1) Provide for the efficient procurement of services to provide
16 for the online advertisement of notices of an intention to receive bids by
17 local governmental units;

18 (2) Promote the economical and efficient administration and
19 completion of public works construction projects;

20 (3) Provide for an impartial selection process in selecting
21 statewide vendors to administer online advertisements of notices of an
22 intention to receive bids by local governmental units;

23 (4) Provide for fair and open competition in selecting vendors
24 to accomplish the goals of this subchapter;

25 (5) Prohibit anticompetitive conduct in vendors, including
26 without limitation a vendor's having a direct interest in one (1) or more of
27 the other vendors awarded a contract under this subchapter; and

28 (6) Provide significant penalties for an individual or entity
29 that violates this subchapter.
30

31 22-9-903. Definitions.

32 As used in this subchapter:

33 (1) "Public agency" means:

34 (A) A county, city, town, and school district in this
35 state; and

36 (B) A department, agency, board, bureau, commission,

1 committee, or authority of a county, city, town, or school district; and

2 (2) "Vendor" means an individual, association, corporation,
3 company, firm, organization, partnership, governmental entity, or any other
4 entity that can provide an online system for the online advertisement of
5 notice of an intention to receive bids under §§ 22-9-203 and 22-9-209.

6
7 22-9-904. Public Works Committee – Creation – Duties – Immunity.

8 (a)(1) The Public Works Committee is created and, except as provided
9 in subdivision (a)(2) of this section, shall have the following members:

10 (A) The State Procurement Director or his or her designee;

11 (B) The Executive Director of the Arkansas Press
12 Association, Inc. or his or her designee;

13 (C) The Executive Director of the Association of Arkansas
14 Counties or his or her designee;

15 (D) The President of the Arkansas Municipal League or his
16 or her designee; and

17 (E) The Executive Director of the Arkansas Association of
18 Educational Administrators or his or her designee.

19 (2) If a member of the committee elects not to participate:

20 (A) The Governor shall appoint a replacement; and

21 (B) The member who elects not to participate is not part
22 of the committee.

23 (b) The committee shall meet as needed but at least one (1) time each
24 year.

25 (c) The committee shall:

26 (1) Administer this subchapter;

27 (2) Prepare an annual report on the performance of the vendors
28 selected under this subchapter and submit the report to the Office of State
29 Procurement;

30 (3) Hear any complaints from interested individuals or entities
31 relating to vendors selected under this subchapter;

32 (4) Prepare an annual report concerning the success of this
33 subchapter and submit the report to the Office of State Procurement; and

34 (5) Perform an annual review and remove any noncompliant vendors
35 under § 22-9-907.

36 (d) A majority vote of the members of the committee is required for

1 the committee to take action.

2 (e)(1) The committee has the same immunity granted to state agencies
3 under the Arkansas Constitution.

4 (2) The individual members of the committee are immune to the
5 same extent as state employees under § 19-10-305.

6
7 22-9-905. Online notice for bids.

8 A public agency may contract with a vendor selected under this
9 subchapter to provide online advertisements of notices of an intention to
10 receive bids under §§ 22-9-203 and 22-9-209.

11
12 22-9-906. Selection of vendors.

13 (a)(1) The Office of State Procurement shall select three (3) vendors
14 using the procedures for the procurement of professional services under § 19-
15 11-801 et seq.

16 (2) The office may use the responses from a previous request for
17 qualifications under this subchapter for up to five (5) years to replace any
18 vendors that are removed under this subchapter.

19 (3) If fewer than three (3) vendors respond to the request for
20 qualifications or if there are fewer than three (3) qualified vendors, the
21 office shall select as many qualified vendors as possible.

22 (b) The vendors selected under this subchapter shall be the only
23 vendors with which a public agency may contract for the online advertisement
24 of notices of an intention to receive bids under §§ 22-9-203 and 22-9-209.

25 (c) A vendor selected under this subchapter shall:

26 (1) Maintain on its website a clearly designated area for public
27 notices that is accessible through a prominently displayed and clearly
28 labeled link from the homepage of the website; and

29 (2) Primarily publish in the English language.

30 (d) A vendor selected under this subchapter shall not:

31 (1) Have a common owner, shareholder, member of a board of
32 directors, employee, or any other similar interest with another vendor
33 selected under this subchapter;

34 (2)(A) Require payment or a subscription to view an
35 advertisement of a notice of an intention to receive bids or any other
36 posting authorized in this section.

1 (B) A vendor may require payment or a subscription to view
2 any other document; or

3 (3) Provide services under this subchapter for a public agency
4 until the public agency has complied with subsections (e) and (f) of this
5 section.

6 (e) Before using the online advertisement of notices of an intention
7 to receive bids as a form of notification, a county, city, or town shall:

8 (1) Provide notice through publication in a newspaper
9 concurrently with notification through an online advertisement of notice of
10 an intention to receive bids under this subchapter for five (5) weeks;

11 (2) Adopt a resolution at the beginning of each calendar year
12 that identifies each website designated by ordinance for the online posting
13 of advertisements for notices of an intention to receive bids;

14 (3) Publish notice in a newspaper of general circulation within
15 the county identifying each website designated for the online posting of
16 advertisements for notices of an intention to receive bids; and

17 (4) Adopt an ordinance that identifies each website designated
18 for the online posting of advertisements for notices of an intention to
19 receive bids.

20 (f) Before using the online advertisement of bids as a form of
21 notification, a school district shall:

22 (1) Provide notice through publication in a newspaper
23 concurrently with notification through an online advertisement of notices of
24 an intention to receive bids under this subchapter for five (5) weeks;

25 (2) Adopt a resolution at the beginning of each calendar year
26 that identifies each website designated for the online posting of
27 advertisements for notices of an intention to receive bids; and

28 (3) Publish notice in a newspaper of general circulation within
29 the county in which the school district is located that identifies each
30 website designated for the online posting of advertisements for notices of an
31 intention to receive bids.

32
33 22-9-907. Annual review – Removal of vendor – Penalties.

34 (a) The Public Works Committee shall review the performance and
35 compliance of vendors selected under this subchapter.

36 (b) After reasonable notice to the vendor and a reasonable opportunity

1 for the vendor to have a hearing, the committee may remove a vendor's
2 authority to perform the services provided for under this subchapter if the
3 committee determines that the vendor's performance does not meet the goals of
4 this subchapter.

5 (c)(1) A vendor who knowingly violates this subchapter:

6 (A) Upon conviction is guilty of a Class B misdemeanor;

7 (B) Is prohibited from performing services under this
8 subchapter or being selected as a vendor under this subchapter for five (5)
9 years; and

10 (C) Shall pay damages to any public agency, person, or
11 entity that is found to have ascertainable damages as a result of the
12 vendor's violation of this subchapter.

13 (2) The Office of State Procurement shall maintain a list of
14 vendors that are prohibited from performing services.

15
16 22-9-908. Replacement of vendor.

17 (a) A vendor shall be replaced as soon as practicable using the
18 procedure established under § 22-9-906 if the vendor:

19 (1) Is unable to perform the services required under this
20 subchapter;

21 (2) Has its authority to perform the services provided for under
22 this subchapter removed under § 22-9-907; or

23 (3) Is otherwise no longer performing the services required
24 under this subchapter.

25 (b) If only one (1) vendor remains as a selected vendor under this
26 subchapter as the result of action taken under § 22-9-907, the Public Works
27 Committee shall meet and select at least one (1) additional vendor within
28 ninety (90) days.

29 (c) An online posting to advertise the notice of an intention to
30 receive bids by a public agency on a vendor's website at the time of a
31 vendor's removal under § 22-9-907 shall be reposted on the website of another
32 vendor selected under this subchapter under the same terms as the original
33 online advertisement for notice of an intention to receive bids.

34
35 22-9-909. Multiyear contracts.

36 A contract with a vendor under this subchapter is subject to the

1 restrictions of § 19-11-238.

2
3 SECTION 3. Arkansas Code § 22-9-203(a)(2), concerning contracts for
4 public improvements, is amended to read as follows:

5 (2)(A) ~~Any~~ The county, municipality, school district, or other
6 local taxing unit shall have first published notice of its intention to
7 receive bids one (1) time each week for not less than two (2) consecutive
8 weeks in a newspaper of general circulation published in the county in which
9 the proposed improvements are to be made. ~~or in a trade~~

10 (B) In addition to the publication of notice required
11 under subdivision (a)(2)(A) of this section, the county, municipality, school
12 district, or other local taxing unit:

13 (i) May also publish notice in a trade journal
14 reaching the construction industry; and

15 (ii) If the county, municipality, school district,
16 or other local taxing unit is accepting electronically submitted bids, shall
17 also post notice on the website of a vendor selected under the Fair Notice
18 and Efficiency in Public Works Act, § 22-9-901 et seq.

19
20 SECTION 4. Arkansas Code § 22-9-203(b)(2) and (3), concerning
21 contracts for public improvements, are amended to read as follows:

22 (2)(A) If there is ~~no~~ not a newspaper regularly published in the
23 county in which the proposed work is to be done, the notices may be published
24 in any newspaper having a general circulation in the county.

25 (B) In addition to the publication of notice required
26 under subdivision (b)(2)(A) of this section, the county, municipality, school
27 district, or other local taxing unit:

28 (i) May also publish notice in a trade journal
29 reaching the construction industry; and

30 (ii) If the county, municipality, school district,
31 or other local taxing unit is accepting electronically submitted bids, shall
32 also post notice on the website of a vendor selected under the Fair Notice
33 and Efficiency in Public Works Act, § 22-9-901 et seq.

34 (3) ~~Nothing in this section shall be construed as limiting This~~
35 section does not limit to two (2) the number of weeks the notices may be
36 published for projects over ~~the amount of~~ fifty thousand dollars (\$50,000),

1 ~~limiting limit~~ to one (1) the number of weeks the notices may be published
2 for projects more than the quote bid limit, as provided under subsection (a)
3 of this section, and less than or equal to fifty thousand dollars (\$50,000),
4 ~~and as limiting or limit~~ to two (2) the number of weeks the notices may be
5 published for all other projects.

6
7 SECTION 5. Arkansas Code § 22-9-203(c)(1), concerning contracts for
8 public improvements, is amended to read as follows:

9 (c)(1) All notices shall contain:

10 (A) A brief description of the kind or type of work
11 contemplated;

12 (B) The approximate location ~~thereof~~ of the work
13 contemplated;

14 (C) The place at which prospective bidders may obtain
15 plans and specifications, including any websites on which a county,
16 municipality, or school district is posting notice of its intention to
17 receive bids under the Fair Notice and Efficiency in Public Works Act, § 22-
18 9-901 et seq.;

19 (D) The date, time, and place at which sealed bids ~~will~~
20 shall be received;

21 (E) The amount, which may be stated in a percentage, of
22 the bid bond required;

23 (F) A statement of the taxing unit's reservation of the
24 right to reject any or all bids and to waive any formalities; and

25 (G) Such other pertinent facts or information which to it
26 may appear necessary or desirable.

27
28 SECTION 6. Arkansas Code § 22-9-203, concerning contracts for public
29 improvements, is amended to add an additional subsection to read as follows:

30 (1) A sealed bid under this section shall be submitted in one (1) of
31 the following formats:

32 (1) Written; or

33 (2) Electronic media.

34
35 SECTION 7. Arkansas Code § 22-9-209(a), concerning the advertising of
36 contracts for the renovation of historic sites, is amended to read as

1 follows:

2 (a)(1) A contract for the altering, repairing, or renovation of a
3 recognized historic site or structure owned by the state or with title vested
4 in the name of a state agency or of another taxing authority in which the
5 estimated cost of the work equals or exceeds the sum of thirty-five thousand
6 dollars (\$35,000) shall not be entered into between the state agency or
7 taxing authority and any contractor unless the state agency or taxing
8 authority has first published notice of intention to receive bids for
9 improvements one (1) time each week for not less than two (2) consecutive
10 weeks in a newspaper of general circulation published in the county in which
11 the proposed improvements are to be made, ~~or in a trade~~

12 (2) In addition to the publication of notice required under
13 subdivision (a)(1) of this section, the state agency or taxing authority:

14 (A) May also publish notice in a trade journal reaching
15 the construction industry; and

16 (B) If the state agency or taxing authority is accepting
17 electronically submitted bids, shall also post notice on the website of a
18 vendor selected under the Fair Notice and Efficiency in Public Works Act, §
19 22-9-901 et seq.

20

21 SECTION 8. Arkansas Code § 22-9-209(b)(2), concerning the advertising
22 of contracts for the renovation of historic sites, is amended to read as
23 follows:

24 (2)(A) If there is ~~no~~ not a newspaper regularly published in the
25 county in which the proposed work is to be done, the notices may be published
26 in any newspaper having a general circulation in the county.

27 (B) In addition to the publication of notice required
28 under subdivision (b)(2)(A) of this section, the state agency or taxing
29 authority:

30 (i) May also publish notice in a trade journal
31 reaching the construction industry; and

32 (ii) If the state agency or taxing authority is
33 accepting electronically submitted bids, shall also post notice on the
34 website of a vendor selected under the Fair Notice and Efficiency in Public
35 Works Act, § 22-9-901 et seq.

36

1 SECTION 9. Arkansas Code § 22-9-209(c)(1), concerning the advertising
2 of contracts for the renovation of historic sites, is amended to read as
3 follows:

4 (c)(1) All notices shall contain: a

5 (A) A brief description of the kind or type of work
6 contemplated, ~~the~~;

7 (B) The approximate location ~~thereof, the~~ of the work
8 contemplated;

9 (C) The place at which prospective contractors may obtain
10 plans and specifications, ~~the~~ including any websites on which a state agency
11 or taxing authority is posting notice of its intention to receive bids under
12 the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.;

13 (D) The date, time, and place at which sealed bids ~~will~~
14 shall be received,; and ~~the~~

15 (E) The amount, which may be stated in a percentage, of
16 bond required.

17
18 SECTION 10. Arkansas Code § 22-9-209, concerning the advertising of
19 contracts for the renovation of historic sites, is amended to add an
20 additional subsection to read as follows:

21 (e) A sealed bid under this section shall be submitted in one (1) of
22 the following formats:

23 (1) Written; or

24 (2) Electronic media.

25
26
27 /s/Flippo

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29
30 APPROVED: 4/17/19