

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 478 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/14/07

A Bill

HOUSE BILL 2583

5 By: Representative Sample
6 By: *Senator Horn*
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8

For An Act To Be Entitled

10 AN ACT TO MAKE VARIOUS REVISIONS TO THE
11 PROCUREMENT LAWS OF THE STATE OF ARKANSAS; AND
12 FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO MAKE VARIOUS REVISIONS TO THE
15 PROCUREMENT LAWS OF THE STATE OF
16 ARKANSAS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 19-11-101(b), concerning responsibilities
23 of an agency disbursement officer, is amended to read as follows:

24 (b) The Office of State Procurement of the Department of Finance and
25 Administration shall maintain complete files which shall be open to public
26 inspection on all commercial term and one-time contracts. The files shall
27 contain:

28 (1) A copy of the contract;

29 (2) A list of all printing or duplicating done or commodities
30 ordered, as well as the name of the invoiced agency; and

31 (3) A copy of all correspondence regarding the contract or jobs
32 performed thereunder; ~~and~~

33 ~~(4) A listing of the warrant number and amount of each warrant~~
34 ~~issued in payment of each job performed or commodity delivered.~~
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1 SECTION 2. Arkansas Code § 19-11-203(14), concerning the definition of
2 "exempt commodities and services", is amended to read as follows:

3 (14) "Exempt commodities and services" means:

4 (A) Advertising in newspapers, periodicals, and related
5 publications, and on television, radio, billboards, and electronic media;

6 (B) Animals procured for medical research;

7 (C)(i) Commodities and services for use in research,
8 education, and treatment for the diagnosis, cure, and prevention of disease
9 may be procured, with administrative approval, through a group purchasing
10 entity serving other public health institutions when substantial savings are
11 available.

12 (ii) A report shall be filed annually with the
13 Division of Legislative Audit reflecting the justification of and the
14 estimated savings accruing due to the use of this exemption;

15 (D)(i) Commodities procured for resale in cafeterias,
16 commissaries, bookstores, gift shops, canteens, and other similar
17 establishments.

18 (ii) However, these commodities procured shall not
19 be sold or transferred to any agency with the intent of circumventing
20 applicable procurement procedures;

21 (E) Commodities procured from nonprofit workshops in
22 accordance with § 19-11-501 et seq. [repealed];

23 (F)(i) Contracts awarded by agencies for the construction
24 of buildings and facilities and for major repairs.

25 (ii) These contract exemptions shall not extend to
26 the procurement of any commodities not otherwise exempt, which are to be
27 furnished by the agency under any such contract;

28 (G) Contracts awarded by the Arkansas State Highway and
29 Transportation Department for the construction, reconstruction, and
30 maintenance of roads and bridges in the state highway system and for the
31 county, rural road aid, and city street aid programs;

32 ~~(H) Contracts by institutions of higher learning for
33 personal and consulting services and contracts with students;~~

34 ~~(I)~~(H)(i) Farm products procured or sold by a state agency
35 having an agency procurement official.

36 (ii) The current trade customs with respect to the

1 procurement or sale of cotton, cotton seed, rice, and other farm products
2 shall be followed when it is necessary to do so in order to obtain the best
3 price for the commodities procured or sold;

4 ~~(J)~~(I) Fees, including medical fees and physician fees;

5 ~~(K)~~(J) Foster care maintenance services provided by foster
6 family homes approved by the Division of Children and Family Services of the
7 Department of Health and Human Services for children whose placement and care
8 are the responsibility of the Division of Children and Family Services of the
9 Department of Health and Human Services;

10 ~~(L)~~(K) Freight and storage charges and demurrage;

11 ~~(M)~~(L) Licenses required prior to performance of services;

12 ~~(N)~~(M)(i) Livestock procured by an agency having an
13 official experienced in selection and procurement of livestock.

14 (ii) Such procurement will be reported to the State
15 Procurement Director, giving details of the purchase;

16 ~~(O)~~(N) Livestock procured for breeding, research, or
17 experimental purposes;

18 ~~(P)~~(O) Maintenance on office machines and technical
19 equipment;

20 ~~(Q)~~(P) Medical items specifically requested by a physician
21 for treatment or diagnosis of patients in his or her care, including
22 prosthetic devices, surgical instruments, heart valves, pacemakers,
23 radioisotopes, and catheters;

24 ~~(R)~~(Q) Membership in professional, trade, and other
25 similar associations;

26 ~~(S)~~(R) Perishable foodstuffs for immediate use or
27 processing;

28 ~~(T)~~(S) Postage;

29 ~~(U)~~(T) Published books, manuals, maps, periodicals, films,
30 technical pamphlets, and copyrighted educational aids for use in libraries
31 and for other informational or instructional purposes in instances in which
32 other applicable law does not provide a restrictive means for the acquisition
33 of them;

34 ~~(V)~~(U) Services of visiting speakers, lecturers, and
35 performing artists;

36 ~~(W)~~(V) Taxes;

1 ~~(X)~~(W) Travel expense items such as room and board and
2 transportation charges;

3 ~~(Y)~~(X) Utility services or equipment which is defined,
4 recognized, and regulated by the Arkansas Public Service Commission as a
5 monopoly offering;

6 ~~(Z)~~(Y) Works of art for museum and public display;

7 ~~(AA)~~(Z) Capital improvements valued at less than twenty
8 thousand dollars (\$20,000), subject to minimum standards and criteria of the
9 Arkansas Building Authority; and

10 ~~(BB)~~(AA) Services related to work force development,
11 incumbent work force training, or specialized business or industry training;

12
13 SECTION 3. Arkansas Code § 19-11-204 is amended to read as follows:

14 19-11-204. Definitions concerning source selection and contract
15 formation.

16 As used in this subchapter:

17 (1) "Competitive bidding" means the same as defined in § 19-11-
18 234(a);

19 (2) "Competitive sealed bidding", means the same as defined in §
20 19-11-229(a);

21 (3) "Competitive sealed proposals", means the same as defined in
22 § 19-11-230(a);

23 (4) "Emergency procurement" means the acquisition of commodities
24 or services, which if not immediately initiated, will endanger human life or
25 health, state property, or the functional capability of a state agency;

26 (5) "Established catalogue price" means the price included in a
27 catalogue, price list, schedule, or other form that:

28 (A) Is regularly maintained by a manufacturer or
29 contractor;

30 (B) Is either published or otherwise available for
31 inspection by customers; and

32 (C) States prices at which sales are currently or were
33 last made to a significant number of buyers constituting the general buying
34 public for the commodities or services involved;

35 (6) "Invitation for bids" means all documents or electronic
36 media, whether attached or incorporated by reference, utilized for soliciting

1 bids in accordance with the procedures set forth in § 19-11-229, which refers
2 to competitive sealed bidding;

3 (7) "Multiple award contracts" means a method of procurement
4 whereby an indefinite quantity contract is awarded to more than one (1)
5 supplier for furnishing a like item or category of items.

6 (8) "Purchase description" means specifications or any other
7 document or electronic media describing the commodities or services to be
8 procured;

9 (9) "Request for proposals" means all documents or electronic
10 media, whether attached or incorporated by reference, utilized for soliciting
11 proposals in accordance with the procedures set forth in § 19-11-230, which
12 refers to competitive sealed proposals, § 19-11-231, which refers to small
13 procurements § 19-11-232, which refers to proprietary or sole source
14 procurements, § 19-11-233, which refers to emergency procurements, or § 19-
15 11-234, which refers to competitive bidding;

16 (10) "Request for qualifications" means a solicitation document
17 requiring submittal of qualifications or specialized expertise in response to
18 the scope of work or services required and does not require pricing.

19 (B) Other than as provided in § 19-11-801 et seq., the
20 request for qualifications process may only be used when, under rules
21 promulgated by the State Procurement Director, the director determines in
22 writing that the request for qualifications process is warranted.

23 ~~(10)~~(11) "Responsible bidder or offeror" means a person who has
24 the capability in all respects to perform fully the contract requirements and
25 the integrity and reliability which will assure good faith performance;

26 ~~(11)~~(12) "Responsive bidder" means a person who has submitted a
27 bid under § 19-11-229, which refers to competitive sealed bidding, which
28 conforms in all material respects to the invitation for bids, including the
29 specifications set forth in the invitation; and

30 ~~(12)~~(13)(A)(i) "Small procurements" means any procurement not
31 exceeding a purchase price of five thousand dollars (\$5000). Small purchases
32 may be procured without seeking competitive bids or competitive sealed bids.

33 (ii) However, competition should be used to the
34 maximum extent practicable.

35 (B) Items under state contract are excluded.

36

1 SECTION 4. Arkansas Code § 19-11-206 is amended to read as follows:
2 19-11-206. Definitions concerning intergovernmental relations.

3 As used in this subchapter:

4 (1) "Cooperative procurement" means procurement conducted by, or
5 on behalf of, more than one (1) public procurement unit or by a public
6 procurement unit with an external procurement activity;

7 (2)(A) "External procurement activity" means any buying
8 organization not located in this state which, if located in this state, would
9 qualify as a public procurement unit.

10 (B) An agency of the federal government is an external
11 procurement activity;

12 (3) "Local public procurement unit" means:

13 (A) Any county, city, town, state agency, and any other
14 subdivision of the state or public agency thereof;

15 (B) Any fire protection district;

16 (C) Any regional water distribution district;

17 (D) Any rural development authority;

18 (E) Any public authority;

19 (F) Any public educational, health, or other institution;

20 (G) Any nonprofit corporation during the time that it
21 contracts with the Department of Health and Human Services to provide
22 services to the developmentally disabled or for transportation services, so
23 long as the contract exceeds seventy-five thousand dollars (\$75,000) per
24 year;

25 ~~(G) Any nonprofit corporation during such time that it~~
26 ~~contracts with the Division of Developmental Disabilities Services of the~~
27 ~~Department of Health and Human Services to provide services to the~~
28 ~~developmentally disabled, provided the contract exceeds seventy five thousand~~
29 ~~dollars (\$75,000) per year;~~

30 (H) Any nonprofit corporation providing fire protection
31 services to a rural area or providing drinking water to the public in a rural
32 area; and

33 ~~(I) Any nonprofit corporation which contracts with the~~
34 ~~Department of Health and Human Services, provided that the contract includes~~
35 ~~provisions for transportation services, and the contract exceeds seventy five~~
36 ~~thousand dollars (\$75,000) per year; and~~

1 ~~(J)~~(I) To the extent not prohibited by law, any other
2 entity which expends public funds for the acquisition or leasing of
3 commodities and services;

4 (4) "Public procurement unit" means either a local public
5 procurement unit or a state public procurement unit; and

6 (5) "State public procurement unit" means the Office of State
7 Procurement and any other procurement agency of this state.

8
9 SECTION 5. Arkansas Code § 19-11-216 is amended to read as follows:
10 19-11-216. State Procurement Director.

11 (a)(1) The executive head of the Office of State Procurement is
12 designated as the administrator of the Office of State Procurement, and as
13 such, he or she shall be known and designated as the State Procurement
14 Director.

15 (2) The administrator shall be appointed by the Director of the
16 Department of Finance and Administration.

17 (b) The administrator shall be at least thirty (30) years of age, of
18 good moral character, and of demonstrated ability or capacity in the field of
19 purchasing commodities and services.

20
21 SECTION 6. Arkansas Code § 19-11-230(b), concerning competitive sealed
22 proposals, is amended to read as follows:

23 (b) ~~When, under regulations promulgated by the State Procurement~~
24 ~~Director, the director determines in writing that~~ the use of competitive
25 sealed bidding is not practicable and advantageous, a contract may be awarded
26 by competitive sealed proposals.

27
28 SECTION 7. Arkansas Code § 19-11-1001 is amended to read as follows:
29 19-11-1001. Definitions.

30 As used in this subchapter:

31 (1) "Consultant services contract" means a contract between a
32 state agency and an individual or organization in which:

33 (A) The service to be rendered to the state agency or to a
34 third-party beneficiary under the contract is primarily the giving of advice
35 by the contractor on a particular problem facing the state agency or the
36 third-party beneficiary;

1 (B) The contractor is an independent contractor with
2 respect to the state agency;

3 (C) The state agency does not exercise managerial control
4 over the day-to-day activities of the contractor; and

5 (D) The contract specifies the results expected from the
6 services to be rendered by the contractor and the advice or assistance to be
7 provided;

8 (2) "Contractor" means any person or organization that executes
9 a contract with a state agency under which the person or organization agrees
10 to provide professional services or consultant services to the state agency,
11 and the individuals performing the services are not state employees occupying
12 regular full-time or part-time or extra help positions provided by law;

13 (3)(A) "Design professional contract" means a contract which is
14 primarily for:

15 (i) Minor projects that are time critical; and

16 (ii) Minor remodeling projects that do not exceed
17 one million dollars (\$1,000,000) in cost.

18 (B) Design professional contracts are primarily for the
19 procurement of architectural, engineering and professional services
20 competitively selected under § 19-11-801 et seq.

21 (C) Design professional contracts shall be reviewed by the
22 agency or institution at least yearly and adjusted to reflect historical
23 expenditures.

24 (D) State agencies shall follow applicable Arkansas
25 Building Authority guidelines and procedures.

26 (E) Institutions of higher education that are exempt from
27 review and approval of the Arkansas Building Authority shall comply with the
28 provisions of this section;

29 ~~(3)(4)~~ "Director" means the State Procurement Director;

30 ~~(4)(5)~~ "Employee" means an individual drawing a salary from a
31 state agency, whether elected or not, and any nonsalaried individual
32 performing professional services for any state agency;

33 ~~(5)(6)~~ "Professional services contract" means a contract between
34 a state agency and a contractor in which:

35 (A) The relationship between the contractor and the state
36 agency is that of an independent contractor rather than that of an employee;

1 (B) The services to be rendered consist of the personal
2 services of an individual that are professional in nature;

3 (C) The state agency does not have direct managerial
4 control over the day-to-day activities of the individual providing the
5 services;

6 (D) The contract specifies the results expected from the
7 rendering of the services rather than detailing the manner in which the
8 services shall be rendered; and

9 (E) Services rendered under a professional services
10 contract are rendered to the state agency itself or to a third-party
11 beneficiary; and

12 ~~(6)~~(7) "State agency" means any department, agency, board,
13 commission, or institution of higher education of the State of Arkansas.

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15 /s/ Sample

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APPROVED: 3/23/2007

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