

STATE OF ARKANSAS  
DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES  
OFFICE OF STATE PROCUREMENT  
CHANGES TO RULES UNDER THE ARKANSAS PROCUREMENT LAW  
Agency Code 006.27

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R1:19-11-203. Definitions of terms used in this Act.

- (a) “Commodities” is a broad term that encompasses all personal property, except for those categories of personal property expressly exempted under Arkansas Procurement Law.

The following are specifically included as commodities under Arkansas Procurement Law:

- (i) Goods, as defined in the Arkansas Commercial Code at § 4-2-105;
- (ii) Leases of Goods, as defined in the Arkansas Commercial Code at § 4-2A-103; and
- (iii) Insurance.

Ark. Code Ann. 19-11-203(4)(B) expressly excludes real property, leases of real property, other permanent interests in real property, capital improvements, and excluded commodities and services from being considered “commodities” for purposes of Arkansas Procurement Law.

Certain types of commodities that would otherwise fall within the definition of personal property are expressly exempted from the application of Arkansas Procurement Law at Ark. Code Ann. § 19-11-203(14). State agencies not authorized to procure commodities through Arkansas Procurement Law may be authorized to do so under other applicable law. Exemption from Arkansas Procurement Law does not automatically exempt any state agency or officer from other laws governing the expenditure of public funds or the ethical restrictions at Ark. Code Ann. § 19-11-701, et. seq.

- (b) “Consulting services” means services of providing professional counsel and expert advice.

- (c) “Employment agreement” means an agreement between a state agency, as employer, and its employee in which the terms and conditions of the employee’s employment are stated. An independent contractor who, in the course of his, her, or its independent occupation or profession, provides services to a state agency pursuant to a contract is not an employee simply by virtue of having a contract with a state agency.

- (d) “Personal services” means services unique to the specific individual and personality providing them, as opposed to services that are fungible and could be provided by any person based on a set of skills or knowledge. Personal services of visiting speakers, lecturers, and performing artists may be procured without any competitive procurement because they are expressly exempted from Arkansas Procurement Law. Any personal services provided by a contract employee under an “employment agreement,” as defined below, are excluded by definition from being considered “services.”

- (e) “Professional services” means services furnished by or under the supervision of a professional who

has been specially trained to provide such services. A “professional” is a person who belongs to a learned profession or occupation that requires a high level of training, specialized knowledge, proficiency, and often a professional license. Professional services include medical, legal, financial advisory, architectural, engineering, construction management, and land surveying services. Under state law, legal, financial advisory, architectural, engineering, construction management, and land surveying services must be procured by means of a request for qualifications. Professional services of medical professionals by means of a request for qualifications is warranted and permitted by OSP rules. Absent authority from the State Procurement Director, the request for qualifications shall not be used by state agencies to procure any other professional services unless the State Procurement Director determines by rule or in writing that the request for qualifications process is warranted.

- (f) **“Services”** is defined at Ark. Code Ann. § 19-11-203(27)(A). It refers to the labor, time, or effort that a contractor furnishes under a contract as performance for separate consideration and not labor, time, or effort included in or incident to the production or sale of a commodity or commodities.

Labor, time, or effort are “included in” the production or sale of a commodity if expended within either the production or sale of the commodity and are not set apart for separate consideration outside of the purchase price of the commodity.

Labor, time, or effort are “incident to” the production or sale of a commodity if they accompany the production or sale of the commodity as a minor consideration, even if a separate but relatively small fee is paid to the contractor for it. For example, where the purchase of a computer includes delivery and installation for a relatively small fee, the labor, time, and effort involved in the delivery and installation of the computer are incident to the sale of the commodity.

After the State’s procurement and acceptance of a commodity as conforming to the contract, subsequent labor, time, or effort furnished by a contractor with respect to the commodity are considered **“services”** for purposes of Arkansas Procurement Law if they are not incident to the original procurement of the commodity and there is a separate consideration paid for those services. Labor, time, or effort that a contractor furnishes for the customization, generation, configuration, or development of software, beyond that which is incident to the procurement, installation, maintenance, and routine technical support of the software, are considered **“services”** for purposes of Ark. Code Ann. § 19-11-265.

Based on the exclusionary definition in Ark. Code Ann. § 19-11-203(27)(C), the following types of contracts are excluded from being considered a “contract requiring services” within the meaning of Ark. Code Ann. § 19-11-265: (1) employment agreements; (2) collective bargaining agreements; (3) architectural or engineering contracts requiring approval of the Division of Building Authority or the Division of Higher Education; and (4) other commodities and services exempted by law.

- (g) **“Technical and general services”** is defined at Ark. Code Ann. § 19-11-203(34)(A). It is a term that generally encompasses the broad range of services that are not professional services.

R2:19-11-203. Definitions of exempt commodities and services used in this Act.

Certain types of services that would otherwise fall within the definition of services are expressly exempted from the application of Arkansas Procurement Law at Ark. Code Ann. § 19-11-203(14). State agencies not authorized to procure services through Arkansas Procurement Law may be authorized to do so under other applicable law. Exemption from Arkansas Procurement Law does not automatically exempt any state agency or officer from other laws governing the expenditure of public funds or the ethical restrictions at Ark. Code Ann. § 19-11-701, et. seq.

EXEMPT COMMODITIES AND SERVICES MEANS:

- (a) Under subsection (14)(D)(i) – Commodities procured for resale does not include items used to support the sale of goods or services such as reusable items or items used in preparing, serving, dispensing, or packaging, except for vendor packaging included with the item purchased.
- (b) Under subsection (14)(G)(i) – Farm products includes unprocessed feed for livestock.
- (c) Under subsection (14)(K) – “License” does not mean software license.
- (d) Under subsection (14)(M) – Livestock breeding to include ova and semen.
- (e) Under subsection (14)(N) – Technical equipment for maintenance purposes shall include, but not be limited to, medical, dental, laboratory, and health aid equipment, climate control equipment, water treatment services, elevators, musical instruments, communications equipment, data processing equipment, and specialized research equipment.
- (f) Under subsection (14)(Q) – “Perishable foodstuffs” means the raw material of food before or after processing, such being liable to spoil or decay in a short duration of time, such as (but not limited to) produce, eggs, or milk.
- (g) Retail gasoline credit card purchases are exempt by rule regulation, regardless of the amount.
- (h) Renewals of termite protection contracts with the contractor who performed the initial treatment of the facility are exempt. Not exempt are termite protection contracts which include the initial treatment.
- (i) Under subsection (14)(H) – Fees that are uniform and fixed in advance by an authoritative body, such as fees for membership in professional associations, court filing fees, witness fees, workshop fees for professional conferences or training, medical fees and physician fees, are exempt from Arkansas Procurement Law. Fees that are payment for professional services for which there is generally free market competition and which may reasonably be subject to negotiation, are not exempt from Arkansas Procurement Law.
- (j) Under subsection (14)(EE) and subsection 23(B)(ii), “Academic medical center” consists of a public medical school and its primary teaching hospitals and clinical programs.

R2R3:19-11-203. Capital Improvements.

Under subsection (14)(Y), capital improvements valued at less than the amount stated in Ark. Code Ann. § 22-9-203 bid requirement threshold stated in Ark. Code Ann. § 22-9-202(b)(2)(C) subject to Department of Transformation and Shared Services Division of Building Authority Department of Finance

~~and Administration Building Authority Division~~ minimum standards and criteria are exempt from the requirements of the Procurement Law.

~~R3~~R4:19-11-203. Proprietary Software.

Software exemption under subsection (14)(AA) does not apply to the initial purchase of proprietary software. Nor does the exemption apply to the purchase of software that is part of any mandatory software contract. Exempt software purchases shall include the purchase of additional proprietary software licenses, copies, license renewals, software upgrades, and proprietary software support for proprietary software after the initial purchase.

~~R4~~R5:19-11-203. Signatures defined.

The definition of “signed” for the purposes of submitting a solicitation response can be found in the Uniform Commercial Code, Ark. Code Ann. § 4-1-201(39) (General Definitions), which “...includes any symbol executed or adopted by a party with present intention to authenticate a writing.” Allowance should therefore be made for any mark or writing, whether printed or cursive, which that person uses as his signature. Electronic signatures shall also be permitted, unless otherwise prohibited by law, pursuant to Ark. Code Ann. § 25-32-107.

~~R5~~R6:19-11-203. Tax-Supported Institutions defined.

“Tax-supported institutions” means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.

~~R6~~R7:19-11-203. Hidden Damages.

- (a) Under subsection (14)(DD), “hidden or unknown damages” refers to damages to machinery needing repair that were not visible or readily apparent to, or were otherwise not within the knowledge of agency personnel at the time the piece of machinery was being serviced by a vendor. By way of example and not limitation, if an agency takes a piece of machinery to a vendor to repair one or more problems, and in the course of such work the vendor notices one or more additional problems that need repair, the agency may, but is not required to, authorize that vendor to undertake such additional repairs without having to solicit competitive bids.
- (b) “Machinery” means mechanical devices or combinations of mechanical powers and devices purchased or constructed and used to perform some function and to produce a certain effect or result.
- (c) This exemption does not apply to damages that are visible, readily apparent, or are or could be within the knowledge of agency personnel with the exercise of reasonable inspection or investigation.



~~R7:19-11-203. Academic Medical Center.~~

~~EXEMPT COMMODITIES AND SERVICES MEANS:~~

~~Under subsection (14)(EE) and subsection 23(B)(ii), “Academic medical center” consists of a public medical school and its primary teaching hospitals and clinical programs.~~

R6:19-11-217. Roster of Expiring Contracts.

The “roster” referenced in Ark. Code Ann. § 19-11-217(c)(9) is a record of active and expiring contracts that may be an electronic record that can be printed or used to populate a list of expiring contracts for which no renewal or new procurement has been initiated by request or requisition.

State agencies have the lead role in identifying any commodities and services that they need in order to perform their respective duties. Consequently, they are in the best position to monitor and manage their contracts for commodities and services. As an essential component of managing their contracts, state agencies shall maintain a roster of their active and expiring contracts to submit to the Office of State Procurement. If a state agency wishes to renew or replace a contract expiring in twelve months or less, it should plan to renew or solicit a replacement with ample time to allow for a new contract to be procured and to avoid a disruption in service due to the expiration of its active contracts. State agencies that plan to procure commodities or services through a request for proposals should submit a requisition no later than nine (9) calendar months before the estimated start date of the contract it anticipates awarding as a result of the request for proposals.

R1:19-11-218. Appointment of assistants and other employees;  
Delegation of authority by the State Procurement Director.

(A) DELEGATION. The delegation to state agencies of the authority for the procurement of commodities and services may be made by the State Procurement Director with the approval of the Secretary of Transformation and Shared Services. The delegation may be for a specific commodity or service or for all commodities and services for a specific period of time not exceeding two (2) years. Such delegation shall be made by a written order signed by the State Procurement Director or by rules regulations promulgated by the State Procurement Director setting forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority. Delegation orders are non-transferable.

(A) (B) LIMITATIONS. All delegations of procurement authority shall remain in force according to the original terms thereof unless modified or until rescinded by the State Procurement Director in writing, or until the expiration date provided by law, whichever comes first. The

term of delegation authority is counted from, and includes the date of, the effective date stated in the written delegation order.

- ~~(B)~~ (C) SMALL PROCUREMENTS AND COMPETITIVE BIDDING. All state agencies shall be authorized to make purchases according to the procedures for small purchases and competitive bidding as authorized by §§ 19-11-231 and 19-11-234 and rules regulations adopted pursuant thereto. All state agencies not having an agency procurement official shall designate a procurement agent for said delegated purchases and shall submit a letter signed by the administrative head of the state agency to the State Procurement Director requesting designating designation of each employee who shall be a procurement agent. Approval of such delegation shall be made in writing by the State Procurement Director.
- ~~(D)~~ A person who is requesting authority under a written delegation order issued under this section shall complete training as may be required.
- ~~(E)~~ Delegation orders may be suspended or rescinded by the State Procurement Director. Suspended delegation orders may be reinstated, modified or rescinded in writing by the director.

R1:19-11-219. Attorney review of designated contracts.

A contract for services or commodities that, by its terms, requires or may require a state agency to expend an amount of public funds equal to or greater than seventy five thousand dollars (\$75,000) in either a calendar or fiscal year shall, prior to execution, be reviewed by any attorney employed by the state and licensed to practice law in Arkansas. The class of attorneys that can satisfy the requirement should be interpreted broadly so as to maximize the number of attorneys that can help state agencies satisfy it. This class of attorneys includes, without limitation, licensed attorneys employed by: (1) the Office of State Procurement; (2) the Office of the Attorney General; and (3) any state agency or institution of higher education.

Where the standard terms and conditions that have already been approved by the Office of State procurement ("OSP") are not used, or they are used but substantively amended, the reviewing attorney shall certify, in a writing (electronic or paper) identifying the responsible attorney, that he or she has reviewed the contract and found no term, condition, or provision that requires the state to:

- (a) subject itself to the law of any other state or to appear in any venue outside of the State other than as may be required by federal law;
- (b) indemnify a non-state party or hold a non-state party harmless;
- (c) keep records or information confidential, unless it is consistent with the Arkansas Freedom of Information Act or other applicable supervening law;
- (d) be financially obligated to make payments for commodities or services before they have been received.

R1:19-11-220. Procurement agencies.

(a) DESIGNATION. Each state agency authorized by § 19-11-220 to elect to have an agency procurement official shall submit a letter signed by the administrative head of the state agency to the State Procurement Director designating an employee who shall be the agency procurement official.

(b) INTERNAL PROCEDURES. The internal procurement procedures must ensure adequate management and control of the agency procurement functions pursuant to law and rules regulations. Each agency shall ensure that a current copy of its internal procurement procedures and rules regulations is kept on file. The internal procurement procedures established may include, but are not limited to:

- (1) A method of recording and filing each transaction as follows:
  - (A) legal notice where applicable;
  - (B) the original invitation for bids, purchase order, internal purchase request, printing order, or other applicable document;
  - (C) a list of all bidders invited to participate;
  - (D) the original of all bids received;
  - (E) an abstract of bids received; and
  - (F) a copy of all correspondence, memos, or other documents related to the award and administration of each transaction, including administrative determinations or justifications when applicable.
- (2) A file containing each vendor's application and reports regarding the vendor's performance.

(c) LIMITATIONS. Upon request of the Secretary of the Department of Transformation and Shared Services ~~Director of the Department of Finance and Administration or his or her designee~~, the agency procurement official shall make available for audit and inspection records of any and all transactions pertaining to the procurement of commodities and services.

(d) GENERAL. A state agency having an agency procurement official may request the Office of State Procurement to procure specific commodities and services which the agency procurement official is authorized to procure or to procure all commodities and services which the agency procurement official is authorized to procure for a specific period of time.

R1:19-11-221. Sale, acquisition or use of commodities by a public procurement unit.

DEPARTMENT OF CORRECTION INDUSTRY PROGRAM.

(1) The Department of Correction is authorized to enter into contracts, purchase orders, compacts or agreements with the appropriate officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods and products

produced by and belonging to their respective institutions. The buying and selling of these materials will be for the purpose of producing finished products through a correctional industries program.

(2) The Department of Correction shall be governed by Ark. Code Ann. § 12-30-101 et seq., § 12-30-201 et seq., and other appropriate laws when utilizing the provisions of these rules regulations. The procurement official/agent for the Department of Correction is authorized to enter into contracts, orders, compacts or agreements pursuant to these rules regulations.

(3) Copies of all such contracts, orders, compacts or agreements entered into under the provisions of this rule regulation shall be kept by the Department of Correction with respect to all transactions, deliveries, and obligations under each contract, compact, or agreement

(4) All records and reports required pursuant to this rule regulation shall be available to public inspection during normal business hours, and shall be retained for a period of five (5) years after completion of the contract, compact, or agreement.

#### R1:19-11-223. Commodities and services under state contract.

(a) REQUEST FOR EXCLUSION. State agencies having agency procurement officials may request exemption from a proposed state contract by submitting to the State Procurement Director a written justification for such exemption.

(b) DETERMINATION BY STATE PROCUREMENT DIRECTOR. Approval ~~or denial~~ of exemption from a state contract shall be made in writing by the State Procurement Director, but a denial of a request for an exemption from a state contract may be made in any manner reasonably likely to communicate the denial to the requestor.

#### R2:19-11-223. Mandatory state contracts.

(a) Unless an exemption is approved by the State Procurement Director in writing, a state agency that requires commodities or services that are available under a mandatory state contract shall procure these commodities and services exclusively under the mandatory state contract. Except in the case of emergency procurements, as defined in Ark. Code Ann. § 19-11-204(4) and as provided in Ark. Code Ann. § 19-11-233, the director may only approve an exemption from a mandatory state contract awarded under this section if the state agency demonstrates that substantial savings will likely be effected by purchasing outside of the mandatory state contract.

(b) “Substantial savings” are the lesser of: (1) savings of five percent (5%) or more when compared against purchasing from the mandatory state contract; or (2) ten thousand dollars (\$10,000) or more when compared against purchasing from the mandatory state contract.

R1:19-11-224. Interest, carrying charges, and termination fees.

LIMITATIONS.

(1) Contracts may be entered into which contemplate the payment of interest or carrying charges only in the following conditions:

(A) when the interest or carrying charge is required because the term of the contract is extended over a period of time; and

(B) when a provision for termination of the contract is included in the contract, as provided in § 19-11-238(c) and the ~~regulations~~ rules promulgated pursuant thereto.

(2) Contracts may be entered into which contain a provision for the payment of the following charges on delinquent accounts: interest charges, carrying charges, late payment charges or any other charge which may be construed as a penalty, but only if incurred sixty (60) days after the due date.

(3) Service charges may be paid on credit card procurements.

R6:19-11-229. Competitive Sealed Bidding.

SOLICITATION CONFERENCES. Solicitation conference may be held by the State Procurement Director or agency procurement official or a designee to provide information to prospective bidders. Nothing discussed during a solicitation conference will change the specifications or terms and conditions of a competitive sealed bid, nor shall anything discussed during a solicitation conference be deemed to be binding or incorporated into the specifications or terms and conditions of a competitive sealed bid unless it is subsequently reduced to writing and included in the competitive sealed bid.

~~R6~~ R7:19-11-229. Competitive Sealed Bidding.

BID OPENING. When practical, the names of the bidders and amounts of their bids may be read aloud. Except where it may be deemed impractical, due to the nature or complexity of an invitation for bids, an abstract of bids which contains the amount of each bid and the name of the bidder shall be prepared for each invitation for bids. An abstract of bids shall be retained in the bid file and shall be available for public inspection.

~~R7~~ R8:19-11-229. Competitive sealed bidding.

BID EVALUATION.

(1) Those criteria that will affect the bid price and be considered in evaluation for award shall be stated in the bid and objectively measured, such as transportation costs and total or life cycle cost. Judgmental evaluation of commodities and services may be used in determining whether

the commodity or service offered by a bidder meets the specification requirements of the procurement, or the bidder is qualified to provide the service.

(2) The following matters will be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities:

(A) Time discounts cannot be considered in the evaluation of a bid pursuant to A.C.A. § 19-11-229(f)(3) unless the solicitation specifically requests a time discount; ~~or cash discounts will not be considered;~~

(B) Quantity discounts should be included in the price of the item. When not included in the item price, the discount will be considered only if the procurement agency, or the agency for whose benefit the procurement has been undertaken, deems it to be in the state's best interest. The unit price shown on the contract will be the net price, less the discount, unless otherwise indicated in the bid;

(C) An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the state's best interest.

(D) Only signed, sealed bids delivered prior to the date and time of bid opening will be accepted.

(E) Past Performance

(i) The past performance of a bidder on a state contract may be used by the procurement agency to determine whether the bidder is "responsible." Past performance must be supported by written documentation not greater than three years old. Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(ii) Past performance on contracts from other Arkansas State Agencies may also be used for evaluation. Supporting documentation should be provided.

(iii) Past performance evaluation should not take the place of suspension or debarment procedures.

(3) TIE BIDS.

(A) Definitions: As used in this section

(i) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(ii) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(B) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(C) In the event of a tie bid between two or more offers that meet the specifications as required and where one of the offerors is an Arkansas company, then the award will be made to that Arkansas company.

(D) In the event of a tie bid between two or more offers that meet the specifications as required

(i) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(ii) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the bidders.

(E) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

~~R8~~R9:19-11-229. Competitive sealed bidding.

REJECTION. Grounds for rejection of bids include but are not be limited to:

- (1) failure of a bid to conform to the mandatory ~~essential~~ requirements of an invitation for bids;
- (2) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;
- (3) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;
- (4) a bid imposing conditions which would modify the stated terms and conditions of the invitation for bids;
- (5) any bid determined by the procurement official in writing to be unreasonable as to price;
- (6) bids received from bidders determined to be nonresponsible bidders;
- (7) failure to furnish a bid guarantee when required by an invitation for bids; and
- (8) any or all bids when the procurement official makes a written determination that it is in the best interest of the state.

~~R9~~R10:19-11-229. Competitive sealed bidding.

(a) CORRECTION OR WITHDRAWAL OF BIDS.

- (1) The State Procurement Director or agency procurement official may waive technicalities (small details) or minor irregularities (something irregular in form or nature) in bids which do not affect the material substance of the bids when it is in the state's best interest to do so.
- (2) Amendments to bids shall be allowed if the amendments are in writing and signed, are received prior to the date and time of bid opening, and clearly indicate the date and time of bid opening and bid number.
- (3) If there is a suspected bid mistake, the State Procurement Director or agency procurement official may request confirmation of a bid and shall request the confirmation to be made in writing. The bid of any bidder who fails or refuses to clarify in writing within a reasonable time any matter contained in his bid shall be rejected. The written clarification shall become a part of the contract awarded on the basis of that bid.
- (4) Bid prices shall be based on the unit prices and any correction of the price extension or of the price addition by the Office of State Procurement or state agency

having an agency procurement official shall not be considered the correction of a bid. Bid prices shall not be increased after the date and hour of bid opening. A bid price may be decreased only after a determination has been made that the bid is low.

(5) An otherwise low bidder may be permitted the opportunity to furnish other information requested in the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6) When a mistake in a bid is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the bid, and that due to such mistake the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract and the contractor will sustain a financial loss (a reduction or diminution in profit margin shall not be deemed a financial loss under this subsection) if required to perform the contract, the contract may be rescinded.

(b) CORRECTION. Any negotiated adjustments, as defined in Ark. Code Ann. § 19-11-229(h), will not be considered the correction of a bid.

~~R40~~R11:19-11-229. Competitive sealed bidding.

(a) AWARD. After a reasonable bid evaluation period, the bid shall be awarded 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. All bids may be rejected if, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the procurement official that no satisfactory bid has been received.

(b) NEGOTIATION. In the event that negotiation is necessary, a bidder may be determined to be non-responsive if the bidder and agency are unable to reach a mutually agreeable negotiated adjustment. If negotiations fail or the agency is unable to reach a negotiated adjustment with the apparent low bidder, the next lowest bidder can be contacted for the purposes of entering into negotiations.

(c) TRAINED AND CERTIFIED IN NEGOTIATION AND PROCUREMENT PROCESSES means the person will have received certified training from or authorized by the Office of State Procurement.

~~——— UNSUCCESSFUL BID. In the event no bids are received or items bid do not meet specifications and it is apparent that further solicitation of bids would be futile, requested commodities may be purchased from any available source.~~

~~R41~~R12:19-11-229. Competitive sealed bidding.

(1) LIFE CYCLE COST. Life cycle or total ownership costs may include but are not limited to, costs of operation, maintenance, repair, disposal and/or acquisition.

(2) APPLICATION. Life cycle cost formulas may be used for procurements. Certain specified commodities must be procured using life cycle cost formulas provided by the



Office of State Procurement. For those specified commodities, the State Procurement Director shall provide formulas to be used in the evaluation of bids by the State Procurement Director, the agency procurement officials or the procurement agents.

~~R12~~R13:19-11-229. Cancellation of invitations for bids.

When an invitation for bids is cancelled, notice of cancellation of OSP bids will be posted on the OSP website [www.arkansas.gov/dfa/procurement](http://www.arkansas.gov/dfa/procurement). The bids may be returned if the bid is properly identified.

~~R13~~R14:19-11-229. Ethical standards.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars (\$20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

~~R14~~R15:19-11-229. Negotiations.

(a) Negotiation of Competitive Sealed Bids should be used only in those cases where the best interests of the State are served, such as where the lowest bid submitted by a responsive and responsible bidder exceeds the available funding to pay for the commodity or service (as certified by the appropriate fiscal officer of the procurement agency) or can be shown to be above the fair market price available on the open market to a reasonably prudent buyer. Procurement officials who conduct negotiations should be trained in negotiation and Arkansas Procurement Law.

(b) Prior to negotiation, a written justification supporting negotiations must be included in the bid folder. The justification must include, as applicable:

(1) Bid tabulation with indication of lowest responsive and responsible bidder.

(2) Certification of funds budgeted for the procurement by agency chief fiscal officer in instances where all bids received from responsive and responsible bidders exceed the available funding.

(3) Reason(s) precluding re-solicitation, including but not limited to time constraints and economic impact to agency.

(c) After it is determined that negotiation is in the best interests of the State and permissible under Ark. Code Ann. § 19-11-229(2)(A), appropriate representatives will

proceed with negotiations and award recommendation. Appropriate representatives include purchasing staff and representatives from the original requesting unit.

(d) Agency should investigate the factors affecting the price offered by the apparent low bidder to include but not be limited to cost, delivery requirements, warranty, location of supplier, volatile nature of goods or services requested and current economic condition of the market.

(e) The agency must develop a plan to include at least:

(1) The acceptable range of price, the desired “best” price and the highest acceptable price.

(2) What adjustment may be made to delivery requirements that may affect price.

(3) Acceptable adjustments in quantity.

(4) A prioritized list of acceptable adjustments in specifications that may result in price reduction.

(5) Timetable for completion of negotiation.

(f) Negotiation plans shall not be revealed to bidder(s) nor made available for public review until after the anticipated award is made public in order to avoid revealing information that if disclosed would give advantage to competitors or bidders.

(g) An acceptable negotiated contract must be signed and in writing listing agreed upon terms, conditions, specifications, quantities and pricing.

(h) If a negotiated contract cannot be developed, the bidder may be declared non-responsive and time permitting, the negotiation process may be repeated with the next low bidder.

(i) If negotiations do not result in an acceptable contract, the Director or head of a procurement agency may authorize that a new solicitation be issued or elect to procure by special procurement (Ark. Code Ann. § 19-11-263).

#### R2:19-11-230. Competitive sealed proposals.

R2-19-11-230.1 CONDITIONS OF USE. The key element in determining the necessity for utilization of the competitive sealed proposal method is the type of evaluation required. Where evaluation involves the relative abilities of offerors to perform, including the degree of technical or professional experience, and price is not the only consideration, use of competitive sealed proposals is appropriate. Further, where the types of supplies or services may require the use of comparative, judgmental evaluation, competitive sealed proposals are the appropriate procurement method.

R2-19-11-230.2 THIRTY PERCENT (30%) WEIGHTED COST WAIVER. In seeking a written determination by the State Procurement Director that it is in the best interest of the state for cost to be weighted at less than thirty percent (30%) of the total evaluation score, the requesting agency shall:

(1) Issue a written request addressed to the State Procurement Director. The written

request may be delivered by email or mail, and in either case, should be clearly marked or labeled "Request for Weighted Cost Deviation."

- (2) The written request should clearly articulate the factors for why it is in the best interest of the state for cost to be weighted at a lower percentage than thirty percent (30%), and what percentage the requesting agency seeks. The factors articulated should be specific to the request for proposal under consideration.
- (3) If the State Procurement Director issues a written determination approving of the lower percentage, the written determination shall be submitted for review by Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

R5:19-11-230. Competitive sealed proposals.

(a) EVALUATION. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. All members of evaluation committees shall participate in Evaluation Committee Training sponsored either by OSP or the college or university agency procurement official. Evaluations will be conducted in accordance with the OSP Policy. A written recommendation shall be made by the evaluation committee and submitted by the chairperson to the State Procurement Director or agency procurement official stating the basis on which the recommendation for award was found to be most advantageous to the state.

(b) (1) RESPONSIBILITY OF OFFEROR. Past performance of an offeror may be used by the procurement agency to determine whether the offeror is "responsible." No points for past performance may be used in the evaluation scoring criteria unless (i) past performance with the state is a non-mandatory evaluation criteria and (ii) the same amount of points allocated for past performance with the state are also made available in the evaluation scoring criteria in such a way as to not prejudice offerors without past performance history with the state. Past performance must be supported by written documentation and shall have not occurred more not greater than three (3) years before the proposal was submitted-~~old~~. Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(i) Past performance on contracts from other Arkansas State Agencies may also be used for evaluation. Supporting documentation should be provided.

(ii) Past performance evaluation should not take the place of suspension or debarment procedures.

(2) The awarding of points for references may be used as evaluation scoring criteria if set forth in the solicitation.

(c) TIE BIDS.

(1) Definitions: As used in this section

(i) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(ii) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie bid between two or more offers that meet the specifications as required and where one of the offerors is an Arkansas company, then the award shall be made to that Arkansas company.

(4) In the event of a tie bid between two or more offers that meet the specifications as required

(i) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(ii) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the offerors.

(5) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

(d) PRIVATE EVALUATORS.

(1) An agency may use qualified evaluators from non-State governmental entities or the private sector.

(i) There is no limit on the number of private evaluators that may be used on an evaluation committee, but they must abide by all ethical standards and legal requirements a state employee or former state employee would have to meet in order to serve as an evaluator.

R7:19-11-230. Correction or withdrawal of proposals.

(a) There is a strong public interest in favor of conserving public funds in awarding public contracts, and little, if any, public benefit in disqualifying proposals for technical deficiencies in form or minor irregularities where the offeror does not derive any unfair competitive advantage therefrom. The State Procurement Director or agency procurement official may waive technicalities in proposals or minor irregularities in a procurement which do not affect the material substance of the Request for Proposals when it is in the State's best interest to do so.

(b) Amendments to proposals shall be allowed if the amendments are in writing and signed, are received prior to the date and time of the proposal opening, and clearly indicate the date and time of proposal opening and Request for Proposals number.

(c) If there is a suspected proposal mistake or the State Procurement Director or agency procurement official chooses to seek a clarification on a matter that is evaluated in the proposal, the State Procurement Director or agency procurement official may request a clarification ~~confirmation~~ of a proposal.

(1) ~~The and shall request the response by the offeror confirmation to must be made in writing. Clarifications made verbally, in demonstration presentations, or communicated in any other matter shall not be considered a clarifying response by the offeror, and should be reduced to a written clarification by the offeror to be considered.~~

(2) The response of any offeror who fails or refuses to clarify in writing within a reasonable time any matter contained in his or her proposal may be rejected.

(3) Any written clarification submitted shall become a part of the contract awarded on the basis of that proposal.

(d) Proposal prices shall not be increased after the date and hour of the proposal opening.

(e) When a mistake in a proposal is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the proposal, and that due to such mistake the proposal submitted was not the proposal intended, the bidder may be permitted to withdraw his proposal.

#### R1:19-11-233. Emergency procurements.

(a) ~~BIDS. The state agency must, at a minimum, receive three (3) competitive bids unless the emergency is critical. The quotation abstract must show the names of at least three (3) firms contacted in attempting to obtain competition.~~

APPROVAL. All non-critical emergency procurements must be approved in advance by the State Procurement Director, the head of a procurement agency, or a designee of either officer. Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date. Requests for approval must be made in writing and include:

- (1) a copy of the purchase order;
- (2) a copy of the quotation abstract Competitive Bid Tabulation form; and
- (3) a written explanation of the emergency.

(b) TIE BIDS.

(1) Definitions: As used in this section

(i) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(ii) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie bid between two or more offers that meet the specifications as required and where one of the offerors is an Arkansas company, then the award will be made to that Arkansas company.

(4) In the event of a tie bid between two or more offers that meet the specifications as required

(i) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(ii) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the bidders.

(5) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

(dc) LEGISLATIVE REVIEW. Except in the case of a “critical emergency” procurement, as that term is defined in Ark. Code Ann. § 19-11-233(b)(2), all services contracts must be presented for legislative review as required under Ark. Code Ann. § 19-11-265. ~~PROFESSIONAL AND CONSULTANT SERVICES~~. Emergency procurements of professional and consultant services with a total projected contract amount, including any amendments or possible extensions, of less than fifty thousand dollars (\$50,000) may be procured using the method as described in R1:19-11-233(A) through (C). For those PCS contracts with a total projected contract amount, including any amendments or possible extensions, of fifty thousand dollars (\$50,000) or more, the agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may institute a request for emergency action review of a professional or consultant service contract by providing in writing a request to the Director of State Procurement. The request must detail that to procure using other methods would endanger human life or health, state property or the functional capability of the agency. The State Procurement Director may then approve submission of the contract to the Legislative Council. Under its emergency action procedures, the Co-chairpersons of the Legislative Council and/or the Co-chairpersons of the Legislative Council Review Committee may review PCS contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting.

(e) ~~TECHNICAL AND GENERAL SERVICES~~. Emergency procurements of technical and general services with a total projected contract amount, including any amendments or possible extensions, of less than one hundred thousand dollars (\$100,000) may be procured using the method as described in R1:19-11-233(A) through (C). For those technical and general services contracts with a total projected contract amount, including any amendments or possible extensions, of one hundred thousand dollars (\$100,000) or more, the agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may institute a request for emergency action review of a technical and general services contract by providing in writing a request to the Director of State Procurement. The request must detail that to procure using other methods would endanger human life or health, state property or the functional capability of the agency. The State Procurement Director may then approve submission of the contract to the Legislative Council. Under its emergency action procedures, the Co-chairpersons of the Legislative Council and/or the Co-chairpersons of the Legislative Council Review Committee may review technical and general services contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting.

#### R1:19-11-238. Initial Term.

A contract may be entered into for up to a maximum period of a total of seven (7) years. It may be advantageous for agencies to have a contract expire annually unless renewed, however, they may opt to make the initial term of a contract extend for up to four (4) years before the first renewal. The aggregate number of years under a non-exempt contract remains seven (7), regardless of the length of the initial term of the contract.

## R1-19-11-244 Definitions.

R1-19-11-244.6 "Grounds" of the protest are as defined in § 19-11-244(a)(4).

R1-19-11-244.7 "Interested Party", when used in relation to a protest in connection with a solicitation, means any actual or prospective bidder, offeror, or contractor actually or prospectively participating in a solicitation. When used in relation to a protest in connection with the award of a contract, it means a bidder, offeror, or contractor who actually submitted a bid or offer or who holds a contract to provide the commodities or services solicited.

R1-19-11-244.78 "Protest" means a written objection from a person setting forth facts showing that the person is an interested party who has been aggrieved in connection with: (a) the solicitation of a contract; or (b) the award of a contract.

R1-19-11-244.89 "Solicitation" means an instance of soliciting bids, proposals, or qualifications for a contract for commodities or services, and includes "competitive bidding," "competitive sealed bidding," "competitive sealed proposals," and "request for qualifications," as those terms are defined in Arkansas Procurement Law.

R1-19-11-244.10 "Submitted" means a protest that conforms to the formal requirements as defined in these rules, that has been received by the State Procurement Director or the head of the relevant procurement agency. It is not sufficient for a protestor to merely claim a protest was submitted; evidence of actual receipt of the protest must be obtained, whether return receipt, confirmation email by the State Procurement Director or the head of the relevant procurement agency, or other adequate evidence of receipt.

## R2-19-11-244 Protest Requirements.

R2-19-11-244.1 Substantive Requirements. A protest must set forth facts showing that the protestor: (i) is an interested party with standing to protest under Ark. Code Ann. § 19-11-244(a); (ii) who has been aggrieved: (a) in connection with a solicitation, or (b) in connection with the award of a contract, and (iii) has Grounds.

R2-19-11-244.2 Formal Requirements. A protest must be ~~submitted~~ Submitted in writing to the State Procurement Director or the head of the relevant procurement agency. To expedite handling of protests, if delivered by mail, the envelope containing a protest should be clearly labeled "Protest." Protests delivered by ~~email/electronic means~~ should be identified as a protest in the subject line and marked as important. A protest shall include, as a minimum, the following:

- (a) The name and address of the protestor (or the protestor's attorney);
- (b) Appropriate identification of the solicitation by reference to its number, if a number has been assigned; and

- (c) Unless good cause is shown for its absence, a copy of any documents or supporting evidence upon which the protest is based, attached to or enclosed with the protest as an exhibit. Where such documents or supporting evidence substantiating any claims made in a protest are believed or known to exist, but are not available with reasonable diligence to include as an exhibit within the time for submitting a protest, the anticipated documents must be described in the protest so as to explain how they are expected to support the protest and when the protestor reasonably anticipates they will be available, if ever. Failure to provide such supporting exhibits without good cause or within a reasonable time may result in the protest not being sustained.

R2-19-11-244.3 Time Periods for Submission. There are two types of protests permitted under Ark. Code Ann. § 19-11-244: (i) a protest in connection with the solicitation of a contract; and (ii) a protest in connection with the award of a contract. To be timely, a protest, must be ~~submitted~~ Submitted in writing to the State Procurement Director or the head of the procurement agency conducting the procurement:

- (a) at least seventy-two (72) hours before the deadline for submitting a response to the solicitation, if it is a protest in connection with the solicitation of a contract; or
- ~~(b) within fourteen (14) calendar days after the award or notice of anticipation to award has been posted. In the event that both a notice of anticipation to award and an award have been posted, the protest shall be submitted in writing within fourteen (14) calendar days of whichever occurred first. aggrieved person knows or should have known of the facts giving rise to the grievance, if it is a protest in connection with the award of a contract. The phrase "should have known" indicates that constructive knowledge, and not just actual knowledge, is considered in determining the timeliness of a protest in connection with the award of a contract.~~

#### R3-19-11-244 Burden of Supporting a Protest and Supplying Requested Information.

A party submitting a protest has the burden of stating facts showing that the protestor has Grounds ~~been aggrieved~~ in connection with a solicitation or in connection with the award of a contract. The State Procurement Director or the head of a procurement agency determining a protest may, but has no duty to, request a protestor or other interested party to submit documentation or information relevant to the protest. Failure of any person to comply expeditiously with a request for documents or information by the State Procurement Director or the head of a procurement agency determining a protest may result in the protest being determined without consideration of the requested information. Delivery of requested documents or information after three business days from the request is generally not considered expeditious, but the State Procurement Director or the head of a procurement agency may allow additional time for good cause.

#### R4-19-11-244 Stay of Procurements During Protest.

When a protest has been timely submitted, no execution ~~award~~ of the contract shall be made until the protest has been settled or determined by the State Procurement Director or relevant procurement agency head, unless the State Procurement Director or relevant procurement agency head makes a written determination, after consulting with the head of the using agency or the head of the procurement agency, that the execution ~~award~~ of the contract without delay is necessary to protect substantial interests of the State.



R1:19-11-249. Cooperative purchasing.

(a) When an agency that is subject to Arkansas Procurement Law seeks to participate in a cooperative purchasing agreement that is administered by a public procurement unit or external procurement activity that is not subject to Arkansas Procurement Law, it will first need to submit the cooperative purchasing agreement to the State Procurement Director for a determination as required by A.C.A. § 19-11-256(b) and these rules. If a determination has already been made with respect to a cooperative purchasing agreement, any other public procurement unit may rely on that determination. Cooperative purchasing contracts or agreements must be approved by the Director of the Office of State Procurement prior to being entered into by a state public procurement unit.

R2:19-11-249. Reporting of Cooperative Contract Purchases.

Cooperative contract purchases of state agencies without an agency procurement official must be presented to the Legislative Council or Joint Budget Committee by the ~~Department of Finance and Administration~~ Office of State Procurement annually. Agencies shall submit purchases using the appropriate method as determined by the Office of State Procurement within ninety (90) days after the conclusion of the relevant fiscal year.

R1:19-11-251. Intergovernmental agreements.

(a) Intergovernmental agreements should include at a minimum:

- (1) Scope of work to be accomplished;
- (2) Amount of compensation (if any);
- (3) Delineation of responsibilities and duties of each entity;
- (4) Term of agreement; and
- (5) Authorized signatures from each entity.

~~(b) (1) Intergovernmental agreements for technical and general services with a total projected contract amount, including any amendments and possible extensions, of one hundred thousand dollars (\$100,000) or more will be submitted to the Office of State Procurement prior to contract execution for review by the Legislative Council or Joint Budget Committee.~~

~~(2) Intergovernmental agreements involving professional and consultant services with a total projected contract amount, including any amendments and possible extensions, of fifty thousand dollars (\$50,000) or more will be submitted to the Office of State Procurement prior to contract execution for review by the Legislative Council or Joint Budget Committee.~~

~~(3) Intergovernmental agreements involving commodities will not be submitted to the Office of State Procurement prior to contract execution.~~

R1:19-11-265. Submission of Contracts for Services Review Requirements of Technical and General Services Contracts that are Amended.

~~(a) — Amendments to contracts that were originally reviewed by Legislative Council or Joint Budget Committee. An amendment will require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration and before the execution date of the amendment if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount and/or involves major changes in the objectives and scope of the contract.~~

~~(b) — Amendments to contracts that originally did not require review by Legislative Council or Joint Budget Committee. Any amendment which increases the total projected contract amount, including any amendments or possible extensions, of a technical and general services contract to one hundred thousand dollars (\$100,000) or more shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. The amendment along with a copy of the original contract and any attachments thereto must be submitted to the Office of State Procurement in accordance with the time guidelines as prescribed in R5:19-11-265. Contracts that have expired cannot be amended.~~

(a) Contracts requiring “services,” as defined in Arkansas Procurement Law and these rules, are to be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the contract if the contract amount is fifty thousand dollars (\$50,000) or more in any one year of the contract’s term, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars (\$350,000) or more unless they are contracts for critical emergency procurements or are otherwise exempted from the submission requirements of Ark. Code Ann. § 19-11-265.

(b) Labor, time, or effort included in or incident to a contractor’s production or sale of a commodity or commodities are not considered “services” for purposes of determining whether a contract is a “contract requiring services” within the meaning of Ark. Code Ann. § 19-11-265. Consequently, a contract for the procurement of a commodity or commodities is not a “contract requiring services” for purposes of Ark. Code Ann. § 19-11-265 if it only calls for labor, time, or effort included in or incident to the procurement of the commodity or commodities.

(c) Where a tangible commodity exists and is identifiable at the time of the commodity’s procurement, any labor, time, or effort expended in its production are not considered services if no separate consideration is paid beyond the purchase price of the commodity for the labor, time, and effort expended in producing the commodity. Even where a present purchase order is for a tangible commodity yet to be produced, the future labor, time, or effort to be expended in the production of the commodity will not be considered “services” if the only consideration to be paid is the purchase price of the commodity after its receipt (and incidentals, such as taxes, delivery fees, etc.), and no separate consideration is paid for the labor, time, or effort expended in the production of the commodity. However, where a contract requires a contractor to furnish labor, time, or effort to produce a commodity not yet in existence, such as a computer program, and the contract calls for consideration to be paid to the contractor based on the labor, time, or effort furnished in the production of the commodity rather than based on the finished commodity, such labor, time, or

effort are considered “services.”

- (d) If a contract will require procurement of a combination of commodities and services, as those terms are defined in Arkansas Procurement Law and these rules, then it should be submitted for review under Ark. Code Ann. § 19-11-265 if the services component of the contract is fifty thousand dollars (\$50,000) or more in any one contract year, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars (\$350,000) or more.

R2:19-11-265. Material changes to Contracts for Services Technical and General Services Contract Form.

Each contract presented for review should be submitted using the appropriate contract form as specified by the Office of State Procurement. Contract forms are available on the OSP website.

- (a) A contract that has previously been presented for review does not need to be presented for legislative review again upon its renewal or extension unless it introduces a “material change.” There are two classes of material changes that trigger a duty to resubmit a contract for review at either renewal of a contract or extension of a contract term:

(1) an amendment that is a material change in contractual terms, including, without limitation:

- (A) An increase in the contract amount;
- (B) An increase in the total projected contract amount;
- (C) A change in any of the essential terms of the contract;
- (D) A change in any performance-based standards stated in the contract; and

(2) a material deviation by a contractor from the performance promised during the period preceding renewal or extension, such as a:

- (A) default requiring the imposition of financial consequences as the result of the contractor’s failure to satisfy performance-based standards under Ark. Code Ann. § 19–11–267 during the year preceding the renewal or extension of the contract; or
- (B) vendor performance resulting in a vendor performance report during the year preceding the renewal or extension of the contract.

Both of these are “material changes” that trigger the duty to re-submit a contract for review prior to a renewal or an extension.

For purposes of Ark. Code Ann. § 19-11-265, renewal refers to re-establishing an existing contract for another term, whereas extension is extending the term of an existing contract that would otherwise expire. Although technically distinguishable, they are functionally similar.

(b) Definitions.

1. “Initial contract amount” refers to the amount agreed to for the initial term of a contract.

2. “Total projected contract amount” refers to the total amount that the state is projected to expend under the contract over the entire life of the contract, which can be no more than seven (7) years under Ark. Code Ann. § 19-11-238.
3. “Essential terms of a contract,” also called fundamental terms, are provisions that must be included for an enforceable contract to exist between the parties under any applicable statute of frauds.

~~R3:19-11-265. Disclosure Requirements for  
Technical and General Service Contracts.~~

~~(1) — No contract for Technical or general services greater than the dollar limit established by Executive Order 98-04, will be awarded, extended, amended, or renewed by any agency to any contractor who has not disclosed as required in Executive Order 98-04. However, contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from Executive Order 98-04 disclosure requirements.~~

~~(2) — No contract for technical or general services greater than the dollar limit established by the ACA § 19-11-105 Illegal Immigrant Certification program will be awarded extended, amended or renewed by any agency to any contractor or subcontractor who has not completed the proper certification.~~

~~(3) — No contract for technical or general services greater than the dollar limit established by the ACA § 25-1-503 Certification program will be awarded by any agency to any contractor who has not completed the proper certification.~~

~~(4) — The failure of any person or entity to disclose as required under any term of Executive Order 98-04, the ACA § 19-11-105 Illegal Immigrant Certification requests, the ACA § 25-1-503 Certification program or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, will be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and will subject the party failing to disclose, or in violation, to all legal remedies available to the agency under the provisions of existing law.~~

~~R4:19-11-265. Contract Dates.~~

~~—— For each technical and general services contract form submitted, the agency is required to enter the beginning and ending date of the contract. The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was signed. This date should be arrived at with emphasis placed on the following:~~

~~(a) Any contract or amendment to a contract that requires review by the Legislative Council or Joint Budget Committee must be submitted to the Department of Finance and Administration Office of State Procurement in accordance with the time guidelines as prescribed on the Office of State Procurement website. The beginning date of the contract must not precede the date of the Arkansas Legislative Council meeting in which such contract is to be reviewed. The Legislative Council or the Joint Budget Committee~~

shall provide the State Procurement Director with their review as to the propriety of the contract within thirty (30) days of said submission to the Legislative Council or Joint Budget Committee;

~~(b) All technical and general services contracts with a total projected contract amount, including any amendments or possible extensions, of one hundred thousand dollars (\$100,000) or more unless specifically exempted, must be filed with the Department of Finance and Administration Office of State Procurement for review by the Legislative Council or Joint Budget Committee.~~

#### ~~R5:19-11-265. Reporting of Technical and General Services Contracts.~~

~~(1) Technical and general services contracts with a total projected contract amount, including any amendments and possible extensions, of twenty-five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000) shall be reported to the Legislative Council or the Joint Budget Committee monthly. Agencies must report contracts using the appropriate method as determined by the Office of State Procurement.~~

~~(2) Maintenance contracts are not considered services of one (1) or more individuals for regular full-time or part-time weekly work, and do not require reporting to the Legislative Council or the Joint Budget Committee. Maintenance contracts are narrowly defined as providing help or assistance needed to support the continuous operation of procured commodities according to the commodities' original functionality and specifications, including but not limited to software maintenance contracts. Agencies should not apply maintenance contracts so broadly as to frustrate the legislative intent of statutes requiring reporting of certain consulting services or professional service contracts.~~

~~(3) Under subsection (a)(1), "regular" is defined by giving the word its ordinary and usually accepted meaning in common language, which in the context of subsection (a)(1) shall be constituted, conducted, scheduled, or done in conformity with established or prescribed usages, rules, or discipline. —~~

#### ~~R6R3:19-11-265. Technical and General Services Contracts on File in the Office of State Procurement.~~

All agencies will be required to maintain copies in accordance with current document retention laws (Ark. Code Ann. § 19-11-214), of all purchase orders issued for the procurement of technical and general services.

#### ~~R1:19-11-267. Use of Performance-Based Standards in Contracts.~~

~~The purpose of these standards is to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.~~

- ~~(a) The purpose of performance-based standards is to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.~~
- ~~(b) It is recommended that all services contracts include performance standards.~~
- ~~(c) All services contracts that have a contract amount of at least one million dollars~~

~~(\$1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars (\$7,000,000), including any amendments or possible extensions, shall include performance standards.~~

~~(bd)~~ Performance standards may be standardized for use with similar contracts or may be specifically developed for unique requirements.

~~(ee)~~ Performance standards should measure, at prescribed points throughout the term of the contract, the quality, quantity, and timeliness of work being performed.

~~(df)~~ Performance standards may be refined by the agency and the provider as a part of the contract negotiations.

~~(eg)~~ A provider's inability to meet established performance standards may be sufficient cause for declaring default and may also result in cancellation of the contract.

~~(fh)~~ Contracts that otherwise fall under Ark. Code Ann. § 19-11-267(b)(1) may be exempt from the use of performance standards ~~include if they are:~~

- ~~(1) Sole source by law contracts in which the state is compelled as a result of court, state or federal mandate to award for services from a specific provider;~~
- ~~(2) Emergency contracts in which the need for expediency does not permit for the development of performance standards.~~

#### ~~R1:19-11-268. Reporting of Vendor Performance.~~

~~Contracts with a total projected contract amount, including any amendments and possible extensions, of twenty five thousand dollars (\$25,000) or more shall require the submission of a vendor performance report at least one (1) time every three (3) months for the entire term of the contract and at the end of the contract. Reports shall be due to the Office of State Procurement. This shall not restrict agencies from submitting an unsatisfactory vendor performance report at any time during the contract period. Agencies shall submit vendor performance reports using the appropriate method as prescribed by the Office of State Procurement.~~

~~R1:19-11-[273]. Solicitation Conferences. A solicitation conference may be held by an agency to provide the following information to prospective bidders:~~

- ~~(1) Names and contact information of state personnel who will serve as points of contact to bidders during the solicitation process;~~
- ~~(2) Times, dates, locations and other relevant information pertaining to the procurement calendar and process;~~
- ~~(3) A description of the services or commodities sought, as well as the agency's objectives;~~
- ~~(4) A review of the specifications and pricing model being sought;~~
- ~~(5) And to take questions from attendees~~

~~R2:19-11-[273]. Mandatory Solicitation Conferences. Agencies may make attendance at a solicitation conference mandatory by obtaining approval from the State Procurement Director or the head of the procurement agency. In seeking such approval, the agency shall:~~

- (1) Issue a request letter, addressed to the State Procurement Director or the head of the procurement agency. Email is sufficient to constitute a request. Whether delivered by email or mail, the communication should be clearly marked or labeled "Request for a Mandatory Solicitation Conference."
- (2) The written request should clearly articulate the factors and reasoning for why the solicitation conference should be made mandatory, as well as a citation to the mandatory language for a solicitation conference in the invitation for bids, request for proposals, or request for statements of qualifications and performance data.
- (3) A copy of the draft invitation for bids, request for proposals, or request for statements of qualifications and performance data should be attached with the written request.

R3:19-11-[273]. Nothing discussed during a solicitation conference will augment or change the specifications or terms and conditions of a solicitation, nor shall anything discussed during a solicitation conference be deemed to be binding or incorporated into the specifications or terms and conditions of a solicitation, unless it is subsequently reduced to writing and included in the solicitation.

R1:19-11-[275]. CONDITIONS OF USE. A request for information ("RFI") solicitation may be issued by an agency for the purposes of information gathering and planning while contemplating a possible competitive sealed bid procurement or competitive sealed proposal procurement. A RFI is not, and should not be construed as, a commitment by the agency to issue a solicitation in the future. Agencies should not seek, and vendors should not provide, proposals or bids. A response to a RFI should be treated by the agency as informational only, and should not be considered a proposal or bid, nor should any contract be awarded directly from a RFI.

R2:19-11-[275]. PRICING INFORMATION. A request for information solicitation may request general pricing models, but specific pricing should be expressly prohibited in the RFI solicitation, and if provided unsolicited, should not be considered.

R3:19-11-[275]. The exemption of public records from the Freedom of Information Act of 1967 corresponding to a request for information ("RFI") is limited, expiring upon either: (1) the public opening of bids for a competitive sealed bid procurement that followed the relevant RFI; (2) notice being posted of the anticipated award for a competitive sealed proposal that followed the relevant RFI; or (3) upon an agency making a determination (either formally or through failure to initiate a solicitation within twenty-four (24) months of the RFI) not to proceed with a solicitation following the relevant RFI.

~~R1:19-11-1006. Performance Evaluation and Expenditure Review of Professional and Consultant Service Contracts.~~

~~Professional and consultant service contracts between state agencies for which the total projected contract amount, including any amendments or possible extensions, is fifty thousand dollars (\$50,000) or more, must be presented to the Performance Evaluation and Expenditure Review Committee (PEER) or Joint Budget Committee by the Department of Finance and Administration prior to the execution date of such contract.~~

~~R2:19-11-1006. Review Requirements of Professional and Consultant Service Contracts that Are Amended.~~

~~(a) AMENDMENTS TO CONTRACTS THAT WERE ORIGINALLY REVIEWED BY LEGISLATIVE COUNCIL OR JOINT BUDGET COMMITTEE. An amendment will require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration and before the execution date of the amendment if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount and/or involves major changes in the objectives and scope of the contract.~~

~~(b) AMENDMENTS TO CONTRACTS THAT ORIGINALLY DID NOT REQUIRE REVIEW BY LEGISLATIVE COUNCIL OR JOINT BUDGET COMMITTEE. Any amendment that increases the total projected contract amount, including any amendments or possible extensions, of a professional or consultant service contract to fifty thousand dollars (\$50,000) or more shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. The amendment, along with a copy of the original contract and any attachments thereto, must be submitted to the Office of State Procurement in accordance with the time guidelines as prescribed in R12:11-19-1012. Contracts that have expired cannot be amended.~~

~~R3:19-11-1006. Reporting of Professional and Consultant Service Contracts.~~

~~Professional and consultant service contracts with a total projected contract amount, including any amendments or possible extensions, of ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000) shall be reported to the Legislative Council or the Joint Budget Committee monthly. Agencies shall submit contracts using the appropriate method as determined by the Office of State Procurement.~~

~~R1:19-11-1010. Use of Performance-Based Standards in Professional and Consultant Service Contracts.~~

~~(a) All professional and consultant service contracts shall include performance standards. The purpose of these standards is to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.~~



~~(b) — Performance standards may be standardized for use with similar contracts or may be specifically developed for unique requirements.~~

~~(c) — Performance standards should measure, at prescribed points throughout the term of the contract, the quality, and quantity, and timeliness of work being performed.~~

~~(d) — Performance standards may be refined by the agency and the provider as a part of the contract negotiations.~~

~~(e) — A provider's inability to meet established performance standards may be sufficient cause for declaring default and may also result in cancellation of the contract.~~

~~(f) — Contracts that may be exempt from the use of performance standards include:~~

~~(1) — Sole source by law contracts in which the state is compelled as a result of court, state or federal mandate to award for services from a specific provider.~~

~~(2) — Emergency contracts in which the need for expediency does not permit for the development of performance standards.~~

~~Architectural and Engineering contracts that are awarded using Building Authority Division criteria or similar criteria developed by those colleges and universities which are exempt from Building Authority Division review.~~

#### R2:19-11-1012. Contract Dates.

For each professional and consultant service contract form submitted, the agency is required to enter the beginning and ending date of the contract. The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was signed. This date should be arrived at with emphasis placed on the following:

(a) Any contract or amendment to a contract that requires review by the Legislative Council or Joint Budget Committee must be submitted to the ~~Department of Finance and Administration~~, Office of State Procurement, in accordance with the time guidelines as prescribed on the Office of State Procurement website. The beginning date of the contract must not precede the date of the Arkansas Legislative Council meeting in which such contract is to be reviewed. The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with their review as to the propriety of the contract within thirty (30) days of said submission to the Legislative Council or Joint Budget Committee;

(b) All professional and consultant service contracts with fifty thousand dollars (\$50,000) or more in any one year of the contract's term, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars (\$350,000) or more unless they are contracts for critical emergency procurements or are otherwise exempted from the submission requirements of Ark. Code Ann. § 19-11-265, must be filed with the Office of State Procurement for review by the Legislative Council or Joint Budget Committee. a total projected contract amount, including any amendments or possible extensions, of fifty thousand dollars (\$50,000) or more, unless specifically excepted, must be filed with the Department of Finance and Administration for review by the Legislative Council or Joint Budget Committee.

#### R1:19-11-1013. Reporting of Vendor Performance.

~~Contracts with a total projected contract amount, including any amendments and possible extensions, of twenty five thousand dollars (\$25,000) or more shall require the submission of a vendor performance report at least one (1) time every three (3) months for the entire term of the contract and at the end of the contract. Reports shall be due to the Office of State Procurement. This shall not restrict agencies from submitting an unsatisfactory vendor performance report at any time during the contract period. Agencies shall submit vendor performance reports using the appropriate method as prescribed by the Office of State Procurement.~~

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1572

By: Representative Ladyman  
By: Senator L. Eads

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING STATE AGENCY  
CAPITAL IMPROVEMENT CONTRACTS FOR PURPOSES OF  
UNIFORMITY; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW CONCERNING STATE AGENCY  
CAPITAL IMPROVEMENT CONTRACTS FOR  
PURPOSES OF UNIFORMITY.

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

SECTION 1. Arkansas Code § 18-44-503(a), concerning public buildings and improvements, is amended to read as follows:

(a) No A contract in any a sum exceeding ~~twenty thousand dollars~~ (\$20,000) the amount stated in § 22-9-203 providing for the repair, alteration, or erection of any public building, public structure, or public improvement shall not be entered into by the State of Arkansas or any subdivision ~~thereof~~ of the state, by any county, municipality, school district, or other local taxing unit, or by any agency of ~~any of the foregoing the state~~, a subdivision of the state, a county, a municipality, a school district, or any other local taxing unit, unless the contractor shall furnish to the party letting the contract a bond in a sum equal to the amount of the contract.

SECTION 2. Arkansas Code § 19-4-1405(d)(1), concerning the bidding procedure for the construction of buildings and facilities, is amended to



1 read as follows:

2 (d)(1)(A) Every bid submitted on state agency construction contracts  
3 for projects over the amount of ~~twenty thousand dollars (\$20,000)~~ shall be  
4 stated in § 22-9-203 is void unless accompanied by a cashier's check drawn  
5 upon a bank or trust company doing business in this state or by a corporate  
6 bid bond and the agent's power of attorney as his or her authority.

7 (B) ~~No bid Bid security shall be~~ is not required for  
8 projects under or equal to the amount of ~~twenty thousand dollars (\$20,000)~~  
9 stated in § 22-9-203.

10  
11 SECTION 3. Arkansas Code § 19-11-203(14)(Y), concerning the definition  
12 of "exempt commodities and services" under the Arkansas Procurement Law, is  
13 amended to read as follows:

14 (Y) Capital improvements valued at less than ~~twenty~~  
15 ~~thousand dollars (\$20,000)~~ the amount stated in § 22-9-203, subject to  
16 minimum standards and criteria of the Building Authority Division of the  
17 Department of Finance and Administration;

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19  
20 **APPROVED: 4/2/19**  
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1 State of Arkansas

As Engrossed: S2/20/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

HOUSE BILL 1161

5 By: Representatives Dotson, Wardlaw

6 By: Senator Flippo

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE  
10 LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES  
11 CONTRACTS; TO AMEND THE LAWS CONCERNING STATE AGENCY  
12 PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE  
13 ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND  
14 REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED  
15 BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE  
16 LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR  
17 THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY  
18 STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING  
19 REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR  
20 OTHER PURPOSES.

## Subtitle

24 TO AMEND THE REVIEW AND REPORTING  
25 REQUIREMENTS FOR SERVICE CONTRACTS; TO  
26 AMEND THE LAW CONCERNING VEHICLE LEASES  
27 BY STATE AGENCIES; AND TO PROVIDE FOR THE  
28 TRACKING AND REPORTING OF CONTRACTS  
29 PROCURED BY STATE AGENCIES.

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

34 SECTION 1. Arkansas Code § 19-11-203(4), concerning the definitions to  
35 be used under the Arkansas Procurement Law, is amended to read as follows:

36 (4)(A) "Commodities" means all personal property, including, ~~but~~



1 ~~not limited to, equipment, printing, stationery, supplies, and insurance, but~~  
2 ~~excluding leases without limitation:~~

3 (i) Goods, as defined in § 4-2-105;

4 (ii) Leases, as defined in § 4-2A-103; and

5 (iii) Insurance.

6 (B) "Commodities" does not include:

7 (i) A lease on real property, real property, or a  
8 permanent interest in real property, exempt;

9 (ii) Exempt commodities and services, and capital;  
10 and

11 (iii) Capital improvements;  
12

13 SECTION 2. Arkansas Code § 19-11-203(14)(AA), concerning the  
14 definition of "exempt commodities and services" under the Arkansas  
15 Procurement Law, is amended to read as follows:

16 (AA) The following commodities and services relating to  
17 proprietary software after the initial procurement:

18 (i) Technical support incidental to supporting the  
19 continuous operation of proprietary software;

20 (ii) Renewals;

21 (iii) Additional copies; and

22 (iv) License upgrades;  
23

24 SECTION 3. Arkansas Code § 19-11-203(27), concerning the definitions  
25 to be used under the Arkansas Procurement Law, is amended to read as follows:

26 (27)(A) "Services" means the furnishing of labor, time, or  
27 effort by a contractor, ~~not involving the delivery of a specific end product~~  
28 ~~other than reports which are merely incidental to the required performance~~  
29 that does not produce tangible commodities.

30 (B) "Services" includes without limitation:

31 (i) Consulting services;

32 (ii) Personal services;

33 (iii) Professional services;

34 (iv) Technical and general services; and

35 (v) The furnishing of labor, time, or effort by a  
36 contractor for the generation, customization, configuration, or development

1 of software and other intangible property other than technical support  
2 incidental to the procurement of proprietary software.

3 (C) "Services" shall does not include employment  
4 agreements, collective bargaining agreements, exempt commodities and  
5 services, or architectural or engineering contracts requiring approval of the  
6 Building Authority Division of the Department of Finance and Administration  
7 or higher education;

8  
9 SECTION 4. Arkansas Code § 19-11-217(c), concerning the powers and  
10 duties of the State Procurement Director, is amended to add an additional  
11 subdivision to read as follows:

12 (9) Shall create a roster of expiring contracts entered into by  
13 a state agency for which there is no new requisition.

14  
15 SECTION 5. Arkansas Code § 19-11-249, concerning cooperative  
16 purchasing, is amended to add an additional subsection to read as follows:

17 (c) A contractor shall cooperate with the director in providing  
18 information necessary for the director to complete the report required under  
19 subsection (b) of this section.

20  
21 SECTION 6. Arkansas Code § 19-11-260 is repealed.

22 ~~19-11-260. Recycled paper products — Preference.~~

23 ~~(a) The State Procurement Director shall issue a recycled paper~~  
24 ~~content specification for each type of paper product.~~

25 ~~(b)(1) The goal of state agencies for the percentage of paper products~~  
26 ~~to be purchased that utilize recycled paper shall be:~~

27 ~~(A) Ten percent (10%) in fiscal year 1991;~~

28 ~~(B) Twenty five percent (25%) in fiscal year 1992;~~

29 ~~(C) Forty-five percent (45%) in fiscal year 1993; and~~

30 ~~(D) Sixty percent (60%) by calendar year 2000.~~

31 ~~(2)(A) The Office of State Procurement shall prepare a~~  
32 ~~semiannual report of the state's progress in meeting the goals for the~~  
33 ~~purchase of paper products with recycled content.~~

34 ~~(B) The report shall be made to the Governor.~~

35 ~~(c)(1) Whenever a bid is required, a preference for recycled paper~~  
36 ~~products shall be exercised if the use of the products is technically~~

feasible and price is competitive.

(2)(A) For the purpose of procurement of recycled paper products, "competitive" means the bid price does not exceed the lowest qualified bid of a vendor offering paper products manufactured or produced from virgin material by ten percent (10%).

(B) An additional one percent (1%) preference shall be allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas.

(3) A bidder receiving a preference under this section shall not be entitled to an additional preference under § 19-11-259.

SECTION 7. Arkansas Code § 19-11-265 is amended to read as follows:

19-11-265. Submission of contracts required.

(a)(1) A Except for critical emergency procurements and as otherwise provided in this section, a contract requiring the service services of one (1) or more individuals for regular full-time or part-time weekly work persons shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the contract if the annual contract amount is at least fifty thousand dollars (\$50,000) in any one (1) contract year or if the total initial contract amount or the projected contract amount, including any amendments or possible extensions, is at least one hundred thousand dollars (\$100,000) three hundred fifty thousand dollars (\$350,000).

(2) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with its review as to the propriety of the contract within thirty (30) days after receipt of the proposed contract.

(3) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Office of State Procurement has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

(4)(A)(i) A contract that does not have a material change upon renewal or extension shall be included in the monthly report required under § 19-11-273 instead of being submitted to the Legislative Council or the Joint Budget Committee for review under this subsection.

(ii) As used in this subdivision (a)(4), "material



1 change" includes without limitation:

2 (a) An increase in the contract amount;

3 (b) An increase in the total projected  
4 contract amount;

5 (c) A change in any of the essential terms of  
6 the contract;

7 (d) A change in any performance-based  
8 standards stated in the contract;

9 (e) The imposition of financial consequences  
10 as the result of a failure to satisfy performance-based standards under § 19-  
11 11-267 during the year preceding the renewal or extension of the contract;  
12 and

13 (f) The submission of a vendor performance  
14 report during the year preceding the renewal or extension of the contract.

15 (B) However, a state agency may elect to submit a contract  
16 for review under this subsection if the state agency is uncertain whether the  
17 contract has a material change.

18 (5) A contract that is submitted for review under this  
19 subsection and that has a total projected contract amount of at least three  
20 hundred fifty thousand dollars (\$350,000) shall have a cover sheet that  
21 provides the following information:

22 (A) A description of the services being procured;

23 (B) A description of the procurement process followed,  
24 including without limitation the method used for the procurement; and

25 (C) The outcome of any protests.

26 (b) The Legislative Council or the Joint Budget Committee may review  
27 or exempt from review any contract or group of contracts contemplated by this  
28 section.

29 ~~(c)(1) In addition to the contracts presented to the Legislative~~  
30 ~~Council or to the Joint Budget Committee under subsection (a) of this~~  
31 ~~section, the director shall compile a monthly report of all executed~~  
32 ~~contracts requiring the service of one (1) or more individuals for regular~~  
33 ~~full-time or part-time weekly work if the total initial contract amount or~~  
34 ~~the total projected contract amount, including any amendments or possible~~  
35 ~~extensions, is at least twenty-five thousand dollars (\$25,000) and less than~~  
36 ~~one hundred thousand dollars (\$100,000).~~

~~(2) The monthly report required under this subsection shall include without limitation:~~

~~(A) The name of the contractor;~~

~~(B) The state agency name;~~

~~(C) The contact information for the contractor or state agency;~~

~~(D) The total initial cost of the contract, the cost of any commodities included in the contract, and the cost of the services;~~

~~(E) The type of commodities and services contracted;~~

~~(F) The quantity of commodities and services contracted;~~

~~(G) The procurement method;~~

~~(H) The total projected contract amount that includes any amendments and all available extensions; and~~

~~(I) Any other information requested by the Legislative Council or the Joint Budget Committee.~~

~~(3) The director shall remit the report required under this subsection each month to the Legislative Council or to the Joint Budget Committee as directed by the Legislative Council.~~

~~(d) (c)~~ A contract that is procured by a state agency with that has a state agency procurement official or procurement authority under a delegation order is subject to the reporting and presentment requirements under this section.

~~(e) (d)~~ It is a violation of state procurement laws, Arkansas Code Title 19, Chapter 11, for a state agency official to procure services in an incremental or split purchase arrangement to avoid the ~~reporting or~~ presentment requirements of this section.

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

19-11-273. Reporting requirements.

(a) The State Procurement Director shall compile a monthly report of all executed contracts for services that have a total initial contract amount or a total projected contract amount, including any amendments or possible extensions, of at least twenty-five thousand dollars (\$25,000) but less than an annual contract amount of fifty thousand dollars (\$50,000) in any one (1) contract year or a total projected contract amount, including any amendments

1 or possible extensions, of three hundred fifty thousand dollars (\$350,000).

2 (b) A contract that is procured by a state agency that has a state  
3 agency procurement official or procurement authority under a delegation order  
4 is subject to the reporting requirements under this section.

5 (c) The State Procurement Director shall adopt rules to:

6 (1) Prescribe a cover sheet for the report required under this  
7 section that sorts and identifies contracts within the report that may be  
8 candidates for review;

9 (2) Create instructions for completing the cover sheet  
10 prescribed under subdivision (c)(1) of this section; and

11 (3) Provide for the identification of any contracts included in  
12 the report that may need to be reviewed under § 19-11-265.

13 (d) It is a violation of state procurement laws, Arkansas Code Title  
14 19, Chapter 11, for a state agency official to procure services in an  
15 incremental or split purchase arrangement to avoid the reporting requirements  
16 of this section.

17  
18 19-11-274. Tracking requirements.

19 (a) The State Procurement Director, each agency procurement official,  
20 and any state agency with procurement authority under a delegation order  
21 shall track the following for the procurements they conduct and the contracts  
22 they execute:

23 (1) Each protest received and the resolution of the protest;

24 (2) The outcome of any negotiations under this chapter; and

25 (3) The anticipated procurement needs of the state agency based  
26 on the contracts that:

27 (A) Are set to expire during the next twelve (12) months;

28 and

29 (B) Will require a new solicitation in the next twelve  
30 (12) months.

31 (b) Each agency procurement official and each state agency with  
32 procurement authority under a delegation order shall report the information  
33 obtained under subsection (a) of this section to the Office of State  
34 Procurement.

35  
36 SECTION 9. Arkansas Code § 19-11-1006 is repealed as duplicative.

1 ~~19-11-1006. Submission of contracts required.~~

2 ~~(a)(1) A professional services contract or consultant services~~  
3 ~~contract shall be presented to the Legislative Council or, if the General~~  
4 ~~Assembly is in session, to the Joint Budget Committee, before the execution~~  
5 ~~of the professional services contract or consultant services contract if the~~  
6 ~~total initial amount or the total projected amount, including any amendments~~  
7 ~~or possible extensions, of the professional services contract or consultant~~  
8 ~~services contract is at least fifty thousand dollars (\$50,000).~~

9 ~~(2) The Legislative Council or the Joint Budget Committee shall~~  
10 ~~provide the State Procurement Director with its review as to the propriety of~~  
11 ~~the professional services contract or consultant services contract within~~  
12 ~~thirty (30) days after receipt of the proposed professional services contract~~  
13 ~~or consultant services contract.~~

14 ~~(3) The professional services contract or consultant services~~  
15 ~~contract shall not be submitted to the Legislative Council or to the Joint~~  
16 ~~Budget Committee until the Department of Finance and Administration has~~  
17 ~~reviewed the professional services contract or consultant services contract~~  
18 ~~and provided the Legislative Council or the Joint Budget Committee with a~~  
19 ~~recommendation regarding the legality of the professional services contract~~  
20 ~~or consultant services contract.~~

21 ~~(b) The Legislative Council or the Joint Budget Committee may review~~  
22 ~~or exempt from review any professional services contract or consultant~~  
23 ~~services contract or group of professional services contracts or consultant~~  
24 ~~services contracts contemplated by this subchapter.~~

25 ~~(c)(1) Funds from grants and contracts to a state institution of~~  
26 ~~higher education may be used for the purpose of subcontracting with~~  
27 ~~institutions under the performance conditions of the grants or contracts.~~

28 ~~(2) Subcontracts for research that are derived from grants and~~  
29 ~~contracts to a state institution of higher education require the prior~~  
30 ~~approval of the director and a review by the Legislative Council or by the~~  
31 ~~Joint Budget Committee.~~

32 ~~(d)(1) In addition to the professional services contracts and~~  
33 ~~consultant services contracts presented to the Legislative Council or to the~~  
34 ~~Joint Budget Committee under subsection (a) of this section, the director~~  
35 ~~shall compile a monthly report of all executed professional services~~  
36 ~~contracts and consultant services contracts if the total initial amount or~~

1 ~~the total projected amount, including any amendments or possible extensions,~~  
2 ~~of the professional services contract or consultant services contract is at~~  
3 ~~least ten thousand dollars (\$10,000) and less than fifty thousand dollars~~  
4 ~~(\$50,000).~~

5 ~~(2) The monthly report required under this subsection shall~~  
6 ~~include without limitation:~~

7 ~~(A) The name of the contractor;~~

8 ~~(B) The state agency name;~~

9 ~~(C) The contact information for the contractor or state~~  
10 ~~agency;~~

11 ~~(D) The total initial cost of the professional services~~  
12 ~~contract or consultant services contract;~~

13 ~~(E) The type of services contracted;~~

14 ~~(F) The quantity of services contracted;~~

15 ~~(G) The procurement method;~~

16 ~~(H) The total projected amount of the professional~~  
17 ~~services contract or consultant services contract that includes any~~  
18 ~~amendments and all available extensions; and~~

19 ~~(I) Any other information requested by the Legislative~~  
20 ~~Council or the Joint Budget Committee.~~

21 ~~(3) The director shall remit the report each month to the~~  
22 ~~Legislative Council or to the Joint Budget Committee as directed by the~~  
23 ~~Legislative Council.~~

24 ~~(e) A contract that is procured by a state agency with a state agency~~  
25 ~~procurement official is subject to the reporting and presentment requirements~~  
26 ~~under this section.~~

27 ~~(f) It is a violation of state procurement laws, Arkansas Code Title~~  
28 ~~19, Chapter 11, for a state agency official to procure services in an~~  
29 ~~incremental or split purchase arrangement to avoid the reporting or~~  
30 ~~presentment requirements of this section.~~

31  
32 SECTION 10. Arkansas Code § 22-8-102 is amended to read as follows:

33 22-8-102. Leasing and renting of vehicles by state agencies -  
34 Definitions.

35 (a) ~~For purposes of~~ As used in this section:

36 (1) "Lease" means obtaining the use of a motor vehicle from any

1 source for a monetary fee, for a period of thirty-one (31) days or more; ~~and~~

2 (2) "Rental" means obtaining the use of a motor vehicle from any  
3 source for a monetary fee for a period of thirty (30) days or less; and

4 (3) "State agency" means the same as defined in § 19-11-203.

5 (b)(1) Before any state agency ~~shall lease~~ leases any motor vehicle or  
6 ~~renew~~ renews any existing lease for a motor vehicle, the state agency shall  
7 submit a written request to the State Procurement Director identifying the  
8 motor vehicles sought to be leased by the state agency and all facts and  
9 circumstances the director may request to enable him or her to determine the  
10 economics, need, and feasibility of leasing the motor vehicle.

11 (2) Upon receipt, the director shall review the request to lease  
12 the motor vehicle, and if he or she determines that the lease is in the best  
13 interest of the State of Arkansas and that the state agency has adequate  
14 funds to pay the lease, he or she may approve the request but only if ~~he or~~  
15 ~~she has first received the approval of the proposed lease has been reviewed~~  
16 by the Legislative Council or, if the General Assembly is in session, the  
17 Joint Budget Committee.

18 (3) ~~After receiving the approval of~~ If, after the Legislative  
19 Council or the Joint Budget Committee has reviewed the proposed lease of the  
20 motor vehicle, the director approves the proposed lease of the motor vehicle,  
21 the director shall stamp his or her approval on the request and return it to  
22 the state agency, which may ~~then~~ proceed to enter into the lease as proposed  
23 and approved by the director.

24 ~~(4) In emergency situations, the director may approve a~~  
25 ~~temporary lease of a motor vehicle, not to exceed thirty (30) days, but only~~  
26 ~~if he or she has sought the advice of the cochairs of the Legislative Council~~  
27 ~~and scheduled the temporary lease of a motor vehicle for consideration at the~~  
28 ~~next meeting of the Legislative Council.~~

29 (c) If the director disapproves a proposed lease of a motor vehicle,  
30 he or she shall stamp his or her disapproval on the request and return it to  
31 the state agency, and it shall be unlawful for the state agency to proceed to  
32 lease the motor vehicle.

33 (d) If federal assistance requirements or federal contract  
34 requirements conflict with this section, this section shall not prevent a  
35 state agency from complying with the terms and conditions of the federal  
36 assistance requirements or the federal contract requirements.

1       (e) It is a violation of state procurement laws, Arkansas Code Title  
2       19, Chapter 11, for a state agency official to conduct multiple rentals of a  
3       motor vehicle to avoid the approval and review requirements of this section.  
4

5       SECTION 11. DO NOT CODIFY. Rules.

6       (a) When adopting the initial rules required under this act, the State  
7       Procurement Director shall file the final rules with the Secretary of State  
8       for adoption under § 25-15-204(f):

9               (1) On or before January 1, 2020; or

10              (2) If approval under § 10-3-309 has not occurred by January 1,  
11       2020, as soon as practicable after approval under § 10-3-309.

12       (b) The director shall file the proposed rules with the Legislative  
13       Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so  
14       that the Legislative Council may consider the rules for approval before  
15       January 1, 2020.

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18                               /s/Dotson

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21                           APPROVED: 3/11/19  
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1 State of Arkansas *As Engrossed: S2/20/19*

2 92nd General Assembly

3 Regular Session, 2019

# A Bill

HOUSE BILL 1162

5 By: Representatives Dotson, Wardlaw

6 By: Senator Flippo

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
10 AMEND THE LAW CONCERNING THE CONTENT, TERM, AND  
11 REVIEW OF CONTRACTS PROCURED BY THE STATE; TO PROVIDE  
12 CERTAIN COMPLIANCE REQUIREMENTS FOR PERSONS  
13 CONTRACTING WITH THE STATE; TO REQUIRE AND REGULATE  
14 THE USE OF PERFORMANCE-BASED CONTRACTS; TO AMEND THE  
15 REQUIREMENT CONCERNING VENDOR PERFORMANCE REPORTS; TO  
16 ELIMINATE DUPLICATIVE PROVISIONS IN THE LAW; AND FOR  
17 OTHER PURPOSES.

## Subtitle

21 TO AMEND THE LAW CONCERNING THE CONTENT,  
22 TERM, AND REVIEW OF CONTRACTS PROCURED BY  
23 THE STATE; TO REQUIRE THE USE OF  
24 PERFORMANCE-BASED CONTRACTS; AND TO AMEND  
25 VENDOR PERFORMANCE REPORT REQUIREMENTS.

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

30 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and  
31 duties of the State Procurement Director, is amended to add an additional  
32 subdivision to read as follows:

33 (9) Shall analyze information captured in state systems to  
34 measure and track the contract routing process to identify stakeholders that  
35 may be contributing to the elongation of the contracting process; and

36 (10) Ensure that vendor performance reports are available to and





1 searchable by state agencies.

2

3 SECTION 2. Arkansas Code § 19-11-219 is amended to read as follows:  
4 19-11-219. Legal counsel – Contract review.

5 (a) The Attorney General shall act as counsel for the State  
6 Procurement Director in preparation of necessary contracts and in all legal  
7 matters.

8 (b)(1) A contract that the director has designated as requiring review  
9 shall be reviewed by a person employed as an attorney with a state agency.

10 (2) The review required under this subsection shall occur before  
11 the contract is executed.

12 (c) The director shall adopt rules to implement this section,  
13 including without limitation rules to:

14 (1) Designate contracts that require review under this section,  
15 which may include without limitation contracts that:

16 (A) Exceed a certain dollar amount;

17 (B) Modify the standard state terms and conditions; and

18 (C) Are based on other stated criteria; and

19 (2) Identify the requirements for the attorneys who may review  
20 contracts under this section, including without limitation:

21 (A) An attorney employed with the Office of State  
22 Procurement, an institution of higher education, or the Office of the  
23 Attorney General; and

24 (B) Any other attorney employed by the state and licensed  
25 to practice law in Arkansas.

26

27 SECTION 3. Arkansas Code § 19-11-238(c), concerning multiyear  
28 contracts, is amended to read as follows:

29 (c) Termination Due to Unavailability of Funds in Succeeding Years.

30 (1) Original terms of such multiyear contracts shall terminate  
31 on the last day of the current biennium, and any renewals by the state based  
32 upon continuing appropriation shall not exceed the next succeeding biennium  
33 not exceed four (4) years.

34 (2) When funds are not appropriated or otherwise made available  
35 to support continuation of performance in a subsequent year of a multi-year a  
36 multiyear contract, the contract for such subsequent year shall be terminated

1 and the contractor may be reimbursed for the reasonable value of any  
2 nonrecurring costs incurred but not amortized in the price of the commodities  
3 or services delivered under the contract.

4 (3) The cost of termination under subdivision (c)(2) of this  
5 section may be paid from:

6 (1) (A) Appropriations currently available for performance  
7 of the contract;

8 (2) (B) Appropriations currently available for procurement  
9 of similar commodities or services and not otherwise obligated; or

10 (3) (C) Appropriations made specifically for the payment  
11 of such termination costs.

12

13 SECTION 4. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to  
14 read as follows:

15 19-11-267. Development and use of performance-based contracts –  
16 Findings.

17 (a) The General Assembly finds that:

18 (1) Performance-based contracts provide an effective and  
19 efficient method of monitoring and evaluating the overall quality of services  
20 provided; and

21 (2) The practice of including benchmark objectives that the  
22 provider must attain at specific intervals during the term of the contract is  
23 an essential requirement for measuring performance.

24 (b)(1) A state agency, board, commission, or institution of higher  
25 education that enters into a contract under this ~~subchapter~~ chapter to  
26 procure services that has a contract amount of at least one million dollars  
27 (\$1,000,000) in a single contract year or a total projected contract amount,  
28 including any amendments to or possible extensions of the contract, of at  
29 least seven million dollars (\$7,000,000) shall use performance-based  
30 standards in the contract that are specifically tailored to the services  
31 being provided under the contract.

32 (2) The performance-based standards used under this subsection  
33 shall include performance measures based on objective factors.

34 (3) A state agency, board, commission, or institution of higher  
35 education is encouraged to use performance-based standards that are based on  
36 objective factors in any other contract in which it would serve the best

1 interest of the state.

2 (c)(1) A state agency, board, commission, or institution of higher  
3 education that enters into a contract with performance-based standards:

4 (1)(A) Shall monitor the vendor's performance and adherence to  
5 the performance-based standards in the contract.

6 (B) For state contracts, the Office of State Procurement  
7 shall be the state agency that monitors each vendor's performance under this  
8 subdivision (c)(1); and

9 (2) May impose financial consequences, as identified in the  
10 contract, on a vendor that is party to a contract with performance-based  
11 standards for failure to satisfy the performance-based standards, including  
12 without limitation withholding payment or pursuing liquidated damages to the  
13 extent allowed by law.

14 (d)(1) The State Procurement Director shall promulgate rules necessary  
15 to implement and administer this section.

16 (2) Rules promulgated under this subsection are subject to  
17 approval by the Legislative Council or, if the General Assembly is in  
18 session, the Joint Budget Committee.

19

20 19-11-268. Vendor performance reporting.

21 (a)(1) A state agency shall report a vendor's performance under a  
22 contract executed under this subchapter that has a total initial contract  
23 amount or total projected contract amount, including any amendments to or  
24 possible extensions of the contract, of at least twenty-five thousand dollars  
25 (\$25,000) chapter if the vendor fails to satisfy the performance-based  
26 standards stated in the contract in a manner that represents a material  
27 deviation.

28 (2) A state agency shall use the a form prescribed by the State  
29 Procurement Director and approved by the Legislative Council or, if the  
30 General Assembly is in session, the Joint Budget Committee, to report a  
31 vendor's performance under this section.

32 (b) The report required under this section shall be:

33 (1) ~~Completed and submitted:~~

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

36 (B) ~~At the end of the contract;~~

1           (2) Filed with the Office of State Procurement and maintained  
2 for a minimum of three (3) years from the termination of the relevant  
3 contract, including any extensions and amendments; and

4           (3) (2) Signed by the director of the state agency or his or her  
5 designee; and

6           (3) Filed monthly until the vendor has performed satisfactorily  
7 under the contract for a period of at least ninety (90) consecutive days.

8           (c) A state agency may report a vendor's performance in the manner  
9 prescribed under this section for any contract that would not require  
10 reporting of a vendor's performance under this section if the state agency  
11 encounters an issue with the vendor's performance of a contract.

12           (d) A state agency may use a vendor performance report submitted under  
13 this section to evaluate an offeror to the extent that the past performance  
14 of an offeror may be considered under the law and the rules adopted by the  
15 office.

16  
17           SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
18 amended to add an additional section to read as follows:

19           19-11-273. Compliance.

20           (a) A contractor shall ensure, in cooperation with a state agency,  
21 that the contract between the contractor and the state agency adheres to the  
22 requirements of this chapter, including without limitation the inclusion of  
23 any mandatory language and the submission of the contract for any required  
24 review.

25           (b) The signature of a contractor on a contract with a state agency  
26 serves as an acknowledgement that the contractor is:

27           (1) Equally responsible with the state agency for adhering to  
28 the requirements of this chapter related to the content and review of the  
29 contract; and

30           (2) Subject to the relevant ethical provisions of § 19-11-701 et  
31 seq.

32  
33           SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.  
34 19-11-1010. Development and use of performance-based contracts—  
35 Findings.

36           (a) Performance-based contracts provide an effective, efficient method

~~of monitoring and evaluating the overall quality of services provided.~~

~~(b) The practice of including benchmark objectives that the provider must attain at specific intervals during the term of the contract is an essential requirement for measuring performance.~~

~~(c) Under regulations promulgated by the State Procurement Director, all state agencies, boards, commissions, and institutions of higher education shall use performance-based standards in professional and consultant service contracts.~~

SECTION 7. Arkansas Code § 19-11-1013 is repealed as duplicative.

~~19-11-1013. Vendor performance reporting.~~

~~(a)(1) A state agency shall report a vendor's performance under a contract issued under this subchapter that has a total initial contract amount or total projected contract amount, including any amendments to or possible extensions of the contract, of at least twenty-five thousand dollars (\$25,000) for contracts.~~

~~(2) A state agency shall use the form prescribed by the State Procurement Director and approved by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, to report a vendor's performance under this section.~~

~~(b) The report required under this section shall be:~~

~~(1) Completed and submitted:~~

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

~~(B) At the end of the contract;~~

~~(2) Filed with the Office of State Procurement and maintained for a minimum of three (3) years from the termination of the relevant contract, including any extensions and amendments; and~~

~~(3) Signed by the director of the state agency or his or her designee.~~

SECTION 8. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the State Procurement Director shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

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

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

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

/s/Dotson

APPROVED: 3/11/19

State of Arkansas                      *As Engrossed: H2/4/19 S2/25/19*  
92nd General Assembly                      **A Bill**  
Regular Session, 2019

HOUSE BILL 1178

By: Representative Wardlaw  
By: Senator Flippo

**For An Act To Be Entitled**

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
AMEND THE LAWS CONCERNING VARIOUS PROCUREMENT  
METHODS; TO ALLOW FOR REQUESTS FOR INFORMATION; TO  
AMEND THE LAW CONCERNING THE PROCUREMENT OF  
PROFESSIONAL SERVICES; TO PROVIDE FOR THE TRAINING  
AND CERTIFICATION OF PROCUREMENT OFFICIALS; TO  
REQUIRE THAT COST BE WEIGHTED A CERTAIN AMOUNT IN  
EVALUATING RESPONSES TO A REQUEST FOR PROPOSALS; TO  
ALLOW FOR THE USE OF PRIVATE EVALUATORS IN EVALUATING  
RESPONSES TO A REQUEST FOR PROPOSALS; TO REQUIRE THAT  
RULES PROMULGATED BY THE STATE PROCUREMENT DIRECTOR  
BE SUBMITTED TO AND REVIEWED BY THE REVIEW  
SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL; TO AUTHORIZE  
AND REGULATE SOLICITATION CONFERENCES UNDER THE  
ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT VENDOR  
TRAINING AND POLLING BE CONDUCTED UNDER THE ARKANSAS  
PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE  
NEGOTIATION OF COMPETITIVE SEALED BIDS AND  
COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS  
PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE  
REJECTION OF A BID OR PROPOSAL UNDER THE ARKANSAS  
PROCUREMENT LAW; AND FOR OTHER PURPOSES.

**Subtitle**

TO AMEND THE LAWS CONCERNING VARIOUS  
PROCUREMENT METHODS; TO PROVIDE FOR THE  
TRAINING AND CERTIFICATION OF PROCUREMENT



1 OFFICIALS; AND TO REQUIRE ADDITIONAL  
2 LEGISLATIVE REVIEW OF PROCUREMENT RULES.

3  
4  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

6  
7 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and  
8 duties of the State Procurement Director, is amended to add additional  
9 subdivisions to read as follows:

10 (9) Shall provide for enhanced training on the drafting of  
11 specifications for procurements; and

12 (10) Shall maintain records of bids and proposals that are  
13 rejected by the office for failure to adhere to the mandatory requirements of  
14 a solicitation.

15  
16 SECTION 2. Arkansas Code § 19-11-225 is amended to read as follows:

17 19-11-225. ~~Regulations~~ Rules.

18 (a)(1) ~~Regulations shall be promulgated by the~~ The State Procurement  
19 Director shall adopt rules in accordance with the applicable provisions of  
20 this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201  
21 et seq.

22 (2) A rule promulgated by the director under this subchapter is  
23 not effective until the rule is:

24 (A) Submitted to and reviewed by the Review Subcommittee  
25 of the Legislative Council; and

26 (B) Reviewed and approved by the Legislative Council under  
27 § 10-3-309.

28 (b) ~~No regulation~~ A rule shall not change any commitment, right, or  
29 obligation of the state or of a contractor under a contract in existence on  
30 the effective date of the ~~regulation~~ rule.

31 (c)(1) ~~No clause which~~ A clause that is required by ~~regulation~~ rule to  
32 be included ~~shall be considered to be~~ is not incorporated by operation of law  
33 in any state contract without the consent of both parties to the contract to  
34 the incorporation.

35 (2) The parties to the contract may give such consent to  
36 incorporation by reference at any time after the contract has been entered



1 into and without the necessity of consideration passing to either party.

2  
3 SECTION 3. Arkansas Code § 19-11-229(d), concerning competitive sealed  
4 bidding, is amended to read as follows:

5 (d)~~(1)~~ Notice inviting bids shall be:

6 (1) Be given not fewer than five (5) calendar days nor more than  
7 thirty (30) ninety (90) calendar days preceding the date for the opening of  
8 bids by publishing the notice at least one (1) time in at least one (1)  
9 newspaper having general circulation in the state or posting by electronic  
10 media, but in all instances, adequate notice shall be given;

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

14 (3) State where invitations for bid bids may be obtained;

15 ~~(B) The notice also shall state~~ (4) State the date, time, and  
16 place of bid opening; and

17 (5) State the time, date, and place of the solicitation  
18 conference if a solicitation conference is to be held before the opening of  
19 bids to provide information to prospective bidders.

20  
21 SECTION 4. Arkansas Code § 19-11-229(f), concerning competitive sealed  
22 bidding, is amended to add an additional subdivision to read as follows:

23 (3)(A) A time discount may be considered in the evaluation of a  
24 bid only:

25 (i) If the state agency specifically solicits  
26 pricing that requests a time discount; and

27 (ii) Under the structured terms of the invitation  
28 for bids.

29 (B) If a bidder offers a time discount as part of its bid  
30 without the solicitation of time discounts by the state agency, the state  
31 agency shall not consider the time discount.

32  
33 SECTION 5. Arkansas Code § 19-11-229(g), concerning competitive sealed  
34 bidding, is amended to add an additional subdivision to read as follows:

35 (3)(A) The director or an agency procurement official may seek  
36 the clarification of a submitted bid.

1 (B) A written response by a bidder under this subsection  
2 shall only clarify the submitted bid and shall not add any substantive  
3 language to the submitted bid or change the terms of the submitted bid.

4 (C) If the bidder fails or refuses to clarify any matter  
5 questioned about the bidder's bid in writing by the deadline set by the  
6 director or agency procurement official, the bid may be rejected.

7 (D) If the bidder clarifies the matter questioned under  
8 this subsection in writing, the clarification shall be evaluated and become a  
9 part of any contract awarded on the basis of the bidder's bid.

10  
11 SECTION 6. Effective July 1, 2021, Arkansas Code § 19-11-229(h)(2),  
12 concerning competitive sealed bidding under the Arkansas Procurement Law, is  
13 amended to add an additional subdivision read as follows:

14 (C)(i) Negotiations under this subsection shall be  
15 conducted by a person who is trained and certified in negotiation and  
16 procurement processes.

17 (ii)(a) The Office of State Procurement shall  
18 provide for the training and certification required under this subsection.

19 (b) The training provided by the office shall  
20 be specific to Arkansas law.

21  
22 SECTION 7. Arkansas Code § 19-11-229(i), concerning competitive sealed  
23 bidding, is amended to read as follows:

24 (i)(1) An invitation for bid bids may be cancelled or any or all bids  
25 may be rejected in writing by the director or the agency procurement  
26 official.

27 (2) Before the rejection of a bid by the director, the decision  
28 to reject the bid may be validated with the state agency for which the  
29 procurement is being conducted.

30 (3) A bid may be rejected for failure to adhere to mandatory  
31 requirements.

32  
33 SECTION 8. Arkansas Code § 19-11-230(d), concerning competitive sealed  
34 proposals under the Arkansas Procurement Law, is amended to read as follows:

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

1 (2)(A) Except as provided in subdivision (d)(2)(B) of this  
2 section, cost shall be weighted at least thirty percent (30%) of the total  
3 evaluation score for a proposal submitted in response to the request for  
4 proposals.

5 (B)(i) The State Procurement Director may approve that  
6 cost be weighted at a lower percentage of the total evaluation score for a  
7 proposal submitted in response to a request for proposals if the director  
8 makes a written determination that the lower percentage is in the best  
9 interest of the state.

10 (ii) A state agency's failure to obtain the approval  
11 of the director under this subsection for a request for proposals with cost  
12 weighted at a lower percentage than required under subdivision (d)(2)(A) of  
13 this section is grounds for submitting a protest under § 19-11-244.

14 (C) The use of a lower percentage under subdivision  
15 (d)(2)(B) of this section and the corresponding written determination by the  
16 director shall be submitted to the Legislative Council or, if the General  
17 Assembly is in session, the Joint Budget Committee, for review before the  
18 request for proposals is issued.

19 (3) The state's prior experience with an offeror may be  
20 considered and scored as part of the offeror's proposal only:

21 (A) To the extent that the request for proposals requests  
22 that all offerors provide references; and

23 (B) If the offeror's past performance with the state  
24 occurred no more than three (3) years before the offeror submitted the  
25 proposal.

26 (4) A state agency shall not include prior experience with the  
27 state as a mandatory requirement for submitting a proposal under this  
28 section.

29  
30 SECTION 9. Arkansas Code § 19-11-230(e)(2), concerning competitive  
31 sealed proposals under the Arkansas Procurement Law, is amended to add an  
32 additional subdivision to read as follows:

33 (C)(i) Before issuing the notice of award of a contract,  
34 the director or the agency procurement official may request a best and final  
35 offer from each responsible offeror that is reasonably susceptible of being  
36 awarded the contract.

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

3 (a) Resubmit the offeror's original proposal  
4 with lower pricing or additional benefits, or both, in accordance with the  
5 specifications of the request for proposals; or

6 (b) Submit a written response that states that  
7 the offeror's original proposal, including without limitation the pricing,  
8 remains unchanged.

9 (iii) If a best and final offer is requested, the  
10 director or the agency procurement official shall evaluate each proposal  
11 submitted in response to the request for a best and final offer in  
12 determining the proposal that is the most advantageous to the state.  
13

14 SECTION 10. Arkansas Code § 19-11-230(f) and (g), concerning  
15 competitive sealed proposals under the Arkansas Procurement Law, are amended  
16 to read as follows:

17 (f)(1) The director or an agency procurement official may seek the  
18 clarification of a submitted proposal.

19 (2) A written response by an offeror under this subsection shall  
20 only clarify the submitted proposal and shall not add any substantive  
21 language to the submitted proposal or change the terms of the submitted  
22 proposal.

23 (3) If the offeror fails or refuses to clarify any matter  
24 questioned about the offeror's proposal in writing by the deadline set by the  
25 director or agency procurement official, the proposal may be rejected.

26 (4) If the offeror clarifies the matter questioned under this  
27 subsection in writing, the clarification shall be evaluated and become a part  
28 of any contract awarded on the basis of the offeror's proposal.

29 (g)(1) Award shall be made to the responsible offeror whose proposal  
30 is determined in writing to be the most advantageous to the state, taking  
31 into consideration price, the evaluation factors set forth in the request for  
32 proposals, any best and final offers submitted, and the results of any  
33 discussions conducted with responsible offerors.

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

36 (3) If it is determined that two (2) or more responsible

offerors have tied scores after the evaluation of the proposals, the award shall be made to the responsible offeror that had one (1) of the tied scores and submitted the lowest price proposal.

(4) The director or the agency procurement official may enter into negotiations with the responsible offeror whose proposal is determined in writing to be the most advantageous to the state when the best interests of the state would be served, including without limitation when the state can obtain:

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

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

(h)(1) The Office of State Procurement shall:

(A) Encourage full discussion by the evaluators who are evaluating proposals submitted in response to a request for proposals under this section; and

(B) Develop tools and templates to be used in evaluating proposals submitted in response to a request for proposals under this section that optimize the number of material scored attributes and provide for a limited range of possible scores for each attribute.

(2)(A) A state agency may use one (1) or more private evaluators to evaluate proposals submitted in response to a request for proposals under this section.

(B) A private evaluator used under this subsection shall be:

(i) Held to the same requirements and prohibitions regarding conflicts of interest as state employees;

(ii) A qualified volunteer, unless the state does not have the necessary expertise to evaluate the proposals, in which case a paid private evaluator may be used; and

(iii) Eligible for travel reimbursement if the state agency decides to make travel reimbursement available.

(C) The use of a private evaluator is not required.

(D) If a state agency uses one (1) or more private evaluators, the use of a private evaluator shall be disclosed in the

1 procurement file and in any information submitted to the Legislative Council  
2 or, if the General Assembly is in session, the Joint Budget Committee.

3 (g) (i)(1) A competitive sealed proposal may be cancelled or any or  
4 all proposals may be rejected in writing by the State Procurement Director  
5 director or the agency procurement official.

6 (2) Before the rejection of a proposal by the director, the  
7 decision to reject the proposal may be validated with the evaluation  
8 committee that evaluated the proposal.

9 (3) A proposal may be rejected for failure to adhere to  
10 mandatory requirements.

11  
12 SECTION 11. Arkansas Code § 19-11-233 is amended to read as follows:  
13 19-11-233. Emergency procurements.

14 (a) The State Procurement Director, the head of a procurement agency,  
15 or a designee of either officer may make or authorize others to make  
16 emergency procurements as defined in § 19-11-204(4) and in accordance with  
17 regulations rules promulgated by the director.

18 (b)(1) A person or state agency that makes an emergency procurement  
19 under this section shall:

20 (A) Receive at least three (3) competitive bids unless the  
21 emergency is a critical emergency; and

22 (B) Complete a quotation abstract that includes the:  
23 (i) Names of the firms contacted;  
24 (ii) Time that each firm was contacted;  
25 (iii) Quoted price obtained from each contacted  
26 firm; and

27 (iv) Method used for contacting each firm.

28 (2) As used in this subsection, "critical emergency" means an  
29 emergency in which human life or health is imminently endangered.

30  
31 SECTION 12. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
32 amended to add additional sections to read as follows:

33 19-11-273. Solicitation conferences.

34 (a)(1) A state agency may hold a solicitation conference before or  
35 after issuing an invitation for bids, a request for proposals, or a request  
36 for statements of qualifications and performance data under § 19-11-801 et

1 seq.

2 (2) A solicitation conference may be held:

3 (A) In person; or

4 (B) Online or in another virtual format.

5 (b) Attendance by a vendor at a solicitation conference is not  
6 required for that vendor's bid, proposal, or statement of qualifications and  
7 performance data to be accepted unless the attendance requirement is:

8 (1) Explicitly stated in the invitation for bids, request for  
9 proposals, or request for statements of qualifications and performance data;  
10 and

11 (2) Approved by the State Procurement Director or the head of  
12 the procurement agency.

13 (c) A state agency holding a solicitation conference shall:

14 (1) For an invitation for bids or a request for proposals,  
15 include the date and time of the solicitation conference in the notice  
16 required under § 19-11-229;

17 (2) Require vendors in attendance at a solicitation conference  
18 to sign in at the solicitation conference or provide a registration record  
19 for an online or other virtual solicitation conference, regardless of whether  
20 attendance is required under the solicitation; and

21 (3) Maintain the sign-in sheet or registration records with the  
22 other documents related to the solicitation.

23 (d) A statement made at a solicitation conference does not change the  
24 invitation for bids, request for proposals, or request for statements of  
25 qualifications and performance data unless a change is made by written  
26 amendment to the invitation for bids, request for proposals, or request for  
27 statements of qualifications and performance data.

28 (e) A state agency is encouraged to hold a solicitation conference for  
29 a procurement that:

30 (1) Has a contract amount of at least:

31 (A) Five million dollars (\$5,000,000) for a single  
32 contract year; or

33 (B) Thirty-five million dollars (\$35,000,000) for the  
34 total anticipated term of the contract, including any extensions, based on  
35 the previous contract for the same commodities or services or, if a previous  
36 contract is not available, a contract for similar commodities or services; or

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

2  
3 19-11-274. Vendor training and polling.

4 The Office of State Procurement shall:

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

7 (B) The training required under subdivision (1)(A) of this  
8 section shall:

9 (i) Be offered throughout the state; and

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

12 (2) Periodically poll vendors that have been successful in  
13 securing business with the state and vendors that have not been successful in  
14 securing business with the state to solicit procurement feedback that can be  
15 used to improve vendor training.

16  
17 19-11-275. Requests for information.

18 (a) As used in this section, "request for information" means a  
19 procedure for formally requesting information, data, comments, or reactions  
20 from prospective bidders or offerors in contemplation of a possible  
21 competitive sealed bidding procurement under § 19-11-229 or a competitive  
22 sealed proposal procurement under § 19-11-230.

23 (b) The State Procurement Director, a head of a procurement agency, or  
24 a designee of the director or of a head of a procurement agency, may issue or  
25 authorize another person to issue a request for information.

26 (c) A request for information under this section shall be published in  
27 the same manner and location as an invitation for bids, a request for  
28 proposals, or a request for qualifications.

29 (d) A contract shall not be awarded directly from a request for  
30 information.

31 (e) Information provided in response to a request for information  
32 under this section is exempt from the Freedom of Information Act of 1967, §  
33 25-19-101 et seq., until:

34 (1) The bids for a competitive sealed bidding procurement are  
35 opened publicly;

36 (2) The notice of anticipation to award is given for a



1 competitive sealed proposal procurement; or

2 (3) A decision is made not to pursue a procurement based on the  
3 request for information.

4  
5 19-11-276. Training and certification of procurement personnel.

6 (a) The State Procurement Director shall establish a training and  
7 certification program to facilitate the training, continuing education, and  
8 certification of state agency procurement personnel.

9 (b) As part of the training and certification program required under  
10 this section, the director:

11 (1) Shall conduct procurement education and training for state  
12 agency employees and other public employees;

13 (2)(A) Shall establish a tiered core curriculum that outlines  
14 the minimum procurement-related training courses a state agency employee is  
15 required to complete for certification.

16 (B) The tiered core curriculum required under subdivision  
17 (b)(2)(A) of this section shall:

18 (i) Be designed to develop procurement competency;  
19 and

20 (ii) Create a uniform training approach for state  
21 agency employees ranging from entry-level procurement personnel to agency  
22 procurement officials;

23 (3) May charge a reasonable fee for each participant to cover  
24 the cost of providing the training required under this section;

25 (4) May conduct, develop, and collaborate with established  
26 training programs, if any, for the purpose of providing certifications of  
27 proficiency to state agency employees who complete the training and  
28 certification program;

29 (5) May conduct research into existing and new procurement  
30 methods; and

31 (6) May establish and maintain a state procurement library.

32 (c)(1) Beginning July 1, 2021, a state agency employee shall not  
33 conduct a procurement under this chapter unless the state agency employee is  
34 certified through the training and certification program required under this  
35 section.

36 (2) To maintain certification under this section, a state agency

1 employee shall complete a reasonable number of hours of continuing education,  
2 as provided for by rule by the director.

3 (d)(1) The director shall revoke the certification of a state agency  
4 employee who is certified under this section and who is determined to have  
5 knowingly violated state procurement laws, Arkansas Code Title 19, Chapter  
6 11.

7 (2) The director shall adopt rules regarding the procedure for  
8 revoking a state agency employee's certification under this section.

9  
10 SECTION 13. Arkansas Code § 19-11-802, concerning requests for  
11 statements of qualifications and performance data, is amended to add an  
12 additional subsection to read as follows:

13 (e)(1) A request for statements of qualifications and performance data  
14 under this section may be used for certain procurements through a request for  
15 qualifications other than legal, architectural, engineering, construction  
16 management, land surveying, and interior design services if the:

17 (A) State Procurement Director approves the use of a  
18 request for qualifications and determines that it is the most suitable method  
19 of procurement; and

20 (B) Approval of the director under subdivision (e)(1)(A)  
21 of this section is submitted to the Legislative Council for review.

22 (2) In determining whether a request for qualifications under  
23 this subsection is the most suitable method of procurement, the director  
24 shall consider, based on information submitted by the requesting state  
25 agency:

26 (A) Why the request for qualifications is the most  
27 suitable method of procurement;

28 (B) Why cost should not be considered in the procurement;  
29 and

30 (C) How the cost of the contract will be controlled if  
31 cost is not a factor in the procurement.

32  
33 SECTION 14. DO NOT CODIFY. Rules.

34 (a) When adopting the initial rules required under this act, the State  
35 Procurement Director shall file the final rules with the Secretary of State  
36 for adoption under § 25-15-204(f):

1 (1) On or before January 1, 2021; or

2                   (2) If approval under § 10-3-309 has not occurred by January 1,  
3    2021, as soon as practicable after approval under § 10-3-309.

4       (b) The director shall file the proposed rules with the Legislative  
5       Council under § 10-3-309(c) sufficiently in advance of January 1, 2021, so  
6       that the Legislative Council may consider the rules for approval before  
7       January 1, 2021.

8

9 /s/Wardlaw

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12 APPROVED: 3/11/19

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State of Arkansas

As Engrossed: S2/20/19

92nd General Assembly

## A Bill

Regular Session, 2019

HOUSE BILL 1179

By: Representative Wardlaw

By: Senator Flippo

### For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
AMEND ARKANSAS PROCUREMENT LAWS CONCERNING THE  
DELEGATION AUTHORITY OF THE STATE PROCUREMENT  
DIRECTOR; TO AMEND THE LAW CONCERNING PROTESTS OF  
SOLICITATIONS AND AWARDS UNDER THE ARKANSAS  
PROCUREMENT LAW; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE DELEGATION AUTHORITY OF THE  
STATE PROCUREMENT DIRECTOR; AND TO AMEND  
THE LAW CONCERNING PROTESTS OF  
SOLICITATIONS AND AWARDS UNDER THE  
ARKANSAS PROCUREMENT LAW.

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

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

19-11-218. Assistants and designees — Written delegation orders.

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

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

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

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



1 regulations.

2 (B) A written delegation order issued under this section  
3 shall:

4 (i) Include an expiration date for the written  
5 delegation order;

6 (ii) Be publicly posted on the official website of  
7 the Office of State Procurement;

8 (iii) Remain in effect under the original terms  
9 unless the terms of the written delegation order are modified or rescinded in  
10 writing by the director;

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

13 (v) Be narrowly tailored if the written delegation  
14 order is based on the type of commodity or service being procured.

15 (C) The director shall maintain records of each written  
16 delegation order issued under this section.

17 (D) A person who is to be given authority under a written  
18 delegation order issued under this section shall complete training on state  
19 procurement laws, as provided for in this subchapter and in the rules adopted  
20 by the director, before the written delegation order is issued.

21 (b) The director shall adopt rules to:

22 (1) Implement the requirements for written delegation orders  
23 under this section; and

24 (2) Outline the procurement training required under this  
25 section.

26  
27 SECTION 2. Arkansas Code § 19-11-244(a)(3), concerning the resolution  
28 of protested solicitations and awards under the Arkansas Procurement Law, is  
29 amended to read as follows:

30 (3) The protest shall be submitted in writing within fourteen  
31 (14) calendar days after the aggrieved person knows or should have known of  
32 the facts giving rise to the grievance award or notice of anticipation to  
33 award has been posted.

34 (4) A protest submitted by an aggrieved person under this  
35 section shall:

36 (A) Be limited to one (1) or more of the following

1 grounds:

2 (i) The award of the contract exceeded the authority  
3 of the director or the procurement agency;

4 (ii) The procurement process violated a  
5 constitutional, statutory, or regulatory provision;

6 (iii) The director or the procurement agency failed  
7 to adhere to the rules of the procurement as stated in the solicitation, and  
8 the failure to adhere to the rules of the procurement materially affected the  
9 contract award;

10 (iv) The procurement process involved responses that  
11 were collusive, submitted in bad faith, or not arrived at independently  
12 through open competition; or

13 (v) The award of the contract resulted from a  
14 technical or mathematical error made during the evaluation process; and

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

17  
18 SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of  
19 protested solicitations and awards under the Arkansas Procurement Law, is  
20 amended to read as follows:

21 (f) In the event of a timely protest under subsection (a) of this  
22 section, the state shall not ~~proceed further with the solicitation or with~~  
23 ~~the award of the contract until~~ execute a contract that is the result of the  
24 protested solicitation or award unless the director or the head of a the  
25 relevant procurement agency makes a written determination that the award  
26 execution of the contract without delay is necessary to protect substantial  
27 interests of the state.

28  
29 SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of  
30 protested solicitations and awards under the Arkansas Procurement Law, is  
31 amended to add an additional subsection to read as follows:

32 (h) An actual or prospective bidder, offeror, or contractor who is  
33 aggrieved by a protest submitted under this section that was without merit or  
34 intended purely to delay the award of a contract may bring a private cause of  
35 action for tortious interference with a business expectancy against the  
36 person or entity that submitted the protest.

SECTION 5. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the State Procurement Director shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

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

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

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

*/s/Wardlaw*

**APPROVED: 3/11/19**

State of Arkansas

As Engrossed: S2/20/19

92nd General Assembly

## A Bill

Regular Session, 2019

HOUSE BILL 1180

By: Representative Wardlaw

By: Senator Flippo

### For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
AMEND THE LAW CONCERNING STATE CONTRACTS; TO AMEND  
THE LAW CONCERNING COOPERATIVE PURCHASING; AND FOR  
OTHER PURPOSES.

### Subtitle

TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
AMEND THE LAW CONCERNING STATE CONTRACTS;  
AND TO AMEND THE LAW CONCERNING  
COOPERATIVE PURCHASING.

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

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

(1) ~~"Cooperative procurement"~~ "Cooperative purchasing agreement" means an agreement entered into as the result of a procurement conducted by, or on behalf of, more than one (1) public procurement unit or by a public procurement unit with an external procurement activity;

SECTION 2. 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)(1) In addition to establishing a state contract for those commodities, technical and general services, and professional and consultant





1 services within the exclusive jurisdiction of the State Procurement Director  
2 under § 19-11-222, the director may award a mandatory state contract for  
3 other commodities, technical and general services, and professional and  
4 consultant services ~~in those instances when substantial savings may be~~  
5 ~~effected by quantity purchasing of commodities, technical and general~~  
6 ~~services, or professional and consultant services in general use by several~~  
7 ~~state agencies when the director determines that combining the collective~~  
8 ~~purchasing power of the state would be beneficial to the state.~~

9 (2) The director shall submit a mandatory state contract that is  
10 not for commodities or services within the exclusive jurisdiction of the  
11 director to the Legislative Council or, if the General Assembly is in  
12 session, to the Joint Budget Committee, for review.

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

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

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

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

28 ~~(d) Except as authorized in this section, all state agencies which~~  
29 ~~require (b)(1) Unless an exemption is approved by the director under~~  
30 ~~subdivision (b)(2) of this section, a state agency that requires commodities,~~  
31 ~~technical and general services, and professional and consultant services that~~  
32 ~~are under a mandatory state contract shall procure these commodities,~~  
33 ~~technical and general services, and professional and consultant services~~  
34 ~~exclusively under such the mandatory state contract.~~

35 (2)(A) Except as provided in § 19-11-233, the director may  
36 approve an exemption from a mandatory state contract awarded under this

1 section only if the state agency demonstrates that substantial savings will  
2 likely be effected by purchasing outside of the mandatory state contract.

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

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

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

12 (d) The director shall:

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

15 (2) Conduct mandatory state contract procurements under this  
16 section that would produce savings for the state;

17 (3) Attempt to invite the participation of the potentially  
18 affected state agencies in the development and evaluation of a mandatory  
19 state contract procurement;

20 (4) Post notice of his or her intent to procure a mandatory  
21 state contract on the official website of the Office of State Procurement;  
22 and

23 (5)(A) Promote the use of mandatory state contracts among county  
24 and city governments, including without limitation making information about  
25 the mandatory state contracts readily available and searchable.

26 (B) The director shall adopt rules to include any  
27 necessary conditions, reporting, or document retention standards related to  
28 the director's duty to promote mandatory state contract use under this  
29 subsection.

30  
31 SECTION 3. Arkansas Code § 19-11-249 is amended to read as follows:  
32 19-11-249. Cooperative purchasing.

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

1 between the participants.

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

9 (B)(i) For cooperative purchasing agreements entered into  
10 by a state agency, the State Procurement Director shall consider the economic  
11 justification for using a cooperative purchasing agreement when granting or  
12 withholding approval for the cooperative purchasing agreement.

13 (ii) The State Procurement Director shall adopt  
14 rules to create a review policy outlining how the economic justification  
15 required under this section may be demonstrated, including without limitation  
16 a comparison of:

17 (a) Current state contract pricing and the  
18 pricing under a cooperative purchasing agreement; or

19 (b) Information obtained from a request for  
20 information and pricing under a cooperative purchasing agreement.

21 (C) The State Procurement Director and the Director of the  
22 Department of Finance and Administration shall submit any request for the  
23 Office of State Procurement or the Department of Finance and Administration,  
24 respectively, to participate in a cooperative purchasing agreement to the  
25 Governor for approval.

26 (b)(1)(A) The State Procurement Director shall present a quarterly an  
27 annual report of all purchases made under cooperative purchasing agreements  
28 by a state agency without an agency procurement official under this section  
29 to the Legislative Council or, if the General Assembly is in session, to the  
30 Joint Budget Committee.

31 (B) A state agency that has an agency procurement official  
32 shall present an annual report of all purchases made under cooperative  
33 purchasing agreements under this section to the Legislative Council or, if  
34 the General Assembly is in session, to the Joint Budget Committee.

35 (2) The report reports required under this subsection shall be  
36 in the format required by the Legislative Council and shall include the

1 following:

- 2 (A) The name of the contractor;  
3 (B) The name of the procuring agency;  
4 (C) The contact information for the contractor and  
5 procuring agency;  
6 (D) The total cost of the contract, including all  
7 available extensions;  
8 (E) A description of the goods or services procured; and  
9 (F) Any other information requested by the Legislative  
10 Council or the Joint Budget Committee.

11  
12 SECTION 4. DO NOT CODIFY. Rules.

13 (a) When adopting the initial rules required under this act, the State  
14 Procurement Director shall file the final rules with the Secretary of State  
15 for adoption under § 25-15-204(f):

- 16 (1) On or before January 1, 2020; or  
17 (2) If approval under § 10-3-309 has not occurred by January 1,  
18 2020, as soon as practicable after approval under § 10-3-309.

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

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24  
25 /s/Wardlaw

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28 **APPROVED: 3/11/19**  
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