

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas *As Engrossed: S2/12/01 S2/14/01 S2/19/01 H3/14/01*

83rd General Assembly

A Bill

Regular Session, 2001

SENATE BILL 358

By: Senator Mahony

By: Representative Willis

For An Act To Be Entitled

AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
PURCHASING LAW.

Subtitle

AN ACT TO AMEND VARIOUS SECTIONS OF THE
ARKANSAS PURCHASING LAW.

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

SECTION 1. Arkansas Code 19-11-201 is amended to read as follows:
19-11-201. Title.

This subchapter shall be referred to as the "Arkansas ~~Purchasing~~
Procurement Law".

SECTION 2. Arkansas Code 19-11-203 is amended to read as follows:
19-11-203. Definitions generally.

As used in this subchapter, unless the context otherwise requires:

(1) "Agency ~~purchasing~~ procurement official" means any person
authorized by a state agency to enter into and administer contracts and make
written determinations and findings with respect thereto in accordance with
procedures prescribed by this subchapter and the regulations promulgated under
it. The term also includes an authorized representative acting within the
limits of authority;

(2) "Business" means any corporation, partnership, individual, sole
proprietorship, joint-stock company, joint venture, or any other legal entity;

(3) "Capital improvement" means all lands, buildings, structures,

1 utilities, on-site and off-site improvements, and other appurtenant
2 improvements, existing or future, and all construction, repairs, alterations,
3 and renovations thereof which are undertaken, owned, operated, or otherwise
4 managed by a state agency. Capital improvements shall not include construction
5 and reconstruction of roads and bridges in the state highway system by the
6 State Highway Commission, nor shall the term capital improvements include any
7 building, facility, plant, structure, or other improvements constructed by, or
8 in behalf of, the Arkansas State Highway and Transportation Department or the
9 State Highway Commission;

10 (4) "~~Purchasing~~ Procurement agent" means any person authorized by a
11 state agency not having an agency ~~purchasing~~ procurement official to enter
12 into and administer contracts and make written determinations and findings
13 with respect thereto in accordance with procedures prescribed by this
14 subchapter. The term also includes an authorized representative acting within
15 the limits of authority;

16 (5) "Commodities" means all property, including, but not limited to,
17 equipment, printing, stationery, supplies, and insurance but excluding leases
18 on real property, excluding real property or a permanent interest in real
19 property, excluding exempt commodities and services, and excluding capital
20 improvements;

21 (6) "Contract" means all types of state agreements, regardless of what
22 they may be called, for the purchase of commodities and services and for the
23 disposal of surplus commodities and services not otherwise exempt. It includes
24 awards and notices of award, contracts of a fixed-price, cost, cost-plus-a-
25 fixed-fee, or incentive type, contracts providing for the issuance of job or
26 task orders, leases, letter contracts, and purchase orders. It also includes
27 supplemental agreements with respect to any of these items;

28 (7) "Contract modification" means any written alteration in
29 specifications, delivery point, rate of delivery, period of performance,
30 price, quantity, or other provisions of any contract accomplished by mutual
31 action of the parties to the contract;

32 (8) "Contractor" means any person having a contract with a state
33 agency;

34 (9) "Data" means recorded information, regardless of form or
35 characteristic;

36 (10) "Debarment" means the disqualification of a person to receive

1 invitations for bids or requests for proposals or the award of a contract by
2 the state for a specified period of time commensurate with the seriousness of
3 the offense or the failure or the inadequacy of performance;

4 (11) "Designee" means a duly authorized representative of a person
5 holding a superior position;

6 (12) "Electronic" means electrical, digital, magnetic, optical, or any
7 other similar technology;

8 ~~(12)~~(13) "Employee" means an individual drawing a salary from a state
9 agency, whether elected or not, and any nonsalaried individual performing
10 personal services for any agency;

11 ~~(13)~~(14) "Exempt agencies" means the constitutional departments of the
12 state, including the Legislative Council and the Legislative Joint Auditing
13 Committee;

14 ~~(14)~~(15) "Exempt commodities and services" means:

15 (A) Advertising in newspapers, periodicals, and related
16 publications, television, radio, ~~and~~ billboards and electronic media;

17 (B) Animals procured for medical research;

18 (C) Commodities procured for resale in cafeterias, commissaries,
19 bookstores, gift shops, canteens, and other similar establishments. However,
20 such commodities procured shall not be sold or transferred to any agency with
21 the intent of circumventing applicable procurement procedures;

22 (D) Commodities procured from nonprofit workshops in accordance
23 with §§ 19-11-501 - 19-11-504;

24 (E) Contracts awarded by agencies for the construction of
25 buildings and facilities and for major repairs. These contract exemptions
26 shall not extend to the procurement of any commodities not otherwise exempt,
27 which are to be furnished by the agency under any such contract;

28 (F) Contracts awarded by the Arkansas State Highway and
29 Transportation Department for the construction, reconstruction, and
30 maintenance of roads and bridges in the state highway system and for the
31 county, rural road aid, and city street aid programs;

32 (G) Contracts by institutions of higher learning for ~~disposal of~~
33 personal and consulting services and contracts with students;

34 (H) Farm products procured or sold by a state agency having an
35 agency ~~purchasing~~ procurement official. The current trade customs with respect
36 to the procurement or sale of cotton, cotton seed, rice, and other farm

1 products shall be followed when it is necessary to do so in order to obtain
2 the best price for the commodities procured or sold;

3 (I) Fees, including medical fees and physician fees;

4 (J) Freight and storage charges and demurrage;

5 (K) Licenses required prior to performance of services;

6 (L) Livestock procured by an agency having an official
7 experienced in selection and procurement of livestock. Such procurement will
8 be reported to the State ~~Purchasing~~ Procurement Director, giving details of
9 the purchase;

10 (M) Livestock procured for breeding, research, or experimental
11 purposes;

12 (N) Maintenance on office machines and technical equipment;

13 (O) Medical items specifically requested by a physician for
14 treatment or diagnosis of patients in his care, including prosthetic devices,
15 surgical instruments, heart valves, pacemakers, radioisotopes, and catheters;

16 (P) Membership in professional, trade, and other similar
17 associations;

18 (Q) Perishable foodstuffs for immediate use or processing;

19 (R) Postage;

20 (S) Published books, manuals, maps, periodicals, films, technical
21 pamphlets, and copyrighted educational aids for use in libraries and for other
22 informational or instructional purposes in instances in which other applicable
23 law does not provide a restrictive means for the acquisition of them;

24 (T) Services of visiting speakers, lecturers, and performing
25 artists;

26 (U) Taxes;

27 (V) Travel expense items such as room and board and
28 transportation charges;

29 (W) Utility services or equipment which is defined, recognized,
30 and regulated by the Arkansas Public Service Commission as a monopoly
31 offering;

32 (X) Works of art for museum and public display;

33 (Y) Professional and consultant services procured in accordance
34 with § 19-4-101 et seq.; and

35 (Z) Commodities and services for use in research, education, and
36 treatment for the diagnosis, cure, and prevention of disease may be procured,

1 with administrative approval, through a group purchasing entity serving other
2 public health institutions when substantial savings are available. A report
3 shall be filed annually with the Division of Legislative Audit reflecting the
4 justification of and the estimated savings accruing due to the use of this
5 exemption.

6 ~~(15)~~(16) "Grant" means the furnishing by the state of assistance,
7 whether financial or otherwise, to any person to support a program authorized
8 by law. It does not include an award whose primary purpose is to procure an
9 end product, whether in the form of commodities or services. A contract
10 resulting from such an award is not a grant but a procurement contract;

11 ~~(16)~~(17) "May" means the permissive;

12 ~~(17)~~(18) "Person" means any business, individual, union, committee,
13 club, or other organization or group of individuals;

14 ~~(18)~~(19) "Political subdivisions" means counties, municipalities, and
15 school districts;

16 ~~(19)~~(20) "Procurement" means the buying, purchasing, renting, leasing,
17 or otherwise obtaining of any commodities or services. It also includes all
18 functions that pertain to the obtaining of any public procurement, including
19 description of requirements, selection and solicitation of sources,
20 preparation and award of contract, disposal of commodities, and all phases of
21 contract administration;

22 ~~(20)~~(21) "Public funds" means all state-appropriated and cash funds of
23 state agencies, as defined by applicable law or official ruling. Public funds
24 for purposes of this subchapter shall not include funds administered by, or
25 under the control of, agencies, except public funds. Without necessarily being
26 limited thereto, it does not include grants, donations, research contracts,
27 and revenues derived from self-supporting enterprises which are not operated
28 as a primary function of the agency, no part of which funds are deposited in
29 the State Treasury;

30 (22) "Public Notice" means the distribution or dissemination of
31 information to interested parties using methods that are reasonably available.
32 Such methods will often include publication in newspapers of general
33 circulation, electronic or paper mailing lists, and web sites designated by
34 the State of Arkansas and maintained for that purpose;

35 ~~(21)~~(23) "Purchase request" means that document written or electronic
36 whereby a using agency requests that a contract be obtained for a specified

1 need. It may include, but is not limited to, the technical description of the
 2 requested item, delivery schedule, transportation, criteria for evaluation of
 3 solicitees, suggested sources of supply, and information supplied for the
 4 making of any written or electronic determination and finding required by this
 5 subchapter;

6 ~~(22)~~(24) "Purchasing Procurement agency" means any state agency which
 7 is authorized by this subchapter, its implementing regulations, or by way of
 8 delegation from the State Purchasing Procurement Director to contract on its
 9 own behalf rather than through the central contracting authority of the State
 10 Purchasing Procurement Director;

11 ~~(23)~~(25) "Services" means the furnishing of labor, time, or effort by a
 12 contractor, not involving the delivery of a specific end product other than
 13 reports which are merely incidental to the required performance. This term
 14 shall not include employment agreements, collective bargaining agreements,
 15 exempt commodities and services, or architectural or engineering contracts
 16 requiring approval of Arkansas State Building Services;

17 ~~(24)~~(26) "Shall" means the imperative;

18 ~~(27)~~ "Signature" means a manual or an electronic or digital method
 19 executed or adopted by a party with the intent to be bound by or to
 20 authenticate a record which is:

21 (A) Unique to the person using it;

22 (B) Capable of verification;

23 (C) Under the sole control of the person using it; and

24 (D) Linked to data in such a manner that if the data are changed,
 25 the electronic signature is invalidated;

26 ~~(25)~~(28) "State agency" means any office, department, commission,
 27 council, board, bureau, committee, institution, legislative body, agency,
 28 government corporation, or other establishment or official of the executive,
 29 judicial, or legislative branch of this state, except exempt agencies in their
 30 procurement of items not subject to Arkansas Constitution, Amendment 54.

31 "State agency" includes exempt agencies when any agency or exempt agency
 32 procures any item subject to Arkansas Constitution, Amendment 54;

33 ~~(26)~~(29) "State contract" means a contract for the procurement of
 34 commodities or services in volume, awarded by the State Purchasing Procurement
 35 Director. The contract may apply to all or part of the state;

36 ~~(27)~~(30) "State Purchasing Procurement Director" means the person

1 holding the position created in § 19-11-216, as the head of the central
2 purchasing procurement office of the State of Arkansas;

3 ~~(28)~~(31) "Suspension" means the disqualification of a person to receive
4 invitations for bids or requests for proposals, or the award of a contract by
5 the state, for a temporary period pending the completion of an investigation,
6 and any legal proceedings that may ensue because a person is suspected upon
7 probable cause of engaging in criminal, fraudulent, or seriously improper
8 conduct or failure or inadequacy of performance which may lead to debarment;

9 ~~(29)~~(32) "Using agency" means any state agency which utilizes any
10 commodities or services purchased under this subchapter;

11 (33) "Written" or "in writing" means the product of any method of
12 forming characters on paper, other materials, or viewable screens, which can
13 be read, retrieved, and reproduced, including information that is
14 electronically transmitted and stored;

15 ~~(30)~~(34) "Paper product" means any item manufactured from paper or
16 paperboard; and

17 ~~(31)~~(35) "Recycled paper" means paper which contains recycled fiber in
18 a proportion specified by the State Purchasing Procurement Director.

19
20 SECTION 3. Arkansas Code 19-11-204 is amended to read as follows:

21 19-11-204. Definitions concerning source selection and contract
22 formation.

23 As used in this subchapter, unless the context otherwise requires:

24 (1) "Competitive sealed bidding": See § 19-11-229(a);

25 (2) "Competitive sealed proposals": See § 19-11-230(a);

26 (3) "Established catalogue price" means the price included in a
27 catalogue, price list, schedule, or other form that:

28 (A) Is regularly maintained by a manufacturer or contractor;

29 (B) Is either published or otherwise available for inspection by
30 customers; and

31 (C) States prices at which sales are currently or were last made
32 to a significant number of buyers constituting the general buying public for
33 the commodities or services involved;

34 (4) "Invitation for bids" means all documents, or electronic media
35 whether attached or incorporated by reference, utilized for soliciting bids in
36 accordance with the procedures set forth in § 19-11-229, which refers to

1 competitive sealed bidding;

2 (5) "Purchase description" means specifications or any other document
3 or electronic media describing the commodities or services to be procured;

4 (6) "Request for proposals" means all documents, or electronic media
5 whether attached or incorporated by reference, utilized for soliciting
6 proposals in accordance with the procedures set forth in § 19-11-230, which
7 refers to competitive sealed proposals, § 19-11-231, which refers to small
8 ~~purchases~~ procurements § 19-11-232, which refers to proprietary or sole source
9 procurements, § 19-11-233, which refers to emergency procurements, or § 19-11-
10 234, which refers to competitive bidding;

11 (7) "Responsible bidder or offeror" means a person who has the
12 capability in all respects to perform fully the contract requirements, and the
13 integrity and reliability which will assure good faith performance;

14 (8) "Responsive bidder" means a person who has submitted a bid under §
15 19-11-229, which refers to competitive sealed bidding, which conforms in all
16 material respects to the invitation for bids, including the specifications set
17 forth in the invitation;

18 (9) "Emergency procurement" means the acquisition of commodities or
19 services which, if not immediately initiated, will endanger human life or
20 health, state property, or the functional capability of a state agency;

21 (10) "Small ~~purchases~~ procurements means any procurement not exceeding
22 a purchase price of ~~one thousand dollars (\$1000)~~ five thousand dollars
23 (\$5000). Small purchases may be procured without seeking competitive bids or
24 competitive sealed bids; however, competition should be used to the maximum
25 extent practicable. Items under state contract are excluded;

26 (11) "Competitive bidding": See § 19-11-234(a); and

27 (12) "Multiple award contracts" means a method of procurement whereby
28 an indefinite quantity contract is awarded to more than one (1) supplier for
29 furnishing a like item or category of items.

30
31 SECTION 4. Arkansas Code 19-11-206 is amended to read as follows:

32 19-11-206. Definitions concerning intergovernmental relations.

33 As used in this subchapter, unless the context otherwise requires:

34 (1) "State public procurement unit" means the Office of State
35 ~~Purchasing~~ Procurement and any other ~~purchasing~~ procurement agency of this
36 state;

(2) "Local public procurement unit" means:

(A) Any county, city, town, state agency, and any other subdivision of the state or public agency thereof;

(B) Any fire protection district;

(C) Any regional water distribution district;

(D) Any rural development authority;

(E) Any public authority;

(F) Any public educational, health, or other institution;

(G) Any nonprofit corporation during such time that it contracts with the Division of Developmental Disabilities Services of the Department of Human Services to provide services to the developmentally disabled, provided such contract exceeds seventy-five thousand dollars (\$75,000) per year;

(H) Any nonprofit corporation providing fire protection services to a rural area or providing drinking water to the public in a rural area;

(I) Any nonprofit corporation which contracts with the Department of Human Services, provided that the contract includes provisions for transportation services and the contract exceeds seventy-five thousand dollars (\$75,000) per year; and

(J) To the extent not prohibited by law, any other entity which expends public funds for the acquisition or leasing of commodities and services;

(3) "Public procurement unit" means either a local public procurement unit or a state public procurement unit;

(4) "External procurement activity" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the federal government is an external procurement activity; and

(5) "Cooperative purchasing procurement" means 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 5. Arkansas Code 19-11-208 is amended to read as follows:

19-11-208. Exemptions.

Commodities and services need not be procured through the Office of State Purchasing Procurement if procured by the out-of-state offices of state agencies for that out-of-state office's use but shall, nevertheless, be

1 procured subject to the requirements of this subchapter and the state
2 procurement regulations.

3
4 SECTION 6. Arkansas Code 19-11-214 is amended to read as follows:

5 19-11-214. Determinations and findings.

6 Written determinations and findings required by this subchapter shall be
7 retained in an official contract file by the Office of State ~~Purchasing~~
8 Procurement or by the state agency administering the contract for a period of
9 five (5) years.

10
11 SECTION 7. Arkansas Code 19-11-215 is amended to read as follows:

12 19-11-215. Office of State ~~Purchasing~~ Procurement.

13 There is created within the Department of Finance and Administration an
14 Office of State ~~Purchasing~~ Procurement to be administered by the State
15 ~~Purchasing~~ Procurement Director. The office shall be subject to the
16 supervision and management of the Director of the Department of Finance and
17 Administration, and the rules and regulations authorized in this subchapter
18 shall be approved by the director prior to filing of the rules and regulations
19 in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et
20 seq.

21
22 SECTION 8. Arkansas Code 19-11-216 is amended to read as follows:

23 19-11-216. State ~~Purchasing~~ Procurement Director.

24 (a) Appointment.

25 (1) The executive head of the Office of State ~~Purchasing~~
26 Procurement is designated as the Administrator of the Office of State
27 ~~Purchasing~~ Procurement, and as such, he shall be known and designated as the
28 State ~~Purchasing~~ Procurement Director.

29 (2) The administrator shall be appointed by the Director of the
30 Department of Finance and Administration.

31 (b) Qualifications. The administrator shall be at least thirty (30)
32 years of age, of good moral character, and of demonstrated ability or capacity
33 in the field of purchasing commodities.

34 ~~(c) Bond.~~

35 ~~(1) The administrator shall furnish bond, with a corporate surety~~
36 ~~thereon, to the State of Arkansas, in a sum determined by the Director of the~~

~~Department of Finance and Administration, conditioned upon the faithful performance of the duties of employment and for the proper accounting of all funds received and disbursed by the administrator.~~

~~(2) The original of the bond shall be filed in the office of the Director of the Department of Finance and Administration.~~

~~(3) The premiums on the bond shall be paid from appropriations made available to the Office of State Purchasing.~~

SECTION 9. Arkansas Code 19-11-217 is amended to read as follows:

19-11-217. Powers and duties of director.

(a) Principal Contracting Officer of the State. The State ~~Purchasing~~ Procurement Director shall serve as the principal procurement officer of the state.

(b) Power to Adopt Rules and Regulations. Except as otherwise provided in this subchapter, and upon the approval of the Director of the Department of Finance and Administration, the State ~~Purchasing~~ Procurement Director shall have the authority and responsibility to promulgate regulations consistent with this subchapter. In addition, consistent with the provisions of this subchapter, the State ~~Purchasing~~ Procurement Director may adopt rules governing the internal procedures of the Office of State ~~Purchasing~~ Procurement.

(c) Duties. Except as otherwise specifically provided in this subchapter, the State ~~Purchasing~~ Procurement Director shall, within the limitations of this subchapter and the rules and regulations promulgated under authority of this subchapter:

(1) Procure or supervise the procurement of all commodities and services for each state agency not having an agency ~~purchasing~~ procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract;

(2) Manage and establish internal procedures for the office;

(3) Sell, trade, or otherwise dispose of surplus commodities belonging to the state;

(4) Have the authority to establish and maintain programs for the inspection, testing, and acceptance of commodities and services;

(5) Establish and manage a list of vendors desiring written notice of invitations for bid; ~~and~~

(6) ~~Establish~~ May establish, by regulation, a fee, ~~not to exceed~~
~~twenty five dollars (\$25.00) annually,~~ for receiving a written or electronic
notice of ~~an~~ invitations for bid; and

(7) Ensure compliance with this subchapter and implementing
regulations by reviewing and monitoring procurements conducted by any
designee, department, agency or official delegated authority under the State
Procurement Law.

SECTION 10. Arkansas Code 19-11-218 is amended to read as follows:

19-11-218. Assistants and designees.

Subject to the provisions of the Uniform Classification and Compensation
Act, § 21-5-201 et seq., the State Purchasing 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) Delegate authority to such designees or to any state agency as the
director may deem appropriate within the limitations of state law and the
state procurement rules and regulations.

SECTION 11. Arkansas Code 19-11-219 is amended to read as follows:

19-11-219. Legal counsel.

The Attorney General shall act as counsel for the State Purchasing
Procurement Director in preparation of necessary contracts and in all legal
matters.

SECTION 12. Arkansas Code 19-11-220 is amended to read as follows:

19-11-220. Agency purchasing procurement officials.

(a) In addition to any state agency authorized by regulation to have an
agency purchasing procurement official, each of the following state agencies
may elect to have such an official for commodities and services which are not
within the exclusive jurisdiction of the State Purchasing Procurement Director
and which are not under state contract:

(1) Arkansas State Highway and Transportation Department;

(2) Arkansas State University at Beebe;

(3) Arkansas State University at Jonesboro;

(4) Arkansas State University System;

~~(4)~~(5) Arkansas Tech University;
~~(5)~~(6) Henderson State University;
~~(6)~~(7) Southern Arkansas University ~~and its various branches~~;
~~(7)~~(8) University of Arkansas at Fayetteville;
(9) University of Arkansas Fund Entities;
(8)(10) University of Arkansas at Little Rock;
~~(9)~~(11) University of Arkansas at Monticello;
~~(10)~~(12) University of Arkansas at Pine Bluff;
~~(11)~~(13) University of Arkansas for Medical Sciences;
~~(12)~~(14) University of Central Arkansas;
(15) Arkansas State University at Mountain Home;
(16) Arkansas State University at Newport;
(17) Black River Technical College;
(18) Cossatot College;
~~(13)~~(19) East Arkansas Community College;
~~(14)~~(20) Garland County Community College;
~~(15)~~(21) Mississippi County Community College;
(22) Mid-South Community College;
~~(16)~~(23) North Arkansas ~~Community~~ College;
~~(19)~~(24) Northwest Arkansas Community College; ~~and~~
(25) Ouachita Technical College;
(26) Ozarka Technical College;
~~(17)~~(27) Phillips ~~County~~ Community College of the University of
Arkansas;
(28) Petit Jean College;
(29) Pulaski Technical College;
(30) Rich Mountain Community College;
(31) Southern Arkansas University Tech;
(32) Southeast Arkansas College;
(33) South Arkansas Community College;
(34) University of Arkansas Community College at Batesville;
(35) University of Arkansas Community College at Hope;
~~(18)~~(36) Westark ~~Community~~ College; and
~~(20)~~(37) Department of Higher Education, ~~two-year postsecondary~~
~~institutions~~.
~~(b)(1) Each official shall be required to furnish bond, with a~~

~~corporate surety thereon, to the State of Arkansas, in the sum of one hundred thousand dollars (\$100,000), conditioned that the official will faithfully perform the duties of employment and properly account for all funds received and disbursed by the official.~~

~~(2) The original of each bond shall be filed with the State Purchasing Director.~~

~~(c)(1)~~ (b) (1) Each official shall manage and establish internal procedures for the procurement office of the state agency authorized to have the official to ensure adequate administrative procedures and controls pursuant to law and the procurement regulations.

(2)(A) Approval by the Office of State ~~Purchasing~~ Procurement of contracts administered by the official shall not be required unless a determination has been made by the Director of the Department of Finance and Administration that administrative procedures and controls are not adequate.

(B)(i) Such determination shall result in notification by the Director of the Department of Finance and Administration of the specific deficiencies and the reasons therefor.

(ii) After the notification, approval of contracts by the office shall be required until the Director of the Department of Finance and Administration determines that the deficiencies have been corrected.

~~(d)~~ (c) Except for the promulgation by the State ~~Purchasing~~ Procurement Director of rules and regulations authorized in this subchapter and the letting of state contracts, all rights and practices granted herein to the office and the director are granted to an official in the administration of contracts for the state agency authorized to have the official.

~~(c)~~ (d) Nothing in this section is intended to prohibit an agency from utilizing the office in the same manner as state agencies not authorized to have officials.

SECTION 13. Arkansas Code 19-11-221 is amended to read as follows:

19-11-221. Agency ~~purchasing~~ procurement official for Department of Correction.

(a) In addition to those agencies, institutions, and departments of state government enumerated in § 19-11-220 which are authorized to elect to have agency ~~purchasing~~ procurement officials for commodities and services which are not within the exclusive jurisdiction of the State ~~Purchasing~~

1 Procurement Director, which are not under state contract, and which are not
2 procured in accordance with § 19-11-230, the Department of Correction and the
3 Department of Community Punishment are authorized to have such officials, for
4 the sole purpose of procuring perishable food items, who shall possess all
5 powers, functions, and duties as authorized for agency purchasing procurement
6 officials under the provisions of this subchapter with respect to perishable
7 food items only.

8 (b)(1) The officials of the Department of Correction and the Department
9 of Community Punishment shall have exclusive authority to procure perishable
10 food items in accordance with applicable administrative procedures and
11 controls established pursuant to this subchapter and the procurement
12 regulations.

13 (2) Except as noted in this subsection and in subsection (c) of
14 this section, the officials of the departments shall be subject to all other
15 provisions and requirements of this subchapter and administrative procedures
16 controls and procurement regulations provided in or promulgated pursuant to
17 it.

18 (c)(1)(A) The Board of Correction and Community Punishment shall
19 annually, and at more frequent intervals if deemed necessary, make studies and
20 determine whether it would be in the best interest of the management of the
21 farm croplands at the farm units or at each of the separate farm units of the
22 department to provide for the lease of farm machinery and equipment, or
23 certain items thereof, required for the production of farm crops, or whether
24 it would be in the better interest of the department to acquire such items of
25 farm machinery and equipment by purchase.

26 (B)(i) Upon conclusion of the study, the board may, by
27 resolution adopted by a majority of the members of the board, at a regular or
28 special meeting, authorize the agency purchasing procurement official for the
29 department to advertise for bids for the leasing of farm equipment or for the
30 purchase of the items of farm equipment noted in the resolution.

31 (ii) No lease of farm equipment shall be for more
32 than two (2) years nor extend beyond June 30 of the fiscal biennium for which
33 current funds have been appropriated for the operation of the department.
34 However, nothing in this section shall prohibit the lease from including
35 provisions, terms, or conditions upon which the lease may be renewed for an
36 additional period of time, not exceeding two (2) years, at the option of the

1 board.

2 (2)(A) In the event the board determines to provide for the
3 leasing of farm machinery or equipment necessary in the farming operations of
4 the department, the official of the department shall be the exclusive
5 purchasing agent for advertising of bids and awarding of contracts for the
6 leases, subject to the approval of the director of the department and the
7 board.

8 (B) In the advertising for bids and the awarding of
9 contracts, the state laws, ~~purchasing~~ procurement procedures, and rules and
10 regulations shall be complied with in awarding the contracts.

11 (C) It shall not be mandatory upon the board to award the
12 contract for the furnishing of farm machinery and equipment under a lease
13 agreement to the lowest bidder unless the board shall determine that the
14 awarding of the contract to such bidder would be in the best interest of the
15 farming operations of the department. In that event, the board may award the
16 contract to the bidder whose bid proposal is deemed by the board to be in the
17 better interest of the farming operations of the department.

18 (D) In making this determination the board shall consider,
19 but not be limited by, the following factors:

- 20 (i) The type of equipment to be furnished;
- 21 (ii) Compatibility of the equipment with the training
22 and experience of the farm managers and employees of the department and the
23 experience and skills of the inmates who will be using the equipment;
- 24 (iii) Provisions contained in the bid proposal
25 providing for maintenance, repair, and service and upkeep of the equipment
26 during the lease period, availability of the service and repair facilities,
27 and source of replacement or repair parts;
- 28 (iv) The age and condition of the equipment to be
29 leased; and
- 30 (v) Such other factors as the board deems essential
31 to performance under the contract and dependability and reliability of the
32 equipment to be furnished during the period of the lease.

33 (3)(A) In determining the items of farm machinery and equipment
34 to be acquired by purchase, the board may designate, if the board determines
35 it to be within the better interest of the management of farm croplands of the
36 department, those items of farm machinery and equipment to be purchased. The

1 board may restrict the bid to equipment produced by no fewer than two (2)
2 manufacturers of each item of equipment.

3 (B) In making this determination, the board shall include,
4 but not be limited to, a consideration of the following factors:

5 (i) The types of farm machinery equipment now being
6 used by the department and the experience gained by the department in the use
7 of the equipment for the purposes for which it is being purchased;

8 (ii) Availability of service and replacement and
9 spare parts for the equipment;

10 (iii) Familiarity with the equipment of the employees
11 or inmates responsible for the maintenance, repair, and upkeep thereof;

12 (iv) Compatibility of the farm machinery and
13 equipment with repair and maintenance shop facilities available at the
14 department;

15 (v) Access to the dealer responsible for warranty
16 service; and

17 (vi) Such additional factors as the board deems
18 pertinent to the better interests of the management and operation of the farm
19 crop lands of the department.

20 (C)(i) All purchases of farm machinery and equipment shall
21 be in accordance with the applicable state ~~purchasing~~ procurement laws and
22 rules and regulations promulgated thereunder.

23 (ii) Contracts for the providing or furnishing of
24 service, repair, and replacement parts of farm machinery and equipment may
25 include provision for the furnishing of a stated quantity of replacement and
26 spare parts to be stored at the department or may include contract prices for
27 major or standard items of service or for the furnishing of replacement and
28 spare parts at stated prices, which shall be at a discount from the published
29 dealer price list, as the board may deem in the best interest of the
30 department.

31 (iii) As an alternative, the board may elect to
32 authorize the official to acquire replacement and spare parts on a need basis
33 by following the applicable state ~~purchasing~~ procurement procedure in the
34 acquisition of each item thereof as needed.

35 (4)(A) The official of the department acting under the
36 instruction and direction of the board and the director of the department

shall be the sole and exclusive purchasing agent for the acquisition of farm machinery and equipment, whether by lease or purchase, and for the acquisition of repair services for farm machinery and equipment and repair and replacement parts therefor in the manner set forth in this section, and for the acquisition of those items covered in subsection (b) of this section.

(B) Nothing in this section shall prohibit the department from requesting the State Purchasing Procurement Director to make available the services of the Office of State Purchasing Procurement in the acquisition of any item for which the official of the Department of Correction is exclusive purchasing agent under this section.

SECTION 14. Arkansas Code 19-11-222 is amended to read as follows:

19-11-222. Exclusive jurisdiction over procurement.

The State Purchasing Procurement Director shall have exclusive jurisdiction over the procurement of the following commodities and services:

(1) Items subject to Arkansas Constitution, Amendment 54;

(2) Wholesale gasoline, oil, antifreeze, and related products;

(3) Tires;

(4) Tubes;

(5) Passenger motor vehicles and trucks, except highway construction and highway maintenance equipment or any specialized type of equipment used in highway construction except as otherwise provided in this subchapter;

(6) Paper products; ~~and~~

(7) New and used school buses for state agencies and school districts; and

(8) A purchasing card program to include implementation and administration.

SECTION 15. Arkansas Code 19-11-223(a) is amended to read as follows:

(a) In addition to establishing a state contract for those commodities and services within the exclusive jurisdiction of the State Purchasing Procurement Director under § 19-11-222, the director may award a state contract for other commodities and services in those instances where substantial savings may be effected by quantity purchasing of commodities or services in general use by several state agencies.

SECTION 16. Arkansas Code 19-11-223(c) is amended to read as follows:

(c) Except for the procurement of commodities and services within the exclusive jurisdiction of the director, state agencies with agency ~~purchasing~~ procurement officials which can demonstrate a geographical or volume buying advantage need not participate in the state contract. However, if the commodities or services obtained are procured at a substantially higher price during the same state contract period, that agency must participate in the state contract upon expiration of the agency's contract.

SECTION 17. Arkansas Code 19-11-224 is amended to read as follows:

19-11-224. Interest and carrying charges.

State agencies, including exempt agencies, may enter into contracts which contemplate the payment of interest, late charges, but only when such late charges are incurred sixty (60) days after payment is due or carrying charges under such regulations as may be promulgated by the State ~~Purchasing~~ Procurement Director.

SECTION 18. Arkansas Code 19-11-225(a) is amended to read as follows:

(a) Regulations shall be promulgated by the State ~~Purchasing~~ Procurement Director in accordance with the applicable provisions of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SECTION 19. Arkansas Code 19-11-226(a) is amended to read as follows:

(a) The State ~~Purchasing~~ Procurement Director shall maintain a close and cooperative relationship with the using agencies.

SECTION 20. Arkansas Code 19-11-227 is amended to read as follows:

19-11-227. Statistical data.

The State ~~Purchasing~~ Procurement Director shall cooperate with the State Budget Office and the Office of Accounting in the preparation of statistical data concerning the procurement and disposition of all commodities and services unless otherwise provided in this subchapter.

SECTION 21. Arkansas Code 19-11-228 is amended to read as follows:

19-11-228. Methods of source selection.

1 Unless otherwise authorized by law, all contracts shall be awarded by
2 competitive sealed bidding, pursuant to § 19-11-229, which refers to
3 competitive sealed bidding, except as provided in:

- 4 (1) Section 19-11-230, which refers to competitive sealed proposals;
- 5 (2) Section 19-11-231, which refers to small ~~purchases~~ procurements;
- 6 (3) Section 19-11-232, which refers to proprietary or sole source
7 procurements;
- 8 (4) Section 19-11-233, which refers to emergency procurements;
- 9 (5) Section 19-11-234, which refers to competitive bidding; ~~or~~
- 10 (6) Section 19-11-262, which refers to multiple award contracts; or
- 11 (7) Section 19-11-263, which refers to special procurements.

12
13 SECTION 22. Arkansas Code 19-11-229(b)-(i) are amended to read as
14 follows:

15 (b) Conditions for use. Contracts exceeding an estimated purchase price
16 of ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) shall
17 be awarded by competitive sealed bidding unless a determination is made in
18 writing by the agency ~~purchasing~~ procurement official or the State ~~Purchasing~~
19 Procurement Director that this method is not practicable and advantageous, and
20 specifically states the reasons therefor. The director may provide by
21 regulation that it is not practicable to procure specified types of
22 commodities or services by competitive sealed bidding. Factors to be
23 considered in determining whether competitive sealed bidding is not
24 practicable shall include whether:

25 (1) Purchase descriptions are suitable for award on the basis of
26 the lowest evaluated bid price; and

27 (2) The available sources, the time and place of performance, and
28 other relevant circumstances are appropriate for the use of competitive sealed
29 bidding.

30 (c) Two-Step Sealed Bidding. Where it is considered impractical to
31 initially prepare a purchase description to support an award based on price,
32 an invitation for bids may be issued requesting the submission of unpriced
33 technical proposals to be followed by an invitation for bids limited to those
34 bidders whose technical proposals meet the requirements set forth in the first
35 invitation.

36 (d) Public Notice. Notice inviting bids shall be given not less than

1 five (5) calendar days nor more than thirty (30) calendar days preceding the
2 date for the opening of bids by publishing such notice at least one (1) time
3 in at least one (1) newspaper having general circulation in the state, or
4 posting by electronic media, but in all instances adequate notice shall be
5 given. The notice shall include a general description of the commodities or
6 services to be procured and shall state where invitations for bid may be
7 obtained. The notice shall also state the date, time, and place of bid
8 opening.

9 (e) Bid Opening. Bids shall be opened publicly in the presence of one
10 (1) or more witnesses at the time and place designated in the invitation for
11 bids. Each bid, together with the name of the bidder, shall be recorded and
12 open to public inspection.

13 (f) Bid Evaluation. Bids shall be evaluated based on the requirements
14 set forth in the invitation for bids. These requirements may include criteria
15 to determine acceptability such as inspection, testing, quality, workmanship,
16 delivery, and suitability for a particular purpose and criteria affecting
17 price such as life-cycle or total ownership costs. The invitation for bids
18 shall set forth the evaluation criteria to be used. No criteria may be used in
19 bid evaluation that were not set forth in the invitation for bids.

20 (g) Correction or Withdrawal of Bids. Correction of patent or provable
21 errors in bids which do not prejudice other bidders, or withdrawal of bids,
22 may be allowed only to the extent permitted under regulations promulgated by
23 the State ~~Purchasing~~ Procurement Director and upon written approval of the
24 Attorney General or a designee of such officer. No award shall be made on the
25 basis of a corrected bid if the corrected bid exceeds the next lowest bid of a
26 responsible bidder.

27 (h) Award. ~~The contract shall be awarded with reasonable promptness by~~
28 ~~written notice to the lowest responsive and responsible bidder whose bid meets~~
29 ~~the requirements and criteria set forth in the invitation for bids. The~~
30 contract shall be awarded with reasonable promptness by written notice to the
31 lowest responsible bidder whose bid meets the requirements and criteria set
32 forth in the invitation for bids. In the event all bids exceed available
33 funds as certified by the appropriate fiscal officer, the Director of the
34 Office of State Procurement, or the head of a procurement agency, is
35 authorized in situations where time or economic considerations preclude
36 resolicitation of work of a reduced scope to negotiate an adjustment of the

1 bid price, including changes in the bid requirements, with the lowest
2 responsive and responsible bidder, in order to bring the bid within the amount
3 of available funds. All other bidders requesting to be notified of the award
4 decision shall be promptly notified of the decision.

5 (i) Cancellation of Invitation for Bids. An invitation for bid may be
6 cancelled, or any or all bids may be rejected in writing by the State
7 Purchasing Procurement Director or the agency purchasing procurement official.

8
9 SECTION 23. Arkansas Code 19-11-230(b)-(g) are amended to read as
10 follows:

11 (b) Conditions of Use. When, under regulations promulgated by the State
12 Purchasing Procurement Director, the director determines in writing that the
13 use of competitive sealed bidding is not practicable and advantageous, a
14 contract may be awarded by competitive sealed proposals.

15 (c) Public Notice. Public notice of the request for proposals shall be
16 given in the same manner as provided in § 19-11-229(d), which refers to public
17 notice of competitive sealed bidding.

18 (d) Evaluation Factors. The request for proposals shall indicate the
19 relative importance of price and other evaluation factors.

20 ~~(e) Discussion with All Responsible Offerors. Written or oral~~
21 ~~discussions shall be conducted with all responsible offerors who submit~~
22 ~~proposals determined in writing to be reasonably susceptible to being selected~~
23 ~~for award. Discussions need not be conducted:~~

24 ~~(1) With respect to prices, where such prices are fixed by law or~~
25 ~~regulation, except that consideration shall be given to competitive terms and~~
26 ~~conditions;~~

27 ~~(2) Where time of delivery or performance will not permit~~
28 ~~discussions; or~~

29 ~~(3) Where it can be clearly demonstrated and documented from the~~
30 ~~existence of adequate competition or accurate prior cost experience with that~~
31 ~~particular commodity or service that acceptance of an initial offer without~~
32 ~~discussion would result in fair and reasonable prices and the request for~~
33 ~~proposals notifies all offerors of the possibility that award may be made on~~
34 ~~the basis of the initial offers.~~

35 (e) Discussion with Responsible Offerors and Revisions to Proposals.
36 As provided in the request for proposals, and under regulations, discussions

1 may be conducted with responsible offerors who submit proposals determined to
2 be reasonably susceptible of being selected for award for the purpose of
3 clarification to assure full understanding of, and responsiveness to, the
4 solicitation requirements. Offerors shall be accorded fair and equal
5 treatment with respect to any opportunity for discussion and revision of
6 proposals, and such revisions may be permitted after submissions and prior to
7 award for the purpose of obtaining best and final offers. In conducting
8 discussions, there shall be no disclosure of any information derived from
9 proposals submitted by competing offerors.

10 (f) Award. Award shall be made to the responsible offeror whose
11 proposal is determined in writing to be the most advantageous to the state,
12 taking into consideration price, ~~and~~ the evaluation factors set forth in the
13 request for proposals, and the results of any discussions conducted with
14 responsible offerors. No other factors or criteria shall be used in the
15 evaluation.

16 (g) Cancellation of Competitive Sealed Proposals. A competitive sealed
17 proposal may be cancelled, or any or all proposals may be rejected in writing
18 by the State ~~Purchasing~~ Procurement Director or the agency ~~purchasing~~
19 procurement official.

20
21 SECTION 24. Arkansas Code 19-11-229(b)-(i) are amended to read as
22 follows:

23 19-11-231. Small ~~purchases~~ procurements.

24 Any procurement not exceeding the amount under § 19-11-204(10), which
25 refers to small ~~purchases~~ procurements, may be made in accordance with small
26 ~~purchase~~ procurement procedures promulgated by the State ~~Purchasing~~
27 Procurement Director. However, procurement requirements shall not be
28 artificially divided so as to constitute a small ~~purchase~~ procurement under
29 this section.

30
31 SECTION 25. Arkansas Code 19-11-232 is amended to read as follows:

32 19-11-232. Proprietary or sole source procurements.

33 A contract may be awarded for a required or designated commodity or
34 service to a sole or mandatory supplier when, under regulations promulgated
35 under this subchapter, the State ~~Purchasing~~ Procurement Director, the head of
36 a ~~purchasing~~ procurement agency, or a designee of either officer above the

1 level of agency ~~purchasing~~ procurement official determines in writing that it
2 is not practicable to use other than the required or designated commodity or
3 service. Unless a written determination is made that there is only one (1)
4 source for the required or designated commodity or service, efforts shall be
5 made to obtain price competition.

6
7 SECTION 26. Arkansas Code 19-11-233 is amended to read as follows:
8 19-11-233. Emergency procurements.

9 The State ~~Purchasing~~ Procurement Director, the head of a ~~purchasing~~
10 procurement agency, or a designee of either officer may make or authorize
11 others to make emergency procurements as defined in § 19-11-204(9) and in
12 accordance with regulations promulgated by the director.

13
14 SECTION 27. Arkansas Code 19-11-234(a)-(d) are amended to read as
15 follows:

16 (a) Definition. Competitive bidding is a method of procurement which
17 requires:

18 (1) Obtaining bids by:

19 (A) Direct mail request to prospective bidders and
20 obtaining written bids; or

21 (B) Telephone; or

22 (C) Telegraph; or

23 (D) Written form; or

24 (E) Electronic media.

25 (2) A competitive bid form authorized by the State ~~Purchasing~~
26 Procurement Director must be completed.

27 (3) If three (3) competitive bids are not obtained on purchases
28 when bids are required, the form must show the names of at least three (3)
29 firms contacted in attempting to obtain competition or show the reason three
30 (3) firms were not contacted.

31 (4) Only firms which sell the type of commodity or service to be
32 procured shall be contacted. The purchase procedures outlined in this section
33 shall not apply to commodities and services under state contract.

34 (b) Conditions for use. Contracts in which the purchase price exceeds
35 ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000) and is less than
36 or equal to ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars

1 (\$25,000) may be awarded by use of competitive bidding procedures; however, in
2 any such instances, competitive sealed bidding is permitted.

3 (c) Award.

4 (1) All procurements shall be awarded to the responsive and
5 responsible bidder who has submitted the lowest bid that meets the
6 requirements, criteria, and specifications. Delivery time required must be
7 reasonable and consonant with current industry norms.

8 (2) Complete justification must be given if award is made to
9 other than the low bidder.

10 (d) Records. (1) Copies of the competitive bid form and the purchase
11 order must be forwarded to the Office of State ~~Purchasing~~ Procurement within
12 the first ten (10) days of each month by all state agencies not having agency
13 ~~purchasing procurement~~ officials.

14 (2) The director or agency ~~purchasing procurement~~ official shall
15 keep a record of all procurements requiring bids less than or equal to ~~ten~~
16 ~~thousand dollars (\$10,000)~~. twenty-five thousand dollars (\$25,000). An
17 abstract of the bids shall be retained in the bid file and shall be available
18 for public inspection.

19
20 SECTION 28. Arkansas Code 19-11-235 is amended to read as follows:

21 19-11-235. Responsibility of bidders and offerors.

22 (a) Determination of Nonresponsibility. A ~~written~~ determination of
23 nonresponsibility of a bidder or offeror shall be made in accordance with
24 regulations promulgated by the State ~~Purchasing~~ Procurement Director. A
25 reasonable inquiry to determine the responsibility of a bidder or offeror may
26 be conducted. The unreasonable failure of a bidder or offeror to promptly
27 supply information in connection with such an inquiry may be grounds for a
28 determination of nonresponsibility with respect to such bidder or offeror. If
29 a bidder or offeror is determined to be nonresponsible, the reasons therefor
30 shall be ~~stated~~ included in the determination.

31 (b) Right of Nondisclosure. Except as otherwise provided by law,
32 information furnished by a bidder or offeror pursuant to this section shall
33 not be disclosed outside of the Office of State ~~Purchasing~~ Procurement or the
34 ~~purchasing procurement~~ agency without prior written consent by the bidder or
35 offeror. This section is not intended to prohibit the office from disclosing
36 such information to the Governor, the Attorney General, or the Director of the

1 Department of Finance and Administration when any of those officers deems it
2 necessary.

3 (c) Bonds. The State ~~Purchasing~~ Procurement Director or the agency
4 ~~purchasing procurement~~ official may, under regulations promulgated under this
5 subchapter, require the posting of a bid bond, a performance bond, or a
6 similar assurance by any actual or prospective bidder, offeror, or contractor.

7
8 SECTION 29. Arkansas Code 19-11-237 is amended to read as follows:

9 19-11-237. Cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee
10 contracts.

11 As used in this subchapter, unless the context otherwise requires:

12 The cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee system may be

13 used under the authority of the director ~~only in the cases of the bulk~~

14 ~~purchase of diesel fuel and gasoline and pharmaceuticals and the sale of scrap~~
15 ~~paper products~~ when:

16 (1) There exists no other economically practicable price arrangement to
17 secure the commodity; or

18 (2) A cost saving may be proved over the least expensive alternative;
19 or

20 (3) The pricing schedule involved is tied to an industry standard or
21 other reliable system of cost prediction.

22
23 SECTION 30. Arkansas Code 19-11-239 is amended to read as follows:

24 19-11-239. Finality of determinations.

25 The determinations required by § 19-11-229(h), which refers to
26 competitive sealed bidding, award; § 19-11-230(b), which refers to competitive
27 sealed proposals, conditions for use; § 19-11-230(f), which refers to
28 competitive sealed proposals, award; § 19-11-232, which refers to proprietary
29 or sole source procurements; § 19-11-233, which refers to emergency
30 procurements; § 19-11-234, which refers to competitive bidding; § 19-11-235,
31 which refers to responsibility of bidders and offerors, determination of
32 responsibility; ~~and~~ § 19-11-238(b), which refers to multiyear contracts,
33 determination prior to use, and §19-11-263 Special Procurements; are final and
34 conclusive unless they are clearly erroneous, arbitrary, capricious, or
35 contrary to law.

SECTION 31. Arkansas Code 19-11-241(b) is amended to read as follows:

(b) Issuance. The State ~~Purchasing~~ Procurement Director shall promulgate regulations governing the preparation, maintenance, and content of standard and nonstandard specifications for commodities and services procured by the Office of State ~~Purchasing~~ Procurement.

SECTION 32. Arkansas Code 19-11-242 is amended to read as follows:

19-11-242. Commodity management regulations.

The State ~~Purchasing~~ Procurement Director shall promulgate regulations governing:

(1) The sale, lease, or disposal of surplus commodities by public auction, competitive sealed bidding, or other appropriate method designated by regulation, and no employee of the Department of Finance and Administration or member of their immediate family shall be entitled to purchase any such commodities; and

(2) Transfer of excess commodities within the state.

SECTION 33. Arkansas Code 19-11-243 is amended to read as follows:

19-11-243. Proceeds from surplus commodities.

The State ~~Purchasing~~ Procurement Director shall promulgate regulations for the allocation of proceeds from the sale, lease, or disposal of surplus commodities, to the extent practicable, to the using agency which had possession of the commodity.

SECTION 34. Arkansas Code 19-11-244(a)-(f) are amended to read as follows:

(a) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the State ~~Purchasing~~ Procurement Director or the head of a ~~purchasing~~ procurement agency. The protest shall be submitted in writing within fourteen (14) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to Resolve Protests. The director, the head of a ~~purchasing~~ procurement agency, or a designee of either officer shall have authority, prior to the commencement of an action in court or any other action provided by law concerning the controversy, to settle and resolve a protest of

1 an aggrieved bidder, offeror, or contractor, actual or prospective, concerning
2 the solicitation or award of a contract. This authority shall be exercised in
3 accordance with laws governing the Arkansas State Claims Commission and the
4 regulations promulgated by the director.

5 (c) Decision. If the protest is not resolved by mutual agreement, and
6 after reasonable notice to the person involved and reasonable opportunity for
7 that person to be heard, the director, the head of a ~~purchasing~~ procurement
8 agency, or a designee of either officer shall promptly issue a decision in
9 writing. The decision shall state the reasons for the action taken.

10 (d) Notice of Decision. A copy of the decision under subsection (c) of
11 this section shall be mailed or otherwise furnished within five (5) days after
12 it is written to the protestant and any other party intervening.

13 (e) Finality of Decision. A decision under subsection (c) of this
14 section shall be final and conclusive.

15 (f) Stay of Procurements During Protests. In the event of a timely
16 protest under subsection (a) of this section, the state shall not proceed
17 further with the solicitation or with the award of the contract until the
18 State ~~Purchasing~~ Procurement Director or the head of a ~~purchasing~~ procurement
19 agency makes a written determination that the award of the contract without
20 delay is necessary to protect substantial interests of the state.

21
22 SECTION 35. Arkansas Code 19-11-245(b)-(d) are amended to read as
23 follows:

24 (b) Authority. After reasonable notice to the person involved and
25 reasonable opportunity for that person to be heard, the State ~~Purchasing~~
26 Procurement Director or the head of a ~~purchasing~~ procurement agency shall have
27 authority to debar a person for cause from consideration for award of
28 contracts, provided that doing so is in the best interests of the state. The
29 debarment shall not be for a period of more than three (3) years. The same
30 officer shall have authority to suspend a person from consideration for award
31 of contracts, provided that doing so is in the best interests of the state and
32 there is probable cause for debarment. The suspension shall not be for a
33 period exceeding three (3) months. The authority to debar or suspend shall be
34 exercised in accordance with regulations promulgated by the director.

35 (c) Causes for Debarment or Suspension. The causes for debarment or
36 suspension because of unsuitability for award of a contract shall be set forth

1 in regulations promulgated by the director.

2 (d) Decision. The director or the head of a ~~purchasing~~ procurement
3 agency shall issue a written decision to debar or suspend. The decision shall
4 state the reasons for the action taken.

5
6 SECTION 36. Arkansas Code 19-11-246(b)-(f) are amended to read as
7 follows:

8 (b) Authority. The State Purchasing Director, the head of a ~~purchasing~~
9 procurement agency, or a designee of either officer is authorized, prior to
10 commencement of an action in a court or any other action provided by law
11 concerning the controversy, to settle and resolve a controversy described in
12 subsection (a) of this section. This authority shall be exercised in
13 accordance with the law governing the Arkansas State Claims Commission and the
14 regulations promulgated by the director.

15 (c) Decision. If such a claim or controversy is not resolved by mutual
16 agreement, and after reasonable notice to the person involved and reasonable
17 opportunity for that person to be heard, the director, the head of a
18 ~~purchasing~~ procurement agency, or the designee of either officer shall
19 promptly issue a decision in writing. The decision shall state the reasons for
20 the action taken.

21 (d) Notice of Decision. A copy of the decision under subsection (c) of
22 this section shall be mailed or otherwise furnished immediately to the
23 contractor.

24 (e) Finality of Decision. The decision under subsection (c) of this
25 section shall be final and conclusive.

26 (f) Failure to Render Timely Decision. If the director, the head of a
27 ~~purchasing~~ procurement agency, or the designee of either officer does not
28 issue the written decision required under subsection (c) of this section
29 within one hundred twenty (120) days after written request for a final
30 decision, or within such longer period as may be agreed upon by the parties,
31 then the contractor may proceed as if an adverse decision had been received.

32
33 SECTION 37. Arkansas Code 19-11-250 is amended to read as follows:

34 19-11-250. Sale, etc., of commodities.

35 Any public procurement unit by agreement with another public procurement
36 unit may sell to, acquire from, or use any commodities belonging to or

1 produced by another public procurement unit or external procurement activity
2 independent of the requirement of §§ 19-11-204 and 19-11-228 - 19-11-240, and
3 19-11-263, which refer to source selection and contract formation, and §§ 19-
4 11-205, 19-11-242, and 19-11-243, which refer to commodity management.

5
6 SECTION 38. Arkansas Code 19-11-251 is amended to read as follows:

7 19-11-251. ~~Cooperative~~ Intergovernmental use of commodities or
8 services.

9 Any public procurement unit may enter into an agreement, independent of
10 the requirements of §§ 19-11-204 and 19-11-228 - 19-11-240, and 19-11-263
11 which refer to source selection and contract formation, and §§ 19-11-205, 19-
12 11-242, and 19-11-243, which refer to commodity management, with any other
13 public procurement unit or external procurement activity for the ~~cooperative~~
14 intergovernmental use of commodities or services under the terms agreed upon
15 between the parties and in accordance with the rules and regulations
16 promulgated under this subchapter.

17
18 SECTION 39. Arkansas Code 19-11-252 is amended to read as follows:

19 19-11-252. Rules and regulations.

20 The State ~~Purchasing~~ Procurement Director may promulgate reasonable
21 rules and regulations pertaining to the sale or acquisition of any commodities
22 or services belonging to or produced by another public procurement unit or
23 external procurement activity as authorized in §§ 19-11-206 and 19-11-249 -
24 19-11-258.

25
26 SECTION 40. Arkansas Code 19-11-254(a) is amended to read as follows:

27 (a) Upon request, the State ~~Purchasing~~ Procurement Director may make
28 available to public procurement units the following services, among others:

- 29 (1) Standard forms;
30 (2) Printed manuals;
31 (3) Product specifications and standards;
32 (4) Quality assurance testing services and methods;
33 (5) Qualified products lists;
34 (6) Source information;
35 (7) Common use commodities listings;
36 (8) Supplier prequalification information;

- 1 (9) Supplier performance ratings;
- 2 (10) Debarred and suspended bidders lists;
- 3 (11) Forms for invitations for bids, requests for proposals,
- 4 instructions to bidders, general contract provisions, and other contract
- 5 forms; and
- 6 (12) Contracts, or published summaries thereof, including price
- 7 and time of delivery information.
- 8

9 SECTION 41. Arkansas Code 19-11-256(b) is amended to read as follows:

10 (b) Procurement Not Following Provisions. Where a public procurement

11 unit or external procurement activity not subject to this subchapter

12 administers a cooperative purchase for a public procurement unit subject to

13 this subchapter, then the State ~~Purchasing~~ Procurement Director must determine

14 in writing that the procurement system and remedies procedures of the public

15 procurement unit or external procurement activity administering the

16 procurement substantially meet the requirements of this subchapter.

17

18 SECTION 42. Arkansas Code 19-11-257 is amended to read as follows:

19 19-11-257. Review of procurement requirements.

20 To the extent possible and consistent with efficiency, the State

21 ~~Purchasing~~ Procurement Director shall collect information concerning the type,

22 cost, quality, and quantity of commonly used commodities or services being

23 procured or used by state public procurement units. The director may also

24 collect such information from local public procurement units. The director may

25 make available all such information to any public procurement unit upon

26 request.

27

28 SECTION 43. Arkansas Code 19-11-259(b) is amended to read as follows:

29 (b) Preference of Arkansas Firms over Nonresident Firms in ~~Purchases~~

30 Procurements Under Competitive Bids.

31 (1) In the purchase of commodities by competitive bidding, all

32 public agencies shall accept the lowest qualified bid from a firm resident in

33 Arkansas. This bid shall be accepted only if the bid does not exceed the

34 lowest qualified bid from a nonresident firm by more than five percent (5%)

35 and if one (1) or more firms resident in Arkansas made written claim for a

36 preference at the time the bids were submitted. In calculating the preference

1 to be allowed, the appropriate purchasing officials, pursuant to §§ 19-11-201
2 - 19-11-259, shall take the amount of each bid of the Arkansas dealers who
3 claimed the preference and deduct five percent (5%) from its total. If, after
4 making such deduction, the bid of any Arkansas bidder claiming the preference
5 is lower than the bid of the nonresident firm, then the award shall be made to
6 the Arkansas firm which submitted the lowest bid regardless of whether that
7 particular Arkansas firm claimed the preference.

8 (2) The preference provided for in this section shall be
9 applicable only in comparing bids where one (1) or more bids are by a firm
10 resident in Arkansas and the other bid or bids are by a nonresident firm.
11 This preference shall have no application with respect to competing bids if
12 both bidders are firms resident in Arkansas, as defined in this section. All
13 public agencies shall be responsible for carrying out the spirit and intent of
14 this section in their procurement policies. Any public agency, as defined
15 herein, which, through any employee or designated agent, is found guilty of
16 violating the provisions of this section or committing an unlawful act under
17 it, shall be guilty of a misdemeanor. Notwithstanding any other provisions of
18 Arkansas law, upon conviction that person shall be subject to imprisonment for
19 not more than six (6) months and/or a fine of not more than one thousand
20 dollars (\$1,000). If any provision or condition of this subchapter conflicts
21 with any provision of federal law or any rule or regulation made under federal
22 law pertaining to federal grants-in-aid programs or other federal aid
23 programs, such provision or condition shall not apply to such federal -
24 supported contracts for the purchase of commodities to the extent that the
25 conflict exists, but all provisions or conditions of this subchapter with
26 which there is no conflict shall apply to contracts to purchase commodities to
27 be paid in whole or in part from federal funds.

28
29 SECTION 44. Arkansas Code 19-11-260(a) is amended to read as follows:

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

32
33 SECTION 45. Arkansas Code 19-11-260(b)(2)(A) is amended to read as
34 follows:

35 (2)(A) The Office of State ~~Purchasing~~ Procurement shall prepare a
36 semiannual report of the state's progress in meeting the goals for the

1 purchase of paper products with recycled content.

2
3 SECTION 46. Arkansas Code 19-11-261(a)(2), pertaining to cooperative
4 purchasing programs between cities, counties and schools, is amended to read
5 as follows:

6 (2) The program shall be administered by the State ~~Purchasing~~
7 Procurement Director.

8
9 SECTION 47. Arkansas Code 19-11-262 is amended to read as follows:
10 19-11-262. Multiple award contracts.

11 (a) Multiple award contracts may be made only if the State ~~Purchasing~~
12 Procurement Director or agency procurement official determines in writing that
13 a single award is not advantageous to the State of Arkansas. The
14 determination, in writing, shall state a rationale and basis for the multiple
15 award contract. Multiple award contracts shall be limited to the least number
16 of suppliers necessary to meet the requirements of the using agencies.

17 (b) If the State ~~Purchasing~~ Procurement Director anticipates that
18 multiple award contracts will be made, the invitation for bids shall include a
19 notification of the right of the Office of State ~~Purchasing~~ Procurement to
20 make such an award and the criteria upon which such an award will be based.

21
22 SECTION 48. Arkansas Code Title 19, Chapter 11, Subchapter 2 is amended
23 to add an additional section to read as follows:

24 19-11-263. Special Procurements.

25 Notwithstanding any other provision of this subchapter, the State
26 Procurement Director, or the head of a procurement agency may initiate a
27 procurement above the competitive bid amount specified in § 19-11-234 , where
28 the officer determines that an unusual or unique situation exists that makes
29 the application of all requirements of competitive bidding, competitive sealed
30 bidding, or competitive sealed proposals contrary to the public interest. A
31 written determination of the basis for the procurement and for the selection
32 of the particular contractor shall be included by the Director of the Office
33 of State Procurement, or the head of a procurement agency in the contract
34 file, and file a monthly report with the Legislative Council describing all
35 such determinations.

SECTION 49. EMERGENCY CLAUSE. It is found and determined by the General Assembly that recent advances in technology require that the State Purchasing Law be amended to allow electronic procurement and the use of electronic media in the bidding process. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Mahony