Findings and Recommendations List

Ikaso Consulting

January 2025

Findings Roster

A complete list of Ikaso's 16 findings is provided below. Each of these findings informs recommendations within the following "Recommendations Roster" section.

Finding Overview	
1	Rules and policies do not always align to statutory requirements, and at times are in conflict with them.
2	Rules suffer in places from repetition, duplication, and are occasionally not located in the most logical order or grouping.
3	Rules and policies suffer in places from a lack of clarity, and at times contain guidance that is at risk of creating negative outcomes.
4	Rules do not always include needed or helpful guidance on how to implement and/or apply statute.
5	The State's Procurement Manual and policies could benefit from addressing additional topics and providing further guidance in various areas.
6	Policy does not thoroughly describe statutory and regulatory requirements in a way that is useful for individuals not previously immersed in the procurement process.
7	Policy documents at times use different terminology for certain types of procurements than as seen in statute and rule.
8	Policy documents could benefit from more explanation of legislative review requirements for procurements.
9	Training materials do not fully cover the requirements of the procurement process in a way that allows individuals not previously immersed within it to lead procurements with comfort.
10	Agency staff could benefit from intensive in-person procurement training.
11	Templates contain some written inconsistencies when compared to statute and rule.
12	Templates are not available for some phases of the procurement process.
13	Two separate RFP processes exist. Some agency staff indicate greater comfort with the "traditional" RFP process and less comfort with the MAP RFP process.
14	The MAP RFP process may benefit from certain updates.
15	RFPs very frequently weigh cost at 30% of evaluation criteria.
16	Some procurements are out for bid for a relatively short period of time.

Recommendations Roster

A complete list of Ikaso's 60 recommendations is below. Each recommendation is grouped within one of 10 categories based on subject relevancy. These 10 categories are:

I. General Findings and Observations
II. Solicitations
III. Procurement Method Selection
IV. Procurement Development
V. Evaluation
VI. Award
VII. Protest
VIII. Negotiations
IX. Contract Management
X. Committee Review

I. General Findings and Observations

Section I Recommendation Overview	
I-1	The level of depth of information covered by the Arkansas Procurement Manual and related policies should be significantly increased so that it can serve as the central source of procurement information for all phases of the process, and so that it can direct the reader to supplemental policy documents, trainings, and templates that are necessary for the successful completion of the procurement process. As part of this practice, all related policy documents should be updated as well. This is especially important for the benefit of individuals not fully immersed in the procurement process as part of their daily work. As it currently stands, many critical topics are only touched on at a base level in the manual, and other topics are not discussed at all.
I-2	A periodic review of all policy and guidance should be conducted to ensure clarity among end-users, and alignment with statute and rule after any updates to statute or rule.
I-3	An increased level of detail should be provided in the available procurement training modules in support of individuals who are not already fully immersed in the procurement process.
I-4	In-depth procurement training should be provided on all steps of the process, either in recurring in-person sessions or via online course, to all agencies conducting RFPs.

II. Solicitations

Section II Recommendation Overview

II-1	All Policy documents should use consistent terminology when referring to a specific type of procurement. For example, currently, "Small Procurements" are currently referred to as "Small Orders" and "Small Order Procurements" in certain policy locations.
II-2	The "Printing Delegation Order Manual" should be updated to reflect that three bids must be obtained only when a commodity is less than or equal to $75,000, in line with statute. Currently it implies that three bids are always required.
II-3	Agencies should be given clear guidance, in the Procurement Manual and other locations as relevant, to approach OSP with any procurement related questions.
II-4	Any agency leading a solicitation should be required to submit advance notice to OSP of the solicitation.
II-5	Any agency leading a solicitation should be explicitly required to adhere to OSP's guidance and policy on technical and cost scoring.
II-6	19-11-279 should have an additional rule added that allows mandatory responses to a RFI as a precondition to respond to a subsequent IFB or RFP - with prior approval - similar to how Solicitation Conferences attendance may be made mandatory under 19-11-277. The existing statute is silent on the subject, and adding this allowance via rule can help ensure the State is able to fully access informational responses in certain circumstances where the most experienced vendors may have an incentive to otherwise "sit on the sidelines" and avoid sharing useful information.
II-7	R1: 19-11-232(f) should be updated to make clear what is required in the case of Sole Source by Law. Currently this part of the rule appears to be a definition and does not comprise any clear guidance.

III. Procurement Method Selection

Section III Recommendation Overview	
III-1	R2: 19-11-230.1 should be updated to speak to the fact that statute 19-11-229(b)(1) requires formal justification for the use of Competitive Sealed Proposals, where Competitive Sealed Bidding must be used unless a determination is made in writing that this method is not practicable and advantageous.
III-2	Guidance should be developed on when to use the MAP process and when to use traditional RFPs, based on the unique characteristics of each method, and how they best fit different solicitation needs.
III-3	Pending a legislative action to clarify a likely typographic error in 19-11-802(c)(2), the statute may be clarified through a new rule stating "A political subdivision shall not use competitive bidding for the procurement of other professional services without a two-thirds (2/3) vote of its governing body."

III-4	R1: 19-11-249 should be updated to clarify how the economic justification should be calculated per statutory guidance in 19-11-249(a)(2)(B)(ii).

IV. Procurement Development

Section IV Recommendation Overview	
IV-1	Specific training on Scope of Work development should be developed and delivered to individuals involved in the RFP process.
IV-2A	Policy should be updated with guidelines for solicitations with multiple scopes that may be awarded separately, to ensure award under all possible scoring scenarios is clearly laid out in the solicitation materials.
IV-2B	Separate scope requirements for solicitations with multiple scopes should be clearly and independently defined.
IV-3	Specific guidance should be developed and implemented in relation to expectations for respondent experience and minimum company size requirements for procurements.
IV-4	Formal guidance should be provided on establishing the timing between solicitation posting and the response deadline, including in cases where an RFP is reissued after an initial posting.

V. Evaluation

Section V Recommendation Overview	
V-1	Evaluator Training for Procurements should be standardized so that the same information is provided every time a procurement is conducted.
V-2	R8: 19-11-229(2)(E) should be updated to simply refer forward to R1: 19-11-235, which specifically covers responsibility of bidders and offerors.
V-3A	The concept of Responsibility of Offeror contemplated in the title of R5: 19-11-230(b) should be addressed by replacing the first sentence with a simple reference forward to R1: 19-11-235, which specifically covers responsibility of bidders and offerors.
V-3B	The remaining content of R5: 19-11-230(b) should be re-numbered as R5: 19-11-230(c) and re-titled to "Past Performance of Offeror" to match the content of the rule. Current R5: 19-11-230(c) and R5: 19-11-230(d) should be renumbered accordingly.
V-4A	R9: 19-11-229(5) should be updated to make it clear that a procurement official may determine a bid is either too high (“unreasonable”) relative to the bid requirements, or too low (“unrealistic”) relative to successfully meeting the bid requirements.

V-4B	R6: 19-11-230(3) should be updated to make it clear that a procurement official may determine a bid is either too high (“unreasonable”) relative to the solicitation requirements, or too low (“unrealistic”) relative to successfully meeting the solicitation requirements.
V-5	Formal policy should be developed for determining the reasonableness and realism of cost proposals within solicitations.
V-6A	R8: 19-11-230.1(d) should be updated to specifically mention cost as one of the criteria that must be considered as part of establishing a competitive range.
V-6B	The currently recommended practice of considering the cost of all proposals during initial RFP evaluation, and not shortlisting until every cost submission has been considered, should be clearly specified in policy, training, and templates.
V-7	The Policy on the Evaluation of Proposals should be updated in relation to cost weighting requirements to accurately specify the minimum of 30%. Currently it indicates that price can be weighted between 0% and 51%. However, per statute, it is a requirement that this percentage is no lower than 30%.
V-8	R8: 19-11-230.1(g)(2)(I) regarding evaluation of clarified proposals should be relocated into R5: 19-11-230(a) (Evaluation).
V-9	R8: 19-11-230.1(b) should be updated to add a new third sentence in the rule to prevent contradiction with statute 19-11-230(f)(2) that disallows substantial changes to proposals as a part of proposal clarifications. The new third sentence should read “Clarifications to the content of submitted proposals must only address specific elements of the proposal, without adding substantive language, and may not allow modifications to the terms of the submitted proposal.”
V-10	R10: 19-11-229(a)(3) should be clarified to state that confirmed mistakes may be withdrawn by the bidder. Alternately, R10: 19-11-229(a)(4) should be clarified to say that "Actual" bid prices shall not be increased..." or "Bid prices (including as may be corrected following a suspected mistake under R10: 19-11-229(a)(3)) shall not be increased...".
V-11	Clarification guidance in R7: 19-11-230 should be updated to be explicit about the statutory requirement in 19-11-230(f)(2) that "A written response by an offeror under this subsection shall only clarify the submitted proposal and shall not add any substantive language to the submitted proposal or change the terms of the submitted proposal."
V-12	Rule R8: 19-11-230.1(g)(1)(D) regarding Best and Final Offers (BAFOs) for unclear or deficient responses should be removed. Clarifications are a separate topic from BAFOs, and any potential deficiency is already addressed by clause (A) within this rule.
V-13	R8: 19-11-230.1(g)(2)(C) regarding BAFO negotiations with non-responsible offerors should be removed. Non-responsible offerors should be removed before this stage of the process.
V-14	R5: 19-11-230(c) should be updated to reflect the statutory requirement in 19-11-230(g)(3). Tie scores should be resolved with award to the offeror that submitted the lowest price proposal, not settled with a coin flip.

VI. Award

Section VI Recommendation Overview	
VI-1	The rules for 19-11-230 should be supplemented with a rule on award parallel to R11: 19-11-229(a) for Competitive Sealed Bidding.
VI-2	The policy document on the Anticipation to Award process should be updated to accurately reflect the start of the protest period. Currently, it implies that the 14-day protest period for respondents in relation to a procurement begins the day of the award posting. However, per statute 19-11-244, this period is to begin the day after posting of the award.

VII. Protest

Section VII Recommendation Overview	
VII-1	The Procurement Manual should be updated to speak to administrative protest determination, ensuring that it states the reasons for the action taken as statutorily required by 19-11-244(c)(2).
VII-2	R4: 19-11-244 should be updated to explicitly allow negotiations to proceed during a protest, to ensure time is not lost and the State is not fully stymied by the simple existence of a protest. The statute implies that negotiations can proceed based on the allowance for full execution of protested contracts in certain circumstances.
VII-3	R2: 19-11-244.2 should be updated to specifically mention the statutory requirement in 19-11-244(a)(2)(B) that protesting parties must give notice to the awardee.
VII-4	R4: 19-11-244 should be updated to speak to how a solicitation is affected by a solicitation protest. As it stands, this rule only addresses how a solicitation is affected by an award protest.

VIII. Negotiations

Section VIII Recommendation Overview	
VIII-1	The negotiation process should be addressed more clearly in policy, with training and guidance on the subject for agencies conducting procurements.
VIII-2	R15: 19-11-229(a) should be updated to accurately reflect statutory requirements that negotiations may only be conducted by trained personnel. Rule says "Procurement officials who conduct negotiations should be trained...". Statute says: 19-11-229(h)(2)(C)(i): "Negotiations under this subsection shall be conducted by a person who is trained and certified in negotiation and procurement processes."

VIII-3	The elements of R8: 19-11-230.1 should be reordered to follow a more logical sequential order of: a, b, e, d, c, f. (Note that this reflects the net impact of separate recommendations for collapsing certain current rule elements together, and adding other rule elements.)
VIII-4	R8: 19-11-230.1(c)(4) should be updated to remove the words "not responsible or is otherwise" and also "responsibility and" to reflect the fact that offeror responsibility is not relevant to negotiation as addressed in this rule. Any proposal from an offeror that is not responsible should have been rejected before this stage of the process.
VIII-5	R8: 19-11-230.1(d) should remove the clause "For example, and not by limitation, a request for proposals may provide that only the three highest ranked vendors are eligible for negotiation." to avoid the potential for arbitrary elimination of proposals that are very close in score to proposals included within a competitive range.
VIII-6	R8: 19-11-230.1(d)(1)(5) should have the numbered list of criteria for selecting the competitive range removed in favor of simply citing the final criterion - evaluation scores. The other items in the list are not practicable to use as criteria for setting a competitive range.
VIII-7	R8: 19-11-230.1(g) on BAFO Negotiation should be incorporated into R8: 19-11-230.1(c) (Negotiation) as a related subtopic.
VIII-8	R8: 19-11-230.1(h) on Target Price (BAFO) should be incorporated into R8: 19-11-230.1(c) (Negotiation) as a related subtopic.

IX. Contract Management

Section IX Recommendation Overview	
IX-1	The fillable contract form, "Services-Contract-SRV-1-Fillable-Form-V.3.6.27.22" should be updated. Currently, the monetary benefits clause is worded differently than the requirements in statute 19-11-1012.
IX-2	R3: 19-11-245(d) should be simplified to be less onerous and ensure that worthwhile debarments are not avoided due to procedural hurdles.
IX-3	R1: 19-11-245 and R2: 19-11-245 should be updated to require that any agency suspension or debarment action be done in consultation with OSP, to ensure consistency of action, centralized record-keeping within OSP, and sharing of information across all State agencies by OSP.
IX-4	R2: 19-11-245 should be updated to parallel R1: 19-11-245, adding a subsection (b) that addresses the provision of a written determination of debarment to the person in question.
IX-5	R2: 19-11-245 should be clarified as to whether a debarment action must first be preceded by a suspension action. As-written, the rule presupposes that suspension must proceed debarment, but this is not otherwise clearly stated.

IX-6	R1: 19-11-246 should be updated to remove the stipulation that the "Declaration of default and/or contract termination may only be determined by the procurement official who awarded the contract". This is unnecessarily restrictive and could contradict statute 19-11-246(c)(1).
IX-7	R1: 19-11-268 should be updated to ensure guidance on vendor performance reports is as-intended, given the requirement for quarterly performance reports for all contracts over $25K is more stringent than statute and has the potential to create a large volume of paperwork that could distract attention from contracts with vendor performance issues.

X. Committee Review

Section X Recommendation Overview	
X-1	Policy documents should be updated to clearly state and explain legislative review requirements for all procurements, in alignment with statute and rule.
X-2	R1: 19-11-269 should be reconciled with R3: 19-11-1008, which overlap. R1: 19-11-269 should contain the definitive language and R3: 19-11-1008 should simply refer back to R1: 19-11-269.