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2 91st General Assembly

A Bill

3 Regular Session, 2017

SENATE BILL 521

4

5 By: Senator Hickey

6 By: Representative Hammer

7

8

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

20

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

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

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

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) Posting the request for proposals, including a
11 request for proposals performed outside of the Office of State Procurement,
12 on the official website of the office; and

13 (ii) Any additional means of advertising deemed
14 appropriate;

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

17 (C) State how, when, and where the:

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

19 (ii) Proposals should be submitted.

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

22 (2)(A) Except as provided under subdivision (d)(2)(B) of this
23 section, price shall receive at least thirty percent (30%) of the total
24 weight of the evaluation factors.

25 (B) The total weight given to price in an evaluation may
26 be less than thirty percent (30%) if approved by:

27 (i)(a) The Governor if the request for proposals is
28 issued by a state agency.

29 (b) A state agency that received approval
30 under this subdivision (d)(2)(B)(i) shall notify the Legislative Council or,
31 if the General Assembly is in session, the Joint Budget Committee, of the
32 total weight approved by the Governor; or

33 (ii) A vote of more than fifty percent (50%) of the
34 members of the governing body of an institution of higher education or a
35 political subdivision if the request for proposals is issued by an
36 institution of higher education or a political subdivision.

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

2 (A) Each offeror shall disclose in writing:

3 (i) Any conflicts of interest; and

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

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

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

11 (b) A protest under this subdivision
12 (e)(1)(B)(ii) is limited to a protest regarding a perceived bias of the
13 member of the evaluation committee as the result of a familial relationship
14 or a financial interest of the member of the evaluation committee, an
15 immediate family member of the member of the evaluation committee, or a
16 business organization owned in part by the member of the evaluation committee
17 or an immediate family member of the member of the evaluation committee.

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

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

26 (b) Persons prohibited from contacting members
27 of the evaluation committee under this subdivision (e)(1)(B)(iii) include
28 without limitation an officer, employee, or agent of an offeror that
29 submitted a proposal being evaluated by the committee; an officer, employee,
30 or agent of a parent, subsidiary, or affiliate of an offeror that submitted a
31 proposal being evaluated by the committee; a lobbyist employed by an offeror
32 that submitted a proposal being evaluated by the committee; and a lobbyist
33 employed by a parent, subsidiary, or affiliate of an offeror that submitted a
34 proposal being evaluated by the committee.

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

36 (A) Evaluate the proposals independently before meeting or

1 discussing the proposals with any other member of the evaluation committee;
2 (B) Document the specific justification for any
3 modification made to his or her scoring during or after the consensus meeting
4 of the evaluation committee; and

5 (C) In accordance with § 19-11-701 et seq., disclose in
6 writing any potential conflict of interest as soon as the member is aware of
7 the potential conflict of interest.

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

12 (A) Clarifying the solicitation requirements to assure
13 full understanding of, and responsiveness to, the solicitation requirements;
14 and

15 (B) Negotiating a contract that is the most advantageous
16 to the state.

17 (2) ~~Offerors~~ Responsible offerors who are reasonably susceptible
18 of being selected for award shall be accorded fair and equal treatment with
19 respect to ~~any~~ the opportunity for discussion, negotiation, and revision of
20 proposals, and such revisions ~~may~~ shall be permitted after submissions and
21 ~~prior to~~ before award for the purpose of obtaining the best and final ~~offers~~
22 offer from each offeror.

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

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

31 (2) No other factors or criteria shall be used in the
32 evaluation.

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

36

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

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

5 (A) The purchase price exceeds ten thousand dollars
6 (\$10,000) and is less than or equal to fifty thousand dollars (\$50,000) may
7 be awarded by use of competitive bidding procedures; or

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

10
11 SECTION 8. Arkansas Code § 19-11-235(a)(1), concerning the
12 responsibility of bidders and offerors under the Arkansas Procurement Law, is
13 amended to read as follows:

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

17 (B) However, in determining the responsibility of a bidder
18 or offeror, the following shall be considered in addition to any factors
19 identified in a rule promulgated by the director:

20 (i) The past performance of the bidder or offeror;
21 and

22 (ii) Any conflicts of interest of the bidder or
23 offeror.

24
25 SECTION 9. Effective July 1, 2018, Arkansas Code § 19-11-238(a),
26 concerning multiyear contracts under the Arkansas Procurement Law, is amended
27 to read as follows:

28 (a) Specified Period.

29 (1) ~~Unless~~ Except as otherwise provided by law in this section
30 and § 24-2-618, a contract for commodities or services may be entered into
31 for ~~periods of not more than seven (7)~~ up to four (4) years if funds for the
32 first fiscal year of the contemplated contract are available at the time of
33 contracting.

34 (2)(A) If a contract is entered into for four (4) years, before
35 the fourth year of the contract expires, the state agency may solicit a
36 request for information to determine whether the contract that is about to

1 expire is competitively priced.

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

7 (i) The contract about to expire is competitively
8 priced;

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

12 (iii) The vendor currently under contract has
13 received satisfactory vendor performance reports.

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

17 (i) The length of the extension;

18 (ii) The method the state agency used to distribute
19 the request for information;

20 (iii) The number of responses received from the
21 request for information; and

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

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

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

28 (B) The total projected contract amount, including any
29 amendments and possible extensions, is at least twenty million dollars
30 (\$20,000,000); and

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

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

36 (ii) Cost avoidance or savings to the state, as

1 explicitly identified in writing by the director.

2 (4) A technology maintenance agreement or software maintenance
3 agreement that satisfies the requirements stated in the rules promulgated
4 under this subchapter and offers a discount of at least twenty percent (20%)
5 if paid in advance may be entered into for up to:

6 (A) Seven (7) years as provided under subdivision (a)(2)
7 of this section; or

8 (B) Ten (10) years as provided under subdivision (a)(3) of
9 this section.

10 (5) Payment and performance obligations for succeeding fiscal
11 years shall be subject to the availability and appropriation of funds
12 therefor.

13
14 SECTION 10. Arkansas Code § 19-11-239(3), concerning the finality of
15 determinations required by certain portions of the Arkansas Procurement Law,
16 is amended to read as follows:

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

19
20 SECTION 11. Arkansas Code § 19-11-268(b)(1), concerning the
21 requirements for vendor performance reporting under the Arkansas Procurement
22 Law, is amended to read as follows:

23 (1) Completed and submitted:

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

26 (B) At the end of the contract;

27
28 SECTION 12. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
29 amended to add additional sections to read as follows:

30 19-11-273. Expert evaluator – Definition.

31 (a)(1) As used in this section, “expert evaluator” means an individual
32 who, through education or experience, or both, has special expertise,
33 experience, or training in the subject matter area of the solicited
34 procurement.

35 (2) An expert evaluator may be an employee, volunteer, or
36 contractor.

1 (b) A state agency shall:

2 (1) Include at least one (1) expert evaluator on an evaluation
3 committee for the purpose of evaluating responses to a request for proposals
4 or a request for qualifications for a contract that:

5 (a) Is for services that will require a high level of
6 knowledge or expertise in a particular skill area; and

7 (b) Will have a total projected contract amount, including
8 any amendments and possible extensions, of at least ten million dollars
9 (\$10,000,000); or

10 (2) Assemble an evaluation committee composed of at least sixty
11 percent (60%) of expert evaluators for the purpose of evaluating responses to
12 a request for proposals or a request for qualifications for a contract that:

13 (a) Is for services that will require a high level of
14 knowledge or expertise in a particular skill area; and

15 (b) Will have a total projected contract amount, including
16 any amendments and possible extensions, of at least one hundred million
17 dollars (\$100,000,000).

18 (c) If one (1) or more expert evaluators are used as required under
19 subsection (b) of this section, the state agency may:

20 (1) Pay the cost of the expert evaluators from any funds
21 available and authorized for that purpose; or

22 (2)(A) Require the payment of a fee to cover the cost of using
23 the expert evaluators by each offeror at the time the offeror submits a
24 response to the state agency's request for proposals or request for
25 qualifications.

26 (B) If the total amount of the fees collected by the state
27 agency for any expert evaluators required under this section exceeds the
28 actual cost of hiring the expert evaluators, the state agency shall refund
29 the excess fees on a pro rata basis to each offeror that paid the fee.

30 (d) An expert evaluator that is:

31 (1) Employed for the sole purpose of evaluating a solicitation
32 under this section is exempt from § 21-3-802; or

33 (2) Contracted with for the sole purpose of evaluating a
34 solicitation under this section is exempt from the Arkansas Procurement Law,
35 § 19-11-201 et seq., and § 19-11-801 et seq.

36

1 19-11-274. Review of certain contracts by attorneys.

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

7 (b)(1) As part of the solicitation for the contract, a state agency
8 may require each vendor submitting a response to the solicitation to pay a
9 fee to reimburse the Office of State Procurement or the Attorney General's
10 office for the review of the proposed contract at the time the vendor submits
11 a response to the state agency's solicitation.

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

16
17 19-11-275. Public notice of solicitation opportunities.

18 The Office of State Procurement shall publish a notice at least one (1)
19 time per month in a newspaper having general circulation in the state of the
20 website address where the public may view currently available solicitation
21 opportunities for competitive sealed bids, competitive sealed proposals, and
22 requests for qualifications.

23
24 SECTION 13. Arkansas Code §§ 19-11-801 – 19-11-805 are amended to read
25 as follows:

26 19-11-801. Policy – Definitions – Rules.

27 (a)(1)(A) It is the policy of the State of Arkansas that Except as
28 otherwise provided in this section, state agencies, state-supported
29 institutions of higher education, and political subdivisions shall follow the
30 procedures stated in this section, except that subchapter.

31 (B) However, in addition to the request for qualifications
32 method of procurement permitted under this subchapter, competitive bidding
33 under § 19-11-234, competitive sealed bidding under § 19-11-229, and
34 procurement of professional consultant services contracts for legal,
35 architectural, engineering, construction management, and land surveying
36 professional consultant services if+ desired by the state and land surveying

1 ~~professional consultant services if+ desired by the state agency, the state-~~
2 ~~supported institution of higher education, or the political subdivision.~~

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

8 ~~(2) Institutions of higher education exempt from review and~~
9 ~~approval of the division shall follow procedures established by their~~
10 ~~governing boards for the procurement of architectural, engineering, land~~
11 ~~surveying, and construction management professional consultant services.~~

12 (b) ~~It is the policy of the State of Arkansas and its political~~
13 ~~subdivisions that political subdivisions shall follow the procedures stated~~
14 ~~in this section, except that competitive bidding shall not be used for the~~
15 ~~procurement of legal, financial advisory, architectural, engineering,~~
16 ~~construction management, and land surveying professional consultant services.~~

17 The request for qualifications method of procurement stated in this
18 subchapter shall be used only when:

19 (1) The price for the service being procured is predetermined by
20 law or by the state agency or political subdivision;

21 (2) It is necessary to secure a qualified vendor list; or

22 (3) The contract being procured is one hundred percent (100%)
23 funded by federal funds.

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

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

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

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

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

6 (B) "At-risk construction management", in which the
7 construction entity, after providing agency services during the
8 preconstruction period, serves as the general contractor and the following
9 conditions are met:

10 (i) The construction manager provides a maximum
11 guaranteed price;

12 (ii) The public school district holds all trade
13 contracts and purchase orders; and

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

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

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

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

22 (1) "Competitive bidding" means the procurement method
23 established under § 19-11-234;

24 (2) "Political subdivision" means counties, school districts,
25 cities of the first class, cities of the second class, and incorporated
26 towns; and

27 ~~(2) "Other professional services" means professional services~~
28 ~~not listed in subsection (b) of this section as defined by a political~~
29 ~~subdivision with a two-thirds (2/3) vote of its governing body.~~

30 (3) "Professional person" means an individual, corporation,
31 organization, or other legal entity licensed or certified to engage in an
32 occupation that requires a high level of training or expertise;

33 (4) "Qualified vendor list" means a list of professional
34 persons, all of which:

35 (A) Meet the qualifications identified in a request for
36 qualifications;

1 (B) Agree to the terms of the request for qualifications;
2 and

3 (C) Are willing and able to provide the services necessary
4 to meet a scope of work specified in the request for qualifications; and

5 (5) "Request for qualifications" means a solicitation document
6 requiring submittal of qualifications or specialized expertise under this
7 subchapter in response to the scope of work or services required.

8 (e) The State Procurement Director shall promulgate rules to
9 administer this subchapter.

10
11 19-11-802. Annual statements of qualifications and performance data –
12 Restrictions on competitive bidding.

13 (a)(1) In the procurement of professional services, a state agency, a
14 state-supported institution of higher education, or a political subdivision
15 ~~which utilizes these~~ that uses the professional services may issue a request
16 for qualifications to encourage firms engaged in the lawful practice of these
17 professions to submit annual statements of qualifications and performance
18 data to the state agency, state-supported institution of higher education, or
19 political subdivision or may ~~request such information~~ issue a request for
20 qualifications as needed for a particular public project.

21 (2) A professional person may be removed from a qualified vendor
22 list if the professional person:

23 (A) Fails to perform at a satisfactory level as determined
24 by the state agency;

25 (B) Fails to provide annual statements of qualifications
26 and performance data as requested; or

27 (C) Requests to be removed.

28 (3) If a state agency, state supported institution of higher
29 education, or political subdivision secures a qualified vendor list under
30 this subchapter, the state agency, state-supported institution of higher
31 education, or political subdivision shall annually reissue the original
32 request for qualifications and provide an opportunity for additional
33 professional persons to be added to the qualified vendor list.

34 ~~(b) The state agency or political subdivision shall evaluate current~~
35 ~~statements of qualifications and performance data of firms on file or may~~
36 ~~request such information as needed for a particular public project whenever a~~

1 ~~project requiring professional services is proposed. In submitting a request~~
2 ~~for qualifications under subsection (a) of this section, a state agency or a~~
3 ~~political subdivision shall give public notice of the request in the same~~
4 ~~manner as provided in § 19-11-230.~~

5 ~~(c)(1) The political subdivision shall not use competitive bidding for~~
6 ~~the procurement of legal, financial advisory, architectural, engineering,~~
7 ~~construction management, and land surveying professional consulting services.~~

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

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

17 (B) If a public school district secures a qualified vendor
18 list under this subchapter, the public school district shall reissue annually
19 the original request for qualifications and provide an opportunity for
20 additional professional persons to be added to the qualified vendor list.

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

28 ~~(3) The public school district shall not use competitive bidding~~
29 ~~for the procurement of professional services of a construction manager.~~

30 (e) If a request for qualifications is amended, the evaluation process
31 for the statements of qualifications and performance data submitted in
32 response to the request for qualifications shall not begin unless notice of
33 the amended request for qualifications, including without limitation the
34 substance of the amended request for qualifications, is provided at least
35 seven (7) calendar days before the evaluation process begins.

36 (f) A request for qualifications may be used only as provided in this

1 subchapter.

2

3 19-11-803. Evaluation of qualifications.

4 In evaluating the qualifications of each firm submitting a response to
5 a request for qualifications under this subchapter, the state *agency*, the
6 state-supported institution of higher education, or the political subdivision
7 shall consider:

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

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

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

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

18

19 19-11-804. Selection.

20 (a)(1) The If a state agency, a state-supported institution of higher
21 education, or a political subdivision issues a request for qualifications
22 under this subchapter, the state agency, the state-supported institution of
23 higher education, or the political subdivision shall select at least three
24 (3) qualified firms based on the evaluation of the statements of
25 qualifications and performance data received under § 19-11-802.

26 (2) If a state agency, a state-supported institution of higher
27 education, or a political subdivision receives fewer than three (3) responses
28 to a request for qualifications from professional persons, the state agency,
29 the state-supported institution of higher education, or the political
30 subdivision shall select all qualified professional persons.

31 (b)(1) The If the request for qualifications was issued under § 19-11-
32 801(b)(1) or § 19-11-801(b)(3), the state agency, the state-supported
33 institution of higher education, or the political subdivision shall then
34 select the firm considered the best-qualified and capable of performing the
35 desired work and negotiate a contract for the project with the firm selected.

36 (2) If the request for qualifications was issued to professional

1 persons based on a qualified vendor list under § 19-11-801(b)(2), the state
2 agency, the state-supported institution of higher education, or the political
3 subdivision shall:

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

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

9
10 19-11-805. Negotiation of contracts.

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

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

20 (B)(i) The state agency, the state-supported institution
21 of higher education, or the political subdivision shall then undertake
22 negotiations with another of the qualified firms selected.

23 (ii) If the state agency, the state-supported
24 institution of higher education, or the political subdivision is selecting
25 from a qualified vendor list, the state agency or the political subdivision
26 shall undertake negotiations with the professional person that submitted the
27 next lowest bid.

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

30 (B)(i) The state agency, the state-supported institution
31 of higher education, or the political subdivision shall undertake
32 negotiations with the third qualified firm.

33 (ii) If the state agency, the state-supported
34 institution of higher education, or the political subdivision is selecting
35 from a qualified vendor list, the state agency or the political subdivision
36 shall undertake negotiations with the professional person that submitted the

1 next lowest bid.

2 (c) If the state *agency, the state-supported institution of higher*
3 *education*, or the political subdivision is unable to negotiate a contract
4 with any of the selected firms or professional persons on the qualified
5 vendor list, the state *agency, the state-supported institution of higher*
6 *education*, or the political subdivision shall reevaluate the necessary
7 professional services, including the scope and reasonable fee requirements,
8 ~~again compile a list of qualified firms and proceed in accordance with the~~
9 ~~provisions of this subchapter and issue a new request for qualifications~~
10 under this subchapter.

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

14

15 SECTION 14. Arkansas Code § 19-11-1005 is amended to read as follows:
16 19-11-1005. General guidelines and ~~regulations~~ rules.

17 The State Procurement Director, after soliciting suggestions from state
18 agencies and after seeking and receiving the advice of the Attorney General
19 and ~~review~~ approval by the Legislative Council, or by the Joint Budget
20 Committee, if the General Assembly is in session, shall publish general
21 guidelines for the procurement of professional and consultant services
22 contracts and general ~~regulations~~ rules governing the use of each type of
23 contract.

24

25 SECTION 15. Arkansas Code § 19-11-1013(b)(1), concerning vendor
26 performance reporting in relation to professional and consultant services
27 contracts, is amended to read as follows:

28 (1) Completed and submitted:

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

31 (B) At the end of the contract;

32

33 SECTION 16. DO NOT CODIFY. Legislative intent – Exemption.

34 (a) The General Assembly intends that Section 13 of this act have a
35 delayed effective date as applicable to the procurement of professional
36 consultant services contracts for the services stated in subsection (b) of

1 this section.

2 (b) Effective June 30, 2019, Section 13 of this act applies to the
3 procurement of professional consultant services contracts for legal,
4 architectural, engineering, construction management, or land surveying
5 services.

6
7 SECTION 17. DO NOT CODIFY. Study of procurement processes and
8 requirements.

9 The Legislative Council shall:

10 (1) Study current procurement processes and requirements,
11 including without limitation the process and requirements for requests for
12 qualifications and the process and requirements for evaluating responses to
13 requests for proposals and requests for qualifications;

14 (2) Invite the participation of members of the legal,
15 architectural, engineering, construction management, and land surveying
16 professions in the study required under this section; and

17 (3) Complete the study required under this section by January 1,
18 2019.

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

23
24 /s/Hickey
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