

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1161

5 By: Representatives Dotson, Wardlaw
6 By: Senator Flippo
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE
10 LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES
11 CONTRACTS; TO AMEND THE LAWS CONCERNING STATE AGENCY
12 PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE
13 ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND
14 REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED
15 BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE
16 LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR
17 THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY
18 STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING
19 REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR
20 OTHER PURPOSES.
21
22

Subtitle

23 TO AMEND THE REVIEW AND REPORTING
24 REQUIREMENTS FOR SERVICE CONTRACTS; TO
25 AMEND THE LAW CONCERNING VEHICLE LEASES
26 BY STATE AGENCIES; AND TO PROVIDE FOR THE
27 TRACKING AND REPORTING OF CONTRACTS
28 PROCURED BY STATE AGENCIES.
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32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
33

34 SECTION 1. Arkansas Code § 19-11-203(4), concerning the definitions to
35 be used under the Arkansas Procurement Law, is amended to read as follows:

36 (4)(A) "Commodities" means all personal property, including, ~~but~~



1 ~~not limited to, equipment, printing, stationery, supplies, and insurance, but~~
 2 ~~excluding leases without limitation:~~

- 3 (i) Goods, as defined in § 4-2-105;
- 4 (ii) Leases, as defined in § 4-2A-103; and
- 5 (iii) Insurance.

6 (B) "Commodities" does not include:

- 7 (i) A lease on real property, ~~real property,~~ or a
 8 permanent interest in real property, ~~exempt;~~
- 9 (ii) Exempt commodities and services, ~~and capital;~~
 10 and
- 11 (iii) Capital improvements;

12
 13 SECTION 2. Arkansas Code § 19-11-203(14)(AA), concerning the
 14 definition of "exempt commodities and services" under the Arkansas
 15 Procurement Law, is amended to read as follows:

16 (AA) The following commodities and services relating to
 17 proprietary software after the initial procurement:

- 18 (i) Technical support incidental to supporting the
 19 continuous operation of proprietary software;
- 20 (ii) Renewals;
- 21 (iii) Additional copies; and
- 22 (iv) License upgrades;

23
 24 SECTION 3. Arkansas Code § 19-11-203(27), concerning the definitions
 25 to be used under the Arkansas Procurement Law, is amended to read as follows:

26 (27)(A) "Services" means the furnishing of labor, time, or
 27 effort by a contractor, ~~not involving the delivery of a specific end product~~
 28 ~~other than reports which are merely incidental to the required performance~~
 29 that does not produce tangible commodities.

30 (B) "Services" includes without limitation:

- 31 (i) Consulting services;
- 32 (ii) Personal services;
- 33 (iii) Professional services;
- 34 (iv) Technical and general services; and
- 35 (v) The furnishing of labor, time, or effort by a
 36 contractor for the generation, customization, configuration, or development

1 of software and other intangible property other than technical support
 2 incidental to the procurement of proprietary software.

3 (C) “Services” ~~shall~~ does not include employment
 4 agreements, collective bargaining agreements, exempt commodities and
 5 services, or architectural or engineering contracts requiring approval of the
 6 Building Authority Division of the Department of Finance and Administration
 7 or higher education;

8
 9 SECTION 4. Arkansas Code § 19-11-217(c), concerning the powers and
 10 duties of the State Procurement Director, is amended to add an additional
 11 subdivision to read as follows:

12 (9) Shall create a roster of expiring contracts entered into by
 13 a state agency for which there is no new requisition.

14
 15 SECTION 5. Arkansas Code § 19-11-249, concerning cooperative
 16 purchasing, is amended to add an additional subsection to read as follows:

17 (c) A contractor shall cooperate with the director in providing
 18 information necessary for the director to complete the report required under
 19 subsection (b) of this section.

20
 21 SECTION 6. Arkansas Code § 19-11-260 is repealed.

22 ~~19-11-260. Recycled paper products—Preference.~~

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

25 ~~(b)(1) The goal of state agencies for the percentage of paper products~~
 26 ~~to be purchased that utilize recycled paper shall be:~~

27 ~~(A) Ten percent (10%) in fiscal year 1991;~~

28 ~~(B) Twenty five percent (25%) in fiscal year 1992;~~

29 ~~(C) Forty five percent (45%) in fiscal year 1993; and~~

30 ~~(D) Sixty percent (60%) by calendar year 2000.~~

31 ~~(2)(A) The Office of State Procurement shall prepare a~~
 32 ~~semiannual report of the state’s progress in meeting the goals for the~~
 33 ~~purchase of paper products with recycled content.~~

34 ~~(B) The report shall be made to the Governor.~~

35 ~~(c)(1) Whenever a bid is required, a preference for recycled paper~~
 36 ~~products shall be exercised if the use of the products is technically~~

1 ~~feasible and price is competitive.~~

2 ~~(2)(A) For the purpose of procurement of recycled paper~~
 3 ~~products, "competitive" means the bid price does not exceed the lowest~~
 4 ~~qualified bid of a vendor offering paper products manufactured or produced~~
 5 ~~from virgin material by ten percent (10%).~~

6 ~~(B) An additional one percent (1%) preference shall be~~
 7 ~~allowed for products containing the largest amount of postconsumer materials~~
 8 ~~recovered within the State of Arkansas.~~

9 ~~(3) A bidder receiving a preference under this section shall not~~
 10 ~~be entitled to an additional preference under § 19-11-259.~~

11
 12 SECTION 7. Arkansas Code § 19-11-265 is amended to read as follows:

13 19-11-265. Submission of contracts required.

14 (a)(1) A Except for critical emergency procurements and as otherwise
 15 provided in this section, a contract requiring the service services of one
 16 (1) or more ~~individuals for regular full-time or part-time weekly work~~
 17 persons shall be presented to the Legislative Council or, if the General
 18 Assembly is in session, to the Joint Budget Committee, before the execution
 19 of the contract if the total initial contract amount or the total projected
 20 contract amount, including any amendments or possible extensions, is at least
 21 one hundred thousand dollars (\$100,000).

22 (2) The Legislative Council or the Joint Budget Committee shall
 23 provide the State Procurement Director with its review as to the propriety of
 24 the contract within thirty (30) days after receipt of the proposed contract.

25 (3) The contract shall not be submitted to the Legislative
 26 Council or to the Joint Budget Committee until the Office of State
 27 Procurement has reviewed the contract and provided the Legislative Council or
 28 the Joint Budget Committee with a recommendation regarding the legality of
 29 the contract.

30 (4)(A)(i) A contract that does not have a material change upon
 31 renewal or extension shall be included in the monthly report required under §
 32 19-11-273 instead of being submitted to the Legislative Council or the Joint
 33 Budget Committee for review under this subsection.

34 (ii) As used in this subdivision (a)(4), "material
 35 change" includes without limitation:

36 (a) An increase in the contract amount;

1 (b) An increase in the total projected
 2 contract amount;

3 (c) A change in any of the essential terms of
 4 the contract;

5 (d) A change in any performance-based
 6 standards stated in the contract;

7 (e) The imposition of financial consequences
 8 as the result of a failure to satisfy performance-based standards under § 19-
 9 11-267 during the year preceding the renewal or extension of the contract;
 10 and

11 (f) The submission of a vendor performance
 12 report during the year preceding the renewal or extension of the contract.

13 (B) However, a state agency may elect to submit a contract
 14 for review under this subsection if the state agency is uncertain whether the
 15 contract has a material change.

16 (5) A contract that is submitted for review under this
 17 subsection and that has a total projected contract amount of at least three
 18 hundred fifty thousand dollars (\$350,000) shall have a cover sheet that
 19 provides the following information:

20 (A) A description of the services being procured and their
 21 criticality to the state;

22 (B) A description of the procurement process followed,
 23 including without limitation the method used for the procurement;

24 (C) A summary of the scoring from the procurement;

25 (D) The vendors that participated in the procurement;

26 (E) The outcome of any protests;

27 (F) For procurements using the competitive sealed proposal
 28 method:

29 (i) The qualifications of the evaluators; and

30 (ii) Whether any private evaluators were engaged;

31 and

32 (G) Any other information required by the Legislative
 33 Council or the Joint Budget Committee.

34 (b) The Legislative Council or the Joint Budget Committee may review
 35 or exempt from review any contract or group of contracts contemplated by this
 36 section.

1 ~~(c)(1)~~—In addition to the contracts presented to the Legislative
 2 Council or to the Joint Budget Committee under subsection (a) of this
 3 section, the director shall compile a monthly report of all executed
 4 contracts requiring the service of one (1) or more individuals for regular
 5 full-time or part-time weekly work if the total initial contract amount or
 6 the total projected contract amount, including any amendments or possible
 7 extensions, is at least twenty-five thousand dollars (\$25,000) and less than
 8 one hundred thousand dollars (\$100,000).

9 ~~(2)~~—The monthly report required under this subsection shall
 10 include without limitation:

- 11 ~~(A)~~—The name of the contractor;
- 12 ~~(B)~~—The state agency name;
- 13 ~~(C)~~—The contact information for the contractor or state
 14 agency;
- 15 ~~(D)~~—The total initial cost of the contract, the cost of
 16 any commodities included in the contract, and the cost of the services;
- 17 ~~(E)~~—The type of commodities and services contracted;
- 18 ~~(F)~~—The quantity of commodities and services contracted;
- 19 ~~(G)~~—The procurement method;
- 20 ~~(H)~~—The total projected contract amount that includes any
 21 amendments and all available extensions; and
- 22 ~~(I)~~—Any other information requested by the Legislative
 23 Council or the Joint Budget Committee.

24 ~~(3)~~—The director shall remit the report required under this
 25 subsection each month to the Legislative Council or to the Joint Budget
 26 Committee as directed by the Legislative Council.

27 ~~(d)~~ (c) A contract that is procured by a state agency ~~with~~ that has a
 28 state agency procurement official or procurement authority under a delegation
 29 order is subject to the ~~reporting and~~ presentment requirements under this
 30 section.

31 ~~(e)~~ (d) It is a violation of state procurement laws, Arkansas Code
 32 Title 19, Chapter 11, for a state agency official to procure services in an
 33 incremental or split purchase arrangement to avoid the ~~reporting or~~
 34 presentment requirements of this section.

35
 36 SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 2, is

1 amended to add additional sections to read as follows:

2 19-11-273. Reporting requirements.

3 (a) The State Procurement Director shall compile a monthly report of
4 all executed contracts for services that have a total initial contract amount
5 or a total projected contract amount, including any amendments or possible
6 extensions, of at least twenty-five thousand dollars (\$25,000) but less than
7 one hundred thousand dollars (\$100,000).

8 (b) A contract that is procured by a state agency that has a state
9 agency procurement official or procurement authority under a delegation order
10 is subject to the reporting requirements under this section.

11 (c) The State Procurement Director shall adopt rules to:

12 (1) Prescribe a cover sheet for the report required under this
13 section that sorts and identifies contracts within the report that may be
14 candidates for review;

15 (2) Create instructions for completing the cover sheet
16 prescribed under subdivision (c)(1) of this section; and

17 (3) Provide for the identification of any contracts included in
18 the report that may need to be reviewed under § 19-11-265.

19 (d)(1) A primary member of the Legislative Council or the Review
20 Subcommittee of the Legislative Council or, if the General Assembly is in
21 session, the Joint Budget Committee or the PEER Review Subcommittee of the
22 Joint Budget Committee, may identify a contract included in a report under
23 this section that the primary member wants the Legislative Council or the
24 Review Subcommittee of the Legislative Council or, if the General Assembly is
25 in session, the Joint Budget Committee or the PEER Review Subcommittee of the
26 Joint Budget Committee, to review.

27 (2) A primary member shall identify a reported contract for
28 review under this section at least twenty-four (24) hours before the meeting
29 at which the contract is to be reviewed.

30 (e) It is a violation of state procurement laws, Arkansas Code Title
31 19, Chapter 11, for a state agency official to procure services in an
32 incremental or split purchase arrangement to avoid the reporting requirements
33 of this section.

34
35 19-11-274. Tracking requirements.

36 (a) The State Procurement Director, each agency procurement official,

1 and any state agency with procurement authority under a delegation order
 2 shall track the following for the procurements they conduct and the contracts
 3 they execute:

4 (1) Each protest received and the resolution of the protest;

5 (2) The outcome of any negotiations under this chapter; and

6 (3) The anticipated procurement needs of the state agency based
 7 on the contracts that:

8 (A) Are set to expire during the next twelve (12) months;

9 and

10 (B) Will require a new solicitation in the next twelve
 11 (12) months.

12 (b) Each agency procurement official and each state agency with
 13 procurement authority under a delegation order shall report the information
 14 obtained under subsection (a) of this section to the Office of State
 15 Procurement.

16
 17 SECTION 9. Arkansas Code § 19-11-1006 is repealed as duplicative.

18 ~~19-11-1006. Submission of contracts required.~~

19 ~~(a)(1) A professional services contract or consultant services~~
 20 ~~contract shall be presented to the Legislative Council or, if the General~~
 21 ~~Assembly is in session, to the Joint Budget Committee, before the execution~~
 22 ~~of the professional services contract or consultant services contract if the~~
 23 ~~total initial amount or the total projected amount, including any amendments~~
 24 ~~or possible extensions, of the professional services contract or consultant~~
 25 ~~services contract is at least fifty thousand dollars (\$50,000).~~

26 ~~(2) The Legislative Council or the Joint Budget Committee shall~~
 27 ~~provide the State Procurement Director with its review as to the propriety of~~
 28 ~~the professional services contract or consultant services contract within~~
 29 ~~thirty (30) days after receipt of the proposed professional services contract~~
 30 ~~or consultant services contract.~~

31 ~~(3) The professional services contract or consultant services~~
 32 ~~contract shall not be submitted to the Legislative Council or to the Joint~~
 33 ~~Budget Committee until the Department of Finance and Administration has~~
 34 ~~reviewed the professional services contract or consultant services contract~~
 35 ~~and provided the Legislative Council or the Joint Budget Committee with a~~
 36 ~~recommendation regarding the legality of the professional services contract~~

1 ~~or consultant services contract.~~

2 ~~(b) The Legislative Council or the Joint Budget Committee may review~~
 3 ~~or exempt from review any professional services contract or consultant~~
 4 ~~services contract or group of professional services contracts or consultant~~
 5 ~~services contracts contemplated by this subchapter.~~

6 ~~(c)(1) Funds from grants and contracts to a state institution of~~
 7 ~~higher education may be used for the purpose of subcontracting with~~
 8 ~~institutions under the performance conditions of the grants or contracts.~~

9 ~~(2) Subcontracts for research that are derived from grants and~~
 10 ~~contracts to a state institution of higher education require the prior~~
 11 ~~approval of the director and a review by the Legislative Council or by the~~
 12 ~~Joint Budget Committee.~~

13 ~~(d)(1) In addition to the professional services contracts and~~
 14 ~~consultant services contracts presented to the Legislative Council or to the~~
 15 ~~Joint Budget Committee under subsection (a) of this section, the director~~
 16 ~~shall compile a monthly report of all executed professional services~~
 17 ~~contracts and consultant services contracts if the total initial amount or~~
 18 ~~the total projected amount, including any amendments or possible extensions,~~
 19 ~~of the professional services contract or consultant services contract is at~~
 20 ~~least ten thousand dollars (\$10,000) and less than fifty thousand dollars~~
 21 ~~(\$50,000).~~

22 ~~(2) The monthly report required under this subsection shall~~
 23 ~~include without limitation:~~

24 ~~(A) The name of the contractor;~~

25 ~~(B) The state agency name;~~

26 ~~(C) The contact information for the contractor or state~~
 27 ~~agency;~~

28 ~~(D) The total initial cost of the professional services~~
 29 ~~contract or consultant services contract;~~

30 ~~(E) The type of services contracted;~~

31 ~~(F) The quantity of services contracted;~~

32 ~~(G) The procurement method;~~

33 ~~(H) The total projected amount of the professional~~
 34 ~~services contract or consultant services contract that includes any~~
 35 ~~amendments and all available extensions; and~~

36 ~~(I) Any other information requested by the Legislative~~

1 ~~Council or the Joint Budget Committee.~~

2 ~~(3) The director shall remit the report each month to the~~
 3 ~~Legislative Council or to the Joint Budget Committee as directed by the~~
 4 ~~Legislative Council.~~

5 ~~(c) A contract that is procured by a state agency with a state agency~~
 6 ~~procurement official is subject to the reporting and presentment requirements~~
 7 ~~under this section.~~

8 ~~(f) It is a violation of state procurement laws, Arkansas Code Title~~
 9 ~~19, Chapter 11, for a state agency official to procure services in an~~
 10 ~~incremental or split purchase arrangement to avoid the reporting or~~
 11 ~~presentment requirements of this section.~~

12
 13 SECTION 10. Arkansas Code § 22-8-102 is amended to read as follows:

14 22-8-102. Leasing and renting of vehicles by state agencies -
 15 Definitions.

16 (a) ~~For purposes of~~ As used in this section:

17 (1) "Lease" means obtaining the use of a motor vehicle from any
 18 source for a monetary fee, for a period of thirty-one (31) days or more; ~~and~~

19 (2) "Rental" means obtaining the use of a motor vehicle from any
 20 source for a monetary fee for a period of thirty (30) days or less; and

21 (3) "State agency" means the same as defined in § 19-11-203.

22 (b)(1) Before any state agency ~~shall lease~~ leases any motor vehicle or
 23 ~~renew~~ renews any existing lease for a motor vehicle, the state agency shall
 24 submit a written request to the State Procurement Director identifying the
 25 motor vehicles sought to be leased by the state agency and all facts and
 26 circumstances the director may request to enable him or her to determine the
 27 economics, need, and feasibility of leasing the motor vehicle.

28 (2) Upon receipt, the director shall review the request to lease
 29 the motor vehicle, and if he or she determines that the lease is in the best
 30 interest of the State of Arkansas and that the state agency has adequate
 31 funds to pay the lease, he or she may approve the request but only if ~~he or~~
 32 ~~she has first received the approval of~~ the proposed lease has been reviewed
 33 by the Legislative Council or, if the General Assembly is in session, the
 34 Joint Budget Committee.

35 (3) ~~After receiving the approval of~~ If, after the Legislative
 36 Council or the Joint Budget Committee has reviewed the proposed lease of the

1 motor vehicle, the director approves the proposed lease of the motor vehicle,
2 the director shall stamp his or her approval on the request and return it to
3 the state agency, which may then proceed to enter into the lease as proposed
4 and approved by the director.

5 ~~(4) In emergency situations, the director may approve a~~
6 ~~temporary lease of a motor vehicle, not to exceed thirty (30) days, but only~~
7 ~~if he or she has sought the advice of the cochairs of the Legislative Council~~
8 ~~and scheduled the temporary lease of a motor vehicle for consideration at the~~
9 ~~next meeting of the Legislative Council.~~

10 (c) If the director disapproves a proposed lease of a motor vehicle,
11 he or she shall stamp his or her disapproval on the request and return it to
12 the state agency, and it shall be unlawful for the state agency to proceed to
13 lease the motor vehicle.

14 (d) If federal assistance requirements or federal contract
15 requirements conflict with this section, this section shall not prevent a
16 state agency from complying with the terms and conditions of the federal
17 assistance requirements or the federal contract requirements.

18 (e) It is a violation of state procurement laws, Arkansas Code Title
19 19, Chapter 11, for a state agency official to conduct multiple rentals of a
20 motor vehicle to avoid the approval and review requirements of this section.
21

22 SECTION 11. DO NOT CODIFY. Rules.

23 (a) When adopting the initial rules required under this act, the State
24 Procurement Director shall file the final rules with the Secretary of State
25 for adoption under § 25-15-204(f):

26 (1) On or before January 1, 2020; or

27 (2) If approval under § 10-3-309 has not occurred by January 1,
28 2020, as soon as practicable after approval under § 10-3-309.

29 (b) The director shall file the proposed rules with the Legislative
30 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so
31 that the Legislative Council may consider the rules for approval before
32 January 1, 2020.
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