Welcome to Procurement Forum

Presented by Office of State Procurement
October 12th, 2017
Today’s Agenda

• New and Amended Laws and Regulations
• Minority and Women-Owned Business Enterprise Division
• Contract and Grant Disclosure
• Israel Boycott Restriction (Act 710)
• Local Food, Farms, and Jobs (Act 617)
• State Food Contracts
• New Requirements for Special Procurements
• Delegation Order Re-Justification
Procurement Changes:
New and Amended Laws/Regulations

Presented by
OSP Legal
Status of Rule Promulgations

We are still in the process of promulgating the rules we will be presenting today.

All rule additions or amendments presented today remain subject to change.
Status of Rule Promulgations

Please check the OSP website (http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx) for posting of all the rule promulgations during the upcoming public comments period.

Select **Guidelines**

Scroll down to the **Laws & Regulations**

- Procurement Home
- AASIS Instructions
- Act 557 Updates
- Bid Opportunities
- Buy Wise Podcasts
- Credit Cards
- Forms/Reporting
- **Guidelines**
- Helpful Information

- **Laws & Regulations**
  - Title
  - 2013-2 Changes to Rules Under the Arkansas Procurement Law Comments
  - Executive Order 09-07 | Energy & Environmental Impact
  - Executive Order 98-04 | Disclosure
  - Procurement Codes
  - Procurement Laws and Rules
  - Procurement rule change | 2015-3 | Effective Date July 1, 2016
Act 442
School district purchases of motor vehicles


A school district may purchase a new motor vehicle from a motor vehicle dealer licensed under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the purchase price of the motor vehicle does not exceed the fleet price awarded by the Office of State Procurement and in effect at the time the school district submits the purchase order for the same make and model motor vehicle.
Concerning the definition of “exempt commodities and services” under the Arkansas Procurement Law, is amended to add an additional subdivision to read as follows:

– (EE) Commodities and services purchased by an academic medical center using revenue derived from and used for patient care and hospital enterprises;
Act 609 / SB380
Exempt Commodities and Services

*R7: 19-11-203* is being promulgated to define “academic medical center,” which will be defined as consisting “of a public medical school and its primary teaching hospitals and clinical programs.”
Arkansas Code § 19-11-228(h)(2) concerning competitive bidding

- Expands the ability of the state to negotiate contracts, defines collusion; allows negotiations of IFB’s;
- Clarifies that vendor’s proposals cannot be disclosed during negotiations;
- Clarifies the purpose of negotiations; provides for an opportunity for vendors to revise proposals if necessary after discussions are conducted; states that vendors guilty of collusion may be suspended or debarred;
Arkansas Code § 19-11-228(h)(2) concerning competitive bidding

- For ratified contracts, if ALC review was originally necessary, it will need ALC review before it can be ratified.

- **R15: 19-11-229:** Proposed amendment to reflect Act 696
Act 1004
Threshold Changes

• Amendments to the following rules are being proposed for promulgation to reflect the new thresholds:

  R1: 19-11-204 (b), R2: 19-11-204, R2: 19-11-229,
  R2: 19-11-232, R2: 19-11-233, R1: 19-11-234, R2: 19-11-234,

• These amended rules are substantially the same as the old rules except that the thresholds have been updated per the amended statutes.
Proposed Rule Changes for Clarity or Housekeeping

- **R1: 19-11-203(i)** is being added to better define the exempt commodity of “fees”

- **R1: 19-11-204** is being amended to provide better clarity as to the appropriate utilization of requests for qualifications.

- **R6: 19-11-230 & R7: 19-11-230** are being amended to clarify grounds for rejecting offeror proposals, as well as the handling of minor technical deficiencies or irregularities.
Proposed Rule Changes for Clarity or Housekeeping

- **R1: 19-11-242, R2: 19-11-242** and **R3: 19-11-242** are being amended to better align the rules with the statute and to permit Marketing and Redistribution to offer commodities valued at one hundred dollars ($100) or less for sale to the public without the twenty day hold period.

- **R6: 19-11-265** is being amended to define and exclude maintenance contracts from the reporting requirements, pursuant to the statute.
Proposed Rule Changes for Clarity or Housekeeping

- **R1: 19-11-715** is being added to provide guidance for agencies when requesting advisory opinions or waivers of conflicts of interest.

- **R1: 19-11-802** is being amended to add guidance and clarity related to sending notice to vendors deemed best suited to perform the work specified.

- Appendix 8 is being rescinded in its entirety for better efficiency and housekeeping purposes.
Patricia Brown
Director of Minority and Women-Owned Business Enterprise
Division of Minority and Women-Owned Business Enterprise

Sponsors of Act 1080

- **Representatives:** Michelle Gray, Vivian Flowers, Monte Hodges, DeAnn Vaught, Andy Davis

- **Senators:** Missy Irvin, David Wallace, Joyce Elliott
Legislative Highlights

- Division Name Change
- Expansion of Program to Include Women
- Spending Targets
- Advisory Council Members
- Certification Program
- Minority and Women-Owned Business Officer
The Arkansas Economic Development Commission has expanded its program assisting minority business owners to include women and service disabled veterans. As a result the division of AEDC is now the Division of Minority and Women-Owned Business Enterprise.

The Arkansas law that amended the program, Act 1080 went into effect Friday, (September 1, 2017).
Expansion of Program to Include Women

• Under the new changes, women can apply for certification that includes official identification as a women or minority owned business, in addition to training and networking activities and notification of opportunities to conduct business with state agencies, according to AEDC. Expansion of the program also helps state agencies meet the diversity spending target.
Spending Targets

• All state agencies shall attempt to ensure that the following percentages of the total amount expended in state-funded and state-directed public construction programs and in the purchase of goods and services for the state each fiscal year are paid to minority business enterprises and women-owned business enterprises:
  • For minority business enterprises, the spending targets will be allocated as follows:
    • Two percent (2%) for service-disabled veteran-owned business enterprises;
    • Eight percent (8%) for all other minority business enterprises;
    • Five percent (5%) for women-owned business enterprises.
Advisory Council

• The Division is represented by a statewide Minority and Women-Owned Business Advisory Council.

• Council consist of 9 members, two appointed by President Pro Tempore of the Senate, two appointed by the Speaker of the House of Representatives, three appointed by the Governor and two appointed by the Executive Director of AEDC.
Certification

• Company must be in business for 2 years

• Proof of state and federal business returns as filed with the Internal Revenue Service (IRS) federal transcript and Arkansas Department of Finance and Administration for the previous two (2) years

• Application changes

• Recertification – 2 years
New Agencies

- Women’s Business Council – Southwest (WBE)
- United States Department of Veterans Affairs (SDVOSB)
- Eligible businesses certified by qualifying organization need only submit application form and proof of certification from the qualifying organization.
• According to Act 1080 of 2017, within fifteen days of the close of each **six-month period**, each state agency shall submit a report summing up total procurement for all state contracts, except exempt state contracts of the state agency and the dollar value and the percentage of the state contracts of the state agency awarded to minority business enterprises and women-owned business enterprises.
Minority and Women-Owned Business Officer

- Minority and Women-owned Business Officer means the individual within each state agency with the responsibility for carrying out the intended purpose of this program.

- Must submit the agency ‘s plan to reach its goals for the coming fiscal year and shall contain the name of the state agency submitting the plan.

- Agency Director must identify the name of the minority and women-owned business officer.
Questions?
Contract and Grant Disclosure

Presented by
OSP Legal
Contract and Grant Disclosures

Does EO-98-04 require disclosure and OSP Legal review?

Does Executive Order 98-04 require disclosure and OSP Legal review?

1. Is total consideration for the contract, lease, purchase agreement, or grant not subject to competitive sealed bidding or a request for proposal less than $10,000?

   Yes – needs no disclosure or legal review
   No – continue
2. Is the contracting agency exempt from Arkansas Procurement Law?

§19-11-203 states the following definition:

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

Yes – needs no disclosure or legal review

No – continue
3. Is the employee (self, spouse, immediate family member) listed in the disclosure form a current or former state employee?

STATE EMPLOYEE shall mean any employee of any state agency. This does not include disclosure or approval of work-study positions for students at universities, hospitals, etc.
Contract and Grant Disclosures
Does EO-98-04 require disclosure and OSP Legal review?

FORMER STATE EMPLOYEE shall mean any person who was a state employee of any state agency within two years prior to entering into any contract with or receiving any grant awarded by a state agency.

Yes – skip to end
No (not within two years) – please continue
4. Is the Board or Commission Member (self, spouse, immediate family member) listed in the disclosure form a current or former Board or Commission Member?

BOARD OR COMMISSION MEMBER shall mean any person who is an appointed member of a state board or commission, whether appointed by a member of the legislative, executive, or judicial branches of government, or otherwise.
FORMER BOARD OR COMMISSION MEMBER shall mean any person who was a board or commission member *within two years prior* to entering into any contract with or receiving any grant awarded by a state agency.

Yes- skip to end
No (not within two years) – continue
5. Is the Member of the General Assembly (self, spouse, immediate family member) listed in the disclosure form a current or former Member of the General Assembly?

MEMBERS OF THE GENERAL ASSEMBLY shall mean member(s) of the Arkansas House of Representatives or of the Arkansas Senate.
FORMER MEMBER OF THE GENERAL ASSEMBLY shall mean any person who was a member of the General Assembly within two years prior to entering into any contract with or receiving any grant awarded by a state agency.

Yes – Skip to end
No (not within two years) – continue
6. Is the Constitutional Officer (self, spouse, immediate family member) listed in the disclosure form a current or former Constitutional Officer?

CONSTITUTIONAL OFFICER shall mean Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State.
FORMER CONSTITUTIONAL OFFICER shall mean any person who was a Constitutional Officer **within two years prior** to entering into any contract with or receiving any grant awarded by a state agency.

Yes – Skip to end

No (not within two years) – continue
Contract and Grant Disclosures

Does EO-98-04 require disclosure and OSP Legal review?

• If answers for Questions 3-6 are no, there is no need for disclosure or OSP Legal review. If there is a yes answer to Questions 3-6, please disclose for OSP Legal review.
Procurement Changes: Israel Boycott Restriction (Act 710)

Presented by
OSP Legal
Arkansas Code § 25-1-503. Prohibition on Contracting with entities that boycott Israel.

(a) Except as provided under subsection (b) of this section, a public entity shall not:

(1) Enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel; or

(2) Engage in boycotts of Israel.
(b) This section does not apply to:

1. A company that fails to meet the requirements under subdivision (a)(1) of this section but offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business; or

2. Contracts with a total potential value of less than one thousand dollars ($1000)
• **R1: 25-1-503 Prohibition From Public Entities Contracting With Companies That Boycott Israel**

• (a) The contractor must certify that the contractor is not currently engaged in, and agrees that for the aggregate term of the contract will not engage in, a boycott of Israel. The instructions for certification on contracts over seventy-five thousand dollars ($75,000) will be provided in the contract solicitation. The instructions for certification on contracts under seventy-five thousand dollars ($75,000) will be provided on the OSP website.
(b) If the contractor violates the above certification or is found to not be in compliance during the term of the contract, the state may require the contractor to remedy the violation within 60 days of discovery of that violation. Failure to remedy the violation within the 60 day period may result in termination for breach of contract, and the contractor may be liable to the State for the State’s actual damages.
• (c) *This rule applies to written contracts only and is to be applied prospectively. Any written contract entered into prior to August 1, 2017 does not require certification.*

• (d) *Vendors are not required to submit a certificate for commodity purchases made with a p-card as they do not require a written contract.*

• (e) *Certification is required at the time a written contract is entered into, renewals or extensions of contracts do not require certification.*
(f) **This Rule does not apply to:** (1) A company that fails to meet the requirements under Act 710 subdivision (a)(1) of this section but offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business; or

(2) Contracts with a total potential value of less than one thousand dollars ($1,000).
Procurement Changes: Local Food, Farms, and Jobs (Act 617)

Presented by
OSP Legal
Arkansas Code § 15-4-3802. Legislative Intent.
The General Assembly intends for this subchapter to:

(1) Create, strengthen, and expand local farm and food economies throughout the state; and

(2) Support and encourage the procurement of local farm or food products as a significant portion of all food products purchased by the state.
Arkansas Code § 15-4-3804. Procurement goal – Preference

(a) (1) For the fiscal year 2018, each agency shall make it a goal to ensure that ten percent (10%) of the amount budgeted for the agency's purchases of food products is spent on local farm or food products.

(1) Support and encourage the procurement of local farm or food products as a significant portion of all food products purchased by the state.
R1:15-4-3803 Definitions

• Local farm or food products include Arkansas agricultural products that have met the requirements of the “Arkansas Grown Branding Program” administered through the Arkansas Agriculture Department.

• Packaged and Processed means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment or a food processing plant.
R1:15-4-3803 Definitions (cont.)

- Packaged and Processed does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer or recipient.
- On campus-cafeteria does not include a franchise as defined by Arkansas Code § 4-72-202.
R2:15-4-3803 Procurement Goal-Preference

- **Method of Procurement for Purchase of Food Products**
- An agency should utilize an appropriate method of procurement as prescribed in Arkansas Procurement law for the purchase of food products. This may be a competitive sealed bid if price alone is being considered as the determinative factor, or a request for proposals if other factors, such as a history of health code violations, are being considered.
A cooperative purchasing agreement may also be an appropriate mechanism for procuring local farm or food products as a means of reducing the administrative cost of food procurement.

- In the event an agency utilizes a procurement method wherein a contract is to be awarded to the lowest responsive bidder, such as competitive sealed bidding, the lowest bid should be accepted only if the bid does not exceed the lowest bid from a provider of local food or farm products by more than ten percent (10%) and if the bidder submitting the lowest bid is not a provider of local farm or food products.
• In the event an agency utilizes a procurement method wherein a contract is to be awarded to the lowest responsive bidder, such as competitive sealed bidding, the lowest bid should be accepted only if the bid does not exceed the lowest bid from a provider of local food or farm products by more than ten percent (10%) and if the bidder submitting the lowest bid is not a provider of local farm or food products.
Exempt Commodities

Arkansas Code § 19-11-203(D)

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

• (ii) However, these commodities procured shall not be sold or transferred to any agency with the intent of circumventing applicable procurement procedures;
Act 617
Local Food, Farms, and Jobs Act

Exempt Commodities

Please Note - Even if Arkansas Code § 19-11-203(D) applies to your purchase, you are not exempt from the reporting requirements of Act 617.
State Food Contracts

Presented by
Chris Reynolds of OSP
## State Food Contracts

<table>
<thead>
<tr>
<th>Contract</th>
<th>Contract Name</th>
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<td>SP-15-0009</td>
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<td>SP-12-0028</td>
<td>Statewide Dairy</td>
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**TOTAL VALUE:** $65,086,696.11
AR GROWN Identifiers in AASIS

AASIS Transaction ME33K “ITEM OVERVIEW” Screen

This will populate in the Outline Agreement (OA) Print Preview Screen.
ARGROWN identifier is found under the OTHER DATA section in the TrackingNo field.
To Run AR GROWN Report Using AASIS Transaction ME80FN

1. Select VARIANT icon.

2. Type in **ARGROWN** in the VARIANT field.
To Run AR GROWN Report Using AASIS Transaction ME80FN

3. Enter the date range.

4. Enter your Purchasing Organization.

5. Select EXECUTE.
### DFA Website for Non-AASIS Users

**AR GROWN Identifier**

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**SP-15-0009 Statewide Grocery**

**Contract Term:** November 1, 2016 - October 31, 2017

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<td>Conway Wholesale</td>
<td>Raymond Kelley</td>
<td><a href="mailto:rkelly@cyberback.com">rkelly@cyberback.com</a></td>
<td>501-269-1803</td>
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<td>Daniel Loyd</td>
<td><a href="mailto:daloyd@tankersleyfoods.com">daloyd@tankersleyfoods.com</a></td>
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**UPDATED: 10/10/2017 8:45**

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</tr>
<tr>
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<td>Lunch Meat, Roast Beef</td>
<td>10</td>
<td>LBS</td>
<td>2</td>
<td>Sysco</td>
<td>3720432</td>
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<td>No</td>
<td>No</td>
<td>DOLLS CLS</td>
</tr>
</tbody>
</table>
Contact Information

Chris Reynolds
OSP Procurement Specialist – Food Buyer
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Email: chris.reynolds@dfa.arkansas.gov

If you have any questions, please contact me.
New Requirements for Special Procurements

Presented by
Edward Armstrong, Director of OSP
It is the policy of the State of Arkansas to promote increased economy in state procurement by fostering fair and open competition. State agencies should strive for an open and competitive procurement process to help satisfy the public that the procurement process is fair and not influenced by political or other improper considerations.
Special Procurement Policy

Despite this State’s strong policy of favoring competitive procurement where practicable, unusual or unique situations may exist that can make the application of all requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest. In such instances, state agencies may effectuate a special procurement (“Special Procurement”) pursuant to Arkansas Code § 19-11-263.
Special Procurement Policy

• As a procedural safeguard, only the State Procurement Director or the head of a procurement agency (as defined by Arkansas Code § 19-11-203(21) may initiate a Special Procurement.

• To initiate a Special Procurement, the State Procurement Director (if OSP is effectuating the procurement) or the head of a procurement agency (if the agency is effectuating the procurement), must first make a written determination that an unusual or unique situation exists that makes applying the requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest. To promote accountability, this determination will be signed by the officer making the determination.
Special Procurement Policy

• The written determination should explain the basis for the special procurement. The request for a determination needs to identify or explain:
  
  (a) as applicable, the contract number (for AASIS-using agencies the contract number will be represented by the AASIS outline agreement or purchase order number);
  
  (b) the amount to be spent, expressed as the total projected cost;
  
  (c) the unusual or unique situation that justifies special procurement;
Special Procurement Policy

(d) why, under the situation presented, competitive procurement is contrary to the public interest;

(e) the proposed start date and end date;

(f) how long the unusual or unique situation that justifies special procurement as an alternative to competitive procurement is expected to last;

(g) as applicable, what rationale justifies making the duration of the contract exceed the anticipated duration of the unusual or unique situation used to justify special procurement; and

(h) the contractor selected and the reasons for the selection of that contractor.
Special Procurement Policy

Special Procurements used to avoid a shortage of a vital commodity or a service until a competitive procurement process can be finalized must be limited to documented additional time needed to competitively procure the commodity or service.

• The written determination must be kept in the agency’s contract file and submitted to OSP for review and monthly reporting to the Legislative Council.
Special Procurement Policy

• If a contract is a type and/or amount that requires to be submitted for review prior to execution, it is still subject to such review prior to execution. Special Procurement is merely a procurement method and does not excuse non-compliance with any other applicable laws subjecting particular types of contracts to prior review.
Special Procurement Procedure

The procedure for initiating a contract using the “SPECIAL” method of procurement will be similar to that used for sole source (“SS”) contracts. Rather than writing a justification letter which addresses the seven standard questions related to sole source procurements, a justification must be written which identifies:

(a) the contract number,

(for AASIS-using agencies the contract number will be represented by the AASIS outline agreement or purchase order number);

(b) the amount to be spent, expressed as the total projected cost;
Special Procurement Procedure

(c) the unusual or unique situation that justifies special procurement;
(d) why, under the situation presented, competitive procurement is contrary to the public interest;
(e) the start date and end date,
   (for AASIS-using agencies the contract start and end dates are recorded in the *Validity Start* and *Validity End* date fields in the AASIS outline agreement or purchase order);
(f) how long the unusual or unique situation that justifies special procurement as an alternative to competitive procurement is expected to last;

(g) if it exceeds the anticipated duration of the unusual or unique situation used to justify a special procurement, what rationale justifies making the duration of the contract exceed the anticipated duration of the unusual or unique situation used to justify special procurement;

(h) the contractor selected;

(i) the reasons for the selection of the contractor.
Special Procurement Procedure

The PCS and TGS web portal screens have been updated to include the new procurement method. The forms to be completed for professional consulting services (PCS) or technical/general services (TGS) include the SPECIAL procurement method and are posted to the OSP website. The forms included are the:

- PCS-1 Contract Fillable Form
- PCS-1 Contract Form
- PCS-1A Contract Amendment Fillable Form
- PCS-1A Contract Amendment Form
Special Procurement Procedure

- TGS-1 Contract Fillable Form
- TGS-1 Contract Form
- TGS-1A Contract Amendment Fillable Form
- TGS-1A Contract Amendment Form

The checklists for PCS Contract Submission and TGS Contract Submission, available on the OSP website, have been updated to include the “SPECIAL” procurement method.
Special Procurement Procedure

The procedure for these special procurements will mimic that for sole source contracts with the exception of the procurement method and the justification letter mentioned above. The procurement method code SPECIAL should be entered into the Our Reference field on purchasing documents.

The signature of Ed Armstrong, director of the Office of State Procurement, will be required for any special procurement by any agency that is not a procurement agency as defined by law.
Special Procurement Documents are located…

Go to OSP website, scroll down the left side, select Guidelines.

Scroll down to the **Policy** section

Continue to scroll down to

<table>
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<tr>
<th>Policy Title</th>
</tr>
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<tbody>
<tr>
<td>1099 Instructions</td>
</tr>
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<td>Alternative Fuels</td>
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<table>
<thead>
<tr>
<th>Policy Title</th>
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<tbody>
<tr>
<td>Special Procurement Policy</td>
</tr>
<tr>
<td>Special Procurement Procedures</td>
</tr>
</tbody>
</table>
Delegation Order Re-Justification

Presented by
Randy Wright, Deputy Director of OSP
Delegation Orders

• Agencies have until June 30, 2018 to request updated delegation orders.

• A Justification letter must be submitted with the request.

• All delegation orders will be for two years
Stay Informed with OSP E-News!!

Keep up with the current procurement news!!

- OSP website
  http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx
For Questions or Clarifications to Procurement Related Matters ….

Office of State Procurement

501-324-9316

or email officeofstatepurchasing@dfa.Arkansas.gov