

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

A Bill

HOUSE BILL 1180

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 THE LAW CONCERNING STATE CONTRACTS; TO AMEND
11 THE LAW CONCERNING COOPERATIVE PURCHASING; AND FOR
12 OTHER PURPOSES.
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Subtitle

15 TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
16 AMEND THE LAW CONCERNING STATE CONTRACTS;
17 AND TO AMEND THE LAW CONCERNING
18 COOPERATIVE PURCHASING.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 19-11-206(1), concerning the definitions
25 relating to intergovernmental relations under the Arkansas Procurement Law,
26 is amended to read as follows:

27 (1) ~~“Cooperative procurement”~~ “Cooperative purchasing agreement”
28 means an agreement entered into as the result of a procurement conducted by,
29 or on behalf of, more than one (1) public procurement unit or by a public
30 procurement unit with an external procurement activity;
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32 SECTION 2. Arkansas Code § 19-11-223 is amended to read as follows:
33 19-11-223. Commodities, technical and general services, and
34 professional and consultant services under state contract.

35 (a) (1) In addition to establishing a state contract for those
36 commodities, technical and general services, and professional and consultant



1 services within the exclusive jurisdiction of the State Procurement Director
2 under § 19-11-222, the director may award a mandatory state contract for
3 other commodities, technical and general services, and professional and
4 consultant services ~~in those instances when substantial savings may be~~
5 ~~effected by quantity purchasing of commodities, technical and general~~
6 ~~services, or professional and consultant services in general use by several~~
7 state agencies when the director determines that combining the collective
8 purchasing power of the state would be beneficial to the state.

9 (2) The director shall submit a mandatory state contract that is
10 not for commodities or services within the exclusive jurisdiction of the
11 director to the Legislative Council or, if the General Assembly is in
12 session, to the Joint Budget Committee, for review before the execution of
13 the contract.

14 ~~(b)(1) State contracts shall be limited to those commodities on which,~~
15 ~~by virtue of custom or trade, substantial savings may be realized.~~

16 ~~(2) In those instances in which substantial savings are not~~
17 ~~effected, the letting of state contracts for those commodities shall be~~
18 ~~discontinued.~~

19 ~~(c)(1) Except for the procurement of commodities, technical and~~
20 ~~general services, and professional and consultant services within the~~
21 ~~exclusive jurisdiction of the director, state agencies with agency~~
22 ~~procurement officials that can demonstrate a geographical or volume buying~~
23 ~~advantage need not participate in the state contract.~~

24 ~~(2) However, if the commodities, technical and general services,~~
25 ~~or professional and consultant services obtained are procured at a~~
26 ~~substantially higher price during the same state contract period, that state~~
27 ~~agency must participate in the state contract upon expiration of the state~~
28 ~~agency's contract.~~

29 ~~(d) Except as authorized in this section, all state agencies which~~
30 ~~require (b)(1) Unless an exemption is approved by the director under~~
31 ~~subdivision (b)(2) of this section, a state agency that requires commodities,~~
32 ~~technical and general services, and professional and consultant services that~~
33 ~~are under a mandatory state contract shall procure these commodities,~~
34 ~~technical and general services, and professional and consultant services~~
35 ~~exclusively under such the mandatory state contract.~~

36 (2)(A) Except as provided in § 19-11-233, the director may

1 approve an exemption from a mandatory state contract awarded under this
 2 section only if the state agency demonstrates that substantial savings will
 3 likely be effected by purchasing outside of the mandatory state contract.

4 (B)(i) Approval of an exemption from a mandatory state
 5 contract under this section shall be in writing.

6 (ii) Denial of a request for an exemption from a
 7 mandatory state contract under this section is not required to be in writing.

8 ~~(e)~~ (c) All contracts concerning commodities, technical and general
 9 services, and professional and consultant services shall disclose a projected
 10 total cost, including, but not limited to, without limitation expenditures
 11 that may be incurred under all available periods of extension if the
 12 extensions were executed.

13 (d) The director shall:

14 (1) Identify and prioritize opportunities for awarding mandatory
 15 state contracts under this section;

16 (2) Conduct mandatory state contract procurements under this
 17 section that would produce savings for the state;

18 (3) Attempt to invite the participation of the potentially
 19 affected state agencies in the development and evaluation of a mandatory
 20 state contract procurement;

21 (4) Post notice of his or her intent to procure a mandatory
 22 state contract on the official website of the Office of State Procurement;
 23 and

24 (5)(A) Promote the use of mandatory state contracts among county
 25 and city governments, including without limitation making information about
 26 the mandatory state contracts readily available and searchable.

27 (B) The director shall adopt rules to include any
 28 necessary conditions, reporting, or document retention standards related to
 29 the director's duty to promote mandatory state contract use under this
 30 subsection.

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 32 SECTION 3. Arkansas Code § 19-11-249 is amended to read as follows:

33 19-11-249. Cooperative purchasing.

34 (a)(1) A public procurement unit may participate in, sponsor, conduct,
 35 or administer a cooperative purchasing agreement for the acquisition of
 36 commodities or services ~~with one (1) or more public procurement units or~~

1 ~~external procurement activities~~ in accordance with an agreement entered into
 2 between the participants.

3 ~~(2)(A) A cooperative purchasing agreement under this section may~~
 4 ~~include without limitation a joint or multiparty contract between public~~
 5 ~~procurement units and an open ended state public procurement unit contract~~
 6 ~~that is made available to local public procurement units. A cooperative~~
 7 purchasing agreement is limited to commodities and services for which the
 8 public procurement unit may realize savings or material economic value, or
 9 both.

10 (B)(i) The State Procurement Director shall consider the
 11 economic justification for using a cooperative purchasing agreement when
 12 granting or withholding approval for the cooperative purchasing agreement.

13 (ii) The State Procurement Director shall adopt
 14 rules to create a review policy outlining how the economic justification
 15 required under this section may be demonstrated, including without limitation
 16 a comparison of:

17 (a) Current state contract pricing and the
 18 pricing under a cooperative purchasing agreement; or

19 (b) Information obtained from a request for
 20 information and pricing under a cooperative purchasing agreement.

21 (C) The State Procurement Director and the Director of the
 22 Department of Finance and Administration shall submit any request for the
 23 Office of State Procurement or the Department of Finance and Administration,
 24 respectively, to participate in a cooperative purchasing agreement to the
 25 Governor for approval.

26 (b)(1)(A) The State Procurement Director shall present ~~a quarterly~~ an
 27 annual report of all purchases made under cooperative purchasing agreements
 28 by a state agency without an agency procurement official under this section
 29 to the Legislative Council or, if the General Assembly is in session, to the
 30 Joint Budget Committee.

31 (B) A state agency that has an agency procurement official
 32 shall present an annual report of all purchases made under cooperative
 33 purchasing agreements under this section to the Legislative Council or, if
 34 the General Assembly is in session, to the Joint Budget Committee.

35 (2) The ~~report~~ reports required under this subsection shall be
 36 in the format required by the Legislative Council and shall include the

1 following:

- 2 (A) The name of the contractor;
- 3 (B) The name of the procuring agency;
- 4 (C) The contact information for the contractor and
5 procuring agency;
- 6 (D) The total cost of the contract, including all
7 available extensions;
- 8 (E) A description of the goods or services procured; and
- 9 (F) Any other information requested by the Legislative
10 Council or the Joint Budget Committee.

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12 SECTION 4. DO NOT CODIFY. Rules.

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

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

17 (2) If approval under § 10-3-309 has not occurred by January 1,
18 2020, as soon as practicable after approval under § 10-3-309.

19 (b) The director shall file the proposed rules with the Legislative
20 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so
21 that the Legislative Council may consider the rules for approval before
22 January 1, 2020.