

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

As Engrossed: S4/3/19 S4/5/19

# A Bill

SENATE BILL 409

5 By: Senators Flippo, Hickey  
6 By: Representative Richmond  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE PURCHASING REQUIREMENTS AND  
10 PROCEDURES FOR CERTAIN ENTITIES; TO ALLOW FOR THE  
11 ELECTRONIC NOTIFICATION OF AN INVITATION FOR BIDS AND  
12 *THE ELECTRONIC SUBMISSION OF BIDS; TO CREATE THE FAIR*  
13 *NOTICE AND EFFICIENCY IN PUBLIC WORKS ACT; AND FOR*  
14 OTHER PURPOSES.

## Subtitle

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18 *TO ALLOW FOR THE ELECTRONIC NOTIFICATION*  
19 *OF AN INVITATION FOR BIDS AND ELECTRONIC*  
20 *SUBMISSION OF BIDS; AND TO CREATE THE*  
21 *FAIR NOTICE AND EFFICIENCY IN PUBLIC*  
22 *WORKS ACT.*

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

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27 *SECTION 1. DO NOT CODIFY. Legislative findings.*

28 *The General Assembly finds that:*

29 *(1) There is a need for a statewide system for the online*  
30 *advertisement of notices of an intention to receive bids by local*  
31 *governmental units;*

32 *(2) Legislation is necessary to provide for the efficient*  
33 *procurement of services to provide for the online advertisement of notices of*  
34 *an intention to receive bids by local governmental units;*

35 *(3) There is a need for an impartial selection process in*  
36 *selecting statewide vendors to administer online advertisements of notices of*



1 an intention to receive bids by local governmental units; and  
2 (4) The Office of State Procurement has the authority and  
3 infrastructure to issue requests for qualifications to effectuate this act.  
4

5 SECTION 2. Arkansas Code Title 22, Chapter 9, is amended to add an  
6 additional subchapter to read as follows:

7 Subchapter 9 – Fair Notice and Efficiency in Public Works Act

8  
9 22-9-901. Title.

10 This subchapter shall be known and may be cited as the "Fair Notice and  
11 Efficiency in Public Works Act".  
12

13 22-9-902. Legislative intent.

14 The General Assembly intends for this subchapter to:

15 (1) Provide for the efficient procurement of services to provide  
16 for the online advertisement of notices of an intention to receive bids by  
17 local governmental units;

18 (2) Promote the economical and efficient administration and  
19 completion of public works construction projects;

20 (3) Provide for an impartial selection process in selecting  
21 statewide vendors to administer online advertisements of notices of an  
22 intention to receive bids by local governmental units;

23 (4) Provide for fair and open competition in selecting vendors  
24 to accomplish the goals of this subchapter;

25 (5) Prohibit anticompetitive conduct in vendors, including  
26 without limitation a vendor's having a direct interest in one (1) or more of  
27 the other vendors awarded a contract under this subchapter; and

28 (6) Provide significant penalties for an individual or entity  
29 that violates this subchapter.  
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31 22-9-903. Definitions.

32 As used in this subchapter:

33 (1) "Public agency" means:

34 (A) A county, city, town, and school district in this  
35 state; and

36 (B) A department, agency, board, bureau, commission,

1 committee, or authority of a county, city, town, or school district; and

2 (2) "Vendor" means an individual, association, corporation,  
3 company, firm, organization, partnership, governmental entity, or any other  
4 entity that can provide an online system for the online advertisement of  
5 notice of an intention to receive bids under §§ 22-9-203 and 22-9-209.

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7 22-9-904. Public Works Committee – Creation – Duties – Immunity.

8 (a)(1) The Public Works Committee is created and, except as provided  
9 in subdivision (a)(2) of this section, shall have the following members:

10 (A) The State Procurement Director or his or her designee;

11 (B) The Executive Director of the Arkansas Press  
12 Association, Inc. or his or her designee;

13 (C) The Executive Director of the Association of Arkansas  
14 Counties or his or her designee;

15 (D) The President of the Arkansas Municipal League or his  
16 or her designee; and

17 (E) The Executive Director of the Arkansas Association of  
18 Educational Administrators or his or her designee.

19 (2) If a member of the committee elects not to participate:

20 (A) The Governor shall appoint a replacement; and

21 (B) The member who elects not to participate is not part  
22 of the committee.

23 (b) The committee shall meet as needed but at least one (1) time each  
24 year.

25 (c) The committee shall:

26 (1) Administer this subchapter;

27 (2) Prepare an annual report on the performance of the vendors  
28 selected under this subchapter and submit the report to the Office of State  
29 Procurement;

30 (3) Hear any complaints from interested individuals or entities  
31 relating to vendors selected under this subchapter;

32 (4) Prepare an annual report concerning the success of this  
33 subchapter and submit the report to the Office of State Procurement; and

34 (5) Perform an annual review and remove any noncompliant vendors  
35 under § 22-9-907.

36 (d) A majority vote of the members of the committee is required for

1 the committee to take action.

2 (e)(1) The committee has the same immunity granted to state agencies  
3 under the Arkansas Constitution.

4 (2) The individual members of the committee are immune to the  
5 same extent as state employees under § 19-10-305.

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7 22-9-905. Online notice for bids.

8 A public agency may contract with a vendor selected under this  
9 subchapter to provide online advertisements of notices of an intention to  
10 receive bids under §§ 22-9-203 and 22-9-209.

11  
12 22-9-906. Selection of vendors.

13 (a)(1) The Office of State Procurement shall select three (3) vendors  
14 using the procedures for the procurement of professional services under § 19-  
15 11-801 et seq.

16 (2) The office may use the responses from a previous request for  
17 qualifications under this subchapter for up to five (5) years to replace any  
18 vendors that are removed under this subchapter.

19 (3) If fewer than three (3) vendors respond to the request for  
20 qualifications or if there are fewer than three (3) qualified vendors, the  
21 office shall select as many qualified vendors as possible.

22 (b) The vendors selected under this subchapter shall be the only  
23 vendors with which a public agency may contract for the online advertisement  
24 of notices of an intention to receive bids under §§ 22-9-203 and 22-9-209.

25 (c) A vendor selected under this subchapter shall:

26 (1) Maintain on its website a clearly designated area for public  
27 notices that is accessible through a prominently displayed and clearly  
28 labeled link from the homepage of the website; and

29 (2) Primarily publish in the English language.

30 (d) A vendor selected under this subchapter shall not:

31 (1) Have a common owner, shareholder, member of a board of  
32 directors, employee, or any other similar interest with another vendor  
33 selected under this subchapter;

34 (2)(A) Require payment or a subscription to view an  
35 advertisement of a notice of an intention to receive bids or any other  
36 posting authorized in this section.

1 (B) A vendor may require payment or a subscription to view  
2 any other document; or

3 (3) Provide services under this subchapter for a public agency  
4 until the public agency has complied with subsections (e) and (f) of this  
5 section.

6 (e) Before using the online advertisement of notices of an intention  
7 to receive bids as the exclusive form of notification, a county, city, or  
8 town shall:

9 (1) Provide notice through publication in a newspaper  
10 concurrently with notification through an online advertisement of notice of  
11 an intention to receive bids under this subchapter for five (5) weeks;

12 (2) Adopt a resolution at the beginning of each calendar year  
13 that identifies each website designated by ordinance for the online posting  
14 of advertisements for notices of an intention to receive bids;

15 (3) Publish notice in a newspaper of general circulation within  
16 the county identifying each website designated for the online posting of  
17 advertisements for notices of an intention to receive bids; and

18 (4) Adopt an ordinance that identifies each website designated  
19 for the online posting of advertisements for notices of an intention to  
20 receive bids.

21 (f) Before using the online advertisement of bids as the exclusive  
22 form of notification, a school district shall:

23 (1) Provide notice through publication in a newspaper  
24 concurrently with notification through an online advertisement of notices of  
25 an intention to receive bids under this subchapter for five (5) weeks;

26 (2) Adopt a resolution at the beginning of each calendar year  
27 that identifies each website designated for the online posting of  
28 advertisements for notices of an intention to receive bids; and

29 (3) Publish notice in a newspaper of general circulation within  
30 the county in which the school district is located that identifies each  
31 website designated for the online posting of advertisements for notices of an  
32 intention to receive bids.

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34 22-9-907. Annual review – Removal of vendor – Penalties.

35 (a) The Public Works Committee shall review the performance and  
36 compliance of vendors selected under this subchapter.

1 (b) After reasonable notice to the vendor and a reasonable opportunity  
2 for the vendor to have a hearing, the committee may remove a vendor's  
3 authority to perform the services provided for under this subchapter if the  
4 committee determines that the vendor's performance does not meet the goals of  
5 this subchapter.

6 (c)(1) A vendor who knowingly violates this subchapter:

7 (A) Upon conviction is guilty of a Class B misdemeanor;

8 (B) Is prohibited from performing services under this  
9 subchapter or being selected as a vendor under this subchapter for five (5)  
10 years; and

11 (C) Shall pay damages to any public agency, person, or  
12 entity that is found to have ascertainable damages as a result of the  
13 vendor's violation of this subchapter.

14 (2) The Office of State Procurement shall maintain a list of  
15 vendors that are prohibited from performing services.

16  
17 22-9-908. Replacement of vendor.

18 (a) A vendor shall be replaced as soon as practicable using the  
19 procedure established under § 22-9-906 if the vendor:

20 (1) Is unable to perform the services required under this  
21 subchapter;

22 (2) Has its authority to perform the services provided for under  
23 this subchapter removed under § 22-9-907; or

24 (3) Is otherwise no longer performing the services required  
25 under this subchapter.

26 (b) If only one (1) vendor remains as a selected vendor under this  
27 subchapter as the result of action taken under § 22-9-907, the Public Works  
28 Committee shall meet and select at least one (1) additional vendor within  
29 ninety (90) days.

30 (c) An online posting to advertise the notice of an intention to  
31 receive bids by a public agency on a vendor's website at the time of a  
32 vendor's removal under § 22-9-907 shall be reposted on the website of another  
33 vendor selected under this subchapter under the same terms as the original  
34 online advertisement for notice of an intention to receive bids.

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36 22-9-909. Multiyear contracts.

1 A contract with a vendor under this subchapter is subject to the  
2 restrictions of § 19-11-238.

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4 SECTION 3. Arkansas Code § 22-9-203(a)(2), concerning contracts for  
5 public improvements, is amended to read as follows:

6 (2)(A) ~~Any~~ The county, municipality, school district, or other  
7 local taxing unit shall have first published notice of its intention to  
8 receive bids one (1) time each week for not less than two (2) consecutive  
9 weeks in a: ~~newspaper~~

10 (i) Newspaper of general circulation published in  
11 the county in which the proposed improvements are to be made; ~~or in a trade~~  
12 (ii) Trade journal reaching the construction  
13 industry.

14 (B) In addition to the publication of notice required  
15 under subdivision (a)(2)(A) of this section, if the county, municipality,  
16 school district, or other local taxing unit is accepting electronically  
17 submitted bids, the county, municipality, school district, or other local  
18 taxing unit shall also post notice on the website of a vendor selected under  
19 the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.

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21 SECTION 4. Arkansas Code § 22-9-203(b)(2) and (3), concerning  
22 contracts for public improvements, are amended to read as follows:

23 (2)(A) If there is ~~no~~ not a newspaper regularly published in the  
24 county in which the proposed work is to be done, the notices may be published  
25 in any: ~~newspaper~~

26 (i) Newspaper having a general circulation in the  
27 county; or

28 (ii) Trade journal reaching the construction  
29 industry.

30 (B) In addition to the publication of notice required  
31 under subdivision (b)(2)(A) of this section, if the county, municipality,  
32 school district, or other local taxing unit is accepting electronically  
33 submitted bids, the county, municipality, school district, or other local  
34 taxing unit shall also post notice on the website of a vendor selected under  
35 the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.

36 (3) ~~Nothing in this section shall be construed as limiting This~~

1 section does not limit to two (2) the number of weeks the notices may be  
2 published for projects over ~~the amount of~~ fifty thousand dollars (\$50,000),  
3 ~~limiting limit~~ to one (1) the number of weeks the notices may be published  
4 for projects more than the quote bid limit, as provided under subsection (a)  
5 of this section, and less than or equal to fifty thousand dollars (\$50,000),  
6 ~~and as limiting or limit~~ to two (2) the number of weeks the notices may be  
7 published for all other projects.

8  
9 SECTION 5. Arkansas Code § 22-9-203(c)(1), concerning contracts for  
10 public improvements, is amended to read as follows:

11 (c)(1) All notices shall contain:

12 (A) A brief description of the kind or type of work  
13 contemplated;

14 (B) The approximate location ~~thereof~~ of the work  
15 contemplated;

16 (C) The place at which prospective bidders may obtain  
17 plans and specifications, including any websites on which a county,  
18 municipality, or school district is posting notice of its intention to  
19 receive bids under the Fair Notice and Efficiency in Public Works Act, § 22-  
20 9-901 et seq.;

21 (D) The date, time, and place at which sealed bids ~~will~~  
22 shall be received;

23 (E) The amount, which may be stated in a percentage, of  
24 the bid bond required;

25 (F) A statement of the taxing unit's reservation of the  
26 right to reject any or all bids and to waive any formalities; and

27 (G) Such other pertinent facts or information which to it  
28 may appear necessary or desirable.

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30 SECTION 6. Arkansas Code § 22-9-203, concerning contracts for public  
31 improvements, is amended to add an additional subsection to read as follows:

32 (1) A sealed bid under this section shall be submitted in one (1) of  
33 the following formats:

34 (1) Written; or

35 (2) Electronic media.

36



1           SECTION 7. Arkansas Code § 22-9-209(a), concerning the advertising of  
2 contracts for the renovation of historic sites, is amended to read as  
3 follows:

4           (a)(1) A contract for the altering, repairing, or renovation of a  
5 recognized historic site or structure owned by the state or with title vested  
6 in the name of a state agency or of another taxing authority in which the  
7 estimated cost of the work equals or exceeds the sum of thirty-five thousand  
8 dollars (\$35,000) shall not be entered into between the state agency or  
9 taxing authority and any contractor unless the state agency or taxing  
10 authority has first published notice of intention to receive bids for  
11 improvements one (1) time each week for not less than two (2) consecutive  
12 weeks in a: ~~newspaper~~

13                   (A) Newspaper of general circulation published in the  
14 county in which the proposed improvements are to be made; or ~~in a trade~~

15                   (B) Trade journal reaching the construction industry.

16           (2) In addition to the publication of notice required under  
17 subdivision (a)(1) of this section, if the state agency or taxing authority  
18 is accepting electronically submitted bids, the state agency or taxing  
19 authority shall also post notice on the website of a vendor selected under  
20 the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.

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22           SECTION 8. Arkansas Code § 22-9-209(b)(2), concerning the advertising  
23 of contracts for the renovation of historic sites, is amended to read as  
24 follows:

25           (2)(A) If there is ~~no~~ not a newspaper regularly published in the  
26 county in which the proposed work is to be done, the notices may be published  
27 in any: ~~newspaper~~

28                   (i) Newspaper having a general circulation in the  
29 county; or

30                   (ii) Trade journal reaching the construction  
31 industry.

32           (B) In addition to the publication of notice required  
33 under subdivision (b)(2)(A) of this section, if the state agency or taxing  
34 authority is accepting electronically submitted bids, the state agency or  
35 taxing authority shall also post notice on the website of a vendor selected  
36 under the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.

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SECTION 9. Arkansas Code § 22-9-209(c)(1), concerning the advertising of contracts for the renovation of historic sites, is amended to read as follows:

(c)(1) All notices shall contain: a

(A) A brief description of the kind or type of work contemplated, ~~the;~~

(B) The approximate location thereof, ~~the~~ of the work contemplated;

(C) The place at which prospective contractors may obtain plans and specifications, ~~the~~ including any websites on which a state agency or taxing authority is posting notice of its intention to receive bids under the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.;

(D) The date, time, and place at which sealed bids will shall be received, ~~and the~~

(E) The amount, which may be stated in a percentage, of bond required.

SECTION 10. Arkansas Code § 22-9-209, concerning the advertising of contracts for the renovation of historic sites, is amended to add an additional subsection to read as follows:

(e) A sealed bid under this section shall be submitted in one (1) of the following formats:

(1) Written; or

(2) Electronic media.

/s/Flippo