

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

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND THE LAWS CONCERNING VARIOUS PROCUREMENT
10 METHODS; TO ALLOW FOR REQUESTS FOR INFORMATION; TO
11 AMEND THE LAW CONCERNING THE PROCUREMENT OF
12 PROFESSIONAL SERVICES; TO PROVIDE FOR THE TRAINING
13 AND CERTIFICATION OF PROCUREMENT OFFICIALS; TO
14 REQUIRE THAT COST BE WEIGHTED A CERTAIN AMOUNT IN
15 EVALUATING RESPONSES TO A REQUEST FOR PROPOSALS; TO
16 ALLOW FOR THE USE OF PRIVATE EVALUATORS IN EVALUATING
17 RESPONSES TO A REQUEST FOR PROPOSALS; TO REQUIRE THAT
18 RULES PROMULGATED BY THE STATE PROCUREMENT DIRECTOR
19 BE SUBMITTED TO AND REVIEWED BY THE REVIEW
20 SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL; TO AUTHORIZE
21 AND REGULATE SOLICITATION CONFERENCES UNDER THE
22 ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT VENDOR
23 TRAINING AND POLLING BE CONDUCTED UNDER THE ARKANSAS
24 PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE
25 NEGOTIATION OF COMPETITIVE SEALED BIDS AND
26 COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS
27 PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE
28 REJECTION OF A BID OR PROPOSAL UNDER THE ARKANSAS
29 PROCUREMENT LAW; AND FOR OTHER PURPOSES.

Subtitle

30
31
32 TO AMEND THE LAWS CONCERNING VARIOUS
33 PROCUREMENT METHODS; TO PROVIDE FOR THE
34 TRAINING AND CERTIFICATION OF PROCUREMENT
35 OFFICIALS; AND TO REQUIRE ADDITIONAL
36

LEGISLATIVE REVIEW OF PROCUREMENT RULES.

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

SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and duties of the State Procurement Director, is amended to add additional subdivisions to read as follows:

(9) Shall provide for enhanced training on the drafting of specifications for procurements; and

(10) Shall maintain records of bids and proposals that are rejected by the office for failure to adhere to the mandatory requirements of a solicitation.

SECTION 2. Arkansas Code § 19-11-225 is amended to read as follows:
 19-11-225. ~~Regulations~~ Rules.

~~(a)(1) Regulations shall be promulgated by the~~ The State Procurement Director shall adopt rules in accordance with the applicable provisions of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) A rule promulgated by the director under this subchapter is not effective until the rule is:

(A) Submitted to and reviewed by the Review Subcommittee of the Legislative Council; and

(B) Reviewed and approved by the Legislative Council under § 10-3-309.

~~(b) No regulation~~ A rule shall not change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of the ~~regulation~~ rule.

~~(c)(1) No clause which~~ A clause that is required by ~~regulation~~ rule to be included ~~shall be considered to be~~ is not incorporated by operation of law in any state contract without the consent of both parties to the contract to the incorporation.

(2) The parties to the contract may give such consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

1
 2 SECTION 3. Arkansas Code § 19-11-229(d), concerning competitive sealed
 3 bidding, is amended to read as follows:

4 (d)~~(1)~~ Notice inviting bids shall be:

5 (1) Be given not fewer than five (5) calendar days nor more than
 6 ~~thirty (30)~~ ninety (90) calendar days preceding the date for the opening of
 7 bids by publishing the notice at least one (1) time in at least one (1)
 8 newspaper having general circulation in the state or posting by electronic
 9 media, but in all instances, adequate notice shall be given;

10 ~~(2)(A) The notice shall include~~ Include a general description of
 11 the commodities, technical and general services, or professional and
 12 consultant services to be procured; ~~and shall state~~

13 (3) State where invitations for bid bids may be obtained;

14 ~~(B) The notice also shall state~~ (4) State the date, time, and
 15 place of bid opening; and

16 (5) Include an announcement of the date and time of the
 17 solicitation conference if a solicitation conference is to be held before the
 18 opening of bids to provide information to prospective bidders.

19
 20 SECTION 4. Arkansas Code § 19-11-229(f), concerning competitive sealed
 21 bidding, is amended to add an additional subdivision to read as follows:

22 (3)(A) A time discount may be considered in the evaluation of a
 23 bid only:

24 (i) If the state agency specifically solicits
 25 pricing that requests a time discount; and

26 (ii) Under the structured terms of the invitation
 27 for bids.

28 (B) If a bidder offers a time discount as part of its bid
 29 without the solicitation of time discounts by the state agency, the state
 30 agency shall not consider the time discount.

31
 32 SECTION 5. Arkansas Code § 19-11-229(g), concerning competitive sealed
 33 bidding, is amended to add an additional subdivision to read as follows:

34 (3)(A) The director or an agency procurement official may seek
 35 the clarification of a submitted bid.

36 (B) A written response by a bidder under this subsection

1 shall not add to or enhance the submitted bid or change the terms of the
2 submitted bid.

3 (C) If the bidder fails or refuses to clarify any matter
4 questioned about the bidder's bid in writing by the deadline set by the
5 director or agency procurement official, the bid shall be evaluated as if no
6 clarification were given.

7 (D) If the bidder clarifies the matter questioned under
8 this subsection in writing, the clarification shall be evaluated and become a
9 part of any contract awarded on the basis of the bidder's bid.

10
11 SECTION 6. Effective July 1, 2021, Arkansas Code § 19-11-229(h)(2),
12 concerning competitive sealed bidding under the Arkansas Procurement Law, is
13 amended to add an additional subdivision read as follows:

14 (C)(i) Negotiations under this subsection shall be
15 conducted by a person who is trained and certified in negotiation and
16 procurement processes.

17 (ii)(a) The Office of State Procurement shall
18 provide for the training and certification required under this subsection.

19 (b) The training provided by the office shall
20 be specific to Arkansas law.

21
22 SECTION 7. Arkansas Code § 19-11-229(i), concerning competitive sealed
23 bidding, is amended to read as follows:

24 (i)(1) An invitation for ~~bid~~ bids may be cancelled or any or all bids
25 may be rejected in writing by the director or the agency procurement
26 official.

27 (2) Before the rejection of a bid by the director, the decision
28 to reject the bid may be validated with the state agency for which the
29 procurement is being conducted.

30 (3) A bid may be rejected for failure to adhere to mandatory
31 requirements.

32
33 SECTION 8. Arkansas Code § 19-11-230(d), concerning competitive sealed
34 proposals under the Arkansas Procurement Law, is amended to read as follows:

35 (d)(1) The request for proposals shall indicate the relative
36 importance of price and other evaluation factors.

1 (2)(A) Except as provided in subdivision (d)(2)(B) of this
2 section, cost shall be weighted at least thirty percent (30%) of the total
3 evaluation score for a proposal submitted in response to the request for
4 proposals.

5 (B)(i) The State Procurement Director may approve that
6 cost be weighted at a lower percentage of the total evaluation score for a
7 proposal submitted in response to a request for proposals if the director
8 makes a written determination that the lower percentage is in the best
9 interest of the state.

10 (ii) A state agency's failure to obtain the approval
11 of the director under this subsection for a request for proposals with cost
12 weighted at a lower percentage than required under subdivision (d)(2)(A) of
13 this section is grounds for submitting a protest under § 19-11-244.

14 (C) The use of a lower percentage under subdivision
15 (d)(2)(B) of this section and the corresponding written determination by the
16 director shall be submitted to the Legislative Council or, if the General
17 Assembly is in session, the Joint Budget Committee, for review before the
18 request for proposals is issued.

19 (3) The state's prior experience with an offeror may be
20 considered and scored as part of the offeror's proposal only:

21 (A) To the extent that the request for proposals requests
22 that all offerors provide references; and

23 (B) If the offeror's past performance with the state
24 occurred no more than three (3) years before the offeror submitted the
25 proposal.

26 (4) A state agency shall not include prior experience with the
27 state as a mandatory requirement for submitting a proposal under this
28 section.

29
30 SECTION 9. Arkansas Code § 19-11-230(e)(2), concerning competitive
31 sealed proposals under the Arkansas Procurement Law, is amended to add an
32 additional subdivision to read as follows:

33 (C)(i) Before issuing the notice of award of a contract,
34 the director or the agency procurement official may request a best and final
35 offer from each responsible offeror that is reasonably susceptible of being
36 awarded the contract.

1 (ii) In responding to a request for a best and final
 2 offer, an offeror may:

3 (a) Resubmit the offeror's original proposal
 4 with lower pricing or additional benefits, or both, in accordance with the
 5 specifications of the request for proposals; or

6 (b) Submit a written response that states that
 7 the offeror's original proposal, including without limitation the pricing,
 8 remains unchanged.

9 (iii) If a best and final offer is requested, the
 10 director or the agency procurement official shall evaluate each proposal
 11 submitted in response to the request for a best and final offer in
 12 determining the proposal that is the most advantageous to the state.

13
 14 SECTION 10. Arkansas Code § 19-11-230(f) and (g), concerning
 15 competitive sealed proposals under the Arkansas Procurement Law, are amended
 16 to read as follows:

17 (f)(1) The director or an agency procurement official may seek the
 18 clarification of a submitted proposal.

19 (2) A written response by an offeror under this subsection shall
 20 not add to or enhance the submitted proposal or change the terms of the
 21 submitted proposal.

22 (3) If the offeror fails or refuses to clarify any matter
 23 questioned about the offeror's proposal in writing by the deadline set by the
 24 director or agency procurement official, the proposal shall be evaluated as
 25 if no clarification were given.

26 (4) If the offeror clarifies the matter questioned under this
 27 subsection in writing, the clarification shall be evaluated and become a part
 28 of any contract awarded on the basis of the offeror's proposal.

29 (g)(1) ~~Award~~ After any requested best and final offers are submitted
 30 and evaluated, the award shall be made to the responsible offeror whose
 31 proposal is determined in writing to be the most advantageous to the state,
 32 taking into consideration price, the evaluation factors set forth in the
 33 request for proposals, and the results of any discussions conducted with
 34 responsible offerors.

35 (2) No other factors or criteria shall be used in the
 36 evaluation.

1 (3) If it is determined that two (2) or more responsible
2 offerors have tied scores after the evaluation of the proposals, the award
3 shall be made to the responsible offeror that had one (1) of the tied scores
4 and submitted the lowest price proposal.

5 (4) The director or the agency procurement official may enter
6 into negotiations with the responsible offeror whose proposal is determined
7 in writing to be the most advantageous to the state when the best interests
8 of the state would be served, including without limitation when the state can
9 obtain:

10 (A) A lower price without changes to the terms or
11 specifications of the request for proposals; or

12 (B) An improvement to the terms or specifications, or
13 both, of the request for proposals without increasing the price of the
14 proposal.

15 (h)(1) The Office of State Procurement shall:

16 (A) Encourage full discussion by the evaluators who are
17 evaluating proposals submitted in response to a request for proposals under
18 this section; and

19 (B) Develop tools and templates to be used in evaluating
20 proposals submitted in response to a request for proposals under this section
21 that optimize the number of material scored attributes and provide for a
22 limited range of possible scores for each attribute.

23 (2)(A) A state agency may use one (1) or more private evaluators
24 to evaluate proposals submitted in response to a request for proposals under
25 this section.

26 (B) A private evaluator used under this subsection shall
27 be:

28 (i) Held to the same requirements and prohibitions
29 regarding conflicts of interest as state employees;

30 (ii) A qualified volunteer, unless the state does
31 not have the necessary expertise to evaluate the proposals, in which case a
32 paid private evaluator may be used; and

33 (iii) Eligible for travel reimbursement if the state
34 agency decides to make travel reimbursement available.

35 (C) The use of a private evaluator is not required.

36 (D) If a state agency uses one (1) or more private

1 evaluators, the use of a private evaluator shall be disclosed in the
 2 procurement file and in any information submitted to the Legislative Council
 3 or, if the General Assembly is in session, the Joint Budget Committee.

4 ~~(g)~~ (i)(1) A competitive sealed proposal may be cancelled or any or
 5 all proposals may be rejected in writing by the State Procurement Director
 6 director or the agency procurement official.

7 (2) Before the rejection of a proposal by the director, the
 8 decision to reject the proposal may be validated with the evaluation
 9 committee that evaluated the proposal.

10 (3) A proposal may be rejected for failure to adhere to
 11 mandatory requirements.

12
 13 SECTION 11. Arkansas Code § 19-11-233 is amended to read as follows:
 14 19-11-233. Emergency procurements.

15 (a) The State Procurement Director, the head of a procurement agency,
 16 or a designee of either officer may make or authorize others to make
 17 emergency procurements as defined in § 19-11-204(4) and in accordance with
 18 regulations rules promulgated by the director.

19 (b)(1) A person or state agency that makes an emergency procurement
 20 under this section shall:

21 (A) Receive at least three (3) competitive bids unless the
 22 emergency is a critical emergency; and

23 (B) Complete a quotation abstract that includes the:

24 (i) Names of the firms contacted;

25 (ii) Time that each firm was contacted;

26 (iii) Quoted price obtained from each contacted
 27 firm; and

28 (iv) Method used for contacting each firm.

29 (2) As used in this subsection, "critical emergency" means an
 30 emergency in which human life or health is imminently endangered.

31
 32 SECTION 12. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
 33 amended to add additional sections to read as follows:

34 19-11-273. Solicitation conferences.

35 (a)(1) A state agency may hold a solicitation conference before or
 36 after issuing an invitation for bids or a request for proposals.

1 (2) A solicitation conference may be held:

2 (A) In person; or

3 (B) Online or in another virtual format.

4 (b) Attendance by a vendor at a solicitation conference is not
 5 required for that vendor’s bid or proposal to be accepted unless the
 6 attendance requirement is:

7 (1) Explicitly stated in the invitation for bids or request for
 8 proposals; and

9 (2) Approved by the State Procurement Director or the head of
 10 the procurement agency.

11 (c) A state agency holding a solicitation conference shall:

12 (1) Include the date and time of the solicitation conference in
 13 the notice required under § 19-11-229;

14 (2) Require vendors in attendance at a solicitation conference
 15 to sign in at the solicitation conference or provide a registration record
 16 for an online or other virtual solicitation conference, regardless of whether
 17 attendance is required under the solicitation; and

18 (3) Maintain the sign-in sheet or registration records with the
 19 other documents related to the solicitation.

20 (d) A statement made at a solicitation conference does not change the
 21 invitation for bids or request for proposals unless a change is made by
 22 written amendment to the invitation for bids or request for proposals.

23 (e) A state agency is encouraged to hold a solicitation conference for
 24 a procurement that:

25 (1) Has a contract amount of at least:

26 (A) Five million dollars (\$5,000,000) for a single
 27 contract year; or

28 (B) Thirty-five million dollars (\$35,000,000) for the
 29 total anticipated term of the contract, including any extensions, based on
 30 the previous contract for the same commodities or services or, if a previous
 31 contract is not available, a contract for similar commodities or services; or

32 (2) Is of strategic importance to the state.

33
 34 19-11-274. Vendor training and polling.

35 The Office of State Procurement shall:

36 (1)(A) Develop and deliver vendor training to inform interested

1 vendors of how to do business with the state.

2 (B) The training required under subdivision (1)(A) of this
3 section shall:

4 (i) Be offered throughout the state; and

5 (ii) Be delivered as training sessions in person and
6 online or in another virtual format; and

7 (2) Periodically poll vendors that have been successful in
8 securing business with the state and vendors that have not been successful in
9 securing business with the state to solicit procurement feedback that can be
10 used to improve vendor training.

11
12 19-11-275. Requests for information.

13 (a) As used in this section, "request for information" means a
14 procedure for formally requesting information, data, comments, or reactions
15 from prospective bidders or offerors in contemplation of a possible
16 competitive sealed bidding procurement under § 19-11-229 or a competitive
17 sealed proposal procurement under § 19-11-230.

18 (b) The State Procurement Director, a head of a procurement agency, or
19 a designee of the director or of a head of a procurement agency, may issue or
20 authorize another person to issue a request for information.

21 (c) A request for information under this section shall be published in
22 the same manner and location as an invitation for bids, a request for
23 proposals, or a request for qualifications.

24 (d) A contract shall not be awarded directly from a request for
25 information.

26 (e) Information provided in response to a request for information
27 under this section is exempt from the Freedom of Information Act of 1967, §
28 25-19-101 et seq., until:

29 (1) The bids for a competitive sealed bidding procurement are
30 opened publicly;

31 (2) The notice of anticipation to award is given for a
32 competitive sealed proposal procurement; or

33 (3) A decision is made not to pursue a procurement based on the
34 request for information.

35
36 19-11-276. Training and certification of procurement personnel.

1 (a) The State Procurement Director shall establish a training and
2 certification program to facilitate the training, continuing education, and
3 certification of state agency procurement personnel.

4 (b) As part of the training and certification program required under
5 this section, the director:

6 (1) Shall conduct procurement education and training for state
7 agency employees and other public employees;

8 (2)(A) Shall establish a tiered core curriculum that outlines
9 the minimum procurement-related training courses a state agency employee is
10 required to complete for certification.

11 (B) The tiered core curriculum required under subdivision
12 (b)(2)(A) of this section shall:

13 (i) Be designed to develop procurement competency;
14 and

15 (ii) Create a uniform training approach for state
16 agency employees ranging from entry-level procurement personnel to agency
17 procurement officials;

18 (3) May charge a reasonable fee for each participant to cover
19 the cost of providing the training required under this section;

20 (4) May conduct, develop, and collaborate with established
21 training programs, if any, for the purpose of providing certifications of
22 proficiency to state agency employees who complete the training and
23 certification program;

24 (5) May conduct research into existing and new procurement
25 methods; and

26 (6) May establish and maintain a state procurement library.

27 (c)(1) Beginning July 1, 2021, a state agency employee shall not
28 conduct a procurement under this chapter unless the state agency employee is
29 certified through the training and certification program required under this
30 section.

31 (2) To maintain certification under this section, a state agency
32 employee shall complete a reasonable number of hours of continuing education,
33 as provided for by rule by the director.

34 (d)(1) The director shall revoke the certification of a state agency
35 employee who is certified under this section and who is determined to have
36 knowingly violated state procurement laws, Arkansas Code Title 19, Chapter

1 11.

2 (2) The director shall adopt rules regarding the procedure for
3 revoking a state agency employee's certification under this section.

4
5 SECTION 13. Arkansas Code § 19-11-801(a) and (b), concerning the
6 policy related to the procurement of professional services, are amended to
7 read as follows:

8 (a) It is the policy of the State of Arkansas that state agencies
9 shall follow the procedures stated in this section, except that competitive
10 bidding shall not be used for the procurement of ~~legal~~, architectural,
11 engineering, construction management, and land surveying professional
12 consultant services if:

13 (1) State agencies not exempt from review and approval of the
14 Building Authority Division of the Department of Finance and Administration
15 shall follow procedures established by the division for the procurement of
16 architectural, engineering, land surveying, and construction management
17 services; and

18 (2) Institutions of higher education exempt from review and
19 approval of the division shall follow procedures established by their
20 governing boards for the procurement of architectural, engineering, land
21 surveying, and construction management professional consultant services.

22 (b) It is the policy of the State of Arkansas and its political
23 subdivisions that political subdivisions shall follow the procedures stated
24 in this section, except that competitive bidding shall not be used for the
25 procurement of ~~legal~~, financial advisory, architectural, engineering,
26 construction management, and land surveying professional consultant services.

27
28 SECTION 14. Arkansas Code § 19-11-802, concerning requests for
29 statements of qualifications and performance data, is amended to add an
30 additional subsection to read as follows:

31 (e)(1)(A) A request for statements of qualifications and performance
32 data under this section may be used for certain procurements through a
33 request for qualifications.

34 (B) Absent a sole-source justification, a request for
35 qualifications is the recommended procurement method when contracting for
36 architectural, engineering, construction management, land surveying, and

1 interior design services.

2 (C) A request for qualifications may be used as the
 3 procurement method when contracting for services other than architectural,
 4 engineering, construction management, land surveying, and interior design
 5 services if the:

6 (i) State Procurement Director approves the use of a
 7 request for qualifications and determines that it is the most suitable method
 8 of procurement; and

9 (ii) Approval of the director under subdivision
 10 (e)(1)(C)(i) of this section is submitted to the Legislative Council for
 11 review.

12 (2) In determining whether a request for qualifications under
 13 this subsection is the most suitable method of procurement, the director
 14 shall consider, based on information submitted by the requesting state
 15 agency:

16 (A) Why the request for qualifications is the most
 17 suitable method of procurement;

18 (B) Why cost should not be considered in the procurement;
 19 and

20 (C) How the cost of the contract will be controlled if
 21 cost is not a factor in the procurement.

22
 23 SECTION 15. DO NOT CODIFY. Rules.

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

27 (1) On or before January 1, 2021; or

28 (2) If approval under § 10-3-309 has not occurred by January 1,
 29 2021, as soon as practicable after approval under § 10-3-309.

30 (b) The director shall file the proposed rules with the Legislative
 31 Council under § 10-3-309(c) sufficiently in advance of January 1, 2021, so
 32 that the Legislative Council may consider the rules for approval before
 33 January 1, 2021.

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

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

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 THE LAWS CONCERNING STATE AGENCY
11 PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE
12 ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND
13 REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED
14 BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE
15 LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR
16 THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY
17 STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING
18 REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR
19 OTHER PURPOSES.
20
21

Subtitle

22 TO AMEND THE REVIEW AND REPORTING
23 REQUIREMENTS FOR SERVICE CONTRACTS; TO
24 AMEND THE LAW CONCERNING VEHICLE LEASES
25 BY STATE AGENCIES; AND TO PROVIDE FOR THE
26 TRACKING AND REPORTING OF CONTRACTS
27 PROCURED BY STATE AGENCIES.
28
29
30

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
32

33 SECTION 1. Arkansas Code § 19-11-203(4), concerning the definitions to
34 be used under the Arkansas Procurement Law, is amended to read as follows:

35 (4)(A) “Commodities” means all personal property, including, ~~but~~
36 ~~not limited to, equipment, printing, stationery, supplies, and insurance, but~~

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1 ~~excluding leases~~ without limitation:

2 (i) Goods, as defined in § 4-2-105;

3 (ii) Leases, as defined in § 4-2A-103; and

4 (iii) Insurance.

5 (B) "Commodities" does not include:

6 (i) A lease on real property, ~~real property,~~ or a
 7 permanent interest in real property, ~~exempt;~~

8 (ii) Exempt commodities and services, ~~and capital;~~

9 and

10 (iii) Capital improvements;

11
 12 SECTION 2. Arkansas Code § 19-11-203(14)(AA), concerning the
 13 definition of "exempt commodities and services" under the Arkansas
 14 Procurement Law, is amended to read as follows:

15 (AA) The following commodities and services relating to
 16 proprietary software after the initial procurement:

17 (i) Technical support incidental to supporting the
 18 continuous operation of proprietary software;

19 (ii) Renewals;

20 (iii) Additional copies; and

21 (iv) License upgrades;

22
 23 SECTION 3. Arkansas Code § 19-11-203(27), concerning the definitions
 24 to be used under the Arkansas Procurement Law, is amended to read as follows:

25 (27)(A) "Services" means the furnishing of labor, time, or
 26 effort by a contractor, ~~not involving the delivery of a specific end product~~
 27 ~~other than reports which are merely incidental to the required performance~~
 28 that does not produce tangible commodities.

29 (B) "Services" includes without limitation:

30 (i) Consulting services;

31 (ii) Personal services;

32 (iii) Professional services;

33 (iv) Technical and general services; and

34 (v) The furnishing of labor, time, or effort by a
 35 contractor for the generation, customization, configuration, or development
 36 of software and other intangible property other than technical support

1 incidental to the procurement of proprietary software.

2 (C) "Services" ~~shall~~ does not include employment
 3 agreements, collective bargaining agreements, exempt commodities and
 4 services, or architectural or engineering contracts requiring approval of the
 5 Building Authority Division of the Department of Finance and Administration
 6 or higher education;

7
 8 SECTION 4. Arkansas Code § 19-11-217(c), concerning the powers and
 9 duties of the State Procurement Director, is amended to add an additional
 10 subdivision to read as follows:

11 (9) Shall create a roster of expiring contracts for which there
 12 is no new requisition.

13
 14 SECTION 5. Arkansas Code § 19-11-249, concerning cooperative
 15 purchasing, is amended to add an additional subsection to read as follows:

16 (c) A contractor shall cooperate with the director in providing
 17 information necessary for the director to complete the report required under
 18 subsection (b) of this section.

19
 20 SECTION 6. Arkansas Code § 19-11-260 is repealed.

21 ~~19-11-260. Recycled paper products—Preference.~~

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

24 ~~(b)(1) The goal of state agencies for the percentage of paper products~~
 25 ~~to be purchased that utilize recycled paper shall be:~~

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

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

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

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

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

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

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

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

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

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

10
 11 SECTION 7. Arkansas Code § 19-11-265 is amended to read as follows:
 12 19-11-265. Submission of contracts required.

13 (a)(1) A Except as otherwise provided in this section, a contract
 14 requiring the service services of one (1) or more individuals for regular
 15 full-time or part-time weekly work shall be presented to the Legislative
 16 Council or, if the General Assembly is in session, to the Joint Budget
 17 Committee, before the execution of the contract if the total initial contract
 18 amount or the total projected contract amount, including any amendments or
 19 possible extensions, is at least one hundred thousand dollars (\$100,000).

20 (2) The Legislative Council or the Joint Budget Committee shall
 21 provide the State Procurement Director with its review as to the propriety of
 22 the contract within thirty (30) days after receipt of the proposed contract.

23 (3) The contract shall not be submitted to the Legislative
 24 Council or to the Joint Budget Committee until the Office of State
 25 Procurement has reviewed the contract and provided the Legislative Council or
 26 the Joint Budget Committee with a recommendation regarding the legality of
 27 the contract.

28 (4)(A)(i) A contract that does not have a material change upon
 29 renewal or extension shall be included in the monthly report required under §
 30 19-11-273 instead of being submitted to the Legislative Council or the Joint
 31 Budget Committee for review under this subsection.

32 (ii) As used in this subdivision (a)(4), "material
 33 change" includes without limitation:

34 (a) An increase in the contract amount;

35 (b) An increase in the total projected
 36 contract amount;

1 (c) A change in any of the essential terms of
 2 the contract;

3 (d) A change in any performance-based
 4 standards stated in the contract;

5 (e) The imposition of financial consequences
 6 as the result of a failure to satisfy performance-based standards under § 19-
 7 11-267 during the year preceding the renewal or extension of the contract;
 8 and

9 (f) The submission of a vendor performance
 10 report during the year preceding the renewal or extension of the contract.

11 (B) However, a state agency may elect to submit a contract
 12 for review under this subsection if the state agency is uncertain whether the
 13 contract has a material change.

14 (5) A contract that is submitted for review under this
 15 subsection shall have a cover sheet that provides the following information:

16 (A) A description of the goods or services being procured
 17 and their criticality to the state;

18 (B) A description of the procurement process followed,
 19 including without limitation the method used for the procurement;

20 (C) A summary of the scoring from the procurement;

21 (D) The vendors that participated in the procurement;

22 (E) The outcome of any protests;

23 (F) For procurements using the competitive sealed proposal
 24 method:

25 (i) The qualifications of the evaluators; and

26 (ii) Whether any private evaluators were engaged;

27 and

28 (G) Any other information required by the Legislative
 29 Council or the Joint Budget Committee.

30 (b) The Legislative Council or the Joint Budget Committee may review
 31 or exempt from review any contract or group of contracts contemplated by this
 32 section.

33 ~~(c)(1) In addition to the contracts presented to the Legislative~~
 34 ~~Council or to the Joint Budget Committee under subsection (a) of this~~
 35 ~~section, the director shall compile a monthly report of all executed~~
 36 ~~contracts requiring the service of one (1) or more individuals for regular~~

1 full-time or part-time weekly work if the total initial contract amount or
2 the total projected contract amount, including any amendments or possible
3 extensions, is at least twenty five thousand dollars (\$25,000) and less than
4 one hundred thousand dollars (\$100,000).

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

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

8 (B) ~~The state agency name;~~

9 (C) ~~The contact information for the contractor or state~~
10 ~~agency;~~

11 (D) ~~The total initial cost of the contract, the cost of~~
12 ~~any commodities included in the contract, and the cost of the services;~~

13 (E) ~~The type of commodities and services contracted;~~

14 (F) ~~The quantity of commodities and services contracted;~~

15 (G) ~~The procurement method;~~

16 (H) ~~The total projected contract amount that includes any~~
17 ~~amendments and all available extensions; and~~

18 (I) ~~Any other information requested by the Legislative~~
19 ~~Council or the Joint Budget Committee.~~

20 (3) ~~The director shall remit the report required under this~~
21 ~~subsection each month to the Legislative Council or to the Joint Budget~~
22 ~~Committee as directed by the Legislative Council.~~

23 ~~(d)~~ (c) A contract that is procured by a state agency with that has a
24 state agency procurement official or procurement authority under a delegation
25 order is subject to the ~~reporting and~~ presentment requirements under this
26 section.

27 ~~(e)~~ (d) It is a violation of state procurement laws, Arkansas Code
28 Title 19, Chapter 11, for a state agency official to procure services in an
29 incremental or split purchase arrangement to avoid the ~~reporting or~~
30 presentment requirements of this section.

31
32 SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
33 amended to add additional sections to read as follows:

34 19-11-273. Reporting requirements.

35 (a) The State Procurement Director shall compile a monthly report of
36 all executed contracts for services that have a total initial contract amount

1 or a total projected contract amount, including any amendments or possible
2 extensions, of at least twenty-five thousand dollars (\$25,000) but less than
3 one hundred thousand dollars (\$100,000).

4 (b) A contract that is procured by a state agency that has a state
5 agency procurement official or procurement authority under a delegation order
6 is subject to the reporting requirements under this section.

7 (c) The State Procurement Director shall adopt rules to:

8 (1) Prescribe a cover sheet for the report required under this
9 section that sorts and identifies contracts within the report that may be
10 candidates for review;

11 (2) Create instructions for completing the cover sheet
12 prescribed under subdivision (c)(1) of this section; and

13 (3) Provide for the identification of any contracts included in
14 the report that may need to be reviewed under § 19-11-265.

15 (d)(1) A primary member of the Legislative Council or the Review
16 Subcommittee of the Legislative Council or, if the General Assembly is in
17 session, the Joint Budget Committee or the PEER Review Subcommittee of the
18 Joint Budget Committee, may identify a contract included in a report under
19 this section that the primary member wants the Legislative Council or the
20 Review Subcommittee of the Legislative Council or, if the General Assembly is
21 in session, the Joint Budget Committee or the PEER Review Subcommittee of the
22 Joint Budget Committee, to review.

23 (2) A primary member shall identify a reported contract for
24 review under this section at least twenty-four (24) hours before the meeting
25 at which the contract is to be reviewed.

26 (e) It is a violation of state procurement laws, Arkansas Code Title
27 19, Chapter 11, for a state agency official to procure services in an
28 incremental or split purchase arrangement to avoid the reporting requirements
29 of this section.

30
31 19-11-274. Tracking requirements.

32 (a) The State Procurement Director, each agency procurement official,
33 and any state agency with procurement authority under a delegation order
34 shall track the following for the procurements they conduct and the contracts
35 they execute:

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

1 (2) The outcome of any negotiations under this chapter; and
 2 (3) The anticipated procurement needs of the state agency based
 3 on the contracts that:

4 (A) Are set to expire during the next twelve (12) months;
 5 and

6 (B) Will require a new solicitation in the next twelve
 7 (12) months.

8 (b) Each agency procurement official and each state agency with
 9 procurement authority under a delegation order shall report the information
 10 obtained under subsection (a) of this section to the Office of State
 11 Procurement.

12
 13 SECTION 9. Arkansas Code § 19-11-1006 is repealed as duplicative.
 14 ~~19-11-1006. Submission of contracts required.~~

15 ~~(a)(1) A professional services contract or consultant services~~
 16 ~~contract shall be presented to the Legislative Council or, if the General~~
 17 ~~Assembly is in session, to the Joint Budget Committee, before the execution~~
 18 ~~of the professional services contract or consultant services contract if the~~
 19 ~~total initial amount or the total projected amount, including any amendments~~
 20 ~~or possible extensions, of the professional services contract or consultant~~
 21 ~~services contract is at least fifty thousand dollars (\$50,000).~~

22 ~~(2) The Legislative Council or the Joint Budget Committee shall~~
 23 ~~provide the State Procurement Director with its review as to the propriety of~~
 24 ~~the professional services contract or consultant services contract within~~
 25 ~~thirty (30) days after receipt of the proposed professional services contract~~
 26 ~~or consultant services contract.~~

27 ~~(3) The professional services contract or consultant services~~
 28 ~~contract shall not be submitted to the Legislative Council or to the Joint~~
 29 ~~Budget Committee until the Department of Finance and Administration has~~
 30 ~~reviewed the professional services contract or consultant services contract~~
 31 ~~and provided the Legislative Council or the Joint Budget Committee with a~~
 32 ~~recommendation regarding the legality of the professional services contract~~
 33 ~~or consultant services contract.~~

34 ~~(b) The Legislative Council or the Joint Budget Committee may review~~
 35 ~~or exempt from review any professional services contract or consultant~~
 36 ~~services contract or group of professional services contracts or consultant~~

1 ~~services contracts contemplated by this subchapter.~~

2 ~~(c)(1) Funds from grants and contracts to a state institution of~~
3 ~~higher education may be used for the purpose of subcontracting with~~
4 ~~institutions under the performance conditions of the grants or contracts.~~

5 ~~(2) Subcontracts for research that are derived from grants and~~
6 ~~contracts to a state institution of higher education require the prior~~
7 ~~approval of the director and a review by the Legislative Council or by the~~
8 ~~Joint Budget Committee.~~

9 ~~(d)(1) In addition to the professional services contracts and~~
10 ~~consultant services contracts presented to the Legislative Council or to the~~
11 ~~Joint Budget Committee under subsection (a) of this section, the director~~
12 ~~shall compile a monthly report of all executed professional services~~
13 ~~contracts and consultant services contracts if the total initial amount or~~
14 ~~the total projected amount, including any amendments or possible extensions,~~
15 ~~of the professional services contract or consultant services contract is at~~
16 ~~least ten thousand dollars (\$10,000) and less than fifty thousand dollars~~
17 ~~(\$50,000).~~

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

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

21 ~~(B) The state agency name;~~

22 ~~(C) The contact information for the contractor or state~~
23 ~~agency;~~

24 ~~(D) The total initial cost of the professional services~~
25 ~~contract or consultant services contract;~~

26 ~~(E) The type of services contracted;~~

27 ~~(F) The quantity of services contracted;~~

28 ~~(G) The procurement method;~~

29 ~~(H) The total projected amount of the professional~~
30 ~~services contract or consultant services contract that includes any~~
31 ~~amendments and all available extensions; and~~

32 ~~(I) Any other information requested by the Legislative~~
33 ~~Council or the Joint Budget Committee.~~

34 ~~(3) The director shall remit the report each month to the~~
35 ~~Legislative Council or to the Joint Budget Committee as directed by the~~
36 ~~Legislative Council.~~

1 ~~(e) A contract that is procured by a state agency with a state agency~~
 2 ~~procurement official is subject to the reporting and presentment requirements~~
 3 ~~under this section.~~

4 ~~(f) It is a violation of state procurement laws, Arkansas Code Title~~
 5 ~~19, Chapter 11, for a state agency official to procure services in an~~
 6 ~~incremental or split purchase arrangement to avoid the reporting or~~
 7 ~~presentment requirements of this section.~~

8
 9 SECTION 10. Arkansas Code § 22-8-102 is amended to read as follows:
 10 22-8-102. Leasing and renting of vehicles by state agencies -
 11 Definitions.

12 (a) ~~For purposes of~~ As used in this section:

13 (1) "Lease" means obtaining the use of a motor vehicle from any
 14 source for a monetary fee, for a period of thirty-one (31) days or more; ~~and~~

15 (2) "Rental" means obtaining the use of a motor vehicle from any
 16 source for a monetary fee for a period of thirty (30) days or less; and

17 (3) "State agency" means the same as defined in § 19-11-203.

18 (b)(1) Before any state agency ~~shall lease~~ leases any motor vehicle or
 19 ~~renew~~ renews any existing lease for a motor vehicle, the state agency shall
 20 submit a written request to the State Procurement Director identifying the
 21 motor vehicles sought to be leased by the state agency and all facts and
 22 circumstances the director may request to enable him or her to determine the
 23 economics, need, and feasibility of leasing the motor vehicle.

24 (2) Upon receipt, the director shall review the request to lease
 25 the motor vehicle, and if he or she determines that the lease is in the best
 26 interest of the State of Arkansas and that the state agency has adequate
 27 funds to pay the lease, he or she may approve the request but only if ~~he or~~
 28 ~~she has first received the approval of~~ the proposed lease has been reviewed
 29 by the Legislative Council or, if the General Assembly is in session, the
 30 Joint Budget Committee.

31 (3) ~~After receiving the approval of~~ If, after the Legislative
 32 Council or the Joint Budget Committee has reviewed the proposed lease of the
 33 motor vehicle, the director approves the proposed lease of the motor vehicle,
 34 the director shall stamp his or her approval on the request and return it to
 35 the state agency, which may ~~then~~ proceed to enter into the lease as proposed
 36 and approved by the director.

1 ~~(4) In emergency situations, the director may approve a~~
 2 ~~temporary lease of a motor vehicle, not to exceed thirty (30) days, but only~~
 3 ~~if he or she has sought the advice of the cochairs of the Legislative Council~~
 4 ~~and scheduled the temporary lease of a motor vehicle for consideration at the~~
 5 ~~next meeting of the Legislative Council.~~

6 (c) If the director disapproves a proposed lease of a motor vehicle,
 7 he or she shall stamp his or her disapproval on the request and return it to
 8 the state agency, and it shall be unlawful for the state agency to proceed to
 9 lease the motor vehicle.

10 (d) If federal assistance requirements or federal contract
 11 requirements conflict with this section, this section shall not prevent a
 12 state agency from complying with the terms and conditions of the federal
 13 assistance requirements or the federal contract requirements.

14 (e) It is a violation of state procurement laws, Arkansas Code Title
 15 19, Chapter 11, for a state agency official to conduct multiple rentals of a
 16 motor vehicle to avoid the approval and review requirements of this section.

17
 18 SECTION 11. DO NOT CODIFY. Rules.

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

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

23 (2) If approval under § 10-3-309 has not occurred by January 1,
 24 2020, as soon as practicable after approval under § 10-3-309.

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

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

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND THE LAW CONCERNING THE CONTENT, TERM, AND
10 REVIEW OF CONTRACTS PROCURED BY THE STATE; TO PROVIDE
11 CERTAIN COMPLIANCE REQUIREMENTS FOR PERSONS
12 CONTRACTING WITH THE STATE; TO REQUIRE AND REGULATE
13 THE USE OF PERFORMANCE-BASED CONTRACTS; TO AMEND THE
14 REQUIREMENT CONCERNING VENDOR PERFORMANCE REPORTS; TO
15 ELIMINATE DUPLICATIVE PROVISIONS IN THE LAW; AND FOR
16 OTHER PURPOSES.

Subtitle

17
18
19 TO AMEND THE LAW CONCERNING THE CONTENT,
20 TERM, AND REVIEW OF CONTRACTS PROCURED BY
21 THE STATE; TO REQUIRE THE USE OF
22 PERFORMANCE-BASED CONTRACTS; AND TO AMEND
23 VENDOR PERFORMANCE REPORT REQUIREMENTS.
24

25
26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and
30 duties of the State Procurement Director, is amended to add an additional
31 subdivision to read as follows:

32 (9) Shall analyze information captured in state systems to
33 measure and track the contract routing process to identify stakeholders that
34 may be contributing to the elongation of the contracting process; and

35 (10) Ensure that vendor performance reports are available to and
36 searchable by state agencies.

DRAFT

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SECTION 2. Arkansas Code § 19-11-219 is amended to read as follows:
19-11-219. Legal counsel – Contract review.

(a) The Attorney General shall act as counsel for the State Procurement Director in preparation of necessary contracts and in all legal matters.

(b)(1) A contract that the director has designated as requiring review shall be reviewed by a person employed as an attorney with a state agency.

(2) The review required under this subsection shall occur before the contract is executed.

(c) The director shall adopt rules to implement this section, including without limitation rules to:

(1) Designate contracts that require review under this section, which may include without limitation contracts that:

- (A) Exceed a certain dollar amount;
- (B) Modify the standard state terms and conditions; and
- (C) Are based on other stated criteria; and

(2) Identify the requirements for the attorneys who may review contracts under this section, including without limitation:

(A) An attorney employed with the Office of State Procurement, an institution of higher education, or the Office of the Attorney General; and

(B) Any other attorney employed by the state and licensed to practice law in Arkansas.

SECTION 3. Arkansas Code § 19-11-238(c), concerning multiyear contracts, is amended to read as follows:

(c) Termination Due to Unavailability of Funds in Succeeding Years.

(1) Original terms of such multiyear contracts shall ~~terminate on the last day of the current biennium, and any renewals by the state based upon continuing appropriation shall not exceed the next succeeding biennium~~ not exceed four (4) years.

(2) When funds are not appropriated or otherwise made available to support continuation of performance in a ~~subsequent year of a multi-year a~~ multiyear contract, the contract ~~for such subsequent year~~ shall be terminated and the contractor may be reimbursed for the reasonable value of any

1 nonrecurring costs incurred but not amortized in the price of the commodities
 2 or services delivered under the contract.

3 (3) The cost of termination under subdivision (c)(2) of this
 4 section may be paid from:

5 ~~(1)~~ (A) Appropriations currently available for performance
 6 of the contract;

7 ~~(2)~~ (B) Appropriations currently available for procurement
 8 of similar commodities or services and not otherwise obligated; or

9 ~~(3)~~ (C) Appropriations made specifically for the payment
 10 of such termination costs.

11
 12 SECTION 4. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to
 13 read as follows:

14 19-11-267. Development and use of performance-based contracts –
 15 Findings.

16 (a) The General Assembly finds that:

17 (1) Performance-based contracts provide an effective and
 18 efficient method of monitoring and evaluating the overall quality of services
 19 provided; and

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

23 (b)(1) A state agency, board, commission, or institution of higher
 24 education that enters into a contract under this ~~subchapter~~ chapter to
 25 procure services that has a contract amount of at least one million dollars
 26 (\$1,000,000) in a single contract year or a total projected contract amount,
 27 including any amendments to or possible extensions of the contract, of at
 28 least seven million dollars (\$7,000,000) shall use performance-based
 29 standards in the contract that are specifically tailored to the services
 30 being provided under the contract.

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

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

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

3 (1)(A) Shall monitor the vendor’s performance and adherence to
 4 the performance-based standards in the contract.

5 (B) For state contracts, the Office of State Procurement
 6 shall be the state agency that monitors each vendor’s performance under this
 7 subdivision (c)(1); and

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

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

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

18
 19 19-11-268. Vendor performance reporting.

20 (a)(1) A state agency shall report a vendor’s performance under a
 21 contract executed under this ~~subchapter that has a total initial contract~~
 22 ~~amount or total projected contract amount, including any amendments to or~~
 23 ~~possible extensions of the contract, of at least twenty five thousand dollars~~
 24 ~~(\$25,000)~~ chapter if the vendor fails to satisfy the performance-based
 25 standards stated in the contract in a manner that represents a material
 26 deviation.

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

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

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

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

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

36 ~~(2)~~ Filed with the Office of State Procurement and maintained

1 for a minimum of three (3) years from the termination of the relevant
 2 contract, including any extensions and amendments; ~~and~~

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

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

7 (c) A state agency may report a vendor's performance in the manner
 8 prescribed under this section for any contract that would not require
 9 reporting of a vendor's performance under this section if the state agency
 10 encounters an issue with the vendor's performance of a contract.

11 (d) A state agency may use a vendor performance report submitted under
 12 this section to evaluate an offeror to the extent that the past performance
 13 of an offeror may be considered under the law and the rules adopted by the
 14 office.

15
 16 SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
 17 amended to add an additional section to read as follows:

18 19-11-273. Compliance.

19 (a) A contractor shall ensure, in cooperation with a state agency,
 20 that the contract between the contractor and the state agency adheres to the
 21 requirements of this chapter, including without limitation the inclusion of
 22 any mandatory language and the submission of the contract for any required
 23 review.

24 (b)(1) After any required review of a contract has been completed, the
 25 signature of the contractor shall be placed on the final contract between the
 26 contractor and the state agency.

27 (2) The signature required under subdivision (b)(1) of this
 28 section serves as an acknowledgement that the contractor is:

29 (A) Equally responsible with the state agency for adhering
 30 to the requirements of this chapter related to the content and review of the
 31 contract; and

32 (B) Subject to the relevant ethical provisions of § 19-11-
 33 701 et seq.

34
 35 SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.
 36 ~~19-11-1010. Development and use of performance-based contracts—~~

1 Findings.

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

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

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

11
 12 SECTION 7. Arkansas Code § 19-11-1013 is repealed as duplicative.

13 ~~19-11-1013. Vendor performance reporting.~~

14 ~~(a)(1) A state agency shall report a vendor's performance under a~~
 15 ~~contract issued under this subchapter that has a total initial contract~~
 16 ~~amount or total projected contract amount, including any amendments to or~~
 17 ~~possible extensions of the contract, of at least twenty-five thousand dollars~~
 18 ~~(\$25,000) for contracts.~~

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

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

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

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

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

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

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

33
 34 SECTION 8. DO NOT CODIFY. Rules.

35 (a) When adopting the initial rules required under this act, the State
 36 Procurement Director shall file the final rules with the Secretary of State

1 for adoption under § 25-15-204(f):

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

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

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

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

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

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

Subtitle

15
16 TO AMEND THE DELEGATION AUTHORITY OF THE
17 STATE PROCUREMENT DIRECTOR; AND TO AMEND
18 THE LAW CONCERNING PROTESTS OF
19 SOLICITATIONS AND AWARDS UNDER THE
20 ARKANSAS PROCUREMENT LAW.
21

22
23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 19-11-218 is amended to read as follows:

27 19-11-218. Assistants and designees - Written delegation orders.

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

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

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

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

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

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

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

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

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

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

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

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

20 (b) The director shall adopt rules to:

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

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

25
 26 SECTION 2. Arkansas Code § 19-11-244(a), concerning the resolution of
 27 protested solicitations and awards under the Arkansas Procurement Law, is
 28 amended to read as follows:

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

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

36 ~~(A) Director; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (iv) The procurement process involved responses that

1 were collusive, submitted in bad faith, or not arrived at independently
 2 through open competition; or

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

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

7
 8 SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of
 9 protested solicitations and awards under the Arkansas Procurement Law, is
 10 amended to read as follows:

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

18
 19 SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of
 20 protested solicitations and awards under the Arkansas Procurement Law, is
 21 amended to add an additional subsection to read as follows:

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

27
 28 SECTION 5. DO NOT CODIFY. Rules.

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

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

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

35 (b) The director shall file the proposed rules with the Legislative
 36 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so

1 that the Legislative Council may consider the rules for approval before
2 January 1, 2020.

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

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
9 AMEND THE LAW CONCERNING STATE CONTRACTS; TO AMEND
10 THE LAW CONCERNING COOPERATIVE PURCHASING; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

14 TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
15 AMEND THE LAW CONCERNING STATE CONTRACTS;
16 AND TO AMEND THE LAW CONCERNING
17 COOPERATIVE PURCHASING.
18
19
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 19-11-206(1), concerning the definitions
24 relating to intergovernmental relations under the Arkansas Procurement Law,
25 is amended to read as follows:

26 (1) ~~“Cooperative procurement”~~ “Cooperative purchasing agreement”
27 means an agreement entered into as the result of a procurement conducted by,
28 or on behalf of, more than one (1) public procurement unit or by a public
29 procurement unit with an external procurement activity;
30

31 SECTION 2. Arkansas Code § 19-11-223 is amended to read as follows:
32 19-11-223. Commodities, technical and general services, and
33 professional and consultant services under state contract.

34 (a)(1) In addition to establishing a state contract for those
35 commodities, technical and general services, and professional and consultant
36 services within the exclusive jurisdiction of the State Procurement Director

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

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

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

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

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

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

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

35 (2)(A) Except as provided in § 19-11-233, the director may
36 approve an exemption from a mandatory state contract awarded under this

1 section only if the state agency demonstrates that substantial savings will
 2 likely be effected by purchasing outside of the mandatory state contract.

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

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

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

12 (d) The director shall:

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

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

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

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

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

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

30
 31 SECTION 3. Arkansas Code § 19-11-249 is amended to read as follows:

32 19-11-249. Cooperative purchasing.

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

1 between the participants.

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

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

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

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

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

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

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

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

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

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

10
11 SECTION 4. DO NOT CODIFY. Rules.

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

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

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

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

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

A Bill

DRAFT JLL/JLL
HOUSE BILL

5 By: Representative <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE PROCUREMENT OF
9 DESIGN SERVICES CONTRACTS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE LAW CONCERNING THE
12 PROCUREMENT OF DESIGN SERVICES CONTRACTS.
13

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 22-2-108(7)(A), concerning the powers and
20 duties of the Building Authority Division of the Department of Finance and
21 Administration, is amended to read as follows:

22 (7)(A) To execute contracts necessary to accomplish the purposes
23 of this chapter, including without limitation a statewide contract for design
24 services to expedite the procurement of design services by a state agency in
25 an emergency.
26

27 SECTION 2. Arkansas Code Title 22, Chapter 9, Subchapter 1, is amended
28 to add an additional section to read as follows:

29 22-9-105. Poor contractual performance – Additional bids prohibited.

30 (a) A firm that has an existing state contract with a state agency
31 shall not bid on any additional state contracts with a state agency if the
32 firm's existing state contract with a state agency has one (1) or more
33 material issues, including without limitation a material delay in the
34 commencement or completion of a project or a breach of contract.

35 (b) As used in this section, "state agency" means the same as defined
36 in § 22-2-102.

1 (c) The Director of the Department of Finance and Administration shall
2 adopt rules to provide guidance on what is considered to be a material issue
3 under subsection (a) of this section.

4
5 SECTION 3. Arkansas Code § 22-9-203, concerning the award of contracts
6 for public improvements, is amended to add an additional subdivision to read
7 as follows:

8 (1) To the extent that the division includes minimum experience as
9 part of the evaluation of a bidder's responsiveness, the standard being
10 applied to the bidder's experience shall be stated in the invitation for
11 bids.