

**REPORT
OF THE
COMMITTEE ON POLICY MAKING
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

September 21, 2018

Senator Linda Chesterfield, Co-Chair	Representative George B. McGill, Co-Chair
Senator Frank Glidewell, Vice Co-Chair	Representative, DeAnn Vaught, Vice Co-Chair
Senator Cecile Bledsoe	Representative Richard Womack
Senator Jonathan Dismang	Representative Joe Jett
Senator David Sanders	Representative Les Eaves
Senator Bryan King	Representative Matthew J. Shepherd
Senator Scott Flippo	Representative Joe Farrer
Senator Will Bond	Representative Jim Dotson, ex officio
Senator Bill Sample, ex officio	Representative Jon S. Eubanks, ex officio
Senator Terry Rice, ex officio	

Dear Co-Chairs:

The Policy Making Subcommittee of the Arkansas Legislative Council met Wednesday, September 19, 2018 at 12:00 noon in Committee Room B of the Big Mac Building, Little Rock, Arkansas. Senator Linda Chesterfield called the meeting to order and saw a quorum of members present. The members present are listed on the sign-in sheet.

Marty Garrity, Director of the Bureau of Legislative Research, noted that that the proposal by Lexis-Nexis was the one responsive proposal to the RFP to provide editing and publishing services for the Arkansas Code Revision Commission. Ms. Garrity stated the Arkansas Code Revision Commission and the Bureau of Legislative Research are parties in the contract with Lexis-Nexis. In addition to the publishing services, Lexis Nexis will continue to maintain the online unannotated Arkansas Code for access by the public.

Following discussion, Representative Joe Jett moved that the Policy-Making Subcommittee recommend approval of the contract with Lexis-Nexis. The motion was seconded by Senator Glidewell, and passed by voice vote.

There being no further business to come before the subcommittee, the meeting adjourned.

Respectfully submitted,

Senator Linda Chesterfield, Co-Chair and Representative George B. McGill, Co-Chair

LC: GBM/vjf

PUBLISHING AND EDITING OF STATUTORY MATERIALS SERVICES AGREEMENT

This Services Agreement (the “Agreement”) is between Matthew Bender & Co., Inc., a member of LexisNexis Group (“LexisNexis”), located at 701 E. Water St., Charlottesville, VA, 22902, the Arkansas Code Revision Commission (the “Commission”), and the Bureau of Legislative Research (“BLR”), located in the State Capitol Building, Room 315, 500 Woodlane Street, Little Rock, Arkansas 72201. LexisNexis is a commercial, full-text legal information service. The Commission and the BLR desire to secure LexisNexis’ services for the publication, editorial revision, and upkeep of the laws of the State of Arkansas of a general and permanent nature, along with annotations, editor’s notes, histories, indices, and the supplements and upkeep services to the Arkansas Code of 1987 Annotated, Official Edition (the “A.C.A.”), in both printed and electronic form, as set forth in RFP No. BLR-180001 and LexisNexis’ response to the RFP (the “Services”).

LexisNexis, the Commission, and the BLR hereby agree as follows:

1. **Services to be performed.** LexisNexis hereby agrees to perform the Services as set forth in RFP No. BLR-180001 (the “RFP”) and LexisNexis’ Proposal in response to the RFP, as amended herein and, including LexisNexis’ Official Proposal Price Sheet and its attachments (the “Proposal”). Any and all assumptions stated by LexisNexis in the Proposal shall not be considered part of this Agreement, unless specifically stated herein. The RFP and the Proposal are attached hereto and incorporated into this agreement by reference as Attachment A.
2. **Term and Termination.** The term of this Agreement will commence on January 1, 2019, for an initial term of seven (7) years to terminate on December 31, 2025, with an option for two (2) automatic renewal terms of up to seven (7) years per renewal term, for a maximum possible contract term of twenty-one (21) years.

The Commission, by its own decision, or the Commission and BLR deciding together, may terminate the Agreement at any time for any reason. In the event of termination, LexisNexis agrees to apply its best efforts to bring work in progress to an orderly conclusion, in a manner and form consistent with the Agreement and satisfactory to the Commission.

3. **Pricing for Subscribers and Purchasers.** The initial pricing for subscribers and purchasers, including the BLR, related to this Agreement are outlined in the Official Proposal Price Sheet that is part of the Proposal and incorporated in this Agreement by reference. Any increases in the pricing under this Agreement shall be determined by the Commission upon recommendation of LexisNexis. The Commission is not bound by the recommendation of LexisNexis.
4. **Pricing for Government Subscribers and Purchasers.**
 - A. **BLR.** In addition to adhering to the pricing set forth in the Official Proposal Price Sheet at Attachment A hereto, LexisNexis agrees to provide at no cost to the BLR up to fifty (50) sets of the A.C.A., which may include electronic format versions as determined by the BLR. The sets shall include supplements,

replacement volumes, indexes, court rules, and Advanced Code Service volumes, as they are published, or as the electronic format versions are updated, in order to keep each of the sets provided up to date.

- B. Other Arkansas Public Entities. Sales to and subscriptions for government departments, agencies, boards, and commissions pursuant to this paragraph shall be made without interest or finance charges and in accordance with the pricing set out in the Official Proposal Price Sheet set forth in Attachment A hereto.

5. **Proposed Contract Changes Accepted.**

A. In its proposal in response to RFP No. BLR-180001, LexisNexis proposed the following changes, which have been accepted and agreed to by the Commission and the BLR, and are affirmed herein, as follows:

- i. Binding Method. The binding method for bound volumes will be burst bound;
- ii. Electronic Formats. Production of the Arkansas Primary Law DVD will be discontinued. LexisNexis will provide the BLR with the A.C.A. in electronic format through an XML custom output, as approved by the Commission and the BLR. LexisNexis will also provide the BLR with an electronic version of the A.C.A. that can be installed on the computers of the members of the General Assembly.
- iii. Statement of Liability. The liability of LexisNexis under Section 1.21 of the RFP, which is incorporated by reference into this Agreement, shall be limited in that LexisNexis shall not be made a party to any proceedings or actions related to copyright infringement by a third party. LexisNexis' liability would be limited to any copyright infringement for which LexisNexis is directly responsible.
- iv. Right of Sale. The right of the Commission to license any one or more third parties to market the A.C.A. in unannotated form in any medium shall be limited to non-commercial uses, and LexisNexis shall be entitled to reasonable compensation if it is asked by the Commission to prepare and distribute such output. For purposes of this paragraph, "non-commercial uses" includes without limitation use for the purpose of conducting legal research, including for use in the practice of law, by practicing attorneys, judges, law students, and other members of the public and for educational and academic purposes. Persons or organizations seeking to reproduce more than a small number of code sections may contact the LexisNexis permissions department at permissions@lexisnexis.com.
- v. Add a Special Supplement. LexisNexis proposed adding a special supplement to be published in even-numbered years, as needed, to include any legislation adopted during the fiscal session, court rule changes, etc. Prior to moving forward with work on a special supplement, LexisNexis shall provide written notice to the Commission. The written notice shall be given to the Commission within ten (10) business days of adjournment of a fiscal session of the Arkansas General Assembly, and unless objection is made by the Commission to the decision by LexisNexis to publish a special supplement, within thirty (30) business days of receipt of the notice, LexisNexis may proceed.

B. BLR proposed the following change, which has been accepted and agreed to by the Commission and LexisNexis and is affirmed herein, as follows:

- i. Conformed Acts; Proof Review. The schedule established by LexisNexis for the proof review of the conformed acts by the BLR is staggered over several weeks and must allow five (5)

business days, beginning on the first business day after BLR receives the proof, for BLR's review of each volume.

6. **Proposed Contract Changes Rejected.** In its proposal in response to RFP No. BLR-180001, LexisNexis proposed the following changes, which have been rejected by the Commission and the BLR, as follows:
 - i. **Commentaries Volume.** LexisNexis proposed discontinuing publication of the commentaries volume of the A.C.A. and to place the commentaries within the A.C.A. following their relevant code sections. Although this proposed change was rejected by the Commission, this change may be adopted by a vote of the Commission and a written amendment to this Agreement subsequent to the execution of the Agreement.
 - ii. **References.** LexisNexis proposed to do away with certain references (e.g. AmJur, ALR) that appear as notes to code sections throughout the A.C.A.
 - iii. **Cited Notes.** LexisNexis proposed to discontinue the "cited notes", which are the case citations at the end of each code section throughout the A.C.A.
7. **Transition Provisions.** LexisNexis agrees to an orderly replacement of the current A.C.A. on a volume-by-volume basis and to continue to supplement existing volumes until the particular volume is replaced with the prior approval of the Commission. LexisNexis agrees upon termination or expiration of this Agreement to cooperate fully with the Commission and the subsequent contractor to ensure an orderly transition between contractors and to eliminate inconvenience to the Commission and the public. To this end, LexisNexis agrees to do anything reasonably necessary to ensure an orderly transition, including without limitation participating in good faith negotiations for the sale of existing inventory to the new contractor, granting permission to use any existing A.C.A. database used or prepared by LexisNexis to the new contractor, and permitting the use of any list of subscribers for the commercial purposes of the new contractor.
8. **Lists of Purchasers and Subscribers.** LexisNexis agrees to furnish the Commission and keep current a list of current subscribers to the A.C.A. in both printed and electronic form. LexisNexis agrees that the Commission may furnish the list to any successor contractor to facilitate a transition between contractors and waives any rights in the list to the contrary. The Commission agrees not to use the list for purposes of marketing any competing product produced by the State of Arkansas or any licensee thereof during the term of the Agreement.
9. **Customer Service.**
 - A. **Inventory.** LexisNexis shall maintain an inventory of sets of the printed A.C.A. sufficient to meet demand and shall reprint the current edition of the A.C.A. for such purpose if necessary, to the end that at all times a person will be able to purchase a complete set of the A.C.A. with current supplements or an electronic version of the A.C.A. from LexisNexis.
 - B. **Toll-Free Customer Service Lines.** LexisNexis shall make available to citizens of Arkansas a toll-free customer service telephone line.
10. **Governing Law.** This Agreement shall be governed by the laws of the State of Arkansas, without regard to Arkansas's conflict of law principles. LexisNexis agrees that any claims against the Commission or the BLR, whether arising in tort or in contract, shall be brought before the Arkansas Claims Commission, as provided by

Arkansas law, and shall be governed accordingly. Nothing in this Agreement shall be construed as a waiver of sovereign immunity of the BLR, the Commission, or the Arkansas General Assembly.

11. **Assignment.** This Agreement may not be assigned without the prior written consent of both parties, which either party may withhold for any reason. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
12. **Subcontractors.** If at any point during the contract term LexisNexis finds it necessary to use a subcontractor, LexisNexis shall seek prior approval of the Commission before contracting any part of the work to be performed under this Agreement. The Commission shall have the right to require replacement of any subcontractor found to be unacceptable by the Commission.
13. **Amendment.** This Agreement may be amended upon agreement of all parties to the Agreement and the approval of the Legislative Council. Any amendment to this Agreement must be in writing and signed by all parties.
14. **Restriction of Boycott of Israel.** LexisNexis hereby certifies and agrees that it is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, LexisNexis, the Commission, and BLR have executed this Agreement this ____ day of September, 2018.

Matthew Bender & Co., Inc. (“LexisNexis”)

Anders Ganten, Sr. Director

Date

BUREAU OF LEGISLATIVE

RESEARCH:

Marty Garrity, Director

Date

ARKANSAS CODE REVISION

COMMISSION:

Rep. Matthew Shepherd, Chair

Date

ATTACHMENT A

RFP No. BLR-180001

and

Matthew Bender & Co., Inc.'s (LexisNexis) Proposal in Response, including the
Official Proposal Price Sheet