

Hall of the House of Representatives
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of House Bill No. 2679

"AN ACT TO AMEND VARIOUS PROVISIONS OF THE ARKANSAS PROCUREMENT
LAW."

Amendment No. 1 to House Bill No. 2679.

Amend House Bill No. 2679 as originally introduced:

Page 8, delete line 15 and substitute the following:
"electronically transmitted and stored.

SECTION 2. Arkansas Code § 19-11-220(a), concerning officials for commodities and services, is amended to read as follows:

(a) In addition to any state agency authorized by regulation to have an agency procurement official, each of the following state agencies may elect to have such an official for commodities, technical and general services, and professional and consultant services which are not within the exclusive jurisdiction of the State Procurement Director, and which are not under state contract:

- (1) Arkansas State Highway and Transportation Department;
- (2) Arkansas State University at Beebe;
- (3) Arkansas State University at Jonesboro;
- (4) Arkansas State University System;
- (5) Arkansas Tech University;
- (6) Henderson State University;
- (7) Southern Arkansas University;
- (8) University of Arkansas at Fayetteville;
- (9) University of Arkansas Fund entities;
- (10) University of Arkansas at Little Rock;
- (11) University of Arkansas at Monticello;
- (12) University of Arkansas at Pine Bluff;
- (13) University of Arkansas for Medical Sciences;
- (14) University of Central Arkansas;
- (15) Arkansas State University at Mountain Home;
- (16) Arkansas State University at Newport;
- (17) Black River Technical College;
- (18) Cossatot Technical College;
- (19) East Arkansas Community College;
- (20) Garland County Community College;
- (21) Mississippi County Community College;



- (22) Mid-South Community College;
- (23) North Arkansas College;
- (24) Northwest Arkansas Community College;
- (25) Ouachita Technical College;
- (26) Ozarka Technical College;
- (27) Phillips Community College of the University of Arkansas;
- (28) Petit Jean College;
- (29) Pulaski Technical College;
- (30) Rich Mountain Community College;
- (31) Southern Arkansas University Tech;
- (32) Southeast Arkansas College;
- (33) South Arkansas Community College;
- (34) University of Arkansas Community College at Batesville;
- (35) University of Arkansas Community College at Hope;
- (36) Westark College; and
- (37) Department of Higher Education.

SECTION 3. Arkansas Code § 19-11-221(a), concerning agency procurement officials for the Department of Correction, is amended to read as follows:

(a) In addition to those agencies, institutions, and departments of state government enumerated in § 19-11-220 which are authorized to elect to have agency procurement officials for commodities, technical and general services, and professional and consultant services which are not within the exclusive jurisdiction of the State Procurement Director, which are not under state contract, and which are not procured in accordance with § 19-11-230, the Department of Correction and the Department of Community Correction are authorized to have such officials, for the sole purpose of procuring perishable food items, who shall possess all powers, functions, and duties as authorized for agency procurement officials under the provisions of this subchapter with respect to perishable food items only.

SECTION 4. Arkansas Code § 19-11-222(a), concerning exclusive jurisdiction over procurement, is amended to read as follows:

(a) The State Procurement Director shall have exclusive jurisdiction over the procurement of the following ~~commodities and services~~:

- (1) Items subject to Arkansas Constitution, Amendment 54;
- (2) Wholesale gasoline, oil, and related products;
- (3) Tires;
- (4) Passenger motor vehicles and trucks, except highway construction and highway maintenance equipment or any specialized type of equipment used in highway construction, except as otherwise provided in this subchapter;
- (5) Paper products;
- (6) New and used school buses for state agencies ~~and school districts~~;
- (7) A purchasing card program and travel card program to include implementation and administration; and
- (8) An electronic commerce procurement solution to include planning and administration, consistent with the established financial systems of the state.

SECTION 5. Arkansas Code § 19-11-223 is amended to read as follows:

19-11-223. Commodities, technical and general services, and professional and consultant services under state contract.

(a) In addition to establishing a state contract for those commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the State Procurement Director under § 19-11-222, the director may award a state contract for other commodities, technical and general services, and professional and consultant services in those instances where substantial savings may be effected by quantity purchasing of commodities, technical and general services, or professional and consultant services in general use by several state agencies.

(b) State contracts shall be limited to those commodities on which, by virtue of custom or trade, substantial savings may be realized. In those instances where substantial savings are not effected, the letting of state contracts for those commodities shall be discontinued.

(c) Except for the procurement of commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the director, state agencies with agency procurement officials which can demonstrate a geographical or volume buying advantage need not participate in the state contract. However, if the commodities, technical and general services, or professional and consultant services obtained are procured at a substantially higher price during the same state contract period, that agency must participate in the state contract upon expiration of the agency's contract.

(d) All state agencies, except as authorized in this section, which require commodities, technical and general services, and professional and consultant services that are under state contract shall procure these commodities, technical and general services, and professional and consultant services exclusively under such contract.

(e) All contracts concerning commodities, technical and general services, and professional and consultant services shall disclose a projected total cost, including, but not limited to, expenditures that may be incurred under all available periods of extension if the extensions were executed.

SECTION 6. Arkansas Code § 19-11-229 is amended to read as follows:
19-11-229. Competitive sealed bidding.

(a) ~~Definition.~~ "Competitive sealed bidding" means a method of procurement which requires:

(1) Issuance of an invitation for bids with a purchase description and all contractual terms and conditions applicable to the procurement;

(2) Public, contemporaneous opening of bids at a predesignated time and place;

(3) Unconditional acceptance of a bid without alteration or correction, except as authorized in §§ 19-11-204 and 19-11-228 - 19-11-240;

(4) Award to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids; and

(5) Public notice.

(b) Contracts exceeding an estimated purchase price of twenty-five thousand dollars (\$25,000) shall be awarded by competitive sealed bidding, unless a determination is made in writing by the agency procurement official

or the State Procurement Director of the Office of State Procurement of the Department of Finance and Administration that this method is not practicable and advantageous and specifically states the reasons therefor. The director may provide, by regulation, that it is not practicable to procure specified types of commodities, technical and general services, or professional and consultant services by competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include whether:

(1) Purchase descriptions are suitable for award on the basis of the lowest evaluated bid price; and

(2) The available sources, the time and place of performance, and other relevant circumstances are appropriate for the use of competitive sealed bidding.

(c) Where it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced technical proposals to be followed by an invitation for bids limited to those bidders whose technical proposals meet the requirements set forth in the first invitation.

(d) Notice inviting bids shall be given not fewer than five (5) calendar days nor more than thirty (30) calendar days preceding the date for the opening of bids by publishing such notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances adequate notice shall be given. The notice shall include a general description of the commodities, technical and general services, or professional and consultant services to be procured and shall state where invitations for bid may be obtained. The notice shall also state the date, time, and place of bid opening.

(e) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and open to public inspection.

(f)(1)(A) Bids shall be evaluated based on the requirements set forth in the invitation for bids.

(B) These requirements may include criteria to determine acceptability such as:

- (i) Inspection;
- (ii) Testing;
- (iii) Quality;
- (iv) Workmanship;
- (v) Delivery;
- (vi) Past performance; and
- (vii) Suitability for a particular purpose and

criteria affecting price such as life-cycle or total ownership costs.

(2)(A) The invitation for bids shall set forth the evaluation criteria to be used.

(B) No criteria may be used in bid evaluation that were not set forth in the invitation for bids.

(g) Correction of patent or provable errors in bids which do not prejudice other bidders, or withdrawal of bids, may be allowed only to the extent permitted under regulations promulgated by the director and upon written approval of the Attorney General or a designee of such officer. No award shall be made on the basis of a corrected bid, if the corrected bid

exceeds the next lowest bid of a responsible bidder.

(h) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the director or the head of a procurement agency is authorized in situations where time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. All other bidders requesting to be notified of the award decision shall be promptly notified of the decision.

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

SECTION 7. Arkansas Code § 19-11-234(a)(4), concerning competitive bidding, is amended to read as follows:

(4) Only firms which sell the type of commodity or service to be procured shall be contacted. The purchase procedures outlined in this section shall not apply to commodities, technical and general services, and professional and consultant services under state contract.

SECTION 8. Arkansas Code § 19-11-236(a), concerning the prequalification of suppliers, is amended to read as follows:

(a) The State Purchasing Director may provide for prequalification of suppliers as responsible prospective contractors for particular types of commodities, technical and general services, and professional and consultant services. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

SECTION 9. Arkansas Code § 19-11-241(b), concerning specifications, is amended to read as follows:

(b) The State Procurement Director shall promulgate regulations governing the preparation, maintenance, and content of standard and nonstandard specifications for commodities, technical and general services, and professional and consultant services procured by the Office of State Procurement."

AND

Page 9, delete line 28 and substitute the following:

"(2) The decision shall state the reasons for the action taken.

SECTION 12. Arkansas Code § 19-11-251 is amended to read as follows:
19-11-251. Intergovernmental use of commodities or services.

Any public procurement unit may enter into an agreement, independent of the requirements of §§ 19-11-204, 19-11-228 - 19-11-240, and 19-11-263 which refer to source selection and contract formation, and §§ 19-11-205, 19-11-242, and 19-11-243, which refer to commodity management, with any other public procurement unit or external procurement activity for the intergovernmental use of commodities, technical and general services, or professional and consultant services under the terms agreed upon between the

parties and in accordance with the rules and regulations promulgated under this subchapter.

SECTION 13. Arkansas Code § 19-11-252 is amended to read as follows:
19-11-252. Rules and regulations.

The State Procurement Director may promulgate reasonable rules and regulations pertaining to the sale or acquisition of any commodities, technical and general services, or professional and consultant services belonging to or produced by another public procurement unit or external procurement activity as authorized in §§ 19-11-206 and 19-11-249 - 19-11-258."

AND

Page 10, delete lines 20 through 22 and substitute the following:
"the contract.;

(8) Sufficient funds are available to pay the obligations when they become due; and

(9) A projected total cost of the contract is provided to include expenditures that may be incurred under all available periods of extension if the extensions were executed."

AND

Page 10, delete lines 35 through 36 and substitute the following:

"SECTION 16. Arkansas Code § 19-11-1012 is amended to read as follows:
19-11-1012. Standard contract forms.

(a) The State Procurement Director shall prescribe standard forms to be utilized by all state agencies.

(b) The standard contract form shall include the following items, plus such additional items as the director shall deem desirable for the purposes of this subchapter:

(1) A section setting forth in reasonable detail the objectives and scope of the contractual agreement and the methods to be used to determine whether the objectives specified have been achieved;

(2) The rates of compensation, transportation, per diem, subsistence, out-of-pocket allowances, and all other items of costs contemplated to be paid the contractor by the agency;

(3) The method by which the rate of compensation and the total payment shall be calculated;

(4) The maximum number of dollars which the agency may be obligated to pay to the contractor under the terms of the contract, including all expenses and other items of costs, and the source of funding to be utilized;

(5) The term of the contract;

(6)(A) ~~The names and social security numbers~~ of all individuals who will be supplying services to the agency or to third-party beneficiaries under the terms of the contracts, so far as those names are known to the contractor at the time of the execution of the contract.

(B) If the names of all individuals supplying services under the contract are not available at the time of the execution of the contract, the contract shall contain a provision requiring the contractor to

submit periodically the names ~~and social security numbers~~ of individuals supplying services as soon as the identity of those individuals is known to the contractor;

(7) Where the contractor is a business entity, the federal identification number of the business entity shall be listed on the contract form;

(8)(A) A certification shall be included, signed by the contractor, as follows:

" _____ (name) _____ (title)

"I....., certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of any state agency of the State of Arkansas will receive any personal, direct, or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract."

(B) For the purpose of subdivision (b)(8)(A) of this section, it shall be understood that where the contractor is a widely held public corporation, the term "direct or indirect monetary benefit" shall not apply to any regular corporate dividends paid to a stockholder of the corporation who is also a state employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation;

(9)(A) For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the agency does not exceed twenty-five thousand dollars (\$25,000), a purchase order may be utilized in lieu of the standard form or forms prescribed by the director.

(B)(i) However, should the agency enter into a subsequent contract with the same individual or organization during the same fiscal year, regardless of the nature of the contract, then the details of the original contract which utilized a purchase order form and of all subsequent contracts, regardless of amount or type, shall be promptly reported to the director.

(ii) This reporting shall be done to allow him or her to determine whether the agency is utilizing a series of contracts to avoid the use of the standard form and to avoid the application of appropriate regulations;

(10) Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract forms; and

(11) All professional consultant services contracts shall contain the following clause:

"In the event the State of Arkansas fails to appropriate funds or make moneys available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or moneys made available for such purposes.

This provision shall not be construed to abridge any other right of termination the agency may have."

(c) For the purpose of reporting methods of finance, agencies shall disclose the total estimated project cost in addition to any other reporting requirements of the Legislative Council or the Joint Budget Committee.

AND

Page 11, delete lines 1 through 10

AND

Appropriately renumber the sections of the bill

The Amendment was read _____

By: Representative Dangeau
MBM/JGH - 03-11-2005 13:24
MBM304

Chief Clerk