

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 91st General Assembly  
3 Third Extraordinary Session, 2018  
4

# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AUTHORIZE AND REGULATE PRE-SOLICITATION CONFERENCES  
10 UNDER THE ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT  
11 VENDOR TRAINING AND POLLING BE CONDUCTED UNDER THE  
12 ARKANSAS PROCUREMENT LAW; AND FOR OTHER PURPOSES.  
13  
14

## Subtitle

15 TO AUTHORIZE AND REGULATE PRE-  
16 SOLICITATION CONFERENCES UNDER THE  
17 ARKANSAS PROCUREMENT LAW; AND TO REQUIRE  
18 THAT VENDOR TRAINING AND POLLING BE  
19 CONDUCTED UNDER THE ARKANSAS PROCUREMENT  
20 LAW.  
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23

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

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

28 (d)~~(1)~~ Notice inviting bids shall be;

29 (1) Be given not fewer than five (5) calendar days nor more than  
30 thirty (30) calendar days preceding the date for the opening of bids by  
31 publishing the notice at least one (1) time in at least one (1) newspaper  
32 having general circulation in the state or posting by electronic media, but  
33 in all instances, adequate notice shall be given;

34 ~~(2)(A) The notice shall include~~ Include a general description of  
35 the commodities, technical and general services, or professional and  
36 consultant services to be procured; ~~and shall state~~

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1           (3) State where invitations for ~~bid~~ bids may be obtained;  
 2           ~~(B) The notice also shall state~~ (4) State the date, time, and  
 3 place of bid opening; and

4           (5) Include an announcement of the date and time of the pre-  
 5 solicitation conference if a pre-solicitation conference is to be held before  
 6 the opening of bids to provide information to prospective bidders.

7  
 8           SECTION 2. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
 9 amended to add additional sections to read as follows:

10           19-11-273. Pre-solicitation conferences.

11           (a)(1) A state agency may hold a pre-solicitation conference after  
 12 issuing an invitation for bids or a request for proposals.

13           (2) A pre-solicitation conference may be held:

14           (A) In person; or

15           (B) Online or in another virtual format.

16           (b) Attendance by a vendor at a pre-solicitation conference is not  
 17 required for that vendor's bid or proposal to be accepted unless the  
 18 attendance requirement is:

19           (1) Explicitly stated in the invitation for bids or request for  
 20 proposals; and

21           (2) Approved by the State Procurement Director or the head of  
 22 the procurement agency.

23           (c) A state agency holding a pre-solicitation conference shall:

24           (1) Include the date and time of the pre-solicitation conference  
 25 in the notice required under § 19-11-229;

26           (2) Require vendors in attendance at a pre-solicitation  
 27 conference to sign in at the pre-solicitation conference or provide a  
 28 registration record for an online or other virtual pre-solicitation  
 29 conference, regardless of whether attendance is required under the  
 30 solicitation; and

31           (3) Post the sign-in sheet or registration records online with  
 32 the other documents related to the solicitation.

33           (d) A statement made at a pre-solicitation conference does not change  
 34 the invitation for bids or request for proposals unless a change is made by  
 35 written amendment to the invitation for bids or request for proposals.

36           (e) A state agency is encouraged to hold a pre-solicitation conference

1 for a procurement that:

2 (1) Has a high anticipated contract amount; or

3 (2) Is of strategic importance to the state.

4  
5 19-11-274. Vendor training and polling.

6 The Office of State Procurement shall:

7 (1)(A) Develop and deliver vendor training to inform interested  
8 vendors of how to do business with the state.

9 (B) The training required under subdivision (1)(A) of this  
10 section shall:

11 (i) Be offered throughout the state;

12 (ii) Be delivered as training sessions in person and  
13 online or another virtual format; and

14 (iii) Not be specific to procurement; and

15 (2) Periodically poll vendors that have been successful in  
16 securing business with the state and vendors that have not been successful in  
17 securing business with the state to solicit procurement feedback and inform  
18 improvements to vendor training.

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## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING COMPETITIVE SEALED  
9 BIDDING AND COMPETITIVE SEALED PROPOSALS UNDER THE  
10 ARKANSAS PROCUREMENT LAW; TO AMEND THE LAW CONCERNING  
11 THE NEGOTIATION OF COMPETITIVE SEALED BIDS AND  
12 COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS  
13 PROCUREMENT LAW; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO AMEND THE LAW CONCERNING COMPETITIVE  
17 SEALED BIDDING, COMPETITIVE SEALED  
18 PROPOSALS, AND NEGOTIATIONS OF  
19 PROCUREMENTS UNDER THE ARKANSAS  
20 PROCUREMENT LAW.  
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22  
23

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

26 SECTION 1. Arkansas Code § 19-11-229(h) and (i), concerning  
27 competitive sealed bidding under the Arkansas Procurement Law, are amended to  
28 read as follows:

29 (h)(1) ~~The~~ Before issuing a notice of award of a contract, the  
30 director or the agency procurement official may request a best and final  
31 offer from each responsible bidder that submits a responsive bid.

32 (2) In responding to a request for a best and final offer, a  
33 bidder may:

34 (A) Resubmit the bidder's original bid with lower pricing  
35 in accordance with the specifications of the invitation for bids; or

36 (B) Submit a written response that states that the

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1 bidder's original bid remains unchanged.

2 (3) If a best and final offer is requested, the director or the  
 3 agency procurement official shall evaluate each bid submitted in response to  
 4 the request for a best and final offer in determining the lowest responsive  
 5 and responsible bidder.

6 (i)(1) After any requested best and final offers are submitted and  
 7 evaluated, the contract shall be awarded with reasonable promptness by  
 8 written notice to the lowest responsible bidder whose bid meets the  
 9 requirements and criteria ~~set forth~~ stated in the invitation for bids.

10 (2) The director or the agency procurement official may enter  
 11 into negotiations with the lowest responsive and responsible bidder when the  
 12 best interests of the state would be served, including without limitation  
 13 when the state can obtain:

14 (A) A lower price without changes to the terms or  
 15 specifications of the invitation for bids; or

16 (B) An improvement to the terms or specifications, or  
 17 both, of the invitation for bids without increasing the bid price.

18 ~~(2)(A)~~ (3)(A) Except with respect to a contract being procured  
 19 for a construction project, the director or the agency procurement official  
 20 may negotiate a lower bid price, including changes in the bid requirements,  
 21 with the lowest responsive and responsible bidder if:

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

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

27 (B)(i)(a) If negotiations with the lowest responsive and  
 28 responsible bidder conducted under subdivision ~~(h)(2)(A)~~ (h)(3)(A) of this  
 29 section fail to result in a lower bid price, the state may negotiate for a  
 30 lower bid price with the next lowest responsive and responsible bidder.

31 (b) If negotiations with the next lowest  
 32 responsive and responsible bidder under subdivision ~~(h)(2)(B)(i)(a)~~  
 33 (h)(3)(B)(i)(a) of this section fail to result in a lower bid price, the  
 34 state may negotiate for a lower bid price with the next lowest responsive and  
 35 responsible bidder until an acceptable lower bid price is negotiated or the  
 36 state determines that negotiations are no longer in the best interest of the

1 state.

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

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

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

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

11 (4)(A) Negotiations under this section shall be conducted by a  
 12 person who is trained and certified in negotiation and procurement processes.

13 (B)(i) The Office of State Procurement shall provide for  
 14 the training and certification required under this section.

15 (ii) The training provided by the office shall be  
 16 specific to Arkansas law.

17 ~~(3)~~ (5) All other bidders requesting to be notified of the award  
 18 decision shall be promptly notified of the decision.

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

21

22 SECTION 2. Arkansas Code § 19-11-230(e)(2), concerning competitive  
 23 sealed proposals under the Arkansas Procurement Law, is amended to add an  
 24 additional subdivision to read as follows:

25 (C)(i) Before issuing the notice of award of a contract,  
 26 the State Procurement Director or the agency procurement official may request  
 27 a best and final offer from each responsible offeror that submits a  
 28 responsive proposal.

29 (ii) In responding to a request for a best and final  
 30 offer, an offeror may:

31 (a) Resubmit the offeror's original proposal  
 32 with lower pricing in accordance with the specifications of the request for  
 33 proposals; or

34 (b) Submit a written response that states that  
 35 the offeror's original proposal, including without limitation the pricing,  
 36 remains unchanged.

1                   (iii) If a best and final offer is requested, the  
2 director or the agency procurement official shall evaluate each proposal  
3 submitted in response to a request for a best and final offer in determining  
4 the proposal that is the most advantageous to the state.

5  
6           SECTION 3. Arkansas Code § 19-11-230(f), concerning competitive sealed  
7 proposals under the Arkansas Procurement Law, is amended to read as follows:

8           (f)(1) ~~Award~~ After any requested best and final offers are submitted  
9 and evaluated, the award shall be made to the responsible offeror whose  
10 proposal is determined in writing to be the most advantageous to the state,  
11 taking into consideration price, the evaluation factors set forth in the  
12 request for proposals, and the results of any discussions conducted with  
13 responsible offerors.

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

16                   (3) The director or the agency procurement official may enter  
17 into negotiations with the lowest responsive and responsible offeror when the  
18 best interests of the state would be served, including without limitation  
19 when the state can obtain:

20                           (A) A lower price without changes to the terms or  
21 specifications of the request for proposals; or

22                           (B) An improvement to the terms or specifications, or  
23 both, of the request for proposals without increasing the price of the  
24 proposal.

25  
26           SECTION 4. Arkansas Code § 19-11-239(1), concerning the final and  
27 conclusive nature of certain determinations under the Arkansas Procurement  
28 Law, is amended to add an additional subdivision to read as follows:

29                   (1) Section ~~19-11-229(h)~~ 19-11-229(i), which refers to  
30 competitive sealed bidding, award;

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## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING PROTESTS OF  
9 SOLICITATIONS AND AWARDS UNDER THE ARKANSAS  
10 PROCUREMENT LAW; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13  
14 TO AMEND THE LAW CONCERNING PROTESTS OF  
15 SOLICITATIONS AND AWARDS UNDER THE  
16 ARKANSAS PROCUREMENT LAW.  
17

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 19-11-244(a), concerning the resolution of  
22 protested solicitations and awards under the Arkansas Procurement Law, is  
23 amended to read as follows:

24 (a)(1) ~~Any~~ An actual or prospective bidder, offeror, or contractor who  
25 is aggrieved in connection with the solicitation of a contract may protest by  
26 presenting a written notice at least seventy-two (72) hours before the filing  
27 deadline for the solicitation response ~~to the State Procurement Director or~~  
28 ~~the head of a procurement agency.~~

29 (2) ~~Any~~ An actual bidder, offeror, or contractor who is  
30 aggrieved in connection with the award of a contract may protest ~~to the~~

31 ~~(A) Director; or~~

32 ~~(B) Head of a procurement agency~~ by submitting a  
33 written protest within fourteen (14) calendar days after the award or the  
34 notice of anticipation to award has been posted.

35 (3) ~~(A) The protest shall be submitted in writing within fourteen~~  
36 ~~(14) calendar days after the aggrieved person knows or should have known of~~

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1 ~~the facts giving rise to the grievance.~~ A protest submitted under this  
 2 section shall be submitted to the:

3 (i) State Procurement Director, if the Office of  
 4 State Procurement issued the solicitation; or

5 (ii) Head of the relevant procurement agency, if a  
 6 procurement agency issued the solicitation.

7 (B)(i) The head of the relevant procurement agency may  
 8 request that the director resolve a protest submitted under subdivision  
 9 (a)(3)(A)(ii) of this section.

10 (ii) An actual bidder, offeror, or contractor that  
 11 submits a protest under this subsection shall not submit a protest to the  
 12 director if a procurement agency issued the relevant solicitation.

13 (C) A protest resolved by the head of the relevant  
 14 procurement agency under this section:

15 (i) Has the same effect and finality as a protest  
 16 resolved by the director; and

17 (ii) Is not subject to an appeal made to the  
 18 director.

19 (4) A protest submitted under this section shall:

20 (A) Be limited to one (1) or more of the following  
 21 grounds:

22 (i) The award of the contract was arbitrary,  
 23 capricious, or an abuse of discretion;

24 (ii) The award of the contract exceeded the  
 25 authority of the director or the procurement agency;

26 (iii) The procurement process violated a  
 27 constitutional, statutory, or regulatory provision;

28 (iv) The director or procurement agency failed to  
 29 adhere to the rules of the procurement as stated in the solicitation, and the  
 30 failure to adhere to the rules of the procurement materially affected the  
 31 contract award;

32 (v) The procurement process involved responses that  
 33 were collusive, submitted in bad faith, or not arrived at independently  
 34 through open competition; or

35 (vi) The award of the contract resulted from a  
 36 technical or mathematical error made during the evaluation process; and

1                    (B) State facts that substantiate each ground on which the  
 2 protest is based.

3  
 4            SECTION 2. Arkansas Code § 19-11-244(f) and (g), concerning the  
 5 resolution of protested solicitations and awards under the Arkansas  
 6 Procurement Law, are amended to read as follows:

7            (f) In the event of a timely protest under subsection (a) of this  
 8 section, the state shall not ~~proceed further with the solicitation or with~~  
 9 ~~the award of the contract until~~ execute a contract that is the result of the  
 10 protested solicitation or award unless the director or the head of a the  
 11 relevant procurement agency makes a written determination that the ~~award~~  
 12 execution of the contract without delay is necessary to protect substantial  
 13 interests of the state.

14            (g)(1) ~~When the protest is sustained and the successfully protesting~~  
 15 ~~bidder or offeror was denied the contract award, the protesting bidder or~~  
 16 ~~offeror may be entitled to the reasonable costs incurred in connection with~~  
 17 ~~the solicitation, including bid preparation costs, through the commission. An~~  
 18 actual or prospective bidder, offeror, or contractor that submits a protest  
 19 under this section shall submit a protest bond with the written protest  
 20 required under subsection (a) of this section.

21            (2) The protest bond required under this subsection shall be:

22            (A) Five percent (5%) of the lowest bid or lowest cost  
 23 proposal evaluated;

24            (B) Five percent (5%) of the maximum liability or  
 25 estimated maximum liability provided in the solicitation;

26            (C) Five percent (5%) of the estimated maximum revenue, if  
 27 the solicitation, award, or anticipated award is for a contract in which the  
 28 state receives revenue; or

29            (D) For a no-cost contract, an amount determined by the  
 30 director.

31            (3) A protest bond submitted under this subsection is forfeited  
 32 if the director or the head of the relevant procurement agency concludes that  
 33 the protest is:

34            (A) Frivolous;

35            (B) Without merit; or

36            (C) Intended purely to delay the award of a contract.