

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

As Engrossed: S2/20/19

# A Bill

HOUSE BILL 1162

5 By: Representatives Dotson, Wardlaw  
6 By: Senator Flippo  
7

## 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

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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.  
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27

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

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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)~~ (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;~~

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

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

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

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

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

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

19           19-11-273. Compliance.

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

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

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

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

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33           SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.  
34 ~~19-11-1010. Development and use of performance-based contracts—~~  
35 ~~Findings.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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32 SECTION 8. DO NOT CODIFY. Rules.

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

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

