

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 521

5 By: Senator Hickey
6 By: Representative Hammer
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS RELATING TO PUBLIC
10 CONTRACTS; TO AMEND THE PROCESS AND REQUIREMENTS FOR
11 REQUESTS FOR PROPOSALS AND REQUESTS FOR
12 QUALIFICATIONS; TO LIMIT THE TERM OF PUBLIC
13 CONTRACTS; TO REQUIRE CERTAIN DISCLOSURES BY MEMBERS
14 OF AN EVALUATION COMMITTEE AND BY OFFERORS; TO
15 REQUIRE THE PROMULGATION OF RULES REGARDING THE
16 CHANGES TO THE PROCUREMENT LAWS; AND FOR OTHER
17 PURPOSES.
18
19

Subtitle

21 TO AMEND THE PROCESS AND REQUIREMENTS FOR
22 REQUESTS FOR PROPOSALS AND REQUESTS FOR
23 QUALIFICATIONS; TO LIMIT THE TERM OF
24 PUBLIC CONTRACTS; AND TO REQUIRE CERTAIN
25 DISCLOSURES IN PROCURING PUBLIC
26 CONTRACTS.
27
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Effective July 1, 2018, Arkansas Code § 19-4-704(a),
32 concerning the prohibition on paying obligations without an appropriation, is
33 amended to read as follows:

34 (a)(1) ~~No obligations will~~ An obligation shall not be paid from
35 appropriated funds until the General Assembly ~~shall have~~ has made an
36 appropriation for that purpose; ~~nor shall any.~~



1 (2) A state agency shall not enter into ~~any a~~ contract which
2 ~~would contemplate~~ that permits payments under the ~~contracts would~~ contract to
3 be made ~~beyond~~ after the expiration of the biennial period unless ~~the~~:

4 (A) The General Assembly, ~~prior to~~ before the expiration
5 of the biennial period, makes an appropriation for that purpose; ~~or in the~~
6 ~~ease of~~

7 (B) A written determination has been made by the State
8 Procurement Director concerning multiyear contracts for commodities or
9 services under § 19-11-238, a determination in writing has been made prior to
10 ~~use~~ stating that the:

11 ~~(1) (i)~~ (i) Estimated requirements cover the period of
12 the contract and are reasonably firm and continuing; and

13 ~~(2) Such a contract would serve~~ (ii) Contract is in
14 the best ~~interests~~ interest of the state by ~~encouraging~~:

15 (a) Encouraging effective competition ~~or~~
16 ~~otherwise promoting~~;

17 (b) Promoting economies in state procurement;
18 or

19 (c) Providing a substantial cost avoidance or
20 savings to the state.

21 (b) ~~In no event shall any obligations~~ Obligations shall not be
22 incurred unless there are sufficient funds or an approved federal grant on
23 hand, or estimated to become available, to meet the obligations when they
24 become due.

25
26 SECTION 2. Effective July 1, 2018, Arkansas Code § 19-4-705(a),
27 concerning obligations being limited to funds available, is amended to read
28 as follows:

29 (a) ~~No~~ A state agency for which regular operating appropriations are
30 made on a fiscal-year basis shall not: ~~incur any obligations~~

31 (1) Incur an obligation under the appropriations unless, to
32 satisfy the obligation, there are:

33 (A) Are funds on hand ~~or~~;

34 (B) Is an approved federal grant; ~~or~~

35 (C) Is funding or one (1) or more grants that are
36 estimated to become available, during the fiscal year for the payment of the

1 obligation; ~~nor shall any agency; or~~

2 ~~(2) create any~~ Create an obligation in one (1) fiscal year ~~which~~
3 that will make it necessary to use the revenues of the following fiscal year
4 in order to meet the obligation except in the case of multiyear contracts for
5 commodities or services and as provided in §§ 19-4-707 and 19-11-238.

6
7 SECTION 3. Effective July 1, 2018, Arkansas Code § 19-4-707 is amended
8 to read as follows:

9 19-4-707. Obligations for improvements.

10 ~~(a) Notwithstanding the fact that no disbursements may~~ A disbursement
11 shall not be made during any fiscal period in excess of the appropriations
12 made available by the General Assembly for the fiscal period, ~~it is~~ except as
13 provided that for contracts for ~~improvements~~ which an appropriation has been
14 made available for that purpose, including without limitation:

15 (1) Improvements, including major repairs, alterations, and
16 construction of new buildings and facilities ~~may be let to the extent of the~~
17 ~~appropriations made available for those purposes for the biennial period; and~~

18 (2) Multiyear contracts under § 19-11-238.

19 ~~(b) However, no such contracts may~~ a contract shall not be ~~let in~~
20 ~~amounts exceeding~~ entered into for an amount that exceeds the probable funds:

21 (1) Currently available; ~~or which are estimated~~

22 (2) Estimated to become available during the fiscal period.

23
24 SECTION 4. Effective July 1, 2018, Arkansas Code § 19-4-1103(a),
25 concerning the responsibilities of agency heads related to the approval of
26 expenditures, is amended to read as follows:

27 (a) It ~~shall be~~ is the responsibility of each executive head of a
28 state agency to ~~establish:~~

29 (1) Establish adequate internal administrative procedures and
30 controls ~~to ensure;~~

31 (2) Ensure prompt and accurate payment of obligations in order
32 to promote good public relations; ~~and to take~~

33 (3) Take advantage of all available discounts, including
34 without limitation the discounts available under § 19-11-238; and

35 ~~(4) It shall also be the responsibility of each executive head~~
36 ~~of a state agency to establish~~ Establish adequate administrative procedures

1 to ensure that all financial transactions of the state agency are posted in
 2 the state’s financial management system in accordance with procedures
 3 established by the Chief Fiscal Officer of the State.

4
 5 SECTION 5. Arkansas Code § 19-11-204(10), concerning definitions
 6 concerning source selection and contract formation under the Arkansas
 7 Procurement Law, is amended to read as follows:

8 (10)~~(A)~~ “Request for qualifications” means a solicitation
 9 document requiring submittal of qualifications or specialized expertise under
 10 § 19-11-801 et seq. in response to the scope of work or services required ~~and~~
 11 ~~does not require pricing.~~

12 ~~(B) Other than as provided in § 19-11-801 et seq., the~~
 13 ~~request for qualifications process may only be used when, under rules~~
 14 ~~promulgated by the State Procurement Director, the director determines in~~
 15 ~~writing that the request for qualifications process is warranted;~~

16
 17 SECTION 6. Arkansas Code § 19-11-230 is amended to read as follows:

18 19-11-230. Competitive sealed proposals – Definition – Requirements.

19 (a) Definition. “Competitive sealed proposals” means a method of
 20 procurement ~~which~~ that involves, but is not limited to:

21 (1) Solicitation of proposals through a request for proposals;

22 (2) Submission of cost or pricing data from the ~~offeror where~~
 23 ~~required~~ offerors;

24 (3) Discussions and negotiations with responsible offerors whose
 25 proposals have been determined to be reasonably susceptible to being selected
 26 for award; and

27 (4) An award made to the responsible offeror whose proposal is
 28 determined in writing to be the most advantageous considering price, ~~and~~
 29 other evaluation factors ~~set forth~~ stated in the request for proposals, and
 30 the results of any discussions and negotiations conducted with responsible
 31 offerors.

32 (b) When the use of competitive sealed bidding is not practicable and
 33 advantageous, a contract may be awarded by competitive sealed proposals.

34 (c)(1) Public notice of the request for proposals shall be given ~~in~~
 35 ~~the same manner as provided in § 19-11-229(d), which refers to public notice~~
 36 ~~of competitive sealed bidding~~ at least fourteen (14) days before the

1 evaluation process begins.

2 (2) If a request for proposals is amended, the evaluation
3 process for the proposals submitted in response to the request for proposals
4 shall not begin unless notice of the amended request for proposals, including
5 without limitation the substance of the amended request for proposals, is
6 provided at least seven (7) calendar days before the evaluation process
7 begins.

8 (3) Notice under this subsection shall:

9 (A) Be given by:

10 (i) Publishing the notice at least one (1) time in a
11 newspaper having general circulation in the state; or

12 (ii) Posting by electronic media;

13 (B) Include a description of the commodities or services
14 to be procured; and

15 (C) State how and where the:

16 (i) Request for proposals may be obtained; and

17 (ii) Proposals should be submitted.

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

20 (2) Price shall receive at least forty percent (40%) of the
21 total weight of the evaluation factors.

22 (e)(1) Before the evaluation process begins:

23 (A) Each offeror shall disclose in writing:

24 (i) Any conflicts of interest; and

25 (ii) Any pending litigation that pertains to the
26 subject of the request for proposals in which the offeror or any of its
27 affiliates or subsidiaries is a party; and

28 (B)(i) The identity of the members of the evaluation
29 committee shall be disclosed to the offerors.

30 (ii)(a) The offerors shall have five (5) business
31 days to protest the participation of any member of the evaluation committee.

32 (b) A protest under this subdivision
33 (e)(1)(B)(ii) is limited to a protest regarding a perceived bias of the
34 member of the evaluation committee as the result of a familial relationship
35 or a financial interest of the member of the evaluation committee, an
36 immediate family member of the member of the evaluation committee, or a

1 business organization owned in part by the member of the evaluation committee
2 or an immediate family member of the member of the evaluation committee.

3 (c) The burden of proving the existence of a
4 bias under this subdivision (e)(1)(B)(ii) is on the offeror filing the
5 protest.

6 (iii)(a) After the identity of the members of the
7 evaluation committee are disclosed under this subdivision (e)(1)(B), any
8 person who has a financial interest in the awarding of a contract based on
9 the proposals being evaluated by the identified members of the evaluation
10 committee shall not contact a member of the evaluation committee in any way.

11 (b) Persons prohibited from contacting members
12 of the evaluation committee under this subdivision (e)(1)(B)(iii) include
13 without limitation an officer, employee, or agent of an offeror that
14 submitted a proposal being evaluated by the committee; an officer, employee,
15 or agent of a parent, subsidiary, or affiliate of an offeror that submitted a
16 proposal being evaluated by the committee; a lobbyist employed by an offeror
17 that submitted a proposal being evaluated by the committee; and a lobbyist
18 employed by a parent, subsidiary, or affiliate of an offeror that submitted a
19 proposal being evaluated by the committee.

20 (2) Each member of the evaluation committee shall:

21 (A) Evaluate the proposals independently before meeting or
22 discussing the proposals with any other member of the evaluation committee;
23 and

24 (B) In accordance with § 19-11-701 et seq., disclose in
25 writing any potential conflict of interest as soon as the member is aware of
26 the potential conflict of interest.

27 ~~(e)(1) As provided in the request for proposals and under regulations,~~
28 ~~discussions may~~ (f)(1) Discussions may be conducted with responsible
29 offerors who submit proposals determined to be reasonably susceptible of
30 being selected for award for the purpose of ~~clarification;~~

31 (A) Clarifying the solicitation requirements to assure
32 full understanding of, and responsiveness to, the solicitation requirements;
33 and

34 (B) Negotiating a contract that is the most advantageous
35 to the state.

36 (2) ~~Offerors~~ Responsible offerors who are reasonably susceptible

1 of being selected for award shall be accorded fair and equal treatment with
 2 respect to ~~any~~ the opportunity for discussion, negotiation, and revision of
 3 proposals, and such revisions ~~may~~ shall be permitted after submissions and
 4 ~~prior to~~ before award for the purpose of obtaining the best and final ~~offers~~
 5 offer from each offeror.

6 (3) In conducting discussions and negotiations, ~~there shall be~~
 7 ~~no disclosure of any~~ information derived from proposals submitted by
 8 competing offerors shall not be disclosed.

9 ~~(f)(1)~~ (g)(1) Award shall be made to the responsible offeror whose
 10 proposal is determined in writing to be the most advantageous to the state,
 11 taking into consideration price, the other evaluation factors ~~set forth~~
 12 stated in the request for proposals, and the results of ~~any~~ the discussions
 13 and negotiations conducted with responsible offerors.

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

16 ~~(g)~~ (h) A competitive sealed proposal may be cancelled or any or all
 17 proposals may be rejected in writing by the State Procurement Director or the
 18 agency procurement official.

19
 20 SECTION 7. Arkansas Code § 19-11-234(b)(1), concerning competitive
 21 bidding under the Arkansas Procurement Law, is amended to read as follows:

22 (b)(1) ~~Contracts in which the~~ Competitive bidding may be used to
 23 solicit a contract if:

24 (A) The purchase price exceeds ten thousand dollars
 25 (\$10,000) and is less than or equal to fifty thousand dollars (\$50,000) may
 26 be awarded by use of competitive bidding procedures; or

27 (B) The contract will be with a professional person
 28 selected from a qualified vendor list under § 19-11-804.

29
 30 SECTION 8. Arkansas Code § 19-11-235(a)(1), concerning the
 31 responsibility of bidders and offerors under the Arkansas Procurement Law, is
 32 amended to read as follows:

33 (a)(1)(A) A determination of nonresponsibility of a bidder or offeror
 34 shall be made in accordance with ~~regulations~~ rules promulgated by the State
 35 Procurement Director.

36 (B) However, in determining the responsibility of a bidder

1 or offeror, the following shall be considered in addition to any factors
2 identified in a rule promulgated by the director:

3 (i) The past performance of the bidder or offeror;
4 and

5 (ii) Any conflicts of interest of the bidder or
6 offeror.

7
8 SECTION 9. Effective July 1, 2018, Arkansas Code § 19-11-238(a),
9 concerning multiyear contracts under the Arkansas Procurement Law, is amended
10 to read as follows:

11 (a) Specified Period.

12 (1) Unless Except as otherwise provided by law in this section,
13 a contract for commodities or services may be entered into for periods of not
14 more than seven (7) up to four (4) years if funds for the first fiscal year
15 of the contemplated contract are available at the time of contracting.

16 (2)(A) If a contract is entered into for four (4) years, before
17 the fourth year of the contract expires, the state agency may solicit a
18 request for information to determine whether the contract that is about to
19 expire is competitively priced.

20 (B) After soliciting a request for information under this
21 subdivision (a)(2), the state agency may extend the contract that is about to
22 expire for up to three (3) additional years if funds for the first fiscal
23 year of the contemplated extension are available at the time of contracting
24 and the state agency determines that:

25 (i) The contract about to expire is competitively
26 priced;

27 (ii) Extending the contract that is about to expire
28 would be more advantageous to the state than conducting a new procurement
29 process for the contract at the end of the four-year period; and

30 (iii) The vendor currently under contract has
31 received satisfactory vendor performance reports.

32 (C) A state agency that extends a contract under this
33 subdivision (a)(2) shall inform the State Procurement Director in writing of
34 the extension, including without limitation:

35 (i) The length of the extension;

36 (ii) The method the state agency used to distribute

1 the request for information;

2 (iii) The number of responses received from the
3 request for information; and

4 (iv) The pricing information included in each
5 submission received in response to the request for information.

6 (3) A contract for commodities or services may be entered into
7 for up to ten (10) years if:

8 (A) Funds for the first fiscal year of the contemplated
9 contract are available at the time of contracting;

10 (B) The total projected contract amount, including any
11 amendments and possible extensions, is at least twenty million dollars
12 (\$20,000,000); and

13 (C) The director approves the length of the contract based
14 on a written determination that the extended contract period is likely to
15 result in substantial:

16 (i) Savings to the state by avoiding, reducing, or
17 amortizing nonrecurring startup costs over the life of the contract; or

18 (ii) Cost avoidance or savings to the state, as
19 explicitly identified in writing by the director.

20 (4) An internet technology maintenance agreement or software
21 maintenance agreement that offers a discount of at least twenty percent (20%)
22 if paid in advance may be entered into for up to five (5) years with the
23 approval of the director if the director determines in writing that the
24 potential savings offered by prepayment is in the best interest of the state.

25 (5) Payment and performance obligations for succeeding fiscal
26 years shall be subject to the availability and appropriation of funds
27 therefor.

28
29 SECTION 10. Arkansas Code § 19-11-239(3), concerning the finality of
30 determinations required by certain portions of the Arkansas Procurement Law,
31 is amended to read as follows:

32 (3) Section ~~19-11-230(f)~~ 19-11-230(g), which refers to
33 competitive sealed proposals, award;

34
35 SECTION 11. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
36 amended to add additional sections to read as follows:

1 19-11-273. Expert evaluation committee – Definition.

2 (a) As used in this section, "expert evaluation committee" means a
3 committee composed of individuals from inside or outside the state who have
4 special expertise, experience, or training in the subject matter area of the
5 solicited procurement.

6 (b) A state agency shall hire an expert evaluation committee for the
7 purpose of evaluating responses to a request for proposals or a request for
8 qualifications:

9 (1) For services that will require a high level of knowledge or
10 expertise in a particular skill area; and

11 (2) For a contract that will have a total projected contract
12 amount, including any amendments and possible extensions, of at least ten
13 million dollars (\$10,000,000).

14 (c) If an expert evaluation committee is hired under this section, the
15 state agency may:

16 (1) Pay the cost of hiring the expert evaluation committee from
17 any funds available and authorized for that purpose; or

18 (2)(A) Require the payment of a fee to cover the cost of hiring
19 the expert evaluation committee by each offeror at the time the offeror
20 submits a response to the state agency's request for proposals or request for
21 qualifications.

22 (B) If the total amount of fees collected by the state
23 agency for hiring an expert evaluation committee under this subdivision
24 (c)(2) exceeds the actual cost of hiring the expert evaluation committee, the
25 state agency shall refund the excess fees on a pro rata basis to each offeror
26 that paid the fee.

27
28 19-11-274. Review of certain contracts by attorneys.

29 (a) A proposed contract for goods or services shall be reviewed by an
30 attorney at the Office of State Procurement or the Attorney General's office
31 before the contract is executed if the total projected contract amount,
32 including any amendments and possible extensions, is at least ten million
33 dollars (\$10,000,000).

34 (b)(1) As part of the solicitation for the contract, a state agency
35 may require each vendor submitting a response to the solicitation to pay a
36 fee to reimburse the Office of State Procurement or the Attorney General's

1 office for the review of the proposed contract at the time the vendor submits
 2 a response to the state agency's solicitation.

3 (2) If the total amount of fees collected by the state agency
 4 for review of the proposed contract under this subsection exceeds the actual
 5 cost of reimbursement, the state agency shall refund the excess fees on a pro
 6 rata basis to each vendor that paid the fee.

7
 8 SECTION 12. Arkansas Code §§ 19-11-801 – 19-11-805 are amended to read
 9 as follows:

10 19-11-801. Policy – Definitions – Rules.

11 (a) ~~(1)(A) It is the policy of the State of Arkansas that~~ Except as
 12 otherwise provided in this section, state agencies and political subdivisions
 13 shall follow the procedures stated in this section, except that subchapter.

14 (B) However, competitive bidding shall not be used for the
 15 procurement of legal, architectural, engineering, construction management,
 16 and land surveying professional consultant services, ~~if~~ unless competitive
 17 bidding is used only to select a professional person from a qualified vendor
 18 list under this subchapter.

19 ~~(1) State agencies~~ (2) A state agency that is not exempt from
 20 review and approval of the Building Authority Division of the Department of
 21 Finance and Administration shall follow procedures established by the
 22 division for the procurement of architectural, engineering, land surveying,
 23 and construction management services; ~~and.~~

24 ~~(2) Institutions~~ (3) An institution of higher education that is
 25 exempt from review and approval of the division shall follow procedures
 26 established by ~~their governing boards~~ its governing board for the procurement
 27 of architectural, engineering, land surveying, and construction management
 28 professional consultant services.

29 (b) ~~It is the policy of the State of Arkansas and its political~~
 30 ~~subdivisions that political subdivisions shall follow the procedures stated~~
 31 ~~in this section, except that competitive bidding shall not be used for the~~
 32 ~~procurement of legal, financial advisory, architectural, engineering,~~
 33 ~~construction management, and land surveying professional consultant services.~~
 34 The request for qualifications method of procurement stated in this
 35 subchapter shall be used only when:

36 (1) The price for the service being procured is predetermined by

1 law or by the state agency or political subdivision; or

2 (2) It is necessary to secure a qualified vendor list.

3 ~~(e) For purposes of this subchapter, a political subdivision of the~~
4 ~~state may elect to not use competitive bidding for other professional~~
5 ~~services not listed in subsection (b) of this section with a two thirds (2/3)~~
6 ~~vote of the political subdivision's governing body.~~

7 ~~(d)(1)~~ (c)(1) As used in this section, "construction management" means
8 a project delivery method based on an agreement in which a state agency,
9 political subdivision, public school district, or institution of higher
10 education acquires from a construction entity a series of services that
11 include, but are not limited to, design review, scheduling, cost control,
12 value engineering, constructability evaluation, preparation and coordination
13 of bid packages, and construction administration.

14 (2) "Construction management" includes, ~~but is not limited to~~
15 without limitation:

16 (A)(i) "Agency construction management", in which a public
17 school district selects a construction manager to serve as an agent for the
18 purpose of providing administration and management services.

19 (ii) The construction manager shall not hold
20 subcontracts for the project or provide project bonding for the project;

21 (B) "At-risk construction management", in which the
22 construction entity, after providing agency services during the
23 preconstruction period, serves as the general contractor and the following
24 conditions are met:

25 (i) The construction manager provides a maximum
26 guaranteed price;

27 (ii) The public school district holds all trade
28 contracts and purchase orders; and

29 (iii) The portion of the project not covered by the
30 trade contracts is bonded and guaranteed by the construction manager; and

31 (C)(i) "General contractor construction management", in
32 which the construction entity, after providing agency services during the
33 preconstruction period, serves as the general contractor.

34 (ii) The general contractor shall hold all trade
35 contracts and purchase orders and shall bond and guarantee the project.

36 ~~(e)~~ (d) As used in this subchapter:

1 (1) “Competitive bidding” means the procurement method
2 established under § 19-11-234;

3 (2) “Political subdivision” means counties, school districts,
4 cities of the first class, cities of the second class, and incorporated
5 towns; and

6 ~~(2) “Other professional services” means professional services~~
7 ~~not listed in subsection (b) of this section as defined by a political~~
8 ~~subdivision with a two thirds (2/3) vote of its governing body.~~

9 (3) “Professional person” means an individual, corporation,
10 organization, or other legal entity licensed or certified to engage in an
11 occupation that requires a high level of training or expertise; and

12 (4) “Qualified vendor list” means a list of professional
13 persons, all of which:

14 (A) Meet the qualifications identified in a request for
15 qualifications;

16 (B) Agree to the terms of the request for qualifications;
17 and

18 (C) Are willing and able to provide the services necessary
19 to meet a scope of work specified in the request for qualifications.

20 (e) The State Procurement Director may promulgate rules to administer
21 this subchapter.

22
23 19-11-802. Annual statements of qualifications and performance data –
24 Restrictions on competitive bidding.

25 (a)(1) In the procurement of professional services, a state agency or
26 a political subdivision which utilizes these that uses the professional
27 services may issue a request for qualifications to encourage firms engaged in
28 the lawful practice of these professions to submit annual statements of
29 qualifications and performance data to the state agency or political
30 subdivision or may request such information issue a request for
31 qualifications as needed for a particular public project.

32 (2) However, if the state agency or the political subdivision
33 secures a qualified vendor list under this subchapter, the state agency or
34 the political subdivision shall issue a new request for qualifications and
35 secure an updated qualified vendor list each year.

36 (b) ~~The state agency or political subdivision shall evaluate current~~

1 ~~statements of qualifications and performance data of firms on file or may~~
 2 ~~request such information as needed for a particular public project whenever a~~
 3 ~~project requiring professional services is proposed.~~ In submitting a request
 4 for qualifications under subsection (a) of this section, a state agency or a
 5 political subdivision shall give public notice of the request in the same
 6 manner as provided in § 19-11-230.

7 (c)~~(1)~~ The political subdivision shall not use competitive bidding for
 8 the procurement of legal, financial advisory, architectural, engineering,
 9 construction management, and land surveying professional consulting services,
 10 unless competitive bidding is used only to select a professional person from
 11 a qualified vendor list.

12 ~~(2) A political subdivision shall not use competitive bidding~~
 13 ~~for the procurement of other professional services with a two-thirds (2/3)~~
 14 ~~vote of its governing body.~~

15 (d)(1)(A) A public school district that utilizes construction
 16 management services ~~shall~~ may issue a request for qualifications to encourage
 17 construction management firms to submit to the school district annual
 18 statements of qualifications and performance data or may ~~request such~~
 19 ~~information~~ issue a request for qualifications as needed for a particular
 20 public project.

21 (B) However, if the public school district secures a
 22 qualified vendor list under this subchapter, the public school district shall
 23 issue a new request for qualifications and secure an updated qualified vendor
 24 list each year.

25 (2) ~~The public school district shall evaluate current statements~~
 26 ~~of qualifications and performance data on file with the school district or~~
 27 ~~when submitted as requested whenever a project requiring professional~~
 28 ~~services of a construction manager is proposed.~~ In submitting a request for
 29 qualifications under subdivision (d)(1) of this section, a public school
 30 district shall give public notice of the request in the same manner as
 31 provided in § 19-11-230.

32 (3) The public school district shall not use competitive bidding
 33 for the procurement of professional services of a construction manager unless
 34 competitive bidding is used only to select a vendor from a qualified vendor
 35 list.

36 (e) If a request for qualifications is amended, the evaluation process

1 for the statements of qualifications and performance data submitted in
2 response to the request for qualifications shall not begin unless notice of
3 the amended request for qualifications, including without limitation the
4 substance of the amended request for qualifications, is provided at least
5 seven (7) calendar days before the evaluation process begins.

6 (f) A request for qualifications may be used only as provided in this
7 subchapter.

8
9 19-11-803. Evaluation of qualifications.

10 In evaluating the qualifications of each firm submitting a response to
11 a request for qualifications under this subchapter, the state agency or the
12 political subdivision shall consider:

13 (1) The specialized experience and technical competence of the
14 firm with respect to the type of professional services required;

15 (2) The capacity and capability of the firm to perform the work
16 in question, including specialized services, within the time limitations
17 fixed for the completion of the project;

18 (3) The past record of performance of the firm with respect to
19 such factors as control of costs, quality of work, and ability to meet
20 schedules and deadlines; and

21 (4) The firm's proximity to and familiarity with the area in
22 which the project is located.

23
24 19-11-804. Selection.

25 (a)(1) The If a state agency or a political subdivision issues a
26 request for qualifications under this subchapter, the state agency or the
27 political subdivision shall select at least three (3) qualified firms based
28 on the evaluation of the statements of qualifications and performance data
29 received under § 19-11-802.

30 (2) However, if the state agency or the political subdivision
31 receives fewer than (3) responses to a request for qualifications from
32 qualified firms, the state agency or political subdivision shall select all
33 of the qualified firms.

34 (b)(1) The If the request for qualifications was issued under § 19-11-
35 801(b)(1), the state agency or the political subdivision shall then select
36 the firm considered the best-qualified and capable of performing the desired

1 work and negotiate a contract for the project with the firm selected.

2 (2) If the request for qualifications was issued to professional
 3 persons based on a qualified vendor list under § 19-11-801(b)(2), the state
 4 agency or the political subdivision shall:

5 (A) Use competitive bidding to select the professional
 6 person from the qualified vendor list that is considered the best-qualified
 7 and capable of performing the desired work for the lowest price; and

8 (B) Negotiate a contract for the project under § 19-11-805
 9 with the professional person selected.

10
 11 19-11-805. Negotiation of contracts.

12 (a) For the basis of negotiations, the state agency or the political
 13 ~~subdivisions~~ subdivision and the selected firm or professional person shall
 14 jointly prepare a detailed, written description of the scope of the proposed
 15 services.

16 (b)(1)(A) If the state agency or the political subdivision is unable
 17 to negotiate a satisfactory contract with the firm or professional person
 18 selected, negotiations with that firm shall be terminated.

19 (B)(i) The state agency or the political subdivision shall
 20 then undertake negotiations with another of the qualified firms selected.

21 (ii) If the state agency or the political
 22 subdivision is selecting from a qualified vendor list, the state agency or
 23 the political subdivision shall undertake negotiations with the professional
 24 person that submitted the next lowest bid.

25 (2)(A) If there is a failing of accord with the second firm or
 26 professional person, negotiations with the firm shall be terminated.

27 (B)(i) The state agency or the political subdivision shall
 28 undertake negotiations with the third qualified firm.

29 (ii) If the state agency or the political
 30 subdivision is selecting from a qualified vendor list, the state agency or
 31 the political subdivision shall undertake negotiations with the professional
 32 person that submitted the next lowest bid.

33 (c) If the state agency or the political subdivision is unable to
 34 negotiate a contract with any of the selected firms or professional persons
 35 on the qualified vendor list, the state agency or the political subdivision
 36 shall reevaluate the necessary professional services, including the scope and

1 reasonable fee requirements, ~~again compile a list of qualified firms and~~
2 ~~proceed in accordance with the provisions of this subchapter~~ and issue a new
3 request for qualifications under this subchapter.

4 (d) When unable to negotiate a contract for construction management, a
5 public school district also shall perform a reevaluation of services in
6 accordance with subsection (c) of this section.

7
8 SECTION 13. Arkansas Code § 19-11-1005 is amended to read as follows:
9 19-11-1005. General guidelines and ~~regulations~~ rules.

10 The State Procurement Director, after soliciting suggestions from state
11 agencies and after seeking and receiving the advice of the Attorney General
12 and ~~review~~ approval by the Legislative Council, or by the Joint Budget
13 Committee, if the General Assembly is in session, shall publish general
14 guidelines for the procurement of professional and consultant services
15 contracts and general ~~regulations~~ rules governing the use of each type of
16 contract.

17
18 SECTION 14. DO NOT CODIFY. The State Procurement Director shall
19 promulgate rules and revise rules to comply with, implement, and administer
20 this act.