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1 State of Arkansas
2 91st General Assembly
3 Third Extraordinary Session, 2018

A Bill

DRAFT JLL/JLL
SENATE BILL
JLL387

5 By: Senator <NA>

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAWS
9 CONCERNING STATE CONTRACTS; AND FOR OTHER PURPOSES.

Subtitle

12 TO AMEND THE ARKANSAS PROCUREMENT LAWS
14 CONCERNING STATE CONTRACTS.

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

19 SECTION 1. Arkansas Code § 19-11-223 is amended to read as follows:

20 19-11-223. Commodities, technical and general services, and
21 professional and consultant services under state contract.

22 (a) In addition to establishing a state contract for those
23 commodities, technical and general services, and professional and consultant
24 services within the exclusive jurisdiction of the State Procurement Director
25 under § 19-11-222, the director may award a mandatory state contract for
26 other commodities, technical and general services, and professional and
27 consultant services ~~in those instances when substantial savings may be~~
28 ~~effected by quantity purchasing of commodities, technical and general~~
29 ~~services, or professional and consultant services in general use by several~~
30 ~~state agencies~~ when the director determines that combining the collective
31 purchasing power of the state would be beneficial to the state.

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

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

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

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

11 ~~(d) Except as authorized in this section, all state agencies which~~
 12 ~~require (b)(1) Unless an exemption is approved by the director under~~
 13 ~~subdivision (b)(2) of this section, a state agency that requires~~ commodities,
 14 technical and general services, and professional and consultant services that
 15 are under a mandatory state contract shall procure these commodities,
 16 technical and general services, and professional and consultant services
 17 exclusively under ~~such~~ the mandatory state contract.

18 (2)(A) The director may approve an exemption from a mandatory
 19 state contract awarded under this section only if the state agency
 20 demonstrates that substantial savings may be effected by purchasing outside
 21 of the mandatory state contract.

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

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

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

31 (d) The director shall:

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

34 (2)(A) Conduct mandatory state contract procurements under this
 35 section that would produce savings for the state.

36 (B) A mandatory state contract procurement shall include

1 the participation of stakeholders from all potentially affected state
2 agencies in the development and evaluation of the procurement;

3 (3) Promote the use of mandatory state contracts among county
4 and city governments, including without limitation making information about
5 the mandatory state contracts readily available and searchable; and

6 (4) Measure the savings from each mandatory state contract
7 awarded under this section and periodically report the savings to the Review
8 Subcommittee of the Legislative Council.

9
10 SECTION 2. DO NOT CODIFY. Rules.

11 (a) The State Procurement Director shall adopt rules to include any
12 necessary conditions, reporting, or document retention standards related to
13 the director's duty to promote and measure mandatory state contract use under
14 § 19-11-223.

15 (b)(1) When adopting the initial rules required under this section,
16 the final rule shall be filed with the Secretary of State for adoption under
17 § 25-15-204(f):

18 (A) On or before January 1, 2020; or

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

21 (2) The director shall file the proposed rule with the
22 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
23 2020, so that the Legislative Council may consider the rule for approval
24 before January 1, 2020.

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8 AN ACT TO AMEND ARKANSAS PROCUREMENT LAWS CONCERNING
9 COOPERATIVE PURCHASING; AND FOR OTHER PURPOSES.

Subtitle

12 TO AMEND ARKANSAS PROCUREMENT LAWS
13 CONCERNING COOPERATIVE PURCHASING.

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

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

22 (1) ~~“Cooperative procurement” means procurement conducted by, or~~
23 ~~on behalf of, more than one (1) public procurement unit or by a public~~
24 ~~procurement unit with an external procurement activity~~ “Cooperative
25 purchasing agreement” means an agreement that:

26 (A) A public procurement unit joins; and

27 (B) Was originally sourced outside of the state by an
28 external procurement activity;

30 SECTION 2. Arkansas Code § 19-11-249(a), concerning cooperative
31 purchasing under the Arkansas Procurement Law, is amended to read as follows:

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

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

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

10 (C) The State Procurement Director and the Director of the
11 Department of Finance and Administration shall submit any request for the
12 Office of State Procurement or the Department of Finance and Administration,
13 respectively, to participate in a cooperative purchasing agreement to the
14 Governor for approval.

15
16 SECTION 3. DO NOT CODIFY. Rules.

17 (a) The State Procurement Director shall adopt rules to create a
18 review policy outlining how the economic justification required under § 19-
19 11-249 may be demonstrated, including without limitation a comparison of:

20 (1) Current state contract pricing and the pricing under a
21 cooperative purchasing agreement; or

22 (2) Information obtained from a request for information and
23 pricing under a cooperative purchasing agreement.

24 (b)(1) When adopting the initial rules required under this section,
25 the final rule shall be filed with the Secretary of State for adoption under
26 § 25-15-204(f):

27 (A) On or before January 1, 2020; or

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

30 (2) The director shall file the proposed rule with the
31 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
32 2020, so that the Legislative Council may consider the rule for approval
33 before January 1, 2020.

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9 THE DELEGATION AUTHORITY OF THE STATE PROCUREMENT
10 DIRECTOR; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO AMEND ARKANSAS PROCUREMENT LAWS
14 CONCERNING THE DELEGATION AUTHORITY OF
15 THE STATE PROCUREMENT DIRECTOR.
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

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

22 19-11-218. Assistants and designees - Delegation orders.

23 Subject to the provisions of the Uniform Classification and
24 Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

25 (1) Employ and supervise such assistants and other persons as
26 may be necessary;

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

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

32 (B) A written delegation order issued under this section
33 shall:

34 (i) Include an expiration date for the delegation
35 order;

36 (ii) Be publicly posted on the official website of

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1 the Office of State Procurement;

2 (iii) Remain in effect under the original terms
 3 unless the terms of the delegation order are modified or rescinded in writing
 4 by the director;

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

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

9 (C) The director shall maintain records of each delegation
 10 order issued under this section.

11 (D) A person who is to be given authority under a
 12 delegation order issued under this section shall complete training on state
 13 procurement laws, as provided for in rules adopted by the director, before
 14 the delegation order is issued.

15
 16 SECTION 2. DO NOT CODIFY. Rules.

17 (a) The State Procurement Director shall adopt rules to:

18 (1) Implement the requirements for delegation orders under § 19-
 19 11-218; and

20 (2) Outline the procurement training required under § 19-11-218.

21 (b)(1) When adopting the initial rules required under this section,
 22 the final rule shall be filed with the Secretary of State for adoption under
 23 § 25-15-204(f):

24 (A) On or before January 1, 2020; or

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

27 (2) The director shall file the proposed rule with the
 28 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
 29 2020, so that the Legislative Council may consider the rule for approval
 30 before January 1, 2020.

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