

Stricken language would be deleted from and underlined language would be added to the law as it existed
prior to this session of the General Assembly.
Act 193 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

SENATE BILL 302

5 By: Senator Faris
6 By: Representative Saunders
7

For An Act To Be Entitled

10 AN ACT TO CLARIFY THE DUTIES AND RESPONSIBILITIES
11 OF THE ARKANSAS BUILDING AUTHORITY; TO AMEND THE
12 PERCENTAGE OF EARNED PROGRESS PAYMENTS PAYABLE TO
13 CONTRACTORS; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO CLARIFY THE DUTIES AND
16 RESPONSIBILITIES OF THE ARKANSAS
17 BUILDING AUTHORITY.
18
19
20

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

23 SECTION 1. Arkansas Code § 19-4-1402(a), concerning filing the
24 executed counterparts of all contracts entered into by state agencies, is
25 amended to read as follows:

26 (a) Executed counterparts of all contracts entered into by any state
27 agency with respect to proposed projects for new improvements or major
28 repairs or additions to existing buildings and facilities shall be approved
29 by and filed with the Arkansas Building Authority ~~prior to~~ before the
30 issuance of any vouchers making payments under the contract, unless the
31 contract is exempted from the jurisdiction of the authority by ~~any~~ a law or a
32 regulation promulgated ~~pursuant to~~ under the Arkansas Administrative
33 Procedure Act, § 25-15-201 et seq.
34

35 SECTION 2. Arkansas Code § 19-4-1402(b)(2), concerning the exemption



1 of boards of public institutions of higher education from the requirement for
 2 filing contracts with the Arkansas Building Authority, is amended to read as
 3 follows:

4 (2) The governing boards of all other public institutions
 5 of higher education shall be exempt from the requirement for approval and
 6 filing of the contracts with the authority:

7 (A) Upon approval of the Department of Higher Education;
 8 and

9 (B) If, prior to granting approval, the department shall
 10 have reviewed and approved policies and procedures adopted by the governing
 11 boards of the public institutions of higher education with respect to bidding
 12 and construction of capital improvement projects.

13
 14 SECTION 3. Arkansas Code § 19-4-1405(a)(2)(D), concerning the contents
 15 of the publication of notice for advertising for bids for a state agency
 16 construction project, is amended to read as follows:

17 (D) Contain the amount of the bid ~~bond~~ security; and

18
 19 SECTION 4. Arkansas Code § 19-4-1405(d)(1)(B), concerning when a bid
 20 security is required, is amended to read as follows:

21 (B) No bid ~~bond~~ security shall be required for projects
 22 under or equal to the amount of twenty thousand dollars (\$20,000).

23
 24 SECTION 5. Arkansas Code § 19-4-1415(h)(6)(B)(iii), concerning
 25 statutory sections not affected by the provisions of this section regarding
 26 the Arkansas Building Authority's standards and criteria pertaining to
 27 projects exceeding five million dollars, is amended to read as follows:

28 (iii) Notwithstanding anything in this subsection to
 29 the contrary, the provisions of §§ 19-4-1405(f), 19-4-1413, 19-11-801, 22-9-
 30 101, 22-9-103, 22-9-104, 22-9-212, 22-9-213, § 22-9-301 et seq., § 22-9-401
 31 et seq., § 22-9-501 et seq., § 22-9-601 et seq., and § 22-9-701 et seq. shall
 32 remain in full force and effect and shall not be affected by this section.

33
 34 SECTION 6. Arkansas Code § 19-4-1416 is amended to read as follows:
 35 19-4-1416. Job order contracting.

36 (a) As used in this section:

1 (1) "Job order contracting" means the acquisition of contracting
2 services using a selection method that requires contractors to submit
3 qualifications and prices based on wage rates inclusive of fringes and
4 burden, plus a pricing matrix for markups on materials and subcontractors;
5 and

6 (2)(A) "On-call contracting" means the ability of the state
7 agency or institution of higher education to continue to call upon the
8 successful bidder to conduct additional construction services as required by
9 the state agency or institution of higher education.

10 (B) The contractor shall be required to bid all
11 subcontractor work and the state agency or the institution of higher
12 education shall receive and open the bids with the contractor present at the
13 bid opening date.

14 (b) The state agency or the institution of higher education may supply
15 all materials for the work with no additional markup if the materials may be
16 purchased off state contracts at a lesser price than the contractor would be
17 able to procure.

18 (c)(1)(A) After a state agency or institution of higher education has
19 prepared appropriate scope documents and achieved appropriate reviews, it
20 shall advertise for bids and award and file contracts for the contemplated
21 work as identified in §§ 19-4-1401 – 19-4-1405.

22 (B) Additional work may be awarded based upon the initial
23 bid within the fiscal year.

24 (2)(A) The bidder may not submit a multiplier representing
25 estimated cost inflation as part of the formal bid process.

26 (B) The bid will represent the fixed price amount for the
27 fiscal year.

28 (3) The most qualified bidder offering the best value for the
29 state agency or the institution of higher education shall be selected to
30 perform the construction services identified in the construction
31 specifications.

32 (d)(1) Job order contracting bid awards shall not extend beyond
33 one (1) fiscal year and shall not exceed three hundred thousand dollars
34 (\$300,000) per construction job for the first year of the contract for state
35 agencies and institutions of higher education with education and general
36 appropriations for the 2003 fiscal year equal or exceeding ten million

1 dollars (\$10,000,000), and shall not exceed one hundred thousand dollars
 2 (\$100,000) per construction job for agencies or institutions of higher
 3 education with education and general appropriations for the 2003 fiscal year
 4 of less than ten million dollars (\$10,000,000).

5 (2) However, reasonable extensions may be granted at the
 6 beginning of each new fiscal year not to exceed a total of four (4) years,
 7 if:

8 (A) The price remains mutually agreeable to the state
 9 agency or the institution of higher education and the contractor; and

10 (B) The quality of the work is satisfactory to the state
 11 agency or the institution of higher education.

12 (3) On or before the four-year threshold, the state agency or
 13 the institution of higher education will shall bid the construction service
 14 to assure competitive opportunities and lowest cost circumstances.

15 (e)(1) Executed counterparts of a contract entered into by a state
 16 agency with respect to job order projects shall be approved by and filed with
 17 the Arkansas Building Authority before the issuance of any vouchers making
 18 payments under the contract.

19 (2)(A) The boards of trustees of the University of Arkansas,
 20 Arkansas State University, University of Central Arkansas, Henderson State
 21 University, Arkansas Tech University, and Southern Arkansas University are
 22 exempt from the requirements of this section regarding the approval and
 23 filing of the contracts with the authority.

24 (B)(i) With the exception of those boards of trustees
 25 listed in subdivision (e)(2)(A) of this section, the governing board of a
 26 public institution of higher education is exempt from filing the contracts
 27 with the authority if it receives the approval of the Department of Higher
 28 Education.

29 (ii) Before granting approval, the department shall
 30 review and approve the policies and procedures regarding bidding and
 31 construction of capital improvement projects as adopted by the governing
 32 board of the public institution of higher education.

33 (3) A public institution of higher education that is exempt
 34 under this section may enter into an agreement with the authority to file its
 35 contracts with the authority.

36

1 SECTION 7. Arkansas Code § 22-2-107(a)(1), concerning the duties and
 2 responsibilities of the Construction Section of the Arkansas Building
 3 Authority, is amended to read as follows:

4 (1) Construction Section. The Construction Section shall:

5 (A) Supervise the bidding and awarding of contracts for
 6 new construction and renovations for or by state agencies' capital
 7 improvements;

8 (B) Establish and maintain complete construction files on
 9 all jobs, including plans and specifications for alterations, renovations,
 10 and repairs of all capital improvements;

11 (C) Approve all proposed contracts, change orders, and
 12 final payments requests;

13 (D) Ensure that on-site observation of all construction
 14 projects, alterations, and repairs is accomplished on a regular basis and
 15 maintain records of those observations;

16 (E) Obtain and maintain construction inspection and
 17 observation reports from architects or engineers or their consultants from
 18 state agencies and institutions for all capital improvement construction
 19 projects;

20 (F)(i) Conduct visits with the design professional to
 21 determine the responsibility and performance required by the contract
 22 documents.

23 (ii) On-site observations by design professionals
 24 shall concur with the contractor's payment request and shall be submitted in
 25 written form with the pay request.

26 (iii) The inspection and observation reports shall
 27 be as adopted by the council.

28 (iv) State agencies shall engage the services of
 29 licensed architects or engineers for all projects covered by the Arkansas
 30 Architectural Act, § 17-15-101 et seq., and the Arkansas Engineering Act, §
 31 17-30-101 et seq.; and

32 (G) Ensure that the construction of all projects complies
 33 with the contract documents; ~~and~~

34 ~~(H)(i) Establish and manage a list of contractors desiring~~
 35 ~~written notice of invitations to bid and establish by rule a fee, not to~~
 36 ~~exceed twenty five dollars (\$25.00) annually, for receiving a written notice~~

1 ~~of an invitation to bid.~~

2 ~~(ii) Subscription fees collected pursuant to this~~
3 ~~section shall be deposited in the Arkansas Building Authority Fund;~~

4
5 SECTION 8. Arkansas Code § 22-2-108(9)(A), concerning the Arkansas
6 Building Authority’s authority to adopt and enforce minimum design and
7 construction standards for capital improvement projects undertaken by a state
8 agency, is amended to read as follows:

9 (9)(A) To establish, promulgate, and enforce minimum design and
10 construction standards and criteria for all capital improvements undertaken
11 by any state agency, including, ~~but not limited to,~~ without limitation
12 procedures regarding flood plain management and the bidding and awarding of
13 capital improvements ~~and suspension and debarment of contractors~~ regarding
14 projects under the jurisdiction of the authority.

15
16 SECTION 9. Arkansas Code § 22-9-204(f), concerning violations and
17 penalties regarding unlicensed contractors performing work on a public works
18 project, is amended to read as follows:

19 (f)(1) It shall be a violation of this section for any prime
20 contractor to submit a bid listing unlicensed contractors or to use
21 unlicensed contractors on a public works project.

22 (2) It shall be a violation of this section for any
23 subcontractor who is not licensed by the board to contract to perform work on
24 a public works project.

25 (3) ~~Any contractor or subcontractor who, after notice and~~
26 ~~hearing, is found to have violated this section shall pay to the authority a~~
27 ~~civil penalty of not less than two hundred fifty dollars (\$250) nor more than~~
28 ~~five hundred dollars (\$500) and may be suspended from bidding on future~~
29 ~~public works contracts for a term of not less than six (6) months nor more~~
30 ~~than twelve (12) months. The board has jurisdiction over violations of this~~
31 subsection under § 17-25-103.

32 (4) ~~All hearings and appeals under this section shall be~~
33 ~~pursuant to the provisions of the Arkansas Administrative Procedure Act, §~~
34 ~~25-15-201 et seq. The authority shall have the power to file suit in the~~
35 ~~Pulaski County Circuit Court to obtain a judgment for the amount of any~~
36 ~~penalty not paid within thirty (30) days of service on the contractor of the~~

1 ~~order assessing the penalty.~~

2 ~~(5) Penalties collected pursuant to this section shall be~~
3 ~~deposited in the Arkansas Building Authority Maintenance Fund.~~

4
5 SECTION 10. Arkansas Code § 22-9-604(a), concerning withholding of
6 retention proceeds in a construction contract between a public agency and a
7 contractor required to furnish a performance bond, is amended to read as
8 follows:

9 (a)(1) In the case of a construction contract entered into between a
10 public agency and a contractor who is required to furnish a performance bond,
11 the contractor shall be entitled to payment of ~~ninety~~ ninety-five percent
12 ~~(90%)~~ (95%) of the earned progress payments when due, with the public agency
13 retaining ~~ten~~ five percent ~~(10%)~~ (5%) to assure faithful performance of the
14 contract.

15 ~~(2) Upon certification by the project architect or engineer that~~
16 ~~the construction contract is fifty percent (50%) complete, no further~~
17 ~~retainage will be withheld from the monthly estimates.~~

18 ~~(3)~~(2) If the construction contract allows for phased work in
19 which completion may occur on a partial occupancy, any retention proceeds
20 withheld and retained under this section shall be partially released within
21 thirty (30) days under the same conditions under this section in direct
22 proportion to the value of the part of the capital improvement completed.

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24 **APPROVED: 2/19/2009**

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