

Stricken language would be deleted from and underlined language would be added to present law.

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

# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND PROCUREMENT LAWS CONCERNING VENDOR  
9 PERFORMANCE; TO REQUIRE AND REGULATE THE USE OF  
10 PERFORMANCE-BASED CONTRACTS; TO AMEND THE REQUIREMENT  
11 CONCERNING VENDOR PERFORMANCE REPORTS; TO ELIMINATE  
12 DUPLICATIVE PROVISIONS IN THE LAW; AND FOR OTHER  
13 PURPOSES.  
14  
15

## Subtitle

16 TO AMEND PROCUREMENT LAWS CONCERNING  
17 VENDOR PERFORMANCE; TO REQUIRE AND  
18 REGULATE THE USE OF PERFORMANCE-BASED  
19 CONTRACTS; AND TO AMEND THE REQUIREMENT  
20 CONCERNING VENDOR PERFORMANCE REPORTS.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to  
27 read as follows:

28 19-11-267. Development and use of performance-based contracts –  
29 Findings.

30 (a) The General Assembly finds that:

31 (1) Performance-based contracts provide an effective and  
32 efficient method of monitoring and evaluating the overall quality of  
33 commodities and services provided; and

34 (2) The practice of including benchmark objectives that the  
35 provider must attain at specific intervals during the term of the contract is  
36 an essential requirement for measuring performance.

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1           (b)(1) A state agency, board, commission, or institution of higher  
2 education that enters into ~~a contract~~ one (1) of the following types of  
3 contracts under this ~~subchapter to procure services~~ chapter shall use  
4 performance-based standards in the contract that are specifically tailored to  
5 the commodities or services being provided under the contract:

6                   (A) A contract for the procurement of commodities that has  
7 a total projected contract amount, including any amendments to or possible  
8 extensions of the contract, of at least X dollars (\$X); or

9                   (B) A contract for the procurement of services that has a  
10 total projected contract amount, including any amendments to or possible  
11 extensions of the contract, of at least X dollars (\$X).

12           (2) The performance-based standards used under this subsection  
13 shall include performance measures based on objective factors.

14           (3) A state agency, board, commission, or institution of higher  
15 education is encouraged to use performance-based standards that are based on  
16 objective factors in any contract in which it would serve the best interest  
17 of the state.

18           (c)~~(1)~~ A state agency, board, commission, or institution of higher  
19 education that enters into a contract with performance-based standards:

20                   (1)(A) Shall monitor the vendor's performance and adherence to  
21 the performance-based standards in the contract.

22                   (B) For state contracts, the Office of State Procurement  
23 shall be the state agency that monitors each vendor's performance under this  
24 subdivision (c)(1); and

25                   (2) May impose financial consequences, as identified in the  
26 contract, on a vendor that is party to a contract with performance-based  
27 standards for failure to satisfy the performance-based standards, including  
28 without limitation withholding payment or pursuing liquidated damages to the  
29 extent allowed by law.

30           (d)(1) The State Procurement Director shall promulgate rules necessary  
31 to implement and administer this section.

32           (2) Rules promulgated under this subsection are subject to  
33 approval by the Legislative Council or, if the General Assembly is in  
34 session, the Joint Budget Committee.

35  
36           19-11-268. Vendor performance reporting.

1 (a)(1) A state agency shall report a vendor's performance under a  
 2 contract executed under this ~~subchapter that has a total initial contract~~  
 3 ~~amount or total projected contract amount, including any amendments to or~~  
 4 ~~possible extensions of the contract, of at least twenty five thousand dollars~~  
 5 ~~(\$25,000) chapter if the vendor fails to satisfy the performance-based~~  
 6 standards stated in the contract in a manner that represents a material  
 7 deviation.

8 (2) A state agency shall use ~~the~~ a form prescribed by the State  
 9 Procurement Director and approved by the Legislative Council or, if the  
 10 General Assembly is in session, the Joint Budget Committee, to report a  
 11 vendor's performance under this section.

12 (b) The report required under this section shall be:

13 (1) ~~Completed and submitted:~~

14 ~~(A) At least one (1) time every three (3) months for the~~  
 15 ~~entire term of the contract; and~~

16 ~~(B) At the end of the contract;~~

17 ~~(2) Filed with the Office of State Procurement and maintained~~  
 18 ~~for a minimum of three (3) years from the termination of the relevant~~  
 19 ~~contract, including any extensions and amendments; and~~

20 ~~(3) (2) Signed by the director of the state agency or his or her~~  
 21 ~~designee; and~~

22 (3) Filed monthly until the vendor has performed satisfactorily  
 23 under the contract for a period of at least ninety (90) consecutive days.

24 (c) A state agency may use a vendor performance report submitted under  
 25 this section to evaluate an offeror to the extent that the past performance  
 26 of an offeror may be considered under the law and the rules adopted by the  
 27 office.

28  
 29 SECTION 2. Arkansas Code § 19-11-1010 is repealed.

30 ~~19-11-1010. Development and use of performance-based contracts—~~  
 31 ~~Findings.~~

32 ~~(a) Performance-based contracts provide an effective, efficient method~~  
 33 ~~of monitoring and evaluating the overall quality of services provided.~~

34 ~~(b) The practice of including benchmark objectives that the provider~~  
 35 ~~must attain at specific intervals during the term of the contract is an~~  
 36 ~~essential requirement for measuring performance.~~

1           ~~(c) Under regulations promulgated by the State Procurement Director,~~  
2 ~~all state agencies, boards, commissions, and institutions of higher education~~  
3 ~~shall use performance based standards in professional and consultant service~~  
4 ~~contracts.~~

5  
6           SECTION 3. Arkansas Code § 19-11-1013 is repealed.

7           ~~19-11-1013. Vendor performance reporting.~~

8           ~~(a)(1) A state agency shall report a vendor's performance under a~~  
9 ~~contract issued under this subchapter that has a total initial contract~~  
10 ~~amount or total projected contract amount, including any amendments to or~~  
11 ~~possible extensions of the contract, of at least twenty-five thousand dollars~~  
12 ~~(\$25,000) for contracts.~~

13           ~~(2) A state agency shall use the form prescribed by the State~~  
14 ~~Procurement Director and approved by the Legislative Council or, if the~~  
15 ~~General Assembly is in session, the Joint Budget Committee, to report a~~  
16 ~~vendor's performance under this section.~~

17           ~~(b) The report required under this section shall be:~~

18           ~~(1) Completed and submitted:~~

19                   ~~(A) At least one (1) time every three (3) months for the~~  
20 ~~entire term of the contract; and~~

21                   ~~(B) At the end of the contract;~~

22           ~~(2) Filed with the Office of State Procurement and maintained~~  
23 ~~for a minimum of three (3) years from the termination of the relevant~~  
24 ~~contract, including any extensions and amendments; and~~

25           ~~(3) Signed by the director of the state agency or his or her~~  
26 ~~designee.~~

27  
28           SECTION 4. DO NOT CODIFY. Additional duties of State Procurement  
29 Director.

30           The State Procurement Director shall ensure that vendor performance  
31 reports are available to and searchable by state agencies.

Stricken language would be deleted from and underlined language would be added to present law.

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2 92nd General Assembly  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE  
9 LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES  
10 CONTRACTS; TO AMEND AND PROVIDE FOR THE TRACKING AND  
11 REPORTING OF CONTRACTS PROCURED BY STATE AGENCIES; TO  
12 REPEAL AS OBSOLETE THE REPORTING REQUIREMENT FOR  
13 RECYCLED PAPER PRODUCTS; AND FOR OTHER PURPOSES.  
14

## Subtitle

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16  
17 TO AMEND AND PROVIDE FOR THE TRACKING AND  
18 REPORTING OF CONTRACTS PROCURED BY STATE  
19 AGENCIES; AND TO REPEAL AS OBSOLETE THE  
20 REPORTING REQUIREMENT FOR RECYCLED PAPER  
21 PRODUCTS.  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 19-11-249, concerning cooperative  
27 purchasing, is amended to add an additional subsection to read as follows:

28 (c) A contractor shall cooperate with the director in providing  
29 information necessary for the director to complete the report required under  
30 subsection (b) of this section.  
31

32 SECTION 2. Arkansas Code § 19-11-260 is repealed.

33 ~~19-11-260. Recycled paper products—Preference.~~

34 ~~(a) The State Procurement Director shall issue a recycled paper~~  
35 ~~content specification for each type of paper product.~~

36 ~~(b)(1) The goal of state agencies for the percentage of paper products~~

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1 ~~to be purchased that utilize recycled paper shall be:~~

2 ~~(A) Ten percent (10%) in fiscal year 1991;~~

3 ~~(B) Twenty five percent (25%) in fiscal year 1992;~~

4 ~~(C) Forty five percent (45%) in fiscal year 1993; and~~

5 ~~(D) Sixty percent (60%) by calendar year 2000.~~

6 ~~(2)(A) The Office of State Procurement shall prepare a~~  
 7 ~~semiannual report of the state's progress in meeting the goals for the~~  
 8 ~~purchase of paper products with recycled content.~~

9 ~~(B) The report shall be made to the Governor.~~

10 ~~(c)(1) Whenever a bid is required, a preference for recycled paper~~  
 11 ~~products shall be exercised if the use of the products is technically~~  
 12 ~~feasible and price is competitive.~~

13 ~~(2)(A) For the purpose of procurement of recycled paper~~  
 14 ~~products, "competitive" means the bid price does not exceed the lowest~~  
 15 ~~qualified bid of a vendor offering paper products manufactured or produced~~  
 16 ~~from virgin material by ten percent (10%).~~

17 ~~(B) An additional one percent (1%) preference shall be~~  
 18 ~~allowed for products containing the largest amount of postconsumer materials~~  
 19 ~~recovered within the State of Arkansas.~~

20 ~~(3) A bidder receiving a preference under this section shall not~~  
 21 ~~be entitled to an additional preference under § 19-11-259.~~

22  
 23 SECTION 3. Arkansas Code § 19-11-265(c)-(e), concerning the submission  
 24 of contracts to the legislature under the Arkansas Procurement Law, are  
 25 amended to read as follows:

26 ~~(c)(1) In addition to the contracts presented to the Legislative~~  
 27 ~~Council or to the Joint Budget Committee under subsection (a) of this~~  
 28 ~~section, the director shall compile a monthly report of all executed~~  
 29 ~~contracts requiring the service of one (1) or more individuals for regular~~  
 30 ~~full-time or part-time weekly work if the total initial contract amount or~~  
 31 ~~the total projected contract amount, including any amendments or possible~~  
 32 ~~extensions, is at least twenty five thousand dollars (\$25,000) and less than~~  
 33 ~~one hundred thousand dollars (\$100,000).~~

34 ~~(2) The monthly report required under this subsection shall~~  
 35 ~~include without limitation:~~

36 ~~(A) The name of the contractor;~~

- 1                    ~~(B) The state agency name;~~
- 2                    ~~(C) The contact information for the contractor or state~~
- 3 ~~agency;~~
- 4                    ~~(D) The total initial cost of the contract, the cost of~~
- 5 ~~any commodities included in the contract, and the cost of the services;~~
- 6                    ~~(E) The type of commodities and services contracted;~~
- 7                    ~~(F) The quantity of commodities and services contracted;~~
- 8                    ~~(G) The procurement method;~~
- 9                    ~~(H) The total projected contract amount that includes any~~
- 10 ~~amendments and all available extensions; and~~
- 11                    ~~(I) Any other information requested by the Legislative~~
- 12 ~~Council or the Joint Budget Committee.~~

13                    ~~(3) The director shall remit the report required under this~~

14 ~~subsection each month to the Legislative Council or to the Joint Budget~~

15 ~~Committee as directed by the Legislative Council.~~

16                    ~~(d)~~ (c) A contract that is procured by a state agency with that has a

17 state agency procurement official or a delegation order is subject to the

18 ~~reporting and~~ presentment requirements under this section.

19                    ~~(e)~~ (d) It is a violation of state procurement laws, Arkansas Code

20 Title 19, Chapter 11, for a state agency official to procure services in an

21 incremental or split purchase arrangement to avoid the reporting or

22 presentment requirements of this section.

23

24                    SECTION 4. Arkansas Code Title 19, Chapter 11, Subchapter 2, is

25 amended to add additional sections to read as follows:

26                    19-11-273. Reporting requirements.

27                    (a) The State Procurement Director shall compile a monthly report of

28 all executed contracts that have a total initial contract amount or a total

29 projected contract amount, including any amendments or possible extensions,

30 of at least X [minimum contract amount for reporting requirement] but less

31 than X [minimum contract amount for submission for review].

32                    (b) A contract that is procured by a state agency that has a state

33 agency procurement official or a delegation order is subject to the reporting

34 requirements under this section.

35                    (c) It is a violation of state procurement laws, Arkansas Code Title

36 19, Chapter 11, for a state agency official to procure services in an

1 incremental or split purchase arrangement to avoid the reporting requirements  
 2 of this section.

3  
 4 19-11-274. Tracking requirements.

5 (a) The State Procurement Director, each agency procurement official,  
 6 and any state agency with procurement authority under a delegation order  
 7 shall track the following for the procurements they conduct and the contracts  
 8 they execute:

9 (1) Each protest received and the resolution of the protest;

10 (2) The outcome of any negotiations under this chapter; and

11 (3) The anticipated procurement needs of the state agency based  
 12 on the contracts that:

13 (A) Are set to expire during the next twelve (12) months;

14 and

15 (B) Will require a new solicitation in the next twelve  
 16 (12) months.

17 (b) Each agency procurement official and each state agency with  
 18 procurement authority under a delegation order shall report the information  
 19 obtained under subsection (a) of this section to the Office of State  
 20 Procurement.

21  
 22 SECTION 5. Arkansas Code § 19-11-1006(d)-(f), concerning the  
 23 submission of professional and consultant services contracts to the  
 24 legislature, are amended to read as follows:

25 ~~(d)(1) In addition to the professional services contracts and~~  
 26 ~~consultant services contracts presented to the Legislative Council or to the~~  
 27 ~~Joint Budget Committee under subsection (a) of this section, the director~~  
 28 ~~shall compile a monthly report of all executed professional services~~  
 29 ~~contracts and consultant services contracts if the total initial amount or~~  
 30 ~~the total projected amount, including any amendments or possible extensions,~~  
 31 ~~of the professional services contract or consultant services contract is at~~  
 32 ~~least ten thousand dollars (\$10,000) and less than fifty thousand dollars~~  
 33 ~~(\$50,000).~~

34 ~~(2) The monthly report required under this subsection shall~~  
 35 ~~include without limitation:~~

36 ~~(A) The name of the contractor;~~

- 1                    ~~(B) The state agency name;~~
- 2                    ~~(C) The contact information for the contractor or state~~
- 3 ~~agency;~~
- 4                    ~~(D) The total initial cost of the professional services~~
- 5 ~~contract or consultant services contract;~~
- 6                    ~~(E) The type of services contracted;~~
- 7                    ~~(F) The quantity of services contracted;~~
- 8                    ~~(G) The procurement method;~~
- 9                    ~~(H) The total projected amount of the professional~~
- 10 ~~services contract or consultant services contract that includes any~~
- 11 ~~amendments and all available extensions; and~~
- 12                    ~~(I) Any other information requested by the Legislative~~
- 13 ~~Council or the Joint Budget Committee.~~

14                    ~~(3) The director shall remit the report each month to the~~

15 ~~Legislative Council or to the Joint Budget Committee as directed by the~~

16 ~~Legislative Council.~~

17                    ~~(e)~~ (d) A contract that is procured by a state agency ~~with~~ that has a

18 state agency procurement official or a delegation order is subject to the

19 ~~reporting and~~ presentment requirements under this section.

20                    ~~(f)~~ (e) It is a violation of state procurement laws, Arkansas Code

21 Title 19, Chapter 11, for a state agency official to procure services in an

22 incremental or split purchase arrangement to avoid the ~~reporting or~~

23 presentment requirements of this section.

24

25                    SECTION 6. DO NOT CODIFY. Rules – Additional duties of State

26 Procurement Director.

27                    (a) The State Procurement Director shall:

28                    (1) Adopt rules to:

29                    (A) Prescribe a cover sheet for the report required under

30 § 19-11-273 that sorts and identifies contracts within the report that may be

31 candidates for review; and

32                    (B) Create instructions for completing the cover sheet

33 prescribed under subdivision (a)(1)(A) of this section; and

34                    (2) Create a roster of expiring contracts for which there is no

35 new requisition.

36                    (b)(1) When adopting the initial rules required under this section,

1 the final rules shall be filed with the Secretary of State for adoption under  
2 § 25-15-204(f):

3 (A) On or before January 1, 2020; or

4 (B) If approval under § 10-3-309 has not occurred by  
5 January 1, 2020, as soon as practicable after approval under § 10-3-309.

6 (2) The director shall file the proposed rules with the  
7 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
8 2020, so that the Legislative Council may consider the rules for approval  
9 before January 1, 2020.

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