

As Engrossed: 1/31/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Hinshaw**

A Bill

HOUSE BILL 1181

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 19-11-203 TO REMOVE THE
9 EXEMPTION FROM THE ARKANSAS PURCHASING LAW FOR PURCHASES
10 MADE BY CERTAIN AGENCIES; TO AMEND ARKANSAS CODE 19-4-706,
11 ARKANSAS CODE 19-11-224 AND ARKANSAS CODE 25-8-102 (b) TO
12 REMOVE LANGUAGE REFERRING TO AN EXEMPTION UNDER THE
13 ARKANSAS PURCHASING LAW FOR CERTAIN AGENCIES; AND FOR
14 OTHER PURPOSES."

15

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

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18 SECTION 1. Arkansas Code 19-11-203 is amended to read as follows:

19 "19-11-203. Definitions generally.

20 As used in this subchapter, unless the context otherwise requires:

21 (1) 'Agency purchasing official' means any person authorized by a
22 state agency to enter into and administer contracts and make written
23 determinations and findings with respect thereto in accordance with procedures
24 prescribed by this subchapter and the regulations promulgated under it. The
25 term also includes an authorized representative acting within the limits of
26 authority;

27 (2) 'Business' means any corporation, partnership, individual, sole
28 proprietorship, joint-stock company, joint venture, or any other legal entity;

29 (3) 'Capital improvement' means all lands, buildings, structures,
30 utilities, on-site and off-site improvements, and other appurtenant
31 improvements, existing or future, and all construction, repairs, alterations,
32 and renovations thereof which are undertaken, owned, operated, or otherwise
33 managed by a state agency. Capital improvements shall not include
34 construction and reconstruction of roads and bridges in the state highway
35 system by the State Highway Commission, nor shall the term capital

1 improvements include any building, facility, plant, structure, or other
2 improvements constructed by, or in behalf of, the Arkansas State Highway and
3 Transportation Department or the State Highway Commission;

4 (4) 'Purchasing agent' means any person authorized by a state agency
5 not having an agency purchasing official to enter into and administer
6 contracts and make written determinations and findings with respect thereto in
7 accordance with procedures prescribed by this subchapter. The term also
8 includes an authorized representative acting within the limits of authority;

9 (5) 'Commodities' means all property including, but not limited to,
10 equipment, printing, stationery, supplies, and insurance but excluding leases
11 on real property, excluding real property or a permanent interest in real
12 property, excluding exempt commodities and services, and excluding capital
13 improvements;

14 (6) 'Contract' means all types of state agreements, regardless of what
15 they may be called, for the purchase of commodities and services and for the
16 disposal of surplus commodities and services not otherwise exempt. It
17 includes awards and notices of award, contracts of a fixed-price, cost,
18 cost-plus-a-fixed-fee, or incentive type, contracts providing for the issuance
19 of job or task orders, leases, letter contracts, and purchase orders. It also
20 includes supplemental agreements with respect to any of these items;

21 (7) 'Contract modification' means any written alteration in
22 specifications, delivery point, rate of delivery, period of performance,
23 price, quantity, or other provisions of any contract accomplished by mutual
24 action of the parties to the contract;

25 (8) 'Contractor' means any person having a contract with a state
26 agency;

27 (9) 'Data' means recorded information, regardless of form or
28 characteristic;

29 (10) 'Debarment' means the disqualification of a person to receive
30 invitations for bids or requests for proposals or the award of a contract by
31 the state for a specified period of time commensurate with the seriousness of
32 the offense or the failure or the inadequacy of performance;

33 (11) 'Designee' means a duly authorized representative of a person
34 holding a superior position;

35 (12) 'Employee' means an individual drawing a salary from a state

1 agency, whether elected or not, and any nonsalaried individual performing
2 personal services for any agency;

3

4 (13) 'Exempt commodities and services' means:

5 (A) Advertising in newspapers, periodicals, and related
6 publications;

7 (B) Animals procured for medical research;

8 (C) Commodities procured for resale in cafeterias, commissaries,
9 bookstores, gift shops, canteens, and other similar establishments. However,
10 such commodities procured shall not be sold or transferred to any agency with
11 the intent of circumventing applicable procurement procedures;

12 (D) Commodities procured from nonprofit workshops in accordance
13 with §§ 19-11-501 - 19-11-504;

14 (E) Contracts awarded by agencies for the construction of
15 buildings and facilities and for major repairs. These contract exemptions
16 shall not extend to the procurement of any commodities not otherwise exempt,
17 which are to be furnished by the agency under any such contract;

18 (F) Contracts awarded by the Arkansas State Highway and
19 Transportation Department for the construction, reconstruction, and
20 maintenance of roads and bridges in the state highway system and for the
21 county, rural road aid, and city street aid programs;

22 (G) Contracts by institutions of higher learning for disposal of
23 personal and consulting services and contracts with students;

24 (H) Farm products procured or sold by a state agency having an
25 agency purchasing official. The current trade customs with respect to the
26 procurement or sale of cotton, cotton seed, rice, and other farm products
27 shall be followed when it is necessary to do so in order to obtain the best
28 price for the commodities procured or sold;

29 (I) Fees including medical fees and physician fees;

30 (J) Freight and storage charges and demurrage;

31 (K) Licenses;

32 (L) Livestock procured by an agency having an official
33 experienced in selection and procurement of livestock. Such procurement will
34 be reported to the State Purchasing Director giving details of the purchase;

35 (M) Livestock procured for breeding, research, or experimental

- 1 purposes;
- 2 (N) Maintenance on office machines and technical equipment;
- 3 (O) Medical items specifically requested by a physician for
- 4 treatment or diagnosis of patients in his care including prosthetic devices,
- 5 surgical instruments, heart valves, pacemakers, radioisotopes, and catheters;
- 6 (P) Membership in professional, trade, and other similar
- 7 associations;
- 8 (Q) Perishable foodstuffs for immediate use or processing;
- 9 (R) Postage;
- 10 (S) Published books, manuals, maps, periodicals, films, technical
- 11 pamphlets, and copyrighted educational aids for use in libraries and for other
- 12 informational or instructional purposes in instances in which other applicable
- 13 law does not provide a restrictive means for the acquisition of them;
- 14 (T) Services of visiting speakers, lecturers, and performing
- 15 artists;
- 16 (U) Taxes;
- 17 (V) Travel expense items such as room and board and
- 18 transportation charges;
- 19 (W) Utility services or equipment which is defined, recognized,
- 20 and regulated by the Arkansas Public Service Commission as a monopoly
- 21 offering;
- 22 (X) Works of art for museum and public display;
- 23 (Y) Professional and consultant services procured in accordance
- 24 with § 19-4-101 et seq.;
- 25 (Z) Medical items used for the treatment and diagnosis of
- 26 patients if procured through a group purchasing entity serving other public
- 27 health institutions when substantial savings are documented annually on a line
- 28 item basis by the state agency to the State Purchasing Director and approved
- 29 in writing by the State Purchasing Director. All fees or charges by the group
- 30 purchasing entity or suppliers to the state or state agency are to be prorated
- 31 to determine each line item's actual cost.
- 32 ((14) 'Grant' means the furnishing by the state of assistance, whether
- 33 financial or otherwise, to any person to support a program authorized by law.
- 34 It does not include an award whose primary purpose is to procure an end
- 35 product, whether in the form of commodities or services. A contract resulting

1 from such an award is not a grant but a procurement contract;

2 ((15) 'May' means the permissive;

3 (16) 'Person' means any business, individual, union, committee, club,
4 or other organization or group of individuals;

5 ((17) 'Political subdivisions' means counties, municipalities, and
6 school districts;

7 () (18) 'Procurement' means the buying, purchasing, renting, leasing, or
8 otherwise obtaining of any commodities or services. It also includes all
9 functions that pertain to the obtaining of any public procurement including
10 description of requirements, selection and solicitation of sources,
11 preparation and award of contract, and all phases of contract administration;

12 ((19) 'Public funds' means all state-appropriated and cash funds of
13 state agencies, as defined by applicable law or official ruling. Public funds
14 for purposes of this subchapter shall not include funds administered by, or
15 under the control of, agencies, except public funds. Without necessarily being
16 limited thereto, it does not include grants, donations, research contracts,
17 and revenues derived from self-supporting enterprises which are not operated
18 as a primary function of the agency, no part of which funds are deposited in
19 the State Treasury;

20 ((20) 'Purchase request' means that document whereby a using agency
21 requests that a contract be obtained for a specified need. It may include,
22 but is not limited to, the technical description of the requested item,
23 delivery schedule, transportation, criteria for evaluation of solicitees,
24 suggested sources of supply, and information supplied for the making of any
25 written determination and finding required by this subchapter;

26 () (21) 'Purchasing agency' means any state agency which is authorized
27 by this subchapter, its implementing regulations, or by way of delegation from
28 the State Purchasing Director to contract on its own behalf rather than
29 through the central contracting authority of the State Purchasing Director;

30 ((22) 'Services' means the furnishing of labor, time, or effort by a
31 contractor, not involving the delivery of a specific end product other than
32 reports which are merely incidental to the required performance. This term
33 shall not include employment agreements, collective bargaining agreements,
34 exempt commodities and services, or architectural or engineering contracts
35 requiring approval of State Building Services;

1 ((23) 'Shall' means the imperative;

2 ((24) 'State agency' means any office, department, commission, council,
3 board, bureau, committee, institution, legislative body, agency, government
4 corporation, or other establishment or official of the executive, judicial, or
5 legislative branch of this state. ;

6 ((25) 'State contract' means a contract for the procurement of
7 commodities or services in volume, awarded by the State Purchasing Director.
8 The contract may apply to all or part of the state;

9 () (26) 'State Purchasing Director' means the person holding the
10 position created in § 19-11-216, as the head of the central purchasing office
11 of the State of Arkansas;

12 () (27) 'Suspension' means the disqualification of a person to receive
13 invitations for bids or requests for proposals, or the award of a contract by
14 the state, for a temporary period pending the completion of an investigation,
15 and any legal proceedings that may ensue because a person is suspected upon
16 probable cause of engaging in criminal, fraudulent, or seriously improper
17 conduct or failure or inadequacy of performance which may lead to debarment;
18 and

19 ((28) 'Using agency' means any state agency which utilizes any
20 commodities or services purchased under this subchapter."
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22 SECTION 2. Arkansas Code 19-11-224 is amended to read as follows:

23 "19-11-224. Interest and carrying charges.

24 State agencies may enter into contracts which contemplate the payment of
25 interest or carrying charges under such regulations as may be promulgated by
26 the State Purchasing Director."
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28 SECTION 3. Arkansas Code 25-8-102 (b) is amended to read as follows:

29 "(b) The director shall have authority to install any record- keeping
30 and other procedures in his office and in other offices and departments of the
31 state which he shall deem necessary or advisable to carry out his functions
32 and duties. However, nothing in this section shall be construed to grant the
33 director any authority to establish recordkeeping or other procedures, or
34 rules and regulations with respect to the elected constitutional officers of
35 the state, the General Assembly and its committees, or other agencies who are

1 exempt from all or a part of the procedures set forth in the General
2 Accounting and Budgetary Procedures Law, § 19-4-101 et seq."

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4 SECTION 4. Arkansas Code §19-4-706 is amended to read as follows:

5 "19-4-706. Interest and carrying charges. State agencies may enter
6 into contracts which contemplate the payment of interest or carrying charges
7 under such regulations as may be promulgated by the State Purchasing
8 Director."

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10 SECTION 5. All provisions of this Act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 6. If any provision of this Act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the Act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 Act are declared to be severable.

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20 SECTION 7. All laws and parts of laws in conflict with this Act are
21 hereby repealed.

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/s/Jerry Hinshaw