

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

A Bill

HOUSE BILL 1179

5 By: Representative Wardlaw
6 By: Senator Flippo
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
10 AMEND ARKANSAS PROCUREMENT LAWS CONCERNING THE
11 DELEGATION AUTHORITY OF THE STATE PROCUREMENT
12 DIRECTOR; TO AMEND THE LAW CONCERNING PROTESTS OF
13 SOLICITATIONS AND AWARDS UNDER THE ARKANSAS
14 PROCUREMENT LAW; AND FOR OTHER PURPOSES.
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Subtitle

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18 TO AMEND THE DELEGATION AUTHORITY OF THE
19 STATE PROCUREMENT DIRECTOR; AND TO AMEND
20 THE LAW CONCERNING PROTESTS OF
21 SOLICITATIONS AND AWARDS UNDER THE
22 ARKANSAS PROCUREMENT LAW.
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24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code § 19-11-218 is amended to read as follows:
28 19-11-218. Assistants and designees - Written delegation orders.

29 (a) Subject to the provisions of the Uniform Classification and
30 Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

31 (1) Employ and supervise such assistants and other persons as
32 may be necessary;

33 (2) Fix their compensation as provided by law; and

34 (3) (A) Delegate authority to ~~such~~ designees or to ~~any a~~ state
35 agency ~~as the director may deem appropriate~~ by issuing a written delegation
36 order, within the limitations of state law and the state procurement



1 regulations.

2 (B) A written delegation order issued under this section
 3 shall:

4 (i) Include an expiration date for the written
 5 delegation order;

6 (ii) Be publicly posted on the official website of
 7 the Office of State Procurement;

8 (iii) Remain in effect under the original terms
 9 unless the terms of the written delegation order are modified or rescinded in
 10 writing by the director;

11 (iv) Not be issued for a term that exceeds two (2)
 12 years; and

13 (v) Be narrowly tailored if the written delegation
 14 order is based on the type of commodity or service being procured.

15 (C) The director shall maintain records of each written
 16 delegation order issued under this section.

17 (D) A person who is to be given authority under a written
 18 delegation order issued under this section shall complete training on state
 19 procurement laws, as provided for in this subchapter and in the rules adopted
 20 by the director, before the written delegation order is issued.

21 (b) The director shall adopt rules to:

22 (1) Implement the requirements for written delegation orders
 23 under this section; and

24 (2) Outline the procurement training required under this
 25 section.

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27 SECTION 2. Arkansas Code § 19-11-244(a), concerning the resolution of
 28 protested solicitations and awards under the Arkansas Procurement Law, is
 29 amended to read as follows:

30 (a)(1) ~~Any~~ An actual or prospective bidder, offeror, or contractor who
 31 is aggrieved in connection with the solicitation of a contract may protest by
 32 presenting a written notice at least seventy-two (72) hours before the filing
 33 deadline for the solicitation response ~~to the State Procurement Director or~~
 34 ~~the head of a procurement agency.~~

35 (2) ~~Any~~ An actual bidder, offeror, or contractor who is
 36 aggrieved in connection with the award of a contract may protest ~~to the~~

1 ~~(A) Director; or~~

2 ~~(B) Head of a procurement agency by submitting a~~
 3 written protest within fourteen (14) calendar days after the award or the
 4 notice of anticipation to award has been posted.

5 (3)(A) ~~The protest shall be submitted in writing within fourteen~~
 6 ~~(14) calendar days after the aggrieved person knows or should have known of~~
 7 ~~the facts giving rise to the grievance.~~ A protest submitted under this
 8 section shall be submitted to the:

9 (i) State Procurement Director, if the Office of
 10 State Procurement issued the solicitation; or

11 (ii) Head of the relevant procurement agency, if a
 12 procurement agency issued the solicitation.

13 (B)(i) The head of the relevant procurement agency may
 14 request that the director resolve a protest submitted under subdivision
 15 (a)(3)(A)(ii) of this section.

16 (ii) An actual bidder, offeror, or contractor that
 17 submits a protest under this subsection shall not submit a protest to the
 18 director if a procurement agency issued the relevant solicitation.

19 (C) A protest resolved by the head of the relevant
 20 procurement agency under this section:

21 (i) Has the same effect and finality as a protest
 22 resolved by the director; and

23 (ii) Is not subject to an appeal made to the
 24 director.

25 (4) A protest submitted by an aggrieved person under this
 26 section shall:

27 (A) Be limited to one (1) or more of the following
 28 grounds:

29 (i) The award of the contract exceeded the authority
 30 of the director or the procurement agency;

31 (ii) The procurement process violated a
 32 constitutional, statutory, or regulatory provision;

33 (iii) The director or the procurement agency failed
 34 to adhere to the rules of the procurement as stated in the solicitation, and
 35 the failure to adhere to the rules of the procurement materially affected the
 36 contract award;

1 (iv) The procurement process involved responses that
 2 were collusive, submitted in bad faith, or not arrived at independently
 3 through open competition; or

4 (v) The award of the contract resulted from a
 5 technical or mathematical error made during the evaluation process; and

6 (B) State facts that substantiate each ground on which the
 7 protest is based.

8
 9 SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of
 10 protested solicitations and awards under the Arkansas Procurement Law, is
 11 amended to read as follows:

12 (f) In the event of a timely protest under subsection (a) of this
 13 section, the state shall not ~~proceed further with the solicitation or with~~
 14 ~~the award of the contract until~~ execute a contract that is the result of the
 15 protested solicitation or award unless the director or the head of ~~a~~ the
 16 relevant procurement agency makes a written determination that the ~~award~~
 17 execution of the contract without delay is necessary to protect substantial
 18 interests of the state.

19
 20 SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of
 21 protested solicitations and awards under the Arkansas Procurement Law, is
 22 amended to add an additional subsection to read as follows:

23 (h) An actual or prospective bidder, offeror, or contractor who is
 24 aggrieved by a protest submitted under this section that was without merit or
 25 intended purely to delay the award of a contract may bring a private cause of
 26 action for tortious interference with a business expectancy against the
 27 person or entity that submitted the protest.

28
 29 SECTION 5. DO NOT CODIFY. Rules.

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

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

34 (2) If approval under § 10-3-309 has not occurred by January 1,
 35 2020, as soon as practicable after approval under § 10-3-309.

36 (b) The director shall file the proposed rules with the Legislative

1 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so
2 that the Legislative Council may consider the rules for approval before
3 January 1, 2020.

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