

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2679

4
5 By: Representative Dangeau
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For An Act To Be Entitled

8
9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ARKANSAS PROCUREMENT LAW; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT TO AMEND VARIOUS PROVISIONS OF
14 THE ARKANSAS PROCUREMENT LAW.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 19-11-203 is amended to read as follows:
20 19-11-203. Definitions generally.

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

22 (1)(A) "Agency procurement official" means any person authorized
23 by a state agency to enter into and administer contracts and make written
24 determinations and findings with respect thereto, in accordance with
25 procedures prescribed by this subchapter and the regulations promulgated
26 under it.

27 (B) The term also includes an authorized representative
28 acting within the limits of authority;

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

32 (3)(A) "Capital improvement" means all lands, buildings,
33 structures, utilities, on-site and off-site improvements, and other
34 appurtenant improvements, existing or future, and all construction, repairs,
35 alterations, and renovations thereof which are undertaken, owned, operated,
36 or otherwise managed by a state agency.



1 (B) "Capital improvement" shall not include construction
 2 and reconstruction of roads and bridges in the state highway system by the
 3 State Highway Commission, nor shall the term "capital improvement" include
 4 any building, facility, plant, structure, or other improvement constructed
 5 by, or in behalf of, the Arkansas State Highway and Transportation Department
 6 or the State Highway Commission;

7 (4) "Commodities" means all property, including, but not limited
 8 to, equipment, printing, stationery, supplies, and insurance but excluding
 9 leases on real property, real property or a permanent interest in real
 10 property, exempt commodities and services, and capital improvements;

11 (5)(A) "Contract" means all types of state agreements,
 12 regardless of what they may be called, for the purchase of commodities and
 13 services and for the disposal of surplus commodities and services not
 14 otherwise exempt.

15 (B)(i) It includes awards and notices of award, contracts
 16 of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type, contracts
 17 providing for the issuance of job or task orders, leases, letter contracts,
 18 and purchase orders.

19 (ii) It also includes supplemental agreements with
 20 respect to any of these items;

21 (6) "Contract modification" means any written alteration in
 22 specifications, delivery point, rate of delivery, period of performance,
 23 price, quantity, or other provisions of any contract accomplished by mutual
 24 action of the parties to the contract;

25 (7) "Contractor" means any person having a contract with a state
 26 agency;

27 (8) "Data" means recorded information, regardless of form or
 28 characteristic;

29 (9) "Debarment" means the disqualification of a person to
 30 receive invitations for bids or requests for proposals or the award of a
 31 contract by the state for a specified period of time commensurate with the
 32 seriousness of the offense or the failure or the inadequacy of performance;

33 (10) "Designee" means a duly authorized representative of a
 34 person holding a superior position;

35 (11) "Electronic" means electrical, digital, magnetic, optical,
 36 or any other similar technology;

1 (12) "Employee" means an individual drawing a salary from a
 2 state agency, whether elected or not, and any nonsalaried individual
 3 performing personal services for any agency;

4 (13) "Exempt agencies" means the constitutional departments of
 5 the state, the elected constitutional offices of the state, the General
 6 Assembly, including the Legislative Council and the Legislative Joint
 7 Auditing Committee and supporting agencies and bureaus thereof, the Supreme
 8 Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the
 9 Administrative Office of the Courts;

10 (14) "Exempt commodities and services" means:

11 (A) Advertising in newspapers, periodicals, and related
 12 publications, and on television, radio, billboards, and electronic media;

13 (B) Animals procured for medical research;

14 (C)(i) Commodities and services for use in research,
 15 education, and treatment for the diagnosis, cure, and prevention of disease
 16 may be procured, with administrative approval, through a group purchasing
 17 entity serving other public health institutions when substantial savings are
 18 available.

19 (ii) A report shall be filed annually with the
 20 ~~division~~ Division of the Legislative Audit reflecting the justification of
 21 and the estimated savings accruing due to the use of this exemption;

22 (D)(i) Commodities procured for resale in cafeterias,
 23 commissaries, bookstores, gift shops, canteens, and other similar
 24 establishments.

25 (ii) However, these commodities procured shall not
 26 be sold or transferred to any agency with the intent of circumventing
 27 applicable procurement procedures;

28 (E) Commodities procured from nonprofit workshops in
 29 accordance with § 19-11-501 et seq.;

30 (F)(i) Contracts awarded by agencies for the construction
 31 of buildings and facilities and for major repairs.

32 (ii) These contract exemptions shall not extend to
 33 the procurement of any commodities not otherwise exempt, which are to be
 34 furnished by the agency under any such contract;

35 (G) Contracts awarded by the Arkansas State Highway and
 36 Transportation Department for the construction, reconstruction, and

1 maintenance of roads and bridges in the state highway system and for the
 2 county, rural road aid, and city street aid programs;

3 (H) Contracts by institutions of higher learning for
 4 personal and consulting services and contracts with students;

5 (I)(i) Farm products procured or sold by a state agency
 6 having an agency procurement official.

7 (ii) The current trade customs with respect to the
 8 procurement or sale of cotton, cotton seed, rice, and other farm products
 9 shall be followed when it is necessary to do so in order to obtain the best
 10 price for the commodities procured or sold;

11 (J) Fees, including medical fees and physician fees;

12 (K) Foster care maintenance services provided by foster
 13 family homes approved by the Division of Children and Family Services for
 14 children whose placement and care are the responsibility of the division;

15 (L) Freight and storage charges and demurrage;

16 (M) Licenses required prior to performance of services;

17 (N)(i) Livestock procured by an agency having an official
 18 experienced in selection and procurement of livestock.

19 (ii) Such procurement will be reported to the State
 20 Procurement Director, giving details of the purchase;

21 (O) Livestock procured for breeding, research, or
 22 experimental purposes;

23 (P) Maintenance on office machines and technical
 24 equipment;

25 (Q) Medical items specifically requested by a physician
 26 for treatment or diagnosis of patients in his or her care including
 27 prosthetic devices, surgical instruments, heart valves, pacemakers,
 28 radioisotopes, and catheters;

29 (R) Membership in professional, trade, and other similar
 30 associations;

31 (S) Perishable foodstuffs for immediate use or processing;

32 (T) Postage;

33 (U) Published books, manuals, maps, periodicals, films,
 34 technical pamphlets, and copyrighted educational aids for use in libraries
 35 and for other informational or instructional purposes in instances in which
 36 other applicable law does not provide a restrictive means for the acquisition

1 of them;

2 (V) Services of visiting speakers, lecturers, and
 3 performing artists;

4 (W) Taxes;

5 (X) Travel expense items such as room and board and
 6 transportation charges;

7 (Y) Utility services or equipment which is defined,
 8 recognized, and regulated by the Arkansas Public Service Commission as a
 9 monopoly offering;

10 (Z) Works of art for museum and public display;

11 (AA) Capital improvements valued at less than twenty
 12 thousand dollars (\$20,000), subject to minimum standards and criteria of the
 13 Arkansas Building Authority; and

14 (BB) Services related to work force development, incumbent
 15 work force training, or specialized business or industry training.

16 (15)(A)(i) "Grant" means the furnishing by the state of
 17 assistance, whether financial or otherwise, to any person to support a
 18 program authorized by law.

19 (ii) It does not include an award whose primary
 20 purpose is to procure an end product, whether in the form of commodities or
 21 services.

22 (B) A contract resulting from such an award is not a grant
 23 but a procurement contract;

24 (16) "May" means the permissive;

25 (17) "Paper product" means any item manufactured from paper or
 26 paperboard;

27 (18) "Person" means any business, individual, union, committee,
 28 club, or other organization or group of individuals;

29 (19) "Political subdivisions" means counties, municipalities,
 30 and school districts;

31 (20)(A) "Procurement" means the buying, purchasing, renting,
 32 leasing, or otherwise obtaining of any commodities or services.

33 (B) It also includes all functions that pertain to the
 34 obtaining of any public procurement, including description of requirements,
 35 selection and solicitation of sources, preparation and award of contract,
 36 disposal of commodities, and all phases of contract administration;

1 (21) "Procurement agency" means any state agency which is
 2 authorized by this subchapter or implementing regulations, or by way of
 3 delegation from the State Procurement Director to contract on its own behalf
 4 rather than through the central contracting authority of the State
 5 Procurement Director;

6 (22)(A) "Procurement agent" means any person authorized by a
 7 state agency not having an agency procurement official to enter into and
 8 administer contracts and make written determinations and findings with
 9 respect thereto, in accordance with procedures prescribed by this subchapter.

10 (B) The term also includes an authorized representative
 11 acting within the limits of authority;

12 (23)(A) "Public funds" means all state-appropriated and cash
 13 funds of state agencies, as defined by applicable law or official ruling.
 14 Public funds for purposes of this subchapter shall not include funds
 15 administered by, or under the control of, agencies, except public funds.

16 (B) Without necessarily being limited thereto, it does not
 17 include grants, donations, research contracts, and revenues derived from
 18 self-supporting enterprises which are not operated as a primary function of
 19 the agency, no part of which funds are deposited in the State Treasury;

20 (24) "Public notice" means the distribution or dissemination of
 21 information to interested parties using methods that are reasonably
 22 available. Such methods will often include publication in newspapers of
 23 general circulation, electronic or paper mailing lists, and websites
 24 designated by the State of Arkansas and maintained for that purpose;

25 (25)(A) "Purchase request" means that document written or
 26 electronic whereby a using agency requests that a contract be obtained for a
 27 specified need.

28 (B) It may include, but is not limited to, the technical
 29 description of the requested item, delivery schedule, transportation,
 30 criteria for evaluation of solicitees, suggested sources of supply, and
 31 information supplied for the making of any written or electronic
 32 determination and finding required by this subchapter;

33 (26) "Recycled paper" means paper which contains recycled fiber
 34 in a proportion specified by the State Procurement Director;

35 (27)(A) "Services" means the furnishing of labor, time, or
 36 effort by a contractor, not involving the delivery of a specific end product

1 other than reports which are merely incidental to the required performance.

2 (B) This term shall not include employment agreements,
 3 collective bargaining agreements, exempt commodities and services, or
 4 architectural or engineering contracts requiring approval of ~~Arkansas State~~
 5 ~~Building Services~~ Arkansas Building Authority or ~~public institutions of~~
 6 higher education;

7 (28) "Shall" means the imperative;

8 (29) "Signature" means a manual or an electronic or a digital
 9 method executed or adopted by a party with the intent to be bound by or to
 10 authenticate a record which is:

11 (A) Unique to the person using it;

12 (B) Capable of verification;

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

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

16 (30)(A) "State agency" means any agency, institution, authority,
 17 ~~departments~~ department, board, commission, bureau, council, or other agency
 18 of the state supported by appropriation of state or federal funds, except an
 19 exempt agency pursuant to § 19-11-203(13).

20 (B) "State agency" includes an exempt agency when any
 21 agency or exempt agency procures any item subject to Arkansas Constitution,
 22 Amendment 54;

23 (31)(A) "State contract" means a contract for the procurement of
 24 commodities or services in volume, awarded by the State Procurement Director.

25 (B) The contract may apply to all or part of the state;

26 (32) "State Procurement Director" means the person holding the
 27 position created in § 19-11-216, as the head of the central procurement
 28 office of the State of Arkansas;

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

36 (34) "Technical and general services" means:

1 (A) Work accomplished by skilled individuals involving
2 time, labor, and a degree of expertise, in which performance is evaluated
3 based upon the quality of the work and the results produced;

4 (B) Work performed to meet a demand, including, but not
5 limited to, work of a recurring nature that does not necessarily require
6 special skills or extensive training; or

7 (C) The furnishing of labor, time, or effort by a
8 contractor or vendor, not involving the delivery of any specific end product
9 other than reports that are incidental to the required performance;

10 ~~(34)~~(35) "Using agency" means any state agency which utilizes
11 any commodities or services purchased under this subchapter; and

12 ~~(35)~~(36) "Written" or "in writing" means the product of any
13 method of forming characters on paper, other materials, or viewable screens,
14 which can be read, retrieved, and reproduced, including information that is
15 electronically transmitted and stored.

16
17 SECTION 2. Arkansas Code § 19-11-244 is amended to read as follows:
18 19-11-244. Resolution of protested solicitations and awards.

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

25 (b) The director, the head of a procurement agency, or a designee of
26 either officer shall have the authority, prior to the commencement of an
27 action in court or any other action provided by law concerning the
28 controversy, to settle and resolve a protest of an aggrieved bidder, offer
29 or, or contractor, actual or prospective, concerning the solicitation or
30 award of a contract. This authority shall be exercised in accordance with
31 laws governing the Arkansas State Claims Commission and the regulations
32 promulgated by the director.

33 (c)(1) If the protest is not resolved by mutual agreement, and after
34 reasonable notice to the ~~person~~ protestor involved and reasonable opportunity
35 for ~~that person~~ the protestor to respond to the protest issues according to
36 the regulations promulgated by the director, the head of a procurement

1 agency, the director, or a designee of either officer shall promptly issue a
2 decision in writing.

3 (2) The decision shall state the reasons for the action taken.

4 (d) A copy of the decision under subsection (c) of this section shall
5 be mailed or otherwise furnished within five (5) days after it is written to
6 the ~~protestant~~ protestor and any other party intervening.

7 (e) A decision under subsection (c) of this section shall be final and
8 conclusive.

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

14 (g) ~~Award of Costs to Protestants.~~ When the protest is sustained and
15 the successfully protesting bidder or offeror was denied the contract award,
16 the protesting bidder or offeror may be entitled to the reasonable costs
17 incurred in connection with the solicitation, including bid preparation
18 costs, through the commission.

19

20 SECTION 3. Arkansas Code § 19-11-246(c), concerning the resolution of
21 contract and breach of contract controversies, is amended to read as follows:

22 (c)(1) If such a claim or controversy is not resolved by mutual
23 agreement, and after reasonable notice to the ~~person involved~~ contractor and
24 reasonable opportunity for ~~that person~~ the contractor to ~~respond to~~ present
25 the claim or controversy in accordance with the regulations promulgated by
26 the director, the head of a procurement agency, the director, or the designee
27 of either officer shall promptly issue a decision in writing.

28 (2) The decision shall state the reasons for the action taken.

29

30 SECTION 4. Arkansas Code § 19-11-1002 is amended to read as follows:
31 19-11-1002. Purpose of contracts.

32 The principal purpose of a professional services contract or a
33 consultant services contract is the procurement of ~~the services of an~~
34 ~~individual~~ by the state agency rather than the procurement of commodities.

35

36 SECTION 5. Arkansas Code § 19-11-1007 is amended to read as follows:

1 19-11-1007. Certification by agency head.

2 The head of every agency shall certify by his or her signature on each
3 contract entered into by that agency that:

4 (1) All information required by law and by regulations is
5 supplied;

6 (2) The proper contracting form is utilized;

7 (3) All information contained in the contract is true and
8 correct to the best of his or her knowledge and belief;

9 (4) All general guidelines prescribed by the State Procurement
10 Director have been complied with;

11 (5) The services proposed to be provided under the contract are
12 necessary for operation of the state agency in fulfilling its legal
13 responsibilities and cannot be provided by any existing state agency;

14 (6) The contractor is fully qualified to perform the contract
15 and has no vested interest in the subject matter of the contract that would
16 constitute a conflict of interest and a bar to the contractor's providing
17 services of a professional and disinterested quality; ~~and~~

18 (7) The contract terms are reasonable and the benefits to be
19 derived are sufficient to warrant the expenditure of the funds called for in
20 the contract-; and

21 (8) Sufficient funds are available to pay the obligations when
22 they become due.

23
24 SECTION 6. Arkansas Code § 19-11-1011(a), concerning contract review
25 by the Office of State Procurement, is amended to read as follows:

26 (a)(1) Every contract for professional consultant services covered by
27 this subchapter that is executed using the professional and consultant
28 service contract form approved by the Director of the Office of State
29 Procurement shall be filed with the Office of State Procurement of the
30 Department of Finance and Administration.

31 (2) The execution date of all contracts shall be defined as the
32 date upon which performance of the services to be rendered under the contract
33 is to begin and not the date upon which the agreement was made.

34
35 SECTION 7. Arkansas Code § 19-11-1012(b)(6), concerning information
36 included in the standard contract form, is amended to read as follows:

1 (6)(A) The names ~~and social security numbers~~ of all individuals who
2 will be supplying services to the agency or to third-party beneficiaries
3 under the terms of the contracts, so far as those names are known to the
4 contractor at the time of the execution of the contract.

5 (B) If the names of all individuals supplying services
6 under the contract are not available at the time of the execution of the
7 contract, the contract shall contain a provision requiring the contractor to
8 submit periodically the names ~~and social security numbers~~ of individuals
9 supplying services as soon as the identity of those individuals is known to
10 the contractor;

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