

1 State of Arkansas As Engrossed: S3/13/17 H3/17/17

2 91st General Assembly

# A Bill

3 Regular Session, 2017

SENATE BILL 448

4

5 By: Senator Hester

6 By: Representative Wardlaw

7

8

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
10 PROMOTE EFFICIENCY IN STATE PROCUREMENT BY EXPANDING  
11 THE ABILITY OF THE STATE TO NEGOTIATE CONTRACTS; TO  
12 DEFINE "COLLUSION" UNDER ARKANSAS PROCUREMENT LAW; TO  
13 REQUIRE REVIEW OF A CONTRACT BEFORE IT IS RATIFIED OR  
14 AFFIRMED; AND FOR OTHER PURPOSES.

15

16

17

## Subtitle

18 TO EXPAND THE ABILITY OF THE STATE TO  
19 NEGOTIATE CONTRACTS; TO DEFINE  
20 "COLLUSION" UNDER ARKANSAS PROCUREMENT  
21 LAW; AND TO REQUIRE REVIEW OF A CONTRACT  
22 BEFORE IT IS RATIFIED OR AFFIRMED.

23

24

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

26

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

29 (2)(A) ~~In the event all bids exceed available funds as certified~~  
30 ~~by the appropriate fiscal officer in situations in which time or economic~~  
31 ~~considerations preclude resolicitation of work of a reduced scope, the Except~~  
32 ~~with respect to a contract being procured for a construction project, the~~  
33 director or the head of a procurement agency may negotiate ~~an adjustment of~~  
34 ~~the a lower~~ bid price, including changes in the bid requirements, with the  
35 lowest responsive and responsible bidder, ~~in order to bring the bid within~~  
36 ~~the amount of available funds if:~~



1 (i) All bids received from responsive and  
2 responsible bidders exceed available funding as certified by the appropriate  
3 fiscal officer of the procurement agency; or

4 (ii) It appears that additional savings to the state  
5 may result from negotiation.

6 (B)(i)(a) If negotiations with the lowest responsive and  
7 responsible bidder conducted under subdivision (h)(2)(A) of this section fail  
8 to result in a lower bid price, the state may negotiate for a lower bid price  
9 with the next lowest responsive and responsible bidder.

10 (b) If negotiations with the next lowest  
11 responsive and responsible bidder under subdivision (h)(2)(B)(i)(a) of this  
12 section fail to result in a lower bid price, the state may negotiate for a  
13 lower bid price with the next lowest responsive and responsible bidder until  
14 an acceptable lower bid price is negotiated or the state determines that  
15 negotiations are no longer in the best interest of the state.

16 (ii) A bid price resulting from negotiations  
17 conducted under this section shall not be higher than:

18 (a) The bid price originally submitted by the  
19 lowest responsive and responsible bidder; or

20 (b) A price previously offered in negotiations  
21 by a responsive and responsible bidder.

22 (iii) Negotiations conducted under this section do  
23 not preclude the use of other methods of source selection or procurement  
24 authority provided under this subchapter.

25  
26 SECTION 2. Arkansas Code § 19-11-230(e), concerning competitive sealed  
27 proposals, is amended to read as follows:

28 (e)(1) As provided in the request for proposals and under ~~regulations~~  
29 rule, discussions may be conducted with responsible offerors who submit  
30 proposals determined to be reasonably susceptible of being selected for award  
31 for the purpose of ~~clarification~~;

32 (A) Clarifying solicitation requirements to assure full  
33 understanding of, and responsiveness to, the solicitation requirements; or

34 (B) Negotiating a contract that is more advantageous to  
35 the state.

36 (2)(A) Offerors If discussions conducted after the deadline for

1 the receipt of proposals necessitate material revisions of proposals, each  
2 offeror determined to be responsible and reasonably susceptible of being  
3 awarded a contract shall be accorded fair and equal treatment with respect to  
4 any provided an opportunity for discussion and revision of proposals, and  
5 such revisions may be permitted after submissions and prior to award to  
6 revise its proposal for the purpose of obtaining submitting a best and final  
7 offers offer.

8 (B) An offeror may be permitted to revise its original  
9 proposal as a result of discussions only after the original submission  
10 deadline and before award for the purpose of providing a best and final  
11 offer.

12 (3) In conducting discussions, ~~there shall be no disclosure of~~  
13 any information derived from proposals a proposal submitted by a competing  
14 offerers offeror shall not be disclosed until after a notice of anticipation  
15 to award is announced.

16  
17 SECTION 3. Arkansas Code § 19-11-240 is amended to read as follows:

18 19-11-240. Reporting of suspected collusion - Definition.

19 (a) As used in this section, "collusion" means cooperation in the  
20 restraint of free and open competition in a public procurement, including  
21 without limitation:

22 (1) Price fixing;

23 (2) Bid rigging;

24 (3) Customer or market allocation;

25 (4) Misrepresenting the independence of the relationship between  
26 colluding parties; and

27 (5) Exerting improper influence on public officials to obtain  
28 advantage in a public procurement, including without limitation:

29 (A) Offering bribes or kickbacks;

30 (B) Extortion; and

31 (C) Fraudulent misrepresentation.

32 ~~(b) Notification to the Attorney General.~~ When for any reason  
33 collusion is suspected among any bidders or offerors, a written notice of the  
34 relevant facts shall be transmitted to the Attorney General.

35 ~~(b) (c)(1) Retention of All Documents.~~ All documents involved in any  
36 a procurement in which collusion is suspected shall be retained until the

1 Attorney General gives notice that they may be destroyed.

2 (2) All retained documents shall be made available to the  
3 Attorney General or a designee upon request and proper receipt ~~therefor~~ of  
4 the request.

5 (d) Collusion is cause for:

6 (1) Debarment from consideration for award of a contract under §  
7 19-11-245; and

8 (2) Suspension from consideration for award of a contract if  
9 there is probable cause for suspecting collusion as determined by the  
10 Attorney General or the State Procurement Director.

11

12 SECTION 4. Arkansas Code § 19-11-247, concerning remedies for unlawful  
13 solicitation or award, is amended to add an additional subsection to read as  
14 follows:

15 (d) Before a contract is ratified and affirmed under subdivision  
16 (c)(1)(A) of this section, a contract shall be presented to the Legislative  
17 Council or, if the General Assembly is in session, to the Joint Budget  
18 Committee, for review if the contract is required to be submitted for review  
19 under § 19-11-1006.

20

21 */s/Hester*

22

23

24

**APPROVED: 03/27/2017**

25

26

27

28

29

30

31

32

33

34

35

36