

1 INTERIM STUDY PROPOSAL 2017-047

2 State of Arkansas As *Engrossed*: S3/16/17 S3/16/17 S3/22/17 S3/23/17

3 91st General Assembly

A Bill

4 Regular Session, 2017

SENATE BILL 521

5
6 By: Senator Hickey

7 By: Representative Hammer

8 Filed with: Senate Committee on State Agencies and Governmental Affairs
9 pursuant to A.C.A. §10-3-217.

10 **For An Act To Be Entitled**

11 AN ACT TO AMEND THE LAWS RELATING TO PUBLIC
12 CONTRACTS; TO AMEND THE PROCESS AND REQUIREMENTS FOR
13 REQUESTS FOR PROPOSALS AND REQUESTS FOR
14 QUALIFICATIONS; TO LIMIT THE TERM OF PUBLIC
15 CONTRACTS; TO REQUIRE CERTAIN DISCLOSURES BY MEMBERS
16 OF AN EVALUATION COMMITTEE AND BY OFFERORS; TO
17 REQUIRE THE PROMULGATION OF RULES REGARDING THE
18 CHANGES TO THE PROCUREMENT LAWS; AND FOR OTHER
19 PURPOSES.

20
21
22 **Subtitle**

23 TO AMEND THE PROCESS AND REQUIREMENTS FOR
24 REQUESTS FOR PROPOSALS AND REQUESTS FOR
25 QUALIFICATIONS; TO LIMIT THE TERM OF
26 PUBLIC CONTRACTS; AND TO REQUIRE CERTAIN
27 DISCLOSURES IN PROCURING PUBLIC
28 CONTRACTS.

29
30
31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

32
33 SECTION 1. Effective July 1, 2018, Arkansas Code § 19-4-704(a),
34 concerning the prohibition on paying obligations without an appropriation, is
35 amended to read as follows:

1 (a)(1) ~~No obligations will~~ An obligation shall not be paid from
2 appropriated funds until the General Assembly ~~shall have~~ has made an
3 appropriation for that purpose; ~~nor shall any.~~

4 (2) A state agency shall not enter into ~~any a~~ contract ~~which~~
5 ~~would contemplate that permits~~ payments under the ~~contracts would~~ contract to
6 be made ~~beyond~~ after the expiration of the biennial period unless ~~the:~~

7 (A) The General Assembly, ~~prior to~~ before the expiration
8 of the biennial period, makes an appropriation for that purpose; ~~;~~ or ~~in the~~
9 ~~ease of~~

10 (B) A written determination has been made by the State
11 Procurement Director concerning multiyear contracts for commodities or
12 services under § 19-11-238, ~~a determination in writing has been made prior to~~
13 ~~use~~ stating that the:

14 (1) ~~(i)~~ (i) Estimated requirements cover the period of
15 the contract and are reasonably firm and continuing; and

16 (2) ~~Such a contract would serve~~ (ii) Contract is in
17 the best ~~interests~~ interest of the state by ~~encouraging:~~

18 (a) Encouraging effective competition ~~or~~
19 ~~otherwise promoting;~~

20 (b) Promoting economies in state procurement;
21 or

22 (c) Providing a substantial cost avoidance or
23 savings to the state.

24 (b) ~~In no event shall any obligations~~ Obligations shall not be
25 incurred unless there are sufficient funds or an approved federal grant on
26 hand, or estimated to become available, to meet the obligations when they
27 become due.

28
29 SECTION 2. Effective July 1, 2018, Arkansas Code § 19-4-705(a),
30 concerning obligations being limited to funds available, is amended to read
31 as follows:

32 (a) ~~No~~ A state agency for which regular operating appropriations are
33 made on a fiscal-year basis shall not: ~~incur any obligations~~

34 (1) Incur an obligation under the appropriations unless, to
35 satisfy the obligation, there ~~are:~~

36 (A) Are funds on hand ~~or;~~

1 (B) Is an approved federal grant; or
2 (C) Is funding or one (1) or more grants that are
3 estimated to become available, during the fiscal year for the payment of the
4 obligation; ~~nor shall any agency; or~~

5 ~~(2) create any~~ Create an obligation in one (1) fiscal year ~~which~~
6 that will make it necessary to use the revenues of the following fiscal year
7 in order to meet the obligation except in the case of multiyear contracts for
8 commodities or services and as provided in §§ 19-4-707 and 19-11-238.

9
10 SECTION 3. Effective July 1, 2018, Arkansas Code § 19-4-707 is amended
11 to read as follows:

12 19-4-707. Obligations for improvements.

13 ~~(a) Notwithstanding the fact that no disbursements may~~ A disbursement
14 shall not be made during any fiscal period in excess of the appropriations
15 made available by the General Assembly for the fiscal period, ~~it is~~ except as
16 provided that for contracts for improvements which an appropriation has been
17 made available for that purpose, including without limitation:

18 (1) Improvements, including major repairs, alterations, and
19 construction of new buildings and facilities ~~may be let to the extent of the~~
20 ~~appropriations made available for those purposes for the biennial period; and~~

21 (2) Multiyear contracts under § 19-11-238.

22 ~~(b) However, no such contracts may~~ a contract shall not be ~~let in~~
23 ~~amounts exceeding~~ entered into for an amount that exceeds the probable funds:

24 (1) Currently available; ~~or which are estimated~~

25 (2) Estimated to become available during the fiscal period.

26
27 SECTION 4. Effective July 1, 2018, Arkansas Code § 19-4-1103(a),
28 concerning the responsibilities of agency heads related to the approval of
29 expenditures, is amended to read as follows:

30 ~~(a) It shall be~~ is the responsibility of each executive head of a
31 state agency to establish:

32 (1) Establish adequate internal administrative procedures and
33 controls ~~to ensure;~~

34 (2) Ensure prompt and accurate payment of obligations in order
35 to promote good public relations; ~~and to take~~

1 (3) Take advantage of all available discounts, including
2 without limitation the discounts available under § 19-11-238; and

3 (4) ~~It shall also be the responsibility of each executive head~~
4 ~~of a state agency to establish~~ Establish adequate administrative procedures
5 to ensure that all financial transactions of the state agency are posted in
6 the state’s financial management system in accordance with procedures
7 established by the Chief Fiscal Officer of the State.

8
9 SECTION 5. Arkansas Code § 19-11-204(10), concerning definitions
10 concerning source selection and contract formation under the Arkansas
11 Procurement Law, is amended to read as follows:

12 (10)(A) “Request for qualifications” means a solicitation
13 document requiring submittal of qualifications or specialized expertise under
14 § 19-11-801 et seq. in response to the scope of work or services required ~~and~~
15 ~~does not require pricing.~~

16 (B) ~~Other than as provided in § 19-11-801 et seq., the~~
17 ~~request for qualifications process may only be used when, under rules~~
18 ~~promulgated by the State Procurement Director, the director determines in~~
19 ~~writing that the request for qualifications process is warranted;~~

20
21 SECTION 6. Arkansas Code § 19-11-230 is amended to read as follows:
22 19-11-230. Competitive sealed proposals – Definition – Requirements.

23 (a) Definition. “Competitive sealed proposals” means a method of
24 procurement ~~which~~ that involves, but is not limited to:

25 (1) Solicitation of proposals through a request for proposals;

26 (2) Submission of cost or pricing data from the ~~offeror where~~
27 ~~required~~ offerors;

28 (3) Discussions and negotiations with responsible offerors whose
29 proposals have been determined to be reasonably susceptible to being selected
30 for award; and

31 (4) An award made to the responsible offeror whose proposal is
32 determined in writing to be the most advantageous considering price, ~~and~~
33 other evaluation factors ~~set forth~~ stated in the request for proposals, and
34 the results of any discussions and negotiations conducted with responsible
35 offerors.

1 (b) When the use of competitive sealed bidding is not practicable and
2 advantageous, a contract may be awarded by competitive sealed proposals.

3 (c)(1) Public notice of the request for proposals shall be given ~~in~~
4 ~~the same manner as provided in § 19-11-229(d), which refers to public notice~~
5 ~~of competitive sealed bidding~~ at least fourteen (14) days before the
6 evaluation process begins.

7 (2) If a request for proposals is amended, the evaluation
8 process for the proposals submitted in response to the request for proposals
9 shall not begin unless notice of the amended request for proposals, including
10 without limitation the substance of the amended request for proposals, is
11 provided at least seven (7) calendar days before the evaluation process
12 begins.

13 (3) Notice under this subsection shall:

14 (A) Be given by:

15 (i) Posting the request for proposals, including a
16 request for proposals performed outside of the Office of State Procurement,
17 on the official website of the office; and

18 (ii) Any additional means of advertising deemed
19 appropriate;

20 (B) Include a description of the commodities or services
21 to be procured; and

22 (C) State how, when, and where the:

23 (i) Request for proposals may be obtained; and

24 (ii) Proposals should be submitted.

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

27 (2)(A) Except as provided under subdivision (d)(2)(B) of this
28 section, price shall receive at least thirty percent (30%) of the total
29 weight of the evaluation factors.

30 (B) The total weight given to price in an evaluation may
31 be less than thirty percent (30%) if approved by:

32 (i)(a) The Governor if the request for proposals is
33 issued by a state agency.

34 (b) A state agency that received approval
35 under this subdivision (d)(2)(B)(i) shall notify the Legislative Council or,

1 if the General Assembly is in session, the Joint Budget Committee, of the
2 total weight approved by the Governor; or

3 (ii) A vote of more than fifty percent (50%) of the
4 members of the governing body of an institution of higher education or a
5 political subdivision if the request for proposals is issued by an
6 institution of higher education or a political subdivision.

7 (e)(1) Before the evaluation process begins:

8 (A) Each offeror shall disclose in writing:

9 (i) Any conflicts of interest; and

10 (ii) Any pending litigation that pertains to the
11 subject of the request for proposals in which the offeror or any of its
12 affiliates or subsidiaries is a party; and

13 (B)(i) The identity of the members of the evaluation
14 committee shall be disclosed to the offerors.

15 (ii)(a) The offerors shall have five (5) business
16 days to protest the participation of any member of the evaluation committee.

17 (b) A protest under this subdivision
18 (e)(1)(B)(ii) is limited to a protest regarding a perceived bias of the
19 member of the evaluation committee as the result of a familial relationship
20 or a financial interest of the member of the evaluation committee, an
21 immediate family member of the member of the evaluation committee, or a
22 business organization owned in part by the member of the evaluation committee
23 or an immediate family member of the member of the evaluation committee.

24 (c) The burden of proving the existence of a
25 bias under this subdivision (e)(1)(B)(ii) is on the offeror filing the
26 protest.

27 (iii)(a) After the identity of the members of the
28 evaluation committee are disclosed under this subdivision (e)(1)(B), any
29 person who has a financial interest in the awarding of a contract based on
30 the proposals being evaluated by the identified members of the evaluation
31 committee shall not contact a member of the evaluation committee in any way.

32 (b) Persons prohibited from contacting members
33 of the evaluation committee under this subdivision (e)(1)(B)(iii) include
34 without limitation an officer, employee, or agent of an offeror that
35 submitted a proposal being evaluated by the committee; an officer, employee,
36 or agent of a parent, subsidiary, or affiliate of an offeror that submitted a

1 proposal being evaluated by the committee; a lobbyist employed by an offeror
 2 that submitted a proposal being evaluated by the committee; and a lobbyist
 3 employed by a parent, subsidiary, or affiliate of an offeror that submitted a
 4 proposal being evaluated by the committee.

5 (2) Each member of the evaluation committee shall:

6 (A) Evaluate the proposals independently before meeting or
 7 discussing the proposals with any other member of the evaluation committee;

8 (B) Document the specific justification for any
 9 modification made to his or her scoring during or after the consensus meeting
 10 of the evaluation committee; and

11 (C) In accordance with § 19-11-701 et seq., disclose in
 12 writing any potential conflict of interest as soon as the member is aware of
 13 the potential conflict of interest.

14 ~~(e)(1) As provided in the request for proposals and under regulations,~~
 15 ~~discussions may~~ (f)(1) Discussions may be conducted with responsible
 16 offerors who submit proposals determined to be reasonably susceptible of
 17 being selected for award for the purpose of ~~clarification:~~

18 (A) Clarifying the solicitation requirements to assure
 19 full understanding of, and responsiveness to, the solicitation requirements;
 20 and

21 (B) Negotiating a contract that is the most advantageous
 22 to the state.

23 ~~(2) Offerors~~ Responsible offerors who are reasonably susceptible
 24 of being selected for award shall be accorded fair and equal treatment with
 25 respect to ~~any~~ the opportunity for discussion, negotiation, and revision of
 26 proposals, and such revisions ~~may~~ shall be permitted after submissions and
 27 ~~prior to~~ before award for the purpose of obtaining the best and final ~~offers~~
 28 offer from each offeror.

29 (3) In conducting discussions and negotiations, ~~there shall be~~
 30 ~~no disclosure of any~~ information derived from proposals submitted by
 31 competing offerors shall not be disclosed.

32 ~~(f)(1)~~ (g)(1) Award shall be made to the responsible offeror whose
 33 proposal is determined in writing to be the most advantageous to the state,
 34 taking into consideration price, the other evaluation factors ~~set forth~~
 35 stated in the request for proposals, and the results of ~~any~~ the discussions
 36 and negotiations conducted with responsible offerors.

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

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

6
7 SECTION 7. Arkansas Code § 19-11-234(b)(1), concerning competitive
8 bidding under the Arkansas Procurement Law, is amended to read as follows:

9 (b)(1) ~~Contracts in which the~~ Competitive bidding may be used to
10 solicit a contract if:

11 (A) The purchase price exceeds ten thousand dollars
12 (\$10,000) and is less than or equal to fifty thousand dollars (\$50,000) may
13 be awarded by use of competitive bidding procedures; or

14 (B) The contract will be with a professional person
15 selected from a qualified vendor list under § 19-11-804.

16
17 SECTION 8. Arkansas Code § 19-11-235(a)(1), concerning the
18 responsibility of bidders and offerors under the Arkansas Procurement Law, is
19 amended to read as follows:

20 (a)(1)(A) A determination of nonresponsibility of a bidder or offeror
21 shall be made in accordance with ~~regulations~~ rules promulgated by the State
22 Procurement Director.

23 (B) However, in determining the responsibility of a bidder
24 or offeror, the following shall be considered in addition to any factors
25 identified in a rule promulgated by the director:

26 (i) The past performance of the bidder or offeror;
27 and

28 (ii) Any conflicts of interest of the bidder or
29 offeror.

30
31 SECTION 9. Effective July 1, 2018, Arkansas Code § 19-11-238(a),
32 concerning multiyear contracts under the Arkansas Procurement Law, is amended
33 to read as follows:

34 (a) Specified Period.

35 (1) Unless Except as otherwise provided by law in this section
36 and § 24-2-618, a contract for commodities or services may be entered into

1 for ~~periods of not more than seven (7)~~ up to four (4) years if funds for the
2 first fiscal year of the contemplated contract are available at the time of
3 contracting.

4 (2)(A) If a contract is entered into for four (4) years, before
5 the fourth year of the contract expires, the state agency may solicit a
6 request for information to determine whether the contract that is about to
7 expire is competitively priced.

8 (B) After soliciting a request for information under this
9 subdivision (a)(2), the state agency may extend the contract that is about to
10 expire for up to three (3) additional years if funds for the first fiscal
11 year of the contemplated extension are available at the time of contracting
12 and the state agency determines that:

13 (i) The contract about to expire is competitively
14 priced;

15 (ii) Extending the contract that is about to expire
16 would be more advantageous to the state than conducting a new procurement
17 process for the contract at the end of the four-year period; and

18 (iii) The vendor currently under contract has
19 received satisfactory vendor performance reports.

20 (C) A state agency that extends a contract under this
21 subdivision (a)(2) shall inform the State Procurement Director in writing of
22 the extension, including without limitation:

23 (i) The length of the extension;

24 (ii) The method the state agency used to distribute
25 the request for information;

26 (iii) The number of responses received from the
27 request for information; and

28 (iv) The pricing information included in each
29 submission received in response to the request for information.

30 (3) A contract for commodities or services may be entered into
31 for up to ten (10) years if:

32 (A) Funds for the first fiscal year of the contemplated
33 contract are available at the time of contracting;

34 (B) The total projected contract amount, including any
35 amendments and possible extensions, is at least twenty million dollars
36 (\$20,000,000); and

1 (C) The director approves the length of the contract based
2 on a written determination that the extended contract period is likely to
3 result in substantial:

4 (i) Savings to the state by avoiding, reducing, or
5 amortizing nonrecurring startup costs over the life of the contract; or

6 (ii) Cost avoidance or savings to the state, as
7 explicitly identified in writing by the director.

8 (4) A technology maintenance agreement or software maintenance
9 agreement that satisfies the requirements stated in the rules promulgated
10 under this subchapter and offers a discount of at least twenty percent (20%)
11 if paid in advance may be entered into for up to:

12 (A) Seven (7) years as provided under subdivision (a)(2)
13 of this section; or

14 (B) Ten (10) years as provided under subdivision (a)(3) of
15 this section.

16 (5) Payment and performance obligations for succeeding fiscal
17 years shall be subject to the availability and appropriation of funds
18 therefor.

19
20 SECTION 10. Arkansas Code § 19-11-239(3), concerning the finality of
21 determinations required by certain portions of the Arkansas Procurement Law,
22 is amended to read as follows:

23 (3) Section ~~19-11-230(f)~~ 19-11-230(g), which refers to
24 competitive sealed proposals, award;

25
26 SECTION 11. Arkansas Code § 19-11-268(b)(1), concerning the
27 requirements for vendor performance reporting under the Arkansas Procurement
28 Law, is amended to read as follows:

29 (1) Completed and submitted:

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

32 (B) At the end of the contract;

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

36 19-11-273. Expert evaluator – Definition.

1 (a)(1) As used in this section, "expert evaluator" means an individual
2 who, through education or experience, or both, has special expertise,
3 experience, or training in the subject matter area of the solicited
4 procurement.

5 (2) An expert evaluator may be an employee, volunteer, or
6 contractor.

7 (b) A state agency shall:

8 (1) Include at least one (1) expert evaluator on an evaluation
9 committee for the purpose of evaluating responses to a request for proposals
10 or a request for qualifications for a contract that:

11 (a) Is for services that will require a high level of
12 knowledge or expertise in a particular skill area; and

13 (b) Will have a total projected contract amount, including
14 any amendments and possible extensions, of at least ten million dollars
15 (\$10,000,000); or

16 (2) Assemble an evaluation committee composed of at least sixty
17 percent (60%) of expert evaluators for the purpose of evaluating responses to
18 a request for proposals or a request for qualifications for a contract that:

19 (a) Is for services that will require a high level of
20 knowledge or expertise in a particular skill area; and

21 (b) Will have a total projected contract amount, including
22 any amendments and possible extensions, of at least one hundred million
23 dollars (\$100,000,000).

24 (c) If one (1) or more expert evaluators are used as required under
25 subsection (b) of this section, the state agency may:

26 (1) Pay the cost of the expert evaluators from any funds
27 available and authorized for that purpose; or

28 (2)(A) Require the payment of a fee to cover the cost of using
29 the expert evaluators by each offeror at the time the offeror submits a
30 response to the state agency's request for proposals or request for
31 qualifications.

32 (B) If the total amount of the fees collected by the state
33 agency for any expert evaluators required under this section exceeds the
34 actual cost of hiring the expert evaluators, the state agency shall refund
35 the excess fees on a pro rata basis to each offeror that paid the fee.

36 (d) An expert evaluator that is:

1 (1) Employed for the sole purpose of evaluating a solicitation
2 under this section is exempt from § 21-3-802; or

3 (2) Contracted with for the sole purpose of evaluating a
4 solicitation under this section is exempt from the Arkansas Procurement Law,
5 § 19-11-201 et seq., and § 19-11-801 et seq.

6
7 19-11-274. Review of certain contracts by attorneys.

8 (a) A proposed contract for goods or services shall be reviewed by an
9 attorney at the Office of State Procurement or the Attorney General’s office
10 before the contract is executed if the total projected contract amount,
11 including any amendments and possible extensions, is at least ten million
12 dollars (\$10,000,000).

13 (b)(1) As part of the solicitation for the contract, a state agency
14 may require each vendor submitting a response to the solicitation to pay a
15 fee to reimburse the Office of State Procurement or the Attorney General’s
16 office for the review of the proposed contract at the time the vendor submits
17 a response to the state agency’s solicitation.

18 (2) If the total amount of fees collected by the state agency
19 for review of the proposed contract under this subsection exceeds the actual
20 cost of reimbursement, the state agency shall refund the excess fees on a pro
21 rata basis to each vendor that paid a fee.

22
23 19-11-275. Public notice of solicitation opportunities.

24 The Office of State Procurement shall publish a notice at least one (1)
25 time per month in a newspaper having general circulation in the state of the
26 website address where the public may view currently available solicitation
27 opportunities for competitive sealed bids, competitive sealed proposals, and
28 requests for qualifications.

29
30 SECTION 13. Arkansas Code §§ 19-11-801 – 19-11-805 are amended to read
31 as follows:

32 19-11-801. Policy – Definitions – Rules.

33 ~~(a)(1)(A) It is the policy of the State of Arkansas that~~ Except as
34 otherwise provided in this section, state agencies, state-supported
35 institutions of higher education, and political subdivisions shall follow the
36 procedures stated in this ~~section, except that~~ subchapter.

1 (B) However, in addition to the request for qualifications
 2 method of procurement permitted under this subchapter, competitive bidding
 3 under § 19-11-234, competitive sealed bidding under § 19-11-229, and
 4 procurement of professional consultant services contracts for legal,
 5 architectural, engineering, construction management, and land surveying
 6 professional consultant services if+ desired by the state and land surveying
 7 professional consultant services if+ desired by the state agency, the state-
 8 supported institution of higher education, or the political subdivision.

9 ~~(1) State agencies~~ (2) A state agency that is not exempt from
 10 review and approval of the Building Authority Division of the Department of
 11 Finance and Administration shall follow procedures established by the
 12 division for the procurement of architectural, engineering, land surveying,
 13 and construction management services; and.

14 ~~(2) Institutions of higher education exempt from review and~~
 15 ~~approval of the division shall follow procedures established by their~~
 16 ~~governing boards for the procurement of architectural, engineering, land~~
 17 ~~surveying, and construction management professional consultant services.~~

18 ~~(b) It is the policy of the State of Arkansas and its political~~
 19 ~~subdivisions that political subdivisions shall follow the procedures stated~~
 20 ~~in this section, except that competitive bidding shall not be used for the~~
 21 ~~procurement of legal, financial advisory, architectural, engineering,~~
 22 ~~construction management, and land surveying professional consultant services.~~
 23 The request for qualifications method of procurement stated in this
 24 subchapter shall be used only when:

25 (1) The price for the service being procured is predetermined by
 26 law or by the state agency or political subdivision;

27 (2) It is necessary to secure a qualified vendor list; or

28 (3) The contract being procured is one hundred percent (100%)
 29 funded by federal funds.

30 ~~(e) For purposes of this subchapter, a political subdivision of the~~
 31 ~~state may elect to not use competitive bidding for other professional~~
 32 ~~services not listed in subsection (b) of this section with a two-thirds (2/3)~~
 33 ~~vote of the political subdivision's governing body.~~

34 ~~(d)(1)~~ (c)(1) As used in this section, "construction management" means
 35 a project delivery method based on an agreement in which a state agency,
 36 political subdivision, public school district, or institution of higher

1 education acquires from a construction entity a series of services that
 2 include, but are not limited to, design review, scheduling, cost control,
 3 value engineering, constructability evaluation, preparation and coordination
 4 of bid packages, and construction administration.

5 (2) "Construction management" includes, ~~but is not limited to~~
 6 without limitation:

7 (A)(i) "Agency construction management", in which a public
 8 school district selects a construction manager to serve as an agent for the
 9 purpose of providing administration and management services.

10 (ii) The construction manager shall not hold
 11 subcontracts for the project or provide project bonding for the project;

12 (B) "At-risk construction management", in which the
 13 construction entity, after providing agency services during the
 14 preconstruction period, serves as the general contractor and the following
 15 conditions are met:

16 (i) The construction manager provides a maximum
 17 guaranteed price;

18 (ii) The public school district holds all trade
 19 contracts and purchase orders; and

20 (iii) The portion of the project not covered by the
 21 trade contracts is bonded and guaranteed by the construction manager; and

22 (C)(i) "General contractor construction management", in
 23 which the construction entity, after providing agency services during the
 24 preconstruction period, serves as the general contractor.

25 (ii) The general contractor shall hold all trade
 26 contracts and purchase orders and shall bond and guarantee the project.

27 ~~(e)~~ (d) As used in this subchapter:

28 (1) "Competitive bidding" means the procurement method
 29 established under § 19-11-234;

30 (2) "Political subdivision" means counties, school districts,
 31 cities of the first class, cities of the second class, and incorporated
 32 towns; and

33 ~~(2) "Other professional services" means professional services~~
 34 ~~not listed in subsection (b) of this section as defined by a political~~
 35 ~~subdivision with a two-thirds (2/3) vote of its governing body.~~

1 (3) "Professional person" means an individual, corporation,
2 organization, or other legal entity licensed or certified to engage in an
3 occupation that requires a high level of training or expertise;

4 (4) "Qualified vendor list" means a list of professional
5 persons, all of which:

6 (A) Meet the qualifications identified in a request for
7 qualifications;

8 (B) Agree to the terms of the request for qualifications;
9 and

10 (C) Are willing and able to provide the services necessary
11 to meet a scope of work specified in the request for qualifications; and

12 (5) "Request for qualifications" means a solicitation document
13 requiring submittal of qualifications or specialized expertise under this
14 subchapter in response to the scope of work or services required.

15 (e) The State Procurement Director shall promulgate rules to
16 administer this subchapter.

17
18 19-11-802. Annual statements of qualifications and performance data –
19 Restrictions on competitive bidding.

20 (a)(1) In the procurement of professional services, a state agency, a
21 state-supported institution of higher education, or a political subdivision
22 which utilizes these that uses the professional services may issue a request
23 for qualifications to encourage firms engaged in the lawful practice of these
24 professions to submit annual statements of qualifications and performance
25 data to the state agency, state-supported institution of higher education, or
26 political subdivision or may request such information issue a request for
27 qualifications as needed for a particular public project.

28 (2) A professional person may be removed from a qualified vendor
29 list if the professional person:

30 (A) Fails to perform at a satisfactory level as determined
31 by the state agency;

32 (B) Fails to provide annual statements of qualifications
33 and performance data as requested; or

34 (C) Requests to be removed.

35 (3) If a state agency, state supported institution of higher
36 education, or political subdivision secures a qualified vendor list under

1 this subchapter, the state agency, state-supported institution of higher
 2 education, or political subdivision shall annually reissue the original
 3 request for qualifications and provide an opportunity for additional
 4 professional persons to be added to the qualified vendor list.

5 ~~(b) The state agency or political subdivision shall evaluate current~~
 6 ~~statements of qualifications and performance data of firms on file or may~~
 7 ~~request such information as needed for a particular public project whenever a~~
 8 ~~project requiring professional services is proposed. In submitting a request~~
 9 ~~for qualifications under subsection (a) of this section, a state agency or a~~
 10 ~~political subdivision shall give public notice of the request in the same~~
 11 ~~manner as provided in § 19-11-230.~~

12 ~~(c)(1) The political subdivision shall not use competitive bidding for~~
 13 ~~the procurement of legal, financial advisory, architectural, engineering,~~
 14 ~~construction management, and land surveying professional consulting services.~~

15 ~~(2) A political subdivision shall not use competitive bidding for the~~
 16 ~~procurement of other professional services with a two thirds (2/3) vote of~~
 17 ~~its governing body.~~

18 ~~(d)(1) (c)(1)(A)~~ A public school district that utilizes construction
 19 management services ~~shall~~ may issue a request for qualifications to encourage
 20 construction management firms to submit to the school district annual
 21 statements of qualifications and performance data or may ~~request such~~
 22 ~~information~~ issue a request for qualifications as needed for a particular
 23 public project.

24 (B) If a public school district secures a qualified vendor
 25 list under this subchapter, the public school district shall reissue annually
 26 the original request for qualifications and provide an opportunity for
 27 additional professional persons to be added to the qualified vendor list.

28 ~~(2) The public school district shall evaluate current statements~~
 29 ~~of qualifications and performance data on file with the school district or~~
 30 ~~when submitted as requested whenever a project requiring professional~~
 31 ~~services of a construction manager is proposed. In submitting a request for~~
 32 ~~qualifications under subdivision (d)(1) of this section, a public school~~
 33 ~~district shall give public notice of the request in the same manner as~~
 34 ~~provided in § 19-11-230.~~

35 ~~(3) The public school district shall not use competitive bidding~~
 36 ~~for the procurement of professional services of a construction manager.~~

1 (e) If a request for qualifications is amended, the evaluation process
2 for the statements of qualifications and performance data submitted in
3 response to the request for qualifications shall not begin unless notice of
4 the amended request for qualifications, including without limitation the
5 substance of the amended request for qualifications, is provided at least
6 seven (7) calendar days before the evaluation process begins.

7 (f) A request for qualifications may be used only as provided in this
8 subchapter.

9
10 19-11-803. Evaluation of qualifications.

11 In evaluating the qualifications of each firm submitting a response to
12 a request for qualifications under this subchapter, the state agency, the
13 state-supported institution of higher education, or the political subdivision
14 shall consider:

15 (1) The specialized experience and technical competence of the
16 firm with respect to the type of professional services required;

17 (2) The capacity and capability of the firm to perform the work
18 in question, including specialized services, within the time limitations
19 fixed for the completion of the project;

20 (3) The past record of performance of the firm with respect to
21 such factors as control of costs, quality of work, and ability to meet
22 schedules and deadlines; and

23 (4) The firm's proximity to and familiarity with the area in
24 which the project is located.

25
26 19-11-804. Selection.

27 (a)(1) ~~The~~ If a state agency, a state-supported institution of higher
28 education, or a political subdivision issues a request for qualifications
29 under this subchapter, the state agency, the state-supported institution of
30 higher education, or the political subdivision shall select at least three
31 (3) qualified firms based on the evaluation of the statements of
32 qualifications and performance data received under § 19-11-802.

33 (2) If a state agency, a state-supported institution of higher
34 education, or a political subdivision receives fewer than three (3) responses
35 to a request for qualifications from professional persons, the state agency,

1 the state-supported institution of higher education, or the political
2 subdivision shall select all qualified professional persons.

3 (b)(1) The If the request for qualifications was issued under § 19-11-
4 801(b)(1) or § 19-11-801(b)(3), the state agency, the state-supported
5 institution of higher education, or the political subdivision shall then
6 select the firm considered the best-qualified and capable of performing the
7 desired work and negotiate a contract for the project with the firm selected.

8 (2) If the request for qualifications was issued to professional
9 persons based on a qualified vendor list under § 19-11-801(b)(2), the state
10 agency, the state-supported institution of higher education, or the political
11 subdivision shall:

12 (A) Use competitive bidding to select the professional
13 person from the qualified vendor list that is considered the best-qualified
14 and capable of performing the desired work for the lowest price; and

15 (B) Negotiate a contract for the project under § 19-11-805
16 with the professional person selected.

17
18 19-11-805. Negotiation of contracts.

19 (a) For the basis of negotiations, the state agency, the state-
20 supported institution of higher education, or the political subdivisions
21 subdivision and the selected firm or professional person shall jointly
22 prepare a detailed, written description of the scope of the proposed
23 services.

24 (b)(1)(A) If the state agency, the state-supported institution of
25 higher education, or the political subdivision is unable to negotiate a
26 satisfactory contract with the firm or professional person selected,
27 negotiations with that firm shall be terminated.

28 (B)(i) The state agency, the state-supported institution
29 of higher education, or the political subdivision shall then undertake
30 negotiations with another of the qualified firms selected.

31 (ii) If the state agency, the state-supported
32 institution of higher education, or the political subdivision is selecting
33 from a qualified vendor list, the state agency or the political subdivision
34 shall undertake negotiations with the professional person that submitted the
35 next lowest bid.

1 (2)(A) If there is a failing of accord with the second firm or
 2 professional person, negotiations with the firm shall be terminated.

3 (B)(i) The state agency, the state-supported institution
 4 of higher education, or the political subdivision shall undertake
 5 negotiations with the third qualified firm.

6 (ii) If the state agency, the state-supported
 7 institution of higher education, or the political subdivision is selecting
 8 from a qualified vendor list, the state agency or the political subdivision
 9 shall undertake negotiations with the professional person that submitted the
 10 next lowest bid.

11 (c) If the state agency, the state-supported institution of higher
 12 education, or the political subdivision is unable to negotiate a contract
 13 with any of the selected firms or professional persons on the qualified
 14 vendor list, the state agency, the state-supported institution of higher
 15 education, or the political subdivision shall reevaluate the necessary
 16 professional services, including the scope and reasonable fee requirements,
 17 ~~again compile a list of qualified firms and proceed in accordance with the~~
 18 ~~provisions of this subchapter and issue a new request for qualifications~~
 19 under this subchapter.

20 (d) When unable to negotiate a contract for construction management, a
 21 public school district also shall perform a reevaluation of services in
 22 accordance with subsection (c) of this section.

23
 24 SECTION 14. Arkansas Code § 19-11-1005 is amended to read as follows:
 25 19-11-1005. General guidelines and ~~regulations~~ rules.

26 The State Procurement Director, after soliciting suggestions from state
 27 agencies and after seeking and receiving the advice of the Attorney General
 28 and ~~review~~ approval by the Legislative Council, or by the Joint Budget
 29 Committee, if the General Assembly is in session, shall publish general
 30 guidelines for the procurement of professional and consultant services
 31 contracts and general ~~regulations~~ rules governing the use of each type of
 32 contract.

33
 34 SECTION 15. Arkansas Code § 19-11-1013(b)(1), concerning vendor
 35 performance reporting in relation to professional and consultant services
 36 contracts, is amended to read as follows:

(1) Completed and submitted:

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

(B) At the end of the contract;

SECTION 16. DO NOT CODIFY. Legislative intent – Exemption.

(a) The General Assembly intends that Section 13 of this act have a delayed effective date as applicable to the procurement of professional consultant services contracts for the services stated in subsection (b) of this section.

(b) Effective June 30, 2019, Section 13 of this act applies to the procurement of professional consultant services contracts for legal, architectural, engineering, construction management, or land surveying services.

SECTION 17. DO NOT CODIFY. Study of procurement processes and requirements.

The Legislative Council shall:

(1) Study current procurement processes and requirements, including without limitation the process and requirements for requests for qualifications and the process and requirements for evaluating responses to requests for proposals and requests for qualifications;

(2) Invite the participation of members of the legal, architectural, engineering, construction management, and land surveying professions in the study required under this section; and

(3) Complete the study required under this section by January 1, 2019.

SECTION 18. DO NOT CODIFY. The State Procurement Director shall promulgate rules and revise rules to comply with, implement, and administer this act.

/s/Hickey

Referred by the Arkansas Senate

1 Prepared by: VJF

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