

## DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES, OFFICE OF STATE PROCUREMENT

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**SUBJECT:** R7 19-11-217 Direct Contract Negotiation

**DESCRIPTION:** Act 556 of 2023 is an innovation in Arkansas Procurement Law. This rule will help clarify the extent of its reach. We want to make it clear that the state will have the authority to enter into contracts with suppliers who are commonly recognized as retailers as well as those who have contracts that are listed on the federal GSA contract schedule and/or who have contracts with other states or other public procurement units.

The proposed rule:

- Clarifies the extent of authority that the State Procurement Director has under Act 556; and
- Presents examples of what is permissible under Act 556.

**PUBLIC COMMENT:** A public hearing was held on this rule on February 26, 2024. The public comment period expired on February 27, 2024. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact.

**LEGAL AUTHORIZATION:** The State Procurement Director has authority to promulgate rules consistent with Arkansas Procurement Law. Ark. Code Ann. § 19-11-217(b)(1). This rule implements Act 556 of 2023. The Act, sponsored by Representative Jeff Wardlaw, amends the powers and duties of the State Procurement Director and authorizes the State Procurement Director to enter into nonmandatory state contracts in certain circumstances.

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FEB 12 2024

Revised June 2023

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QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Department of Transformation and Shared Services  
BOARD/COMMISSION \_\_\_\_\_  
BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
CONTACT PERSON Anthony Black  
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PHONE NO. (501) 682-1011 EMAIL anthony.black@arkansas.gov  
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING  
Anthony Black, Edward Armstrong  
PRESENTER EMAIL(S) edward.armstrong@arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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1. What is the official title of this rule?  
R7 19-11-217 Direct Contract Negotiation

2. What is the subject of the proposed rule? Implementation of Act 556 of 2023

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes  No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes  No

4. Is this rule being filed for permanent promulgation? Yes  No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes  No

If yes, what was the effective date of the emergency rule? \_\_\_\_\_

On what date does the emergency rule expire? \_\_\_\_\_

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes  No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes  No

If yes, please provide the state statute and/or rule citation.

To clarify the extent of authority under Act 556 of 2023 by including some examples of what is permissible under it.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes  No

If yes, please list the rules being repealed.

If no, please explain.

OSP Rule R2 19-11-279 [Bureau Staff Note: Per email with Jessica Patterson of 2.14.24, OSP is not actually repealing these rules in this promulgation, but will do so later, potentially Summer 2024.]  
OSP Rule R8 19-11-230

8. Is this a new rule? Yes  No

Does this repeal an existing rule? Yes  No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes  No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Ark. Code Ann. 19-11-217(b)(1)

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes  No

If yes, please provide the year of the act(s) and act number(s).

Act 556 of 2023

11. What is the reason for this proposed rule? Why is it necessary?

To clarify the extent of authority granted under Act 556 of 2023 by including some examples of what is permissible under it.



12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes  No

If yes, please complete the following:

Date: Feb 26, 2024

Time: 1pm

Place: Ouachita Bid Room 501 Woodlane St Little Rock, AR

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. Feb 27, 2024

15. What is the proposed effective date for this rule? TBD

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

None.

19. Is the rule expected to be controversial? Yes  No

If yes, please explain.

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## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Transformation and Shared Services

BOARD/COMMISSION \_\_\_\_\_

PERSON COMPLETING THIS STATEMENT Edward Armstrong

TELEPHONE NO. (501) 324-9312 EMAIL edward.armstrong@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE R7 19-11-217 Direct Contract Negotiation

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes  No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes  No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No   
  
If no, please explain:  
  
(a) how the additional benefits of the more costly rule justify its additional cost;  
  
(b) the reason for adoption of the more costly rule;  
  
(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and  
  
(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.
  
4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:  
  
(a) What is the cost to implement the federal rule or regulation? N/A

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

**Current Fiscal Year**

\$ 0.00 \_\_\_\_\_

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 0.00 \_\_\_\_\_

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Act 556 of 2023 Proposed Rule

**R7: 19-11-217 Direct Negotiation of Contracts With Retailers**

The discretion granted to the State Procurement Director under Arkansas Code Annotated § 19-11-217(c)(15) can only be exercised to negotiate non-mandatory contracts with retailers who sell commodities and/or services directly to ultimate consumers for a standard retail price that can easily be determined by reference to reliable and publicly available sources, such as the retailer's catalog list price, documentation of the Manufacturer's Suggested Retail Price, or a standing price that the retailer currently offers to public procurement units through a contract with the U.S. General Services Administration or a cooperative purchasing agreement.

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**FEB 12 2024**

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