STATE OF ARKANSAS

Procurement Laws and Rules

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Department of Transformation and Shared Services
Office of State Procurement
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INTRODUCTION

This document is a composite of the Arkansas Procurement Law, Procurement Rules and extracts from other laws.

The reference index enables quick access to the appropriate subject being researched. It also identifies the section of the law and/or rule that applies (use “Ctrl F” as a search tool).

The numbering system used is keyed to the numbering of the Arkansas Code of 1987 Annotated. The title, chapter, subchapter and section of the code references are contained within the number. Thus, in the designation “19-11-201,” the “19” means the provision is in Title 19, the “11” indicates chapter 11, and the “2” in 201 means subchapter 2, with the “01” indicating the first section of the subchapter.

The rules are identified by the letter “R” and the rule number prior to the code reference. For example, in the rule designation “R5:19-11-229,” the “R5:” indicates it is the fifth rule; four rules precede it and others may follow. The “19-11-229” is the statute to which the rule relates. Rules are inserted immediately following the appropriate section of the law. The State Procurement rules should be cited as “OSP Rule (rule number).” Thus, a citation to rule R5:19-11-229 should be cited as “OSP Rule R5:19-11-229.”

The appendices contain information that can be of use to state agency procurement personnel and vendors not included in the body of this document.

N.B: Pursuant to Ark. Code Ann. § 1-2-123, if the official electronic version of the Arkansas Code, from which the statutes in this document were taken directly word for word, differs from the official hard-copy version of the Arkansas Code, the hard-copy version shall take precedence over the electronic version.

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COMPOSITE OF ARKANSAS PROCUREMENT LAW AND RULES

Title 19
Public Finance

Chapter 11
Purchasing and Contracts

Subchapter 1 — General Provisions

19-11-101. Responsibility of disbursing officer — Maintenance of files by Office of State Procurement.

(a) The disbursing officer of each agency, board, commission, department, or institution shall be responsible for reviewing all invoices prepared by commercial printers or suppliers holding commercial contracts to make certain that the charges to the agency, board, commission, department, or institution are proper under the terms of the contract.

(b) The Office of State Procurement of the Department of Finance and Administration shall maintain complete files that shall be open to public inspection on all commercial term and one-time contracts. The files shall contain:

(1) A copy of the contract;
(2) A list of all printing or duplicating done or commodities ordered, as well as the name of the invoiced agency; and
(3) A copy of all correspondence regarding the contract or jobs performed thereunder.

History. Acts 1993, No. 1224, § 5; 2007, No. 478, § 1.

19-11-102. Use of soybean ink in state printing.

Notwithstanding any law or rule to the contrary, all printing which is chargeable to or which is paid for with funds appropriated wholly or in part by the state, or any state department, division, bureau, board, commission, or agency, shall be printed in soybean ink; provided, however, that the soybean ink is comparable in price to other inks, and that it is equally suitable for use.

History. Acts 1991, No. 630, § 1; 2019, No. 315, § 1750.

19-11-103. Penalty for violation of law.

Any person who is found by a court of law to have knowingly violated any state law in conjunction with the performance or acquisition of a contract with the state shall be ineligible to contract with the state for a period of three (3) years.

History. Acts 1997, No. 1155, § 1.

19-11-104. Equal Opportunity Policy.

(a) The purpose of this section is to require any entity or person bidding on a state contract, responding to a request for proposals regarding a state contract, responding to a request for qualifications regarding a state contract, or negotiating a contract with the state for professional or consulting services to submit to the Office of State Procurement the most current equal opportunity policy of the entity or person.

(b) The office and a state agency shall require a copy of the most current equal opportunity policy of an entity or person to be filed with the office or state agency for public inspection as a condition precedent to:

(1) Accepting a letter of intent, bid, proposal, or statement of qualification with regard to a state contract from the entity or person; or

(2) Entering negotiations with the entity or person for a professional or consulting services contract with the state.

History. Acts 2005, No. 2157, § 1.

R1:19-11-104. COLLECTION AND MAINTENANCE OF VENDOR EEO POLICIES.

Equal Opportunity Policies are required from vendors who submit responses to state agencies or the Office of State Procurement for procurements of Professional and Consultant Services where the dollar value is greater than $25,000.

The Office of State Procurement will maintain a file of vendor Equal Opportunity Policies. State agencies which issue solicitations will be responsible for confirming that vendors have a current E.O. Policy on file with the State either through requesting that it be supplied with the solicitation response; maintaining an agency file of vendor supplied E.O. Policies or by accessing and checking the files maintained by the Office of State Procurement. A contract may not be awarded prior to determining that a copy of the vendor's current E.O. Policy is on file with the State.

Vendors will be responsible for supplying the State with updated versions of their respective E.O. Policies as they are implemented.

19-11-105. Illegal immigrants — Prohibition — Public contracts for services.

(a) As used in this section:

(1) "Contractor" means a person having a public contract with a state agency for professional services, technical and general services, or any category of construction in which the total dollar value of the contract is twenty-five thousand dollars ($25,000) or greater;

(2) "Exempt agency" 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;

(3) "Illegal immigrant" means any person not a citizen of the United States who has:

(A) Entered the United States in violation of the federal Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 et seq., or regulations issued under the act;

(B) Legally entered the United States but without the right to be employed in the United States; or

(C) Legally entered the United States subject to a time limit but has remained illegally after expiration of the time limit;

(4) “Professional services contract” means a contract between a state agency and a contractor in which:

(A) The relationship between the contractor and the state agency is that of an independent contractor rather than that of an employee;

(B) The services to be rendered consist of the personal services of an individual that are professional in nature;

(C) The state agency does not have direct managerial control over the day-to-day activities of the individual providing the services;

(D) The contract specifies the results expected from the rendering of the services rather than detailing the manner in which the services shall be rendered; and

(E) Services rendered under a professional services contract are rendered to the state agency itself or to a third-party beneficiary;

(5) “Public contract for services” means any type of agreement between a state agency and a contractor for the procurement of services and all categories of construction with a state agency in which the total dollar value of that contract is twenty-five thousand dollars ($25,000) or greater;

(6) (A) “State agency” means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency under subdivision (a)(7)(B) of this section.

(B) “State agency” includes an exempt agency when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54; and

(7) (A) “Technical and general services” means:

(i) Work accomplished by skilled individuals involving time, labor, and a degree of expertise in which performance is evaluated based upon the quality of the work and the results produced;

(ii) Work performed to meet a demand, including without limitation work of a recurring nature that does not necessarily require special skills or extensive training; or

(iii) The furnishing of labor, time, or effort by a contractor or vendor, not involving the delivery of any specific end product other than reports that are incidental to the required performance.

(B) “Technical and general services” shall not be construed to include the procurement of professional services under § 19-11-801 et seq.

(b) No state agency may enter into or renew a public contract for services with a contractor who knows that the contractor or a subcontractor employs or contracts with an illegal immigrant to perform work under the contract.

(c) Before executing a public contract, each prospective contractor shall certify in a manner that does not violate federal law in existence on January 1, 2007, that the contractor at the time of the certification does not employ or contract with an illegal immigrant.

(d) (1) If a contractor violates this section, the state shall require the contractor to remedy the violation within sixty (60) days.

(2)

(A) If the contractor does not remedy the violation within the sixty (60) days specified under subdivision (d)(1) of this section, the state shall terminate the contract for breach of the contract.

(B) If the contract is terminated under subdivision (d)(2)(A) of this section, the contractor shall be liable to the state for actual damages.

(e) (1) (A) If a contractor uses a subcontractor at the time of certification, the subcontractor shall certify in a manner that does not violate federal law in existence on January 1, 2007, that the subcontractor at that time of certification does not employ or contract with an illegal immigrant.

(B) A subcontractor shall submit the certification required under subdivision (e)(1)(A) of this section within thirty (30) days after the execution of the subcontract.

(2) The contractor shall maintain on file the certification of the subcontractor throughout the duration of the term of the contract.

(3) If the contractor learns that a subcontractor is in violation of this section, the contractor may terminate the contract with the subcontractor, and the termination of the contract for a violation of this section shall not be considered a breach of the contract by the contractor and subcontractor.

History. Acts 2007, No. 157, § 1; 2009, No. 251, § 27.

R1:19-11-105. EMPLOYMENT OF ILLEGAL IMMIGRANTS—PROHIBITION—CERTIFICATION BY CONTRACTOR.

(a) Prior to award of a contract, the contractor must certify that the contractor does not, and agrees that for the aggregate term of the contract will not, employ or contract with any illegal immigrant. The instructions for certification will be provided in the contract solicitation.

(b) If the contractor violates the above certification or is found to not be in compliance during the term of the contract, the state shall 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 will result in termination for breach of contract, and the contractor shall be liable to the State for the State's actual damages.

(c) If the contractor uses a subcontractor at the time of the above certification, the subcontractor shall certify that the subcontractor does not employ or contract with an illegal immigrant. The subcontractor's certification must be submitted within 30 days after award of the contract, and the contractor is required to maintain the certification on file for the remainder of the term of the contract.

(d) In the event that the contractor learns that the subcontractor's certification is in violation of the Act, and terminates the contract with the subcontractor, the termination of the subcontract for a violation of this section will not be considered a breach of the contractor's contract with the state. However, any subcontractor subsequently hired by the contractor shall be required to provide like certification.

19-11-106. [Repealed].

Subchapter 2

Arkansas Procurement Law

19-11-201. Title.

This subchapter shall be referred to as the “Arkansas Procurement Law”.

History. Acts 1979, No. 482, § 1; A.S.A. 1947, § 14-233; Acts 2001, No. 1237, § 1.

19-11-202. Purposes and policies.

The underlying purposes and policies of this subchapter are to:

(1) Simplify, clarify, and modernize the law governing procurement by this state;

(2) Permit the continued development of procurement policies and practices;

(3) Provide for increased public confidence in the procedures followed in public procurement;

(4) Ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(5) Provide increased economy in state procurement activities by fostering effective competition; and

(6) Provide safeguards for the maintenance of a procurement system of quality and integrity.

History. Acts 1979, No. 482, § 3; A.S.A. 1947, § 14-233.2.

19-11-203. Definitions generally.

As used in this subchapter:

(1) (A) “Agency procurement official” means any person authorized by a state agency to enter into and administer contracts and make written determinations and findings with respect to contracts, in accordance with procedures prescribed by this subchapter and the rules promulgated under it.

(B) “Agency procurement official” also includes an authorized representative acting within the limits of authority;

(2) “Business” means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity;

(3) (A) “Capital improvement” means all lands, buildings, structures, utilities, on-site and off-site improvements, and other appurtenant improvements, existing or future, and all construction, repairs, alterations, and renovations thereof which are undertaken, owned, operated, or otherwise managed by a state agency.

(B) “Capital improvement” shall not include construction and reconstruction of roads and bridges in the state highway system by the State Highway Commission, nor shall “capital improvement” include any building, facility, plant, structure, or other improvement constructed by, or in behalf of, the Arkansas Department of Transportation or the State Highway Commission;

(4) (A) “Commodities” means all personal property, including without limitation:

(i) Goods, as defined in § 4-2-105;

(ii) Leases, as defined in § 4-2A-103; and

(iii) Insurance.

(B) “Commodities does not include:

(i) A lease on real property or a permanent interest in real property;

(ii) Exempt commodities and services; and

(iii) Capital improvements;

(5) (A) “Contract” means all types of state agreements, regardless of what they may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.

(B) (i) “Contract” includes awards and notices of award, contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.

(ii) “Contract” also includes supplemental agreements with respect to any of these items.

(iii) “Contract” does not include a partial equity ownership agreement as defined under § 19-11-1301 et seq.;

(6) “Contract modification” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract;

(7) “Contractor” means any person having a contract with a state agency;

(8) “Data” means recorded information, regardless of form or characteristic;

(9) “Debarment” means the disqualification of a person to receive invitations for bids or requests for proposals or the award of a contract by the state for a specified period of time commensurate with the seriousness of the offense or the failure or the inadequacy of performance;

(10) “Designee” means a duly authorized representative of a person holding a superior position;

(11) “Electronic” means electrical, digital, magnetic, optical, or any other similar technology;

(12) “Employee” means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any agency;

(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;

(14) “Exempt commodities and services” means:

(A) Advertising in newspapers, periodicals, and related publications and on television, radio, billboards, and electronic media;

(B) Animals procured for medical research;

(C) (i) Commodities and services for use in research, education, and treatment for the diagnosis, cure, and prevention of disease, which may be procured with administrative approval through a group purchasing entity serving other public health institutions when substantial savings are available.

(ii) A report shall be filed annually with the Division of Legislative Audit reflecting the justification of and the estimated savings accruing due to the use of this exemption;

(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;

(E) (i) Contracts awarded by agencies for the construction of buildings and facilities and for major repairs.

(ii) These contract exemptions shall not extend to the procurement of any commodities not otherwise exempt that are to be furnished by the agency under any such contract;

(F) Contracts awarded by the Arkansas State Highway and Transportation Department for the construction, reconstruction, and maintenance of roads and bridges in the state highway system and for the county, rural road aid, and city street aid programs;

(G) (i) Farm products procured or sold by a state agency having an agency procurement official.

(ii) The current trade customs with respect to the procurement or sale of cotton, cotton seed, rice, and other farm products shall be followed when it is necessary to obtain the best price for the commodities procured or sold;

(H) Fees, including medical fees and physician fees;

(I) Foster care maintenance services provided by foster family homes or a community provider that is licensed as a family style residential home or that provides a family home setting approved by the Division of Children and Family Services of the Department of Human Services for children whose placement and care are the responsibility of the Division of Children and Family Services of the Department of Human Services;

(J) Freight and storage charges and demurrage;

(K) Licenses required prior to performance of services;

(L) (i) Livestock procured by an agency having an official experienced in selection and procurement of livestock.

(ii) Such procurement will be reported to the State Procurement Director, giving details of the purchase;

(M) Livestock procured for breeding, research, or experimental purposes;

(N) Maintenance on office machines and technical equipment;

(O) Medical items specifically requested by a physician for treatment or diagnosis of patients in his or her care, including prosthetic devices, surgical instruments, heart valves, pacemakers, radioisotopes, and catheters;

(P) Membership in professional, trade, and other similar associations;

(Q) Perishable foodstuffs for immediate use or processing;

(R) Postage;

(S) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of these materials;

(T) Services of visiting speakers, lecturers, and performing artists;

(U) Taxes;

(V) Travel expense items such as room and board and transportation charges;

(W) Utility services or equipment that is defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering;

(X) Works of art for museum and public display;

(Y) Capital improvements valued at less than the amount stated in § 22-9-203, subject to minimum standards and criteria of the Building Authority Division;

(Z) Services related to work force development, incumbent work force training, or specialized business or industry training;

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

(i) Technical support incidental to supporting the continuous operation of proprietary software;

(ii) Renewals;
(iii) Additional copies; and
(iv) License upgrades;

(BB) Commodities and raw materials purchased by Arkansas Correctional Industries intended for use in goods for resale;

(CC) Commodities purchased by the Department of Correction for crop production, including without limitation fertilizers, seed, seedlings, and agricultural-related chemicals; and

(DD) Repair services for hidden or unknown damages to machinery already purchased;

(EE) Commodities and services purchased by an academic medical center using revenue derived from and used for patient care and hospital enterprises.

(15) (A) (i) "Grant" means the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law.

(ii) "Grant" does not include an award whose primary purpose is to procure an end product, whether in the form of commodities or services.

(B) A contract resulting from such an award is not a grant but a procurement contract;

(16) "May" means the permissive;

(17) "Paper product" means any item manufactured from paper or paperboard;

(18) "Person" means any business, individual, union, committee, club, or other organization or group of individuals;

(19) "Political subdivisions" means counties, municipalities, and school districts;

(20) (A) "Procurement" means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services.

(B) "Procurement" also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, disposal of commodities, and all phases of contract administration;

(21) "Procurement agency" means any state agency that is authorized by this subchapter, by implementing rules, or by way of delegation from the State Procurement Director to contract on its own behalf rather than through the central contracting authority of the State Procurement Director;

(22) (A) "Procurement agent" means any person authorized by a state agency not having an agency procurement official to enter into and administer contracts and make written determinations and findings with respect to contracts, in accordance with procedures prescribed by this subchapter.

(B) "Procurement agent" also includes an authorized representative acting within the limits of authority;

(23) (A) "Public funds" means all state-appropriated and cash funds of state agencies, as defined by applicable law or official ruling.

(B) Without necessarily being limited thereto, "public funds" does not include:

(i) Grants, donations, research contracts, and revenues derived from self-supporting enterprises that are not operated as a primary function of the agency, no part of which funds are deposited into the State Treasury; and

(ii) Revenue derived from patient care and self-supporting hospital enterprises of an academic medical center;

(24) "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and websites designated by the State of Arkansas and maintained for that purpose;

(25) (A) “Purchase request” means that document, written or electronic, in which a using agency requests that a contract be obtained for a specified need.

(B) “Purchase request” may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written or electronic determination and finding required by this subchapter;

(26) “Recycled paper” means paper which contains recycled fiber in a proportion specified by the State Procurement Director;

(27) (A) “Services” means the furnishing of labor, time, or effort by a contractor that does not produce tangible commodities.

(B) “Services” includes without limitation:

(i) Consulting services;

(ii) Personal services;

(iii) Professional services;

(iv) Technical and general services; and

(v) The furnishing of labor, time, or effort by a contractor for the generation, customization, configuration, or development of software and other intangible property other than technical support incidental to the procurement of proprietary software.

(C) “Services” does not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of the Building Authority Division or Division of Higher Education;

(28) “Shall” means the imperative;

(29) “Signature” means a manual, an electronic, or a digital method executed or adopted by a party with the intent to be bound by or to authenticate a record which is:

(A) Unique to the person using it;

(B) Capable of verification;

(C) Under the sole control of the person using it; and

(D) Linked to data in such a manner that if the data are changed, the electronic signature is invalidated;

(30) (A) “State agency” means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency pursuant to subdivision (13) of this section.

(B) “State agency” includes an exempt agency when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54;

(31) (A) “State contract” means a contract for the procurement of commodities or services in volume, awarded by the State Procurement Director.

(B) The contract may apply to all or part of the state;

(32) “State Procurement Director” means the person holding the position created in § 19-11-216, as the head of the Office of State Procurement;

(33) “Suspension” means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the state for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance, which may lead to debarment;

(34) (A) “Technical and general services” means:

(i) Work accomplished by skilled individuals involving time, labor, and a degree of expertise, in which performance is evaluated based upon the quality of the work

and the results produced;
(ii) Work performed to meet a demand, including, but not limited to, work of a recurring nature that does not necessarily require special skills or extensive training; or
(iii) The furnishing of labor, time, or effort by a contractor or vendor, not involving the delivery of any specific end product other than reports that are incidental to the required performance.

(B) "Technical and general services" shall not be construed to include the procurement of professional services under § 19-11-801 et seq.;

(35) "Using agency" means any state agency which utilizes any commodities or services purchased under this subchapter; and

(36) "Written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

History. Acts 1979, No. 482, § 12; 1981, No. 600, §§ 1-5; A.S.A. 1947, § 14-240; Acts 1987, No. 983, § 1; 1991, No. 128, § 1; 1991, No. 749, § 2; 1991, No. 1018, § 1; 1999, No. 1398, § 27; 2001, No. 961, § 7; 2001 No. 1237, § 2; 2001 No. 1568, § 1; 2003, No. 487, § 1; 2003, No. 1315, §§ 4-7; 2005, No. 1680, § 1; 2007, No. 478, § 2; 2009, No. 251, § 28; 2009, No. 605, § 20; 2009, No. 606, § 20; 2009, No. 1211, § 1; 2011, No. 794, § 1; 2013, No. 453, § 1; 2015, No. 218, § 21; 2015, No. 557, § 3; 2017, No. 609, §§ 1, 2; 2019, No. 417, §§ 1-3; 2019, No. 315, §§ 1751, 1752, 2019, No. 658, § 3; 2019, No. 910, §§ 6102, 6103.

R1:19-11-203. DEFINITIONS OF TERMS USED IN THIS ACT.

(a) "**Commodities**" is a broad term that encompasses all personal property, except for those categories of personal property expressly exempted under Arkansas Procurement Law.

The following are specifically included as commodities under Arkansas Procurement Law:

(i) Goods, as defined in the Arkansas Commercial Code at § 4–2–105;
(ii) Leases of Goods, as defined in the Arkansas Commercial Code at § 4-2A-103; and
(iii) Insurance.

Ark. Code Ann. 19-11-203(4)(B) expressly excludes real property, leases of real property, other permanent interests in real property, capital improvements, and excluded commodities and services from being considered "commodities" for purposes of Arkansas Procurement Law. Certain types of commodities that would otherwise fall within the definition of personal property are expressly exempted from the application of Arkansas Procurement Law at Ark. Code Ann. § 19-11-203(14). State agencies not authorized to procure commodities through Arkansas Procurement Law may be authorized to do so under other applicable law. Exemption from Arkansas Procurement Law does not automatically exempt any state agency or officer from other laws governing the expenditure of public funds or the ethical restrictions at Ark. Code Ann. § 19-11-701, *et. seq.*

(b) "**Consulting services**" means services of providing professional counsel and expert advice.

(c) "**Employment agreement**" means an agreement between a state agency, as employer, and its employee in which the terms and conditions of the employee's employment are stated. An independent contractor who, in the course of *his, her, or its* independent occupation or profession, provides services to a state agency pursuant to a contract is not an employee simply by virtue of having a contract with a state agency.

(d) “**Personal services**” means services unique to the specific individual and personality providing them, as opposed to services that are fungible and could be provided by any person based on a set of skills or knowledge. Personal services of visiting speakers, lecturers, and performing artists may be procured without any competitive procurement because they are expressly exempted from Arkansas Procurement Law. Any personal services provided by a contract employee under an “employment agreement,” as defined below, are excluded by definition from being considered “services.”

(e) “**Professional services**” means services furnished by or under the supervision of a professional who has been specially trained to provide such services. A “professional” is a person who belongs to a learned profession or occupation that requires a high level of training, specialized knowledge, proficiency, and often a professional license. Professional services include medical, legal, financial advisory, architectural, engineering, construction management, and land surveying services. Under state law, legal, financial advisory, architectural, engineering, construction management, and land surveying services must be procured by means of a request for qualifications. Absent authority from the State Procurement Director, the request for qualifications shall not be used by state agencies to procure any other professional services unless the State Procurement Director determines by rule or in writing that the request for qualifications process is warranted. Note, contracts to pay physician fees and medical fees are exempt from Arkansas Procurement Law under Ark. Code Ann. § 19-11-203(14)(H). Although contracts to pay for such fees are exempt from Arkansas Procurement Law, to the extent reasonably practicable, reasonable care should be taken to ensure that professional competence is considered with respect to such services. Consequently, the State Procurement Director recognizes a request for qualifications as a suitable method for procuring such services where reasonably possible without the need of advance approval from the Director in light of the exemption provided in Ark. Code Ann. § 19-11-203(14)(H).

(f) “**Services**” is defined at Ark. Code Ann. § 19-11-203(27)(A). It refers to the labor, time, or effort that a contractor furnishes under a contract as performance for separate consideration and not labor, time, or effort included in or incident to the production or sale of a commodity or commodities.

Labor, time, or effort are “included in” the production or sale of a commodity if expended within either the production or sale of the commodity and are not set apart for separate consideration outside of the purchase price of the commodity.

Labor, time, or effort are “incident to” the production or sale of a commodity if they accompany the production or sale of the commodity as a minor consideration, even if a separate but relatively small fee is paid to the contractor for it. For example, where the purchase of a computer includes delivery and installation for a relatively small fee, the labor, time, and effort involved in the delivery and installation of the computer are incident to the sale of the commodity.

After the State’s procurement and acceptance of a commodity as conforming to the contract, subsequent labor, time, or effort furnished by a contractor with respect to the commodity are considered “**services**” for purposes of Arkansas Procurement Law if they are not incident to the original procurement of the commodity and there is a separate consideration paid for those services. Labor, time, or effort that a contractor furnishes for the customization, generation, configuration, or development of software, beyond that which is incident to the procurement, installation, maintenance, and routine technical support of the software, are considered “**services**” for purposes of Ark. Code Ann. § 19-11-265.

Based on the exclusionary definition in Ark. Code Ann. § 19-11-203(27)(C), the following types of contracts are excluded from being considered a "contract requiring services" within the meaning of Ark. Code Ann. § 19-11-265: (1) employment agreements; (2) collective bargaining agreements; (3) architectural or engineering contracts requiring approval of the Division of Building Authority or the Division of Higher Education; and (4) other commodities and services exempted by law.

(g) "**Technical and general services**" is defined at Ark. Code Ann. § 19-11-203(34)(A). It is a term that generally encompasses the broad range of services that are not professional services.

R2:19-11-203. DEFINITIONS OF EXEMPT COMMODITIES AND SERVICES USED IN THIS ACT.

Certain types of services that would otherwise fall within the definition of services are expressly exempted from the application of Arkansas Procurement Law at Ark. Code Ann. § 19-11-203(14). State agencies not authorized to procure services through Arkansas Procurement Law may be authorized to do so under other applicable law. Exemption from Arkansas Procurement Law does not automatically exempt any state agency or officer from other laws governing the expenditure of public funds or the ethical restrictions at Ark. Code Ann. § 19-11-701, et. seq.

EXEMPT COMMODITIES AND SERVICES MEANS:

(a) Under subsection (14)(D)(i) – Commodities procured for resale does not include items used to support the sale of goods or services such as reusable items or items used in preparing, serving, dispensing, or packaging, except for vendor packaging included with the item purchased.
(b) Under subsection (14)(G)(i) – Farm products includes unprocessed feed for livestock.
(c) Under subsection (14)(K) – "License" does not mean software license.
(d) Under subsection (14)(M) – Livestock breeding to include ova and semen.
(e) Under subsection (14)(N) – Technical equipment for maintenance purposes shall include, but not be limited to, medical, dental, laboratory, and health aid equipment, climate control equipment, water treatment services, elevators, musical instruments, communications equipment, data processing equipment, and specialized research equipment.
(f) Under subsection (14)(Q) – "Perishable foodstuffs" means the raw material of food before or after processing, such being liable to spoil or decay in a short duration of time, such as (but not limited to) produce, eggs, or milk.
(g) Retail gasoline credit card purchases are exempt by [rule] regulation, regardless of the amount.
(h) Renewals of termite protection contracts with the contractor who performed the initial treatment of the facility are exempt. Not exempt are termite protection contracts which include the initial treatment.
(i) Under subsection (14)(H) – Fees that are uniform and fixed in advance by an authoritative body, such as fees for membership in professional associations, court filing fees, witness fees, workshop fees for professional conferences or training, medical fees and physician fees, are exempt from Arkansas Procurement Law. Fees that are payment for professional services for which there is generally free market competition and which may reasonably be subject to negotiation, are not exempt from Arkansas Procurement Law.
(j) Under subsection (14)(EE) and subsection 23(B)(ii), "Academic medical center" consists of a public medical school and its primary teaching hospitals and clinical programs.

R3:19-11-203. CAPITAL IMPROVEMENTS.

Under subsection (14)(Y), capital improvements valued at less than the amount stated in Ark. Code Ann. § 22-9-203 subject to Department of Transformation and Shared Services Division of Building Authority minimum standards and criteria are exempt from the requirements of the Procurement Law.

R4:19-11-203. PROPRIETARY SOFTWARE.

Software exemption under subsection (14)(AA) does not apply to the initial purchase of proprietary software. Nor does the exemption apply to the purchase of software that is part of any mandatory software contract. Exempt software purchases shall include the purchase of additional proprietary software licenses, copies, license renewals, software upgrades, and proprietary software support for proprietary software after the initial purchase.

R5:19-11-203. SIGNATURES DEFINED.

The definition of "signed" for the purposes of submitting a solicitation response can be found in the Uniform Commercial Code, Ark. Code Ann. § 4-1-201(39) (General Definitions), which "...includes any symbol executed or adopted by a party with present intention to authenticate a writing." Allowance should therefore be made for any mark or writing, whether printed or cursive, which that person uses as his signature. Electronic signatures shall also be permitted, unless otherwise prohibited by law, pursuant to Ark. Code Ann. § 25-32-107.

R6:19-11-203. TAX-SUPPORTED INSTITUTIONS DEFINED.

"Tax-supported institutions" means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.

R7:19-11-203. HIDDEN DAMAGES.

(a) Under subsection (14)(DD), "hidden or unknown damages" refers to damages to machinery needing repair that were not visible or readily apparent to, or were otherwise not within the knowledge of agency personnel at the time the piece of machinery was being serviced by a vendor. By way of example and not limitation, if an agency takes a piece of machinery to a vendor to repair one or more problems, and in the course of such work the vendor notices one or more additional problems that need repair, the agency may, but is not required to, authorize that vendor to undertake such additional repairs without having to solicit competitive bids.

(b) "Machinery" means mechanical devices or combinations of mechanical powers and devices purchased or constructed and used to perform some function and to produce a certain effect or result.

(c) This exemption does not apply to damages that are visible, readily apparent, or are or could be within the knowledge of agency personnel with the exercise of reasonable inspection or investigation.

19-11-204. Definitions concerning source selection and contract formation.

As used in this subchapter:

(1) “Competitive bidding” means the same as defined in § 19-11-234(a);

(2) “Competitive sealed bidding” means the same as defined in § 19-11-229(a);

(3) “Competitive sealed proposals”, means the same as defined in § 19-11-230(a);

(4) “Emergency procurement” means the acquisition of commodities or services, which if not immediately initiated, will endanger human life or health, state property, or the functional capability of a state agency;

(5) “Established catalogue price” means the price included in a catalogue, price list, schedule, or other form that:

(A) Is regularly maintained by a manufacturer or contractor;

(B) Is either published or otherwise available for inspection by customers; and

(C) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the commodities or services involved;

(6) “Invitation for bids” means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in § 19-11-229, which refers to competitive sealed bidding;

(7) “Multiple award contracts” means a method of procurement whereby an indefinite quantity contract is awarded to more than one (1) supplier for furnishing a like item or category of items.

(8) “Purchase description” means specifications or any other document or electronic media describing the commodities or services to be procured;

(9) “Request for proposals” means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in § 19-11-230, which refers to competitive sealed proposals, § 19-11-231, which refers to small procurements § 19-11-232, which refers to proprietary or sole source procurements, § 19-11-233, which refers to emergency procurements, or § 19-11-234, which refers to competitive bidding;

(10) (A) “Request for qualifications” means a solicitation document requiring submittal of qualifications or specialized expertise in response to the scope of work or services required and does not require pricing.

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

(11) “Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance;

(12) “Responsive bidder” means a person who has submitted a bid under § 19-11-229, which refers to competitive sealed bidding, which conforms in all material respects to the invitation for bids, including the specifications set forth in the invitation; and

(13) (A) (i) “Small procurements” means a procurement not exceeding a purchase price of twenty thousand dollars ($20,000).

(ii) Small procurements may be procured without seeking competitive bids or competitive sealed bids.

(iii) However, competition should be used to the maximum extent practicable.

(B) Items under state contract are excluded.

History. Acts 1979, No. 482, § 27; 1981, No. 600, § 11; A.S.A. 1947, § 14-252; Acts 1987, No. 540, § 1; 1995, No. 317, § 1; 1995, No. 340, § 1; 1995, No. 428, § 1; 1995, No. 507, § 1; 2001, No. 1237, § 3; 2007, No. 478, § 3; 2013, No. 1189, § 1; 2017, No. 1004, § 1.

R1:19-11-204. REQUESTS FOR QUALIFICATION PROCUREMENT METHOD.

(a) The request for qualifications procurement method is used, with prior written approval from the Director of the Office of State Procurement, when price competition is irrelevant and/or the qualifications or specialized expertise of the vendor is the most important factor in selection. For example, an RFQ would likely be appropriate in instances where an agency is compiling a list of qualified vendors and will be offering the same contract rates to all qualified vendors, because price competition is irrelevant in such a situation. An agency should give public notice of an RFQ opportunity, but may also send notice directly to those vendors the agency considers to be best-qualified and capable of performing the scope of work or services required.

(b) Notification of RFQs, for which OSP is responsible, in amounts greater than seventy-five thousand dollars ($75,000) will be made on the OSP website. The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussion may be conducted with qualified vendors who, based upon qualifications submitted, are determined to reasonably be susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements, and to obtain best and final offers. If the state agency or political subdivision is unable to negotiate a satisfactory contract with the vendor selected, negotiations with that vendor shall be terminated and the agency may proceed to negotiate with one or more of the other qualified vendors.

R2:19-11-204. ETHICAL STANDARDS.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars ($20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-205. Definitions concerning commodity management.

As used in this subchapter:

(1) "Commodities" means, for purposes of this section, §§ 19-11-242 and 19-11-243, commodities owned by the state. See § 19-11-203, which refers to commodities;

(2) "Excess commodities" means any commodity, other than expendable commodities, having a remaining useful life but which the using agency in possession of the commodity has determined is no longer required by such agency;

(3) "Expendable commodities" means all tangible commodities other than nonexpendable commodities;

(4) "Nonexpendable commodities" means all tangible commodities having an original acquisition cost of more than two thousand five hundred dollars ($2,500) per unit and a useful life of more than one (1) year; and

(5) “Surplus commodities” means any commodities, other than expendable commodities, no longer having any use to the state. This definition includes obsolete commodities, scrap materials, and nonexpendable commodities that have completed their useful life cycle.

History. Acts 1979, No. 482, § 54; A.S.A. 1947, § 14-275; Acts 2003, No. 487, § 2.

19-11-206. Definitions concerning intergovernmental relations.

As used in this subchapter:

(1) “Cooperative purchasing agreement” means an agreement entered into as the result of a procurement conducted by, or on behalf of, more than one (1) public procurement unit or by a public procurement unit with an external procurement activity;

(2) (A) “External procurement activity” means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit.

(B) An agency of the federal government is an external procurement activity;

(3) “Local public procurement unit” means:

(A) Any county, city, town, state agency, and any other subdivision of the state or public agency thereof;

(B) Any fire protection district;

(C) Any regional water distribution district;

(D) Any rural development authority;

(E) Any public authority;

(F) Any public educational, health, or other institution;

(G) Any nonprofit corporation during the time that it contracts with the Department of Human Services to provide services to individuals with developmental disabilities or for transportation services, so long as the contract exceeds seventy-five thousand dollars ($75,000) per year;

(H) Any nonprofit corporation providing fire protection services to a rural area or providing drinking water to the public in a rural area; and

(I) To the extent not prohibited by law, any other entity that expends public funds for the acquisition or leasing of commodities and services;

(4) “Public procurement unit” means either a local public procurement unit or a state public procurement unit; and

(5) “State public procurement unit” means the Office of State Procurement and any other procurement agency of this state.

History. Acts 1979, No. 482, § 64; A.S.A. 1947, § 14-281; Acts 1989, No. 57, § 1; 1997, No. 872, § 1; 1999, No. 41, § 1; 2001, No. 1237, § 4; 2007, No. 478, § 4; 2019, No. 421, § 1.

19-11-207. Applicability.

(a) This subchapter shall apply to every expenditure of public funds by this state, acting through a state agency as defined in § 19-11-203, under any contract. This subchapter shall not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in §§ 19-11-206 and 19-11-249 — 19-11-258. It shall also apply to the disposal of state commodities. This subchapter shall not apply to contracts between agencies, except as provided in §§ 19-11-206 and 19-11-249 — 19-11-258.

(b) The provisions of this subchapter shall not preclude the acceptance of gifts and donations in the manner authorized by law.

History. Acts 1979, No. 482, § 9; A.S.A. 1947, § 14-237.2.

19-11-208. Exemptions.

Commodities and services need not be procured through the Office of State Procurement, if procured by the out-of-state offices of state agencies for that out-of-state office's use but shall, nevertheless, be procured subject to the requirements of this subchapter and the state procurement rules.

History. Acts 1979, No. 482, § 18; 1981, No. 600, § 6; A.S.A. 1947, § 14-246; Acts 2001, No. 1237, § 5; 2019, No. 315, § 1753.

19-11-209. Construction.

This subchapter shall be construed and applied to promote its underlying purposes and policies.

History. Acts 1979, No. 482, § 2; A.S.A. 1947, § 14-233.1.

19-11-210. Operation of other laws.

Unless displaced by the particular provisions of this subchapter, the principles of law and equity, including the Uniform Commercial Code, § 4-1-101 et seq., of this state, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement its provisions.

History. Acts 1979, No. 482, § 5; A.S.A. 1947, § 14-235.

19-11-211. Obligation of good faith.

Every contract or duty within this subchapter imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

History. Acts 1979, No. 482, § 6; A.S.A. 1947, § 14-236.

19-11-212. Existing contracts.

The administration of contracts in existence on July 1, 1979, shall be the responsibility of the appropriate officials described in this subchapter.

History. Acts 1979, No. 482, § 8; A.S.A. 1947, § 14-237.1.

19-11-213. Federal assistance requirements.

If federal assistance requirements or federal contract requirements conflict with this subchapter or rules promulgated under it, nothing in this subchapter or its rules shall prevent a state agency or political subdivision from complying with the terms and conditions of the federal assistance requirements or the federal contract requirements.

History. Acts 1979, No. 482, § 10; A.S.A. 1947, § 14-238; Acts 2015, No. 147, § 1; 2019, No. 315, § 1754.

19-11-214. Determinations and findings.

Written determinations and findings required by this subchapter shall be retained in an official contract file by the Office of State Procurement or by the state agency administering the contract for a period of five (5) years.

History. Acts 1979, No. 482, § 11; A.S.A. 1947, § 14-239; Acts 2001, No. 1237, § 6.

R1:19-11-214. DETERMINATION.

(a) Written Procurement Determinations. Written determinations and findings shall be signed by the employees making said determinations and findings.

(b) Contract files must be retained for five (5) years after all contract renewals (if any) have expired.

19-11-215. Office of State Procurement.

(a) There is created within the Department of Transformation and Shared Services the Office of State Procurement to be administered by the State Procurement Director.

(b) (1) The Office of State Procurement shall be subject to the supervision and management of the Secretary of the Department of Transformation and Shared Services.

(2) The rules authorized in this subchapter shall be approved by the secretary prior to the filing of the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1979, No. 482, § 13; A.S.A. 1947, § 14-241; Acts 2001, No. 1237, § 7; 2019, No. 315, § 1755; 2019, No. 910, § 6104.

19-11-216. State Procurement Director.

(a) (1) The executive head of the Office of State Procurement is designated as the administrator of the Office of State Procurement, and as such, he or she shall be known and designated as the "State Procurement Director".

(2) The State Procurement Director shall be appointed by the Secretary of the Department of Transformation and Shared Services.

(b) The State Procurement Director shall be at least thirty (30) years of age, of good moral character, and of demonstrated ability or capacity in the field of purchasing commodities and services.

History. Acts 1979, No. 482, § 14; 1983, No. 517, § 1; A.S.A. 1947, § 14-242; Acts 2001, No. 1237, § 8; 2007, No. 478, § 5; 2019, No. 910, § 6105.

19-11-217. Powers and duties of State Procurement Director.

(a) The State Procurement Director shall serve as the principal procurement officer of the state.

(b) (1) Except as otherwise provided in this subchapter and upon the approval of the Secretary of the Department of Transformation and Shared Services, the State Procurement Director shall have the authority and responsibility to promulgate rules consistent with this subchapter.

(2) In addition, consistent with the provisions of this subchapter, the State Procurement Director may adopt rules governing the internal procedures of the Office of State Procurement.

(c) Except as otherwise specifically provided in this subchapter, the State Procurement Director, within the limitations of this subchapter and the rules promulgated under authority of this subchapter:

(1) Shall procure or supervise the procurement of all commodities and services for each state agency not having an agency procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract;

(2) (A) Shall develop and implement a plan for all state agencies acquiring vehicles that will reduce the overall annual petroleum consumption of those state agencies by at least ten percent (10%) by January 1, 2009, through measures that include:

(i) The use of alternative fuels, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005;
(ii) The acquisition of vehicles with higher fuel economy, such as a hybrid vehicle operating on electricity and gasoline or diesel or bio-diesel fuel; and
(iii) The substitution of cars for light trucks.

(B) (i) By January 30 of each year, the State Procurement Director shall submit to the Legislative Council his or her report evaluating the progress of the plan toward achieving the goal set in subdivision (c)(2)(A) of this section.

(ii) The report shall include:

(a) The number and type of alternative fueled vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005, procured;
(b) The total number of alternative fueled vehicles used by each state agency;
(c) The difference between the cost of the purchase, maintenance, and operation of alternative fueled vehicles and comparable conventionally fueled motor vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005;
(d) An evaluation of the plan's success; and
(e) Suggestions for modifying the plan;

(3) Shall manage and establish internal procedures for the office;
(4) Shall sell, trade, or otherwise dispose of surplus commodities belonging to the state;
(5) May establish and maintain programs for the inspection, testing, and acceptance of commodities and services;
(6) Shall establish and manage a list of vendors desiring written notice of invitations for bid;
(7) May establish, by rule, a fee for receiving a written or electronic notice of invitations for bid; and
(8) Shall ensure compliance with this subchapter and implementing rules by reviewing and monitoring procurements conducted by any designee, department, agency, or official delegated authority under this subchapter.
(9) Shall create a roster of expiring contracts entered into by a state agency for which there is no new requisition.
(10) Shall analyze information captured in state systems to measure and track the contract routing process to identify stakeholders that may be contributing to the elongation of the contracting process; and
(11) Shall ensure that vendor performance reports are available to and searchable by state agencies;
(12) Shall provide for enhanced training on the drafting of specifications for procurements; and
(13) Shall maintain records of bids and proposals that are rejected by the office for failure to adhere to the mandatory requirements of a solicitation.

History. Acts 1979, No. 482, § 15; A.S.A. 1947, § 14-243; Acts 1991, No. 1018, § 2; 2001, No. 1237, § 9; 2005, No. 2322, § 1; 2019, No. 315, §§ 1756, 1757; 2019, No. 417, § 4; 2019, No. 418, § 1; 2019, No. 419, § 1; 2019, No. 910, § 6106.

R1:19-11-217. AUTHORITY OF THE STATE PROCUREMENT DIRECTOR.

QUALITY ASSURANCE, INSPECTION, AND TESTING. The State Procurement Director shall procure or supervise the procurement of all commodities and services for each state agency not having an agency procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract. However, in every instance the using agency or college or university receiving commodities or services under the contract shall be responsible for assuring that commodities and services conform to the necessary specifications, terms and conditions of the contract. Unless otherwise agreed, and subject to other applicable law, where commodities are tendered or delivered or identified to the contract for sale, the using agency has a right, before payment or acceptance, to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the commodities directly to the using agency, the inspection may be after their arrival. Using agencies are to provide assessments of the vendor's performance of services as required under Section 19-11-268 of the Arkansas Code Annotated.

Examination of commodities and services may, where and when necessary, include laboratory testing and/or simulation studies.

R2:19-11-217. AUTHORITY OF THE STATE PROCUREMENT DIRECTOR.

REPORTING. The State Procurement Director has the authority to collect information from any designee, department, agency, and procurement official to facilitate the preparation of statistical and financial reports on state government procurement activity and monitoring of compliance with Arkansas Procurement Law.

R3:19-11-217. AUTHORITY OF THE STATE PROCUREMENT DIRECTOR.

(a) VENDOR FEE. Vendors shall make application on the Office of State Procurement web site at www.arkansas.gov/dfa/procurement to have their name placed on the State Master Vendor list for the commodities and services they wish to supply or provide. An annual fee may be required.

(b) STATE MASTER VENDOR LIST. Inclusion of the name of a business on the vendor's list does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(c) VENDORS NOT ON VENDOR LISTS. Hard copies of invitations to bid requested in response to public notice or other notification of a particular procurement will be provided to the requestor at a charge consistent with the current costs of reproduction and distribution.

(d) RECOMMENDED VENDORS. Vendors listed as recommended vendors on agency purchase requests will be furnished invitations to bid, however, if the contract is awarded to a "recommended vendor," that vendor must register on the State Master Vendor List prior to contract award and pay the fee.

R4:19-11-217. VENDORS LIST.

(a) VENDORS LIST. The Office of State Procurement and each agency procurement official will maintain a vendors list.

(b) APPLICATION. A vendor must make application on the Office of State Procurement web site at www.arkansas.gov/dfa/procurement to have its name placed on the vendors lists for the commodities and services it wishes to supply or provide. The business must provide complete information requested in the application before it will be considered for placement on a vendors list.

(c) DETERMINATION. The procurement agencies may refuse to list any prospective bidder not making proper application. The prospective bidder has the burden of showing that it meets

the qualifications for inclusion on the vendors list on which it seeks to be listed. The prospective bidder will be promptly advised if its application is disapproved and the reasons for disapproval will be stated.

(d) REAPPLICATION. Any prospective bidder whose application is disapproved may reapply following the date of disapproval.

(e) REMOVAL.

(1) Any bidder who requests in writing to be removed from the vendors list will be removed.

(2) Bidders who have been suspended and/or debarred will be removed from the vendors list.

(f) Vendors seeking to contract with colleges and universities need to contact those institutions.

Note: A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

R5:19-11-217. STATE CERTIFICATION.

The State Procurement Director may create a statewide procurement training and certification program to advance state agency procurement personnel's knowledge.

R6:19-11-217. ROSTER OF EXPIRING CONTRACTS.

The "roster" referenced in Ark. Code Ann. § 19-11-217(c)(9) is a record of active and expiring contracts that may be an electronic record that can be printed or used to populate a list of expiring contracts for which no renewal or new procurement has been initiated by request or requisition.

State agencies have the lead role in identifying any commodities and services that they need in order to perform their respective duties. Consequently, they are in the best position to monitor and manage their contracts for commodities and services. As an essential component of managing their contracts, state agencies shall maintain a roster of their active and expiring contracts to submit to the Office of State Procurement. If a state agency wishes to renew or replace a contract expiring in twelve months or less, it should plan to renew or solicit a replacement with ample time to allow for a new contract to be procured and to avoid a disruption in service due to the expiration of its active contracts. State agencies that plan to procure commodities or services through a request for proposals should submit a requisition no later than nine (9) calendar months before the estimated start date of the contract it anticipates awarding as a result of the request for proposals.

19-11-218. Assistants and designees – Written delegation orders.

(a) Subject to the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., and the approval of the Secretary of the Department of Transformation and Shared Services, the State Procurement Director may:

(1) Employ and supervise such assistants and other persons as may be necessary;

(2) Fix their compensation as provided by law; and

(3) (A) Delegate authority to such designees or to a state agency by issuing a written delegation order, within the limitations of state law and the state procurement rules.

(B) A written delegation order issued under this section shall:

(i) Include an expiration date for the written delegation order;

(ii) Be publicly posted on the official website of the Office of State Procurement;

(iii) Remain in effect under the original terms unless the terms of the written delegation order are modified or rescinded in writing by the director;
(iv) Not be issued for a term that exceeds two (2) years; and
(v) Be narrowly tailored if the written delegation order is based on the type of commodity or service being procured.

(C) The director shall maintain records of each written delegation order issued under this section.

(D) A person who is to be given authority under a written delegation order issued under this section shall complete training on state procurement laws, as provided for in this subchapter and in the rules adopted by the director, before the written delegation order is issued.

(b) The director shall adopt rules to:

(1) Implement the requirements for written delegation orders under this section; and
(2) Outline the procurement training required under this section.

History. Acts 1979, No. 482, § 16; A.S.A. 1947, § 14-244; Acts 2001, No. 1237, § 10; 2003, No. 487, § 3; 2019, No. 420, § 1; 2019, No. 315, § 1758; 2019, No. 910, § 6107.

R1:19-11-218. APPOINTMENT OF ASSISTANTS AND OTHER EMPLOYEES; DELEGATION OF AUTHORITY BY THE STATE PROCUREMENT DIRECTOR.

(A) DELEGATION. The delegation to state agencies of the authority for the procurement of commodities and services may be made by the State Procurement Director with the approval of the Secretary of Transformation and Shared Services. The delegation may be for a specific commodity or service or for all commodities and services for a specific period of time not exceeding two (2) years. Such delegation shall be made by a written order signed by the State Procurement Director or by rules promulgated by the State Procurement Director setting forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority. Delegation orders are non-transferable.

(B) LIMITATIONS. All delegations of procurement authority shall remain in force according to the original terms thereof unless modified or until rescinded by the State Procurement Director in writing, or until the expiration date provided by law, whichever comes first. The term of delegation authority is counted from, and includes the date of, the effective date stated in the written delegation order.

(C) SMALL PROCUREMENTS AND COMPETITIVE BIDDING. All state agencies not having an agency procurement official and seeking authority to make small procurements and engage in competitive bidding as provided in in §§ 19-11-231 and 19-11-234 shall designate at least one procurement agent to make small purchases and engage in competitive bidding by submitting a letter signed by the administrative head of the state agency to the State Procurement Director requesting such designation of each employee identified as a procurement agent.

(D) A person who is requesting authority under a written delegation order issued under this section shall complete training as required.

(E) Delegation orders may be suspended or rescinded by the State Procurement Director. Suspended delegation orders may be reinstated, modified or rescinded in writing by the director.

19-11-219. Legal counsel – Contract review.

(a) The Attorney General shall act as counsel for the State Procurement Director in preparation of necessary contracts and in all legal matters.

(b) (1) A contract that the director has designated as requiring review shall be reviewed by a person employed as an attorney with a state agency.

(2) The review required under this subsection shall occur before the contract is executed.

(c) The director shall adopt rules to implement this section, including without limitation rules to:

(1) Designate contracts that require review under this section, which may include without limitation contracts that:

(A) Exceed a certain dollar amount;

(B) Modify the standard state terms and conditions; and

(C) Are based on other stated criteria; and

(2) Identify the requirements for the attorneys who may review contracts under this section, including without limitation:

(A) An attorney employed with the Office of State Procurement, an institution of higher education, or the Office of the Attorney General; and

(B) Any other attorney employed by the state and licensed to practice law in Arkansas.

History. Acts 1979, No. 482, § 26; A.S.A. 1947, § 14-251.3; Acts 2001, No. 1237, § 11; 2019, No. 418, § 2.

R1:19-11-219. ATTORNEY REVIEW OF DESIGNATED CONTRACTS.

A contract for services or commodities that, by its terms, requires or may require a state agency to expend an amount of public funds equal to or greater than seventy five thousand dollars ($75,000) in either a calendar or fiscal year shall, prior to execution, be reviewed by any attorney employed by the state and licensed to practice law in Arkansas. The class of attorneys that can satisfy the requirement should be interpreted broadly so as to maximize the number of attorneys that can help state agencies satisfy it. This class of attorneys includes, without limitation, licensed attorneys employed by: (1) the Office of State Procurement; (2) the Office of the Attorney General; and (3) any state agency or institution of higher education.

Where the standard terms and conditions that have already been approved by the Office of State Procurement are not used, or they are used but substantively amended, the reviewing attorney shall certify, in writing (electronic or paper), identifying the responsible attorney, that he or she has reviewed the contract and found no term, condition, or provision that requires the state to:

(a) subject itself to the law of any other state or to appear in any venue outside of the State other than as may be required by federal law;

(b) indemnify a non-state party or hold a non-state party harmless;

(c) keep records or information confidential, unless it is consistent with the Arkansas Freedom of Information Act or other applicable supervening law;

(d) be financially obligated to make payments for commodities or services before they have been received.

19-11-220. Agency procurement officials.

(a) In addition to any state agency authorized by regulation to have an agency procurement official, each of the following state agencies may elect to have such an official for commodities, technical and general services, and professional and consultant services, which are not within the exclusive jurisdiction of the State Procurement Director and which are not under state contract:

(1) Arkansas Department of Transportation;
(2) Arkansas State University-Beebe;
(3) Arkansas State University;
(4) Arkansas State University system;
(5) Arkansas Tech University;
(6) Henderson State University;
(7) Southern Arkansas University;
(8) University of Arkansas at Fayetteville;
(9) University of Arkansas Fund entities;
(10) University of Arkansas at Little Rock;
(11) University of Arkansas at Monticello;
(12) University of Arkansas at Pine Bluff;
(13) University of Arkansas for Medical Sciences;
(14) University of Central Arkansas;
(15) Arkansas State University-Mountain Home;
(16) Arkansas State University-Newport;
(17) Black River Technical College;
(18) Cossatot Community College of the University of Arkansas;
(19) East Arkansas Community College;
(20) National Park College;
(21) Arkansas Northeastern College;
(22) Arkansas State University Mid-South;
(23) North Arkansas College;
(24) Northwest Arkansas Community College;
(25) College of The Ouachitas;
(26) Ozarka College;
(27) Phillips Community College of the University of Arkansas;
(28) University of Arkansas Community College at Morrilton;
(29) University of Arkansas - Pulaski Technical College;
(30) University of Arkansas Community College at Rich Mountain;
(31) SAU-Tech;
(32) Southeast Arkansas College;
(33) South Arkansas Community College;
(34) University of Arkansas Community College at Batesville;
(35) University of Arkansas Community College at Hope-Texarkana;
(36) University of Arkansas at Fort Smith; and
(37) Division of Higher Education.

(b) (1) Each official shall manage and establish internal procedures for the procurement office of the state agency authorized to have the official to ensure adequate administrative procedures and controls pursuant to law and the procurement rules.

(2) (A) Approval by the Office of State Procurement of contracts administered by the official shall not be required, unless a determination has been made by the Secretary of

the Department of Transformation and Shared Services that administrative procedures and controls are not adequate.

(B) (i) Such determination shall result in notification by the secretary of the specific deficiencies and the reasons therefor.

(ii) After the notification, approval of contracts by the Office of State Procurement shall be required until the secretary determines that the deficiencies have been corrected.

(c) Except for the promulgation by the State Procurement Director of rules authorized in this subchapter and the letting of state contracts, all rights and practices granted herein to the Office of State Procurement and the State Procurement Director are granted to an official in the administration of contracts for the state agency authorized to have the official.

(d) Nothing in this section is intended to prohibit a state agency from utilizing the Office of State Procurement in the same manner as state agencies not authorized to have officials.

History. Acts 1979, No. 482, § 19; 1981, No. 600, §§ 7, 8; A.S.A. 1947, § 14-247; Acts 1991, No. 1018, § 3; 2001, No. 1237, § 12; 2005, No. 1680, § 2; 2009, No. 605, § 21; 2009, No. 606, § 21; 2013, No. 1393, § 8; 2015, No. 218, § 22; 2017, No. 707, § 59; 2017, No. 178, § 8; 2017, No. 179, § 10; 2019, No. 315, §§ 1759-1761; 2019 No. 204, § 4; 2019, No. 910, §§ 6108, 6109.

R1:19-11-220. PROCUREMENT AGENCIES.

(a) DESIGNATION. Each state agency authorized by § 19-11-220 to elect to have an agency procurement official shall submit a letter signed by the administrative head of the state agency to the State Procurement Director designating an employee who shall be the agency procurement official.

(b) INTERNAL PROCEDURES. The internal procurement procedures must ensure adequate management and control of the agency procurement functions pursuant to law and rules. Each agency shall ensure that a current copy of its internal procurement procedures and rules is kept on file. The internal procurement procedures established may include, but are not limited to:

(1) A method of recording and filing each transaction as follows:

(A) legal notice where applicable;

(B) the original invitation for bids, purchase order, internal purchase request, printing order, or other applicable document;

(C) a list of all bidders invited to participate;

(D) the original of all bids received;

(E) an abstract of bids received; and

(F) a copy of all correspondence, memos, or other documents related to the award and administration of each transaction, including administrative determinations or justifications when applicable.

(2) A file containing each vendor's application and reports regarding the vendor's performance.

(c) LIMITATIONS. Upon request of the Secretary of the Department of Transformation and Shared Services his or her designee, the agency procurement official shall make available for audit and inspection records of any and all transactions pertaining to the procurement of commodities and services.

(d) GENERAL. A state agency having an agency procurement official may request the Office of State Procurement to procure specific commodities and services which the agency procurement official is authorized to procure or to procure all commodities and services which the agency procurement official is authorized to procure for a specific period of time.

19-11-221. Agency procurement official for Department of Correction.

(a) In addition to those agencies, institutions, and departments of state government enumerated in § 19-11-220 which may elect to have agency procurement officials for commodities, technical and general services, and professional and consultant services which are not within the exclusive jurisdiction of the State Procurement Director, which are not under state contract, and which are not procured in accordance with § 19-11-230, the Division of Correction and the Division of Community Correction may have such officials for the sole purpose of procuring perishable food items, who shall possess all powers, functions, and duties as authorized for agency procurement officials under this subchapter with respect to perishable food items only.

(b) (1) The officials of the Division of Correction and the Division of Community Correction shall have exclusive authority to procure perishable food items in accordance with applicable administrative procedures and controls established pursuant to this subchapter and the procurement rules.

(2) Except as noted in this subsection and in subsection (c) of this section, the officials of the departments shall be subject to all other provisions and requirements of this subchapter and administrative procedures controls and procurement rules provided in or promulgated pursuant to it.

(c) (1) (A) The Board of Corrections, annually, and at more frequent intervals if deemed necessary, shall make studies and determine whether it would be in the best interest of the management of the farm croplands at the farm units or at each of the separate farm units of the Division of Correction to provide for the lease of farm machinery and equipment, or certain items thereof, required for the production of farm crops, or whether it would be in the better interest of the Division of Correction to acquire such items of farm machinery and equipment by purchase.

(B) (i) Upon conclusion of the study, the board, by resolution adopted by a majority of the members of the board at a regular or special meeting, may authorize the agency procurement official for the Division of Correction to advertise for bids for the leasing of farm equipment or for the purchase of the items of farm equipment noted in the resolution.

(ii) (a) No lease of farm equipment shall be for more than two (2) years nor extend beyond June 30 of the fiscal biennium for which current funds have been appropriated for the operation of the Division of Correction.

(b) However, nothing in this section shall prohibit the lease from including provisions, terms, or conditions upon which the lease may be renewed for an additional period of time, not exceeding two (2) years, at the option of the board.

(2) (A) In the event the board determines to provide for the leasing of farm machinery or equipment necessary in the farming operations of the Division of Correction, the official of the Division of Correction shall be the exclusive purchasing agent for advertising of bids and awarding of contracts for the leases, subject to the approval of the Director of the Division of Correction and the board.

(B) In the advertising for bids and the awarding of contracts, the state laws, procurement procedures, and rules shall be complied with in awarding the contracts.

(C) (i) It shall not be mandatory upon the board to award the contract for the furnishing of farm machinery and equipment under a lease agreement to the lowest bidder, unless the board shall determine that the awarding of the contract to such bidder would be in the best interest of the farming operations of the Division of Correction.

(ii) In that event, the board may award the contract to the bidder whose bid proposal is deemed by the board to be in the better interest of the farming operations of the Division of Correction.

(D) In making this determination the board shall consider, but not be limited by, the following factors:

(i) The type of equipment to be furnished;

(ii) Compatibility of the equipment with the training and experience of the farm managers and employees of the Division of Correction and the experience and skills of the inmates who will be using the equipment;

(iii) Provisions contained in the bid proposal providing for maintenance, repair, and service and upkeep of the equipment during the lease period, availability of the service and repair facilities, and source of replacement or repair parts;

(iv) The age and condition of the equipment to be leased; and

(v) Such other factors as the board deems essential to performance under the contract and dependability and reliability of the equipment to be furnished during the period of the lease.

(3) (A) (i) In determining the items of farm machinery and equipment to be acquired by purchase, the board may designate, if the board determines it to be within the better interest of the management of farm croplands of the Division of Correction, those items of farm machinery and equipment to be purchased.

(ii) The board may restrict the bid to equipment produced by no fewer than two (2) manufacturers of each item of equipment.

(B) In making this determination, the board shall include, but not be limited to, a consideration of the following factors:

(i) The types of farm machinery equipment now being used by the Division of Correction and the experience gained by the Division of Correction in the use of the equipment for the purposes for which it is being purchased;

(ii) Availability of service and replacement and spare parts for the equipment;

(iii) Familiarity with the equipment of the employees or inmates responsible for the maintenance, repair, and upkeep thereof;

(iv) Compatibility of the farm machinery and equipment with repair and maintenance shop facilities available at the Division of Correction;

(v) Access to the dealer responsible for warranty service; and

(vi) Such additional factors as the board deems pertinent to the better interests of the management and operation of the farm crop lands of the Division of Correction.

(C) (i) All purchases of farm machinery and equipment shall be in accordance with the applicable state procurement laws and rules promulgated thereunder.

(ii) Contracts for the providing or furnishing of service, repair, and replacement parts of farm machinery and equipment may include provision for the furnishing of a stated quantity of replacement and spare parts to be stored at the Division of Correction or may include contract prices for major or standard items of service or for the furnishing of replacement and spare parts at stated prices, which shall be at a discount from the published dealer price list, as the board may deem in the best interest of the Division of Correction.

(iii) As an alternative, the board may elect to authorize the official to acquire replacement and spare parts on a need basis by following the

applicable state procurement procedure in the acquisition of each item thereof as needed.

(4) (A) The official of the Division of Correction acting under the instruction and direction of the board and the Director of the Division of Correction shall be the sole and exclusive purchasing agent for the acquisition of farm machinery and equipment, whether by lease or purchase, and for the acquisition of repair services for farm machinery and equipment and repair and replacement parts therefor in the manner set forth in this section, and for the acquisition of those items covered in subsection (b) of this section.

(B) Nothing in this section shall prohibit the Division of Correction from requesting the State Procurement Director to make available the services of the Office of State Procurement in the acquisition of any item for which the official of the Division of Correction is exclusive purchasing agent under this section.

History. Acts 1981, No. 240, §§ 1-3; A.S.A. 1947, §§ 14-247.1 — 14-247.3; Acts 1997, No. 351, § 1; 2001, No. 1237, § 13; 2005, No. 1680, § 3; 2019, No. 315, § 1762-1764.

R1:19-11-221. SALE, ACQUISITION OR USE OF COMMODITIES BY A PUBLIC PROCUREMENT UNIT.

DEPARTMENT OF CORRECTION INDUSTRY PROGRAM.

(1) The Department of Correction is authorized to enter into contracts, purchase orders, compacts or agreements with the appropriate officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods and products produced by and belonging to their respective institutions. The buying and selling of these materials will be for the purpose of producing finished products through a correctional industries program.

(2) The Department of Correction shall be governed by Ark. Code Ann. § 12-30-101 et seq., § 12-30-201 et seq., and other appropriate laws when utilizing the provisions of these rules. The procurement official/agent for the Department of Correction is authorized to enter into contracts, orders, compacts or agreements pursuant to these rules.

(3) Copies of all such contracts, orders, compacts or agreements entered into under the provisions of this rule shall be kept by the Department of Correction with respect to all transactions, deliveries, and obligations under each contract, compact, or agreement

(4) All records and reports required pursuant to this rule shall be available to public inspection during normal business hours, and shall be retained for a period of five (5) years after completion of the contract, compact, or agreement.

19-11-222. Exclusive jurisdiction over procurement.

(a) The State Procurement Director has exclusive jurisdiction over the procurement of:

(1) Items subject to Arkansas Constitution, Amendment 54;

(2) Wholesale gasoline, oil, and related products;

(3) Tires;

(4) (A) Passenger motor vehicles and trucks, except highway construction and highway maintenance equipment, any specialized type of equipment used in highway construction, or a motor vehicle purchased under § 6-21-307, except as otherwise provided in this subchapter.

(B) The director may issue a request for qualifications for the procurement of

passenger motor vehicles and trucks to compile a qualified vendor list that includes vendors in multiple areas of the state;

(5) Paper products;

(6) New and used school buses for state agencies;

(7) A purchasing card program and travel card program to include implementation and administration; and

(8) An electronic commerce procurement solution to include planning and administration consistent with the established financial systems of the state.

(b) As used in this section:

(1) “Printing” means the process of transferring images, by the use of standard industrial type printer ink, upon documents such as letterhead, envelopes, pamphlets, booklets, and forms;

(2) “Stationery” means imprinted letterhead and envelopes used by the General Assembly and other departments of state government to identify an individual department, agency, board, commission, etc.; and

(3) “Supplies” means paper and inks used to produce stationery.

History. Acts 1979, No. 482, § 20; 1981, No. 600, § 9; A.S.A. 1947, § 14-248; Acts 1991, No. 749, § 3; 1993, No. 896, § 4; 2001, No. 1237, § 14; 2001, No. 1309, § 1; 2003, No. 487, § 4; 2005, No. 1680, § 4; 2017, No. 1004, § 2; 2017, No. 442, § 2.

19-11-223. Commodities, technical and general services, and professional and consultant services under state contract.

(a) (1) In addition to establishing a state contract for those commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the State Procurement Director under § 19-11-222, the director may award a mandatory state contract for other commodities, technical and general services, and professional and consultant services when the director determines that combining the collective purchasing power of the state would be beneficial to the state.

(2) The director shall submit a mandatory state contract that is not for commodities or services within the exclusive jurisdiction of the director to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, for review.

(b) (1) Unless an exemption is approved by the director under subdivision (b)(2) of this section, a state agency that requires commodities, technical and general services, and professional and consultant services that are under a mandatory state contract shall procure these commodities, technical and general services, and professional and consultant services exclusively under the mandatory state contract.

(2) (A) Except as provided in § 19-11-233, the director may approve an exemption from a mandatory state contract awarded under this section only if the state agency demonstrates that substantial savings will likely be effected by purchasing outside of the mandatory state contract.

(B) (i) Approval of an exemption from a mandatory state contract under this section shall be in writing.

(ii) Denial of a request for an exemption from a mandatory state contract under this section is not required to be in writing.

(c) All contracts concerning commodities, technical and general services, and professional and consultant services shall disclose a projected total cost, including, without limitation expenditures that may be incurred under all available periods of extension if the extensions were executed.

(d) The director shall:

(1) Identify and prioritize opportunities for awarding mandatory state contracts under this section;

(2) Conduct mandatory state contract procurements under this section that would produce savings for the state;

(3) Attempt to invite the participation of the potentially affected state agencies in the development and evaluation of a mandatory state contract procurement;

(4) Post notice of his or her intent to procure a mandatory state contract on the official website of The Office of State Procurement; and

(5) (A) Promote the use of mandatory state contracts among county and city governments, including without limitation making information about the mandatory state contracts readily available and searchable.

(B) The director shall adopt rules to include any necessary conditions, reporting, or document retention standards related to the director's duty to promote mandatory state contract use under this subsection.

History. Acts 1979, No. 482, § 21; 1981, No. 600, § 10; A.S.A. 1947, § 14-249; Acts 2001, No. 1237, §§ 15, 16; 2005, No. 1680, § 5; 2019, No. 421, § 2.

R1:19-11-223. COMMODITIES AND SERVICES UNDER STATE CONTRACT.

(a) REQUEST FOR EXCLUSION. State agencies having agency procurement officials may request exemption from a proposed state contract by submitting to the State Procurement Director a written justification for such exemption.

(b) DETERMINATION BY STATE PROCUREMENT DIRECTOR. Approval of exemption from a state contract shall be made in writing by the State Procurement Director, but a denial of a request for an exemption from a state contract may be made in any manner reasonably likely to communicate the denial to the requestor.

R2:19-11-223. MANDATORY STATE CONTRACTS.

(a) Unless an exemption is approved by the State Procurement Director in writing, a state agency that requires commodities or services that are under a mandatory state contract shall procure these commodities and services exclusively under the mandatory state contract. Except in the case of emergency procurements, as defined in Ark. Code Ann. § 19–11–204(4) and as provided in Ark. Code Ann. § 19–11–233, the director may only approve an exemption from a mandatory state contract awarded under this section if the state agency demonstrates that substantial savings will likely be effected by purchasing outside of the mandatory state contract.

(b) “Substantial savings” are the lesser of: (1) savings of five percent (5%) or more when compared against purchasing from the mandatory state contract; or (2) ten thousand dollars ($10,000) or more when compared against purchasing from the mandatory state contract.

19-11-224. Interest and carrying charges.

State agencies, including exempt agencies, may enter into contracts which contemplate the payment of interest and late charges, but only when such late charges are incurred sixty (60) days after payment is due or carrying charges under such rules as may be promulgated by the State Procurement Director.

History. Acts 1979, No. 482, § 22; A.S.A. 1947, § 14-250; Acts 1997, No. 1066, § 2; 2001, No. 1237, § 17; 2019, No. 315, § 1765.19-11-225

R1:19-11-224. INTEREST, CARRYING CHARGES, AND TERMINATION FEES.

LIMITATIONS.

(1) Contracts may be entered into which contemplate the payment of interest or carrying charges only in the following conditions:

(A) when the interest or carrying charge is required because the term of the contract is extended over a period of time; and

(B) when a provision for termination of the contract is included in the contract, as provided in § 19-11-238(c) and the rules promulgated pursuant thereto.

(2) Contracts may be entered into which contain a provision for the payment of the following charges on delinquent accounts: interest charges, carrying charges, late payment charges or any other charge which may be construed as a penalty, but only if incurred sixty (60) days after the due date.

(3) Service charges may be paid on credit card procurements.

19-11-225. Rules.

(a) (1) The State Procurement Director shall adopt rules in accordance with the applicable provisions of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) A rule promulgated by the director under this subchapter is not effective until the rule is:

(A) Submitted to and reviewed by the Review Subcommittee of the Legislative Council; and

(B) Reviewed and approved by the Legislative Council under § 10-3-309.

(b) A rule shall not change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of the rule.

(c) (1) A clause that is required by rule to be included is not incorporated by operation of law in any state contract without the consent of both parties to the contract to the incorporation.

(2) The parties to the contract may give such consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

History. Acts 1979, No. 482, § 23; A.S.A. 1947, § 14-251; Acts 2001, No. 1237, § 18; 2019, No. 419, § 2; 2019, No. 315, § 1766.

19-11-226. Recommendations.

(a) The State Procurement Director shall maintain a close and cooperative relationship with the using agencies.

(b) (1) The director shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to matters affecting the using agency.

(2) At any time, any using agency may make recommendations to the director, and the director may make recommendations to any using agency.

(3) The Secretary of the Department of Transformation and Shared Services may make recommendations to the director.

History. Acts 1979, No. 482, § 24; A.S.A. 1947, § 14-251.1; Acts 2001, No. 1237, § 19; 2019, No. 910, § 6110.

19-11-227. Statistical data.

The State Procurement Director and the Secretary of the Department of Transformation and Shared Services shall cooperate with the Office of Budget of the Department of Finance and Administration and the Office of Accounting of the Department of Finance and Administration in the preparation of statistical data concerning the procurement and disposition of all commodities and services, unless otherwise provided in this subchapter.

History. Acts 1979, No. 482, § 25; A.S.A. 1947, § 14-251.2; Acts 2001, No. 1237, § 20; 2019, No. 910, § 6111.

19-11-228. Methods of source selection.

Unless otherwise authorized by law, all contracts shall be awarded by competitive sealed bidding, pursuant to § 19-11-229, which refers to competitive sealed bidding, except as provided in:

(1) Section 19-11-230, which refers to competitive sealed proposals;
(2) Section 19-11-231, which refers to small procurements;
(3) Section 19-11-232, which refers to proprietary or sole source procurements;
(4) Section 19-11-233, which refers to emergency procurements;
(5) Section 19-11-234, which refers to competitive bidding;
(6) Section 19-11-262, which refers to multiple award contracts; or
(7) Section 19-11-263, which refers to special procurements.

History. Acts 1979, No. 482, § 28; 1981, No. 600, § 12; A.S.A. 1947, § 14-253; Acts 1995, No. 428, § 2; 1995, No. 507, § 2; 2001, No. 1237, § 21.

19-11-229. Competitive sealed bidding.

(a) “Competitive sealed bidding” means a method of procurement which requires:

(1) Issuance of an invitation for bids with a purchase description and all contractual terms and conditions applicable to the procurement;
(2) Public, contemporaneous opening of bids at a predesignated time and place;
(3) Unconditional acceptance of a bid without alteration or correction, except as authorized in §§ 19-11-204 and 19-11-228 — 19-11-240;
(4) Award to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids; and
(5) Public notice.

(b) (1) Contracts exceeding an estimated purchase price of seventy-five thousand dollars ($75,000) shall be awarded by competitive sealed bidding unless a determination is made in writing by the agency procurement official or the State Procurement Director that this method is not practicable and advantageous and specifically states the reasons that this method is not practicable and advantageous.

(2) The director may provide by rule that it is not practicable to procure specified types of commodities, technical and general services, or professional and consultant services by competitive sealed bidding.
(3) Factors to be considered in determining whether competitive sealed bidding is not practicable shall include whether:

(A) Purchase descriptions are suitable for award on the basis of the lowest evaluated bid price; and
(B) The available sources, the time and place of performance, and other relevant circumstances are appropriate for the use of competitive sealed bidding.

(c) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced technical proposals to be followed by an invitation for bids limited to those bidders whose technical proposals meet the requirements set forth in the first invitation.

(d) Notice inviting bids shall:

(1) Be given not fewer than five (5) calendar days nor more than ninety (90) calendar days preceding the date for the opening of bids by publishing the notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances, adequate notice shall be given;

(2) Include a general description of the commodities, technical and general services, or professional and consultant services to be procured;

(3) State where invitations for bids may be obtained;

(4) State the date, time, and place of bid opening; and

(5) State the time, date, and place of the solicitation conference if a solicitation conference is to be held before the opening of bids to provide information to prospective bidders.

(e) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and open to public inspection.

(f) (1) (A) Bids shall be evaluated based on the requirements set forth in the invitation for bids.

(B) These requirements may include criteria to determine acceptability such as:

(i) Inspection;

(ii) Testing;

(iii) Quality;

(iv) Workmanship;

(v) Delivery;

(vi) Past performance; and

(vii) Suitability for a particular purpose and criteria affecting price such as life-cycle or total ownership costs.

(2) (A) The invitation for bids shall set forth the evaluation criteria to be used.

(B) No criteria may be used in bid evaluation that were not set forth in the invitation for bids.

(3) (A) A time discount may be considered in the evaluation of a bid only:

(i) If the state agency specifically solicits pricing that requests a time discount; and

(ii) Under the structured terms of the invitation for bids.

(B) If a bidder offers a time discount as part of its bid without the solicitation of time discounts by the state agency, the state agency shall not consider the time discount.

(g) (1) Correction of patent or provable errors in bids that do not prejudice other bidders or withdrawal of bids may be allowed only to the extent permitted under rules promulgated by the director and upon written approval of the Attorney General or a designee of such officer.

(2) No award shall be made on the basis of a corrected bid, if the corrected bid exceeds the next lowest bid of a responsible bidder.

(3) (A) The director or an agency procurement official may seek the clarification of a submitted bid.

(B) A written response by a bidder under this subsection shall only clarify the submitted bid and shall not add any substantive language to the submitted bid or change the terms of the submitted bid.

(C) If the bidder fails or refuses to clarify any matter questioned about the

bidder's bid in writing by the deadline set by the director or agency procurement official, the bid may be rejected.

(D) If the bidder clarifies the matter questioned under this subsection in writing, the clarification shall be evaluated and become a part of any contract awarded on the basis of the bidder's bid.

(h) (1) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

(2) (A) Except with respect to a contract being procured for a construction project, the director or the head of a procurement agency may negotiate a lower bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder if:

(i) All bids received from responsive and responsible bidders exceed available funding as certified by the appropriate fiscal officer of the procurement agency; or

(ii) It appears that additional savings to the state may result from negotiation.

(B) (i) (a) If negotiations with the lowest responsive and responsible bidder conducted under subdivision (h)(2)(A) of this section fail to result in a lower bid price, the state may negotiate for a lower bid price with the next lowest responsive and responsible bidder.

(b) If negotiations with the next lowest responsive and responsible bidder under subdivision (h)(2)(B)(i)(a) of this section fail to result in a lower bid price, the state may negotiate for a lower bid price with the next lowest responsive and responsible bidder until an acceptable lower bid price is negotiated or the state determines that negotiations are no longer in the best interest of the state.

(ii) A bid price resulting from negotiations conducted under this section shall not be higher than:

(a) The bid price originally submitted by the lowest responsive and responsible bidder; or

(b) A price previously offered in negotiations by a responsive and responsible bidder.

(iii) Negotiations conducted under this section do not preclude the use of other methods of source selection or procurement authority provided under this subchapter.

(C) [Effective July 1, 2021] (i) Negotiations under this subsection shall be conducted by a person who is trained and certified in negotiation and procurement processes.

(ii) (a) The Office of State Procurement shall provide for the training and certification required under this subsection.

(b) The training provided by the office shall be specific to Arkansas law.

(3) All other bidders requesting to be notified of the award decision shall be promptly notified of the decision.

(i) (1) An invitation for bids may be cancelled or any or all bids may be rejected in writing by the director or the agency procurement official.

(2) Before the rejection of a bid by the director, the decision to reject the bid may be validated with the state agency for which the procurement is being conducted.

(3) A bid may be rejected for failure to adhere to mandatory requirements.

History. Acts 1979, No. 482, § 29; 1981, No. 600, §§ 13-16; A.S.A. 1947, § 14-254; Acts 1987, No. 540, § 2; 1995, No. 317, § 2; 1995, No. 340, § 2; 2001, No. 1237, § 22; 2003, No. 487, § 5; 2005, No. 1680, § 6; 2013, No. 1189, § 2; 2017, No. 1004, § 3; 2017, No. 696, § 1; 2019, No. 419, §§ 3-7; 2019, No. 315, §§ 1767, 1768.

R1:19-11-229. COMPETITIVE SEALED BIDDING.

DEFINITION.

Invitations for bids for which OSP is responsible will be posted on the OSP website www.arkansas.gov/dfa/procurement in adequate time to allow response.

R2:19-11-229. COMPETITIVE SEALED BIDDING.

CONDITIONS FOR USE.

(a) LEASE. All contracts for the lease of a commodity which exceed a cost of seventy-five thousand dollars ($75,000) during the initial period of the contract shall be awarded on the basis of competitive sealed bids. All contracts for the lease of a commodity that do not exceed seventy-five thousand dollars ($75,000) during the initial period of the contract but contain an option to purchase a commodity costing more than seventy-five thousand dollars ($75,000) will be awarded on the basis of competitive sealed bids. No lease duration including renewals can extend beyond a seven-year period. The term “lease” includes rent.

(b) PURCHASE OF COMMODITIES SUBJECT TO THE ARKANSAS CONSTITUTION, AMENDMENT 54. Commodities subject to the Arkansas Constitution, Amendment 54 (printing, stationery and supplies) may be purchased only by the State Procurement Director or his designee.

R3:19-11-229. COMPETITIVE SEALED BIDDING.

Commodities and services which are not practicable to procure by competitive sealed bidding:

(1) Postage meter leases;

(2) Motor vehicle rentals (for thirty (30) days or less) may be procured by use of competitive bid procedures. All motor vehicle leases (over thirty days) must be approved by the State Procurement Director under the provisions of Ark. Code Ann. § 22-8-102.

(3) Agricultural equipment leases for one hundred eighty (180) days or less may be procured by use of competitive bid procedures.

R4:19-11-229. COMPETITIVE SEALED BIDDING.

LEASE OF COMMODITIES ON STATE CONTRACT. No contract greater than ninety (90) days for the lease of commodities on state contract shall be approved unless the State Procurement Director determines in writing that it is in the best interest of the state and states the reasons therefore.

R5:19-11-229. COMPETITIVE SEALED BIDDING.

BID SUBMISSION.

(1) Bidders shall submit bids at the place and on or before the date and time set in the invitation for bids. Bids received after the date and time designated for bid opening are late bids and shall not be considered.

(2) All bids and any modifications to bids previously filed, received prior to the date and time fixed for opening bids, shall be kept secure and unopened. If a bid is submitted and the invitation for bids number is not clearly marked to indicate the date and time of bid opening, the

State Procurement Director or agency procurement official may make a reasonable attempt to determine which bid the sealed submission corresponds to.

(3) Retrieval of a bid for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the business.

R6:19-11-229. COMPETITIVE SEALED BIDDING.

SOLICITATION CONFERENCES. Solicitation conference may be held by the State Procurement Director or agency procurement official or a designee to provide information to prospective bidders. Nothing discussed during a solicitation conference will change the specifications or terms and conditions of a competitive sealed bid, nor shall anything discussed during a solicitation conference be deemed to be binding or incorporated into the specifications or terms and conditions of a competitive sealed bid unless it is subsequently reduced to writing and included in the competitive sealed bid.

R7:19-11-229. COMPETITIVE SEALED BIDDING.

BID OPENING. When practical, the names of the bidders and amounts of their bids may be read aloud. Except where it may be deemed impractical, due to the nature or complexity of an invitation for bids, an abstract of bids which contains the amount of each bid and the name of the bidder shall be prepared for each invitation for bids. An abstract of bids shall be retained in the bid file and shall be available for public inspection.

R8:19-11-229. COMPETITIVE SEALED BIDDING.

BID EVALUATION.

(1) Those criteria that will affect the bid price and be considered in evaluation for award shall be stated in the bid and objectively measured, such as transportation costs and total or life cycle cost. Judgmental evaluation of commodities and services may be used in determining whether the commodity or service offered by a bidder meets the specification requirements of the procurement, or the bidder is qualified to provide the service.

(2) The following matters will be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities:

(A) Time discounts cannot be considered in the evaluation of a bid pursuant to A.C.A. § 19-11-229(f)(3) unless the solicitation specifically requests a time discount;

(B) Quantity discounts should be included in the price of the item. When not included in the item price, the discount will be considered only if the procurement agency, or the agency for whose benefit the procurement has been undertaken, deems it to be in the state's best interest. The unit price shown on the contract will be the net price, less the discount, unless otherwise indicated in the bid;

(C) An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the state's best interest.

(D) Only signed, sealed bids delivered prior to the date and time of bid opening will be accepted.

(E) Past Performance

(i) The past performance of a bidder on a state contract may be used by the procurement agency to determine whether the bidder is "responsible." Past performance must be supported by written documentation not greater than three years old. Documentation may be a formal Vendor Performance Report, an

informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(ii) Past performance on contracts from other Arkansas State Agencies may also be used for evaluation. Supporting documentation should be provided.

(iii) Past performance evaluation should not take the place of suspension or debarment procedures.

(3) TIE BIDS.

(A) Definitions: As used in this section

(i) “Arkansas company” means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(ii) “Out-of-state company” means all foreign entities as defined by Arkansas law.

(B) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(C) In the event of a tie bid between two or more offers that meet the specifications

as required and where one of the offerors is an Arkansas company, then the award will be made to that Arkansas company.

(D) In the event of a tie bid between two or more offers that meet the specifications

as required

(i) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(ii) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the bidders.

(E) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

R9:19-11-229. COMPETITIVE SEALED BIDDING.

REJECTION. Grounds for rejection of bids include but are not be limited to: failure of a bid to conform to the mandatory requirements of an invitation for bids;

(1) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;
(2) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;
(3) a bid imposing conditions which would modify the stated terms and conditions of the invitation for bids;
(4) any bid determined by the procurement official in writing to be unreasonable as to price;
(5) bids received from bidders determined to be nonresponsible

bidders;

(6) failure to furnish a bid guarantee when required by an invitation for bids; and

(7) any or all bids when the procurement official makes a written determination that it is in the best interest of the state.

R10:19-11-229. COMPETITIVE SEALED BIDDING.

(a) CORRECTION OR WITHDRAWAL OF BIDS.

(1) The State Procurement Director or agency procurement official may waive technicalities (small details) or minor irregularities (something irregular in form or nature) in bids which do not affect the material substance of the bids when it is in the state's best interest to do so.

(2) Amendments to bids shall be allowed if the amendments are in writing and signed, are received prior to the date and time of bid opening, and clearly indicate the date and time of bid opening and bid number.

(3) If there is a suspected bid mistake, the State Procurement Director or agency procurement official may request confirmation of a bid and shall request the confirmation to be made in writing. The bid of any bidder who fails or refuses to clarify in writing within a reasonable time any matter contained in his bid may be rejected. The written clarification shall become a part of the contract awarded on the basis of that bid.

(4) Bid prices shall be based on the unit prices and any correction of the price extension or of the price addition by the Office of State Procurement or state agency having an agency procurement official shall not be considered the correction of a bid. Bid prices shall not be increased after the date and hour of bid opening. A bid price may be decreased only after a determination has been made that the bid is low.

(5) An otherwise low bidder may be permitted the opportunity to furnish other information requested in the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6) When a mistake in a bid is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the bid, and that due to such mistake the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract and the contractor will sustain a financial loss (a reduction or diminution in profit margin shall not be deemed a financial loss under this subsection) if required to perform the contract, the contract may be rescinded.

(b) CORRECTION. Any negotiated adjustments, as defined in Ark. Code Ann. § 19-11-229(h), will not be considered the correction of a bid.

R11:19-11-229. COMPETITIVE SEALED BIDDING.

(a) AWARD. After a reasonable bid evaluation period, the bid shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids. All bids may be rejected if, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the procurement official that no satisfactory bid has been received.

(b) NEGOTIATION. In the event that negotiation is necessary, a bidder may be determined to be non-responsive if the bidder and agency are unable to reach a mutually agreeable negotiated adjustment. If negotiations fail or the agency is unable to

reach a negotiated adjustment with the apparent low bidder, the next lowest bidder can be contacted for the purposes of entering into negotiations.

(c) TRAINED AND CERTIFIED IN NEGOTIATION AND PROCUREMENT PROCESSES means the person will have received certified training from or authorized by the Office of State Procurement.

R12:19-11-229. COMPETITIVE SEALED BIDDING.

(1) LIFE CYCLE COST. Life cycle or total ownership costs may include but are not limited to, costs of operation, maintenance, repair, disposal and/or acquisition.
(2) APPLICATION. Life cycle cost formulas may be used for procurements. Certain specified commodities must be procured using life cycle cost formulas provided by the Office of State Procurement. For those specified commodities, the State Procurement Director shall provide formulas to be used in the evaluation of bids by the State Procurement Director, the agency procurement officials or the procurement agents.

R13:19-11-229. CANCELLATION OF INVITATIONS FOR BIDS.

When an invitation for bids is cancelled, notice of cancellation of OSP bids will be posted on the OSP website www.arkansas.gov/dfa/procurement. The bids may be returned if the bid is properly identified.

R14:19-11-229. ETHICAL STANDARDS.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars ($20,000): “It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.”

R15:19-11-229. NEGOTIATIONS.

(a) Negotiation of Competitive Sealed Bids should be used only in those cases where the best interests of the State are served, such as where the lowest bid submitted by a responsive and responsible bidder exceeds the available funding to pay for the commodity or service (as certified by the appropriate fiscal officer of the procurement agency) or can be shown to be above the fair market price available on the open market to a reasonably prudent buyer. Procurement officials who conduct negotiations should be trained in negotiation and Arkansas Procurement Law.

(b) Prior to negotiation, a written justification supporting negotiations must be included in the bid folder. The justification must include, as applicable:

(1) Bid tabulation with indication of lowest responsive and responsible bidder.

(2) Certification of funds budgeted for the procurement by agency chief fiscal officer in instances where all bids received from responsive and responsible bidders exceed the available funding.

(3) Reason(s) precluding re-solicitation, including but not limited to time constraints and economic impact to agency.

(c) After it is determined that negotiation is in the best interests of the State and permissible under Ark. Code Ann. § 19-11-229(2)(A), appropriate representatives will proceed with negotiations and award recommendation. Appropriate representatives include purchasing staff and representatives from the original requesting unit.

(d) Agency should investigate the factors affecting the price offered by the apparent low bidder to include but not be limited to cost, delivery requirements, warranty, location of supplier, volatile nature of goods or services requested and current economic condition of the market.

(e) The agency must develop a plan to include at least:

(1) The acceptable range of price, the desired “best” price and the highest acceptable price.

(2) What adjustment may be made to delivery requirements that may affect price.

(3) Acceptable adjustments in quantity.

(4) A prioritized list of acceptable adjustments in specifications that may result in price reduction.

(5) Timetable for completion of negotiation.

(f) Negotiation plans shall not be revealed to bidder(s) nor made available for public review until after the anticipated award is made public in order to avoid revealing information that if disclosed would give advantage to competitors or bidders.

(g) An acceptable negotiated contract must be signed and in writing listing agreed upon terms, conditions, specifications, quantities and pricing.

(h) If a negotiated contract cannot be developed, the bidder may be declared non-responsive and time permitting, the negotiation process may be repeated with the next low bidder.

(i) If negotiations do not result in an acceptable contract, the Director or head of a procurement agency may authorize that a new solicitation be issued or elect to procure by special procurement (Ark. Code Ann. § 19-11-263).

19-11-230. Competitive sealed proposals.

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

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

(2) Submission of cost or pricing data from the offeror where required;

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

(4) An award made to the responsible offeror whose proposal is determined in writing to be the most advantageous considering price and evaluation factors set forth in the request for proposals.

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

(c) Public notice of the request for proposals shall be given in the same manner as provided in § 19-11-229(d), which refers to public notice of competitive sealed bidding.

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

(2) (A) Except as provided in subdivision (d)(2)(B) of this section, cost shall be weighted at least thirty percent (30%) of the total evaluation score for a proposal submitted in response to the request for proposals.

(B) (i) The State Procurement Director may approve that cost be weighted at a lower percentage of the total evaluation score for a proposal submitted in response to a request for proposals if the director makes a written determination that the lower percentage is in the best interest of the state.

(ii) A state agency's failure to obtain the approval of the director under this subsection for a request for proposals with cost weighted at a lower percentage than required under subdivision (d)(2)(A) of this section is grounds for submitting a protest under § 19-11-244.

(C) The use of a lower percentage under subdivision (d)(2)(B) of this section and the corresponding written determination by the director shall be submitted to the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, for review before the request for proposals is issued.

(3) The state's prior experience with an offeror may be considered and scored as part of the offeror's proposal only:

(A) To the extent that the request for proposals requests that all offerors provide references; and

(B) If the offeror's past performance with the state occurred no more than three

(3) years before the offeror submitted the proposal.

(4) A state agency shall not include prior experience with the state as a mandatory requirement for submitting a proposal under this section.

(e) (1) As provided in the request for proposals and under rule, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of:

(A) Clarifying solicitation requirements to assure full understanding of and responsiveness to the solicitation requirements; or

(B) Negotiating a contract that is more advantageous to the state.

(2) (A) If discussions conducted after the deadline for the receipt of proposals necessitate material revisions of proposals, each offeror determined to be responsible and reasonably susceptible of being awarded a contract shall be provided an opportunity to revise its proposal for the purpose of submitting a best and final offer.

(B) An offeror may be permitted to revise its original proposal as a result of discussions only after the original submission deadline and before award for the purpose of providing a best and final offer.

(C) (i) Before issuing the notice of award of a contract, the director or the agency procurement official may request a best and final offer from each responsible offeror that is reasonably susceptible of being awarded the contract.

(ii) In responding to a request for a best and final offer, an offeror may:

(a) Resubmit the offeror's original proposal with lower pricing or additional benefits, or both, in accordance with the specifications of the request for proposals; or

(b) Submit a written response that states that the offeror's original proposal, including without limitation the pricing, remains unchanged.

(iii) If a best and final offer is requested, the director or the agency procurement official shall evaluate each proposal submitted in response

to the request for a best and final offer in determining the proposal that is the most advantageous to the state.

(3) In conducting discussions, information derived from a proposal submitted by a competing offeror shall not be disclosed until after a notice of anticipation to award is announced.

(f) (1) The director or an agency procurement official may seek the clarification of a submitted proposal.

(2) A written response by an offeror under this subsection shall only clarify the submitted proposal and shall not add any substantive language to the submitted proposal or change the terms of the submitted proposal.

(3) If the offeror fails or refuses to clarify any matter questioned about the offeror's proposal in writing by the deadline set by the director or agency procurement official, the proposal may be rejected.

(4) If the offeror clarifies the matter questioned under this subsection in writing, the clarification shall be evaluated and become a part of any contract awarded on the basis of the offeror's proposal.

(g) (1) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, the evaluation factors set forth in the request for proposals, any best and final offers submitted, and the results of any discussions conducted with responsible offerors.

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

(3) If it is determined that two (2) or more responsible offerors have tied scores after the evaluation of the proposals, the award shall be made to the responsible offeror that had one (1) of the tied scores and submitted the lowest price proposal.

(4) The director or the agency procurement official may enter into negotiations with the responsible offeror whose proposal is determined in writing to be the most advantageous to the state when the best interests of the state would be served, including without limitation when the state can obtain:

(A) A lower price without changes to the terms or specifications of the request for proposals; or

(B) An improvement to the terms or specifications, or both, of the request for proposals without increasing the price of the proposal.

(h) (1) The Office of State Procurement shall:

(A) Encourage full discussion by the evaluators who are evaluating proposals submitted in response to a request for proposals under this section; and

(B) Develop tools and templates to be used in evaluating proposals submitted in response to a request for proposals under this section that optimize the number of material scored attributes and provide for a limited range of possible scores for each attribute.

(2) (A) A state agency may use one (1) or more private evaluators to evaluate proposals submitted in response to a request for proposals under this section.

(B) A private evaluator used under this subsection shall be:

(i) Held to the same requirements and prohibitions regarding conflicts of interest as state employees;

(ii) A qualified volunteer, unless the state does not have the necessary expertise to evaluate the proposals, in which case a paid private evaluator may be used; and

(iii) Eligible for travel reimbursement if the state agency decides to make travel reimbursement available.

(C) The use of a private evaluator is not required.

(D) If a state agency uses one (1) or more private evaluators, the use of a private evaluator shall be disclosed in the procurement file and in any information submitted to the Legislative Council 1 or, if the General Assembly is in session, the Joint Budget Committee.

(i) (1) A competitive sealed proposal may be cancelled or any or all proposals may be rejected in writing by the director or the agency procurement official.

(2) Before the rejection of a proposal by the director, the decision to reject the proposal may be validated with the evaluation committee that evaluated the proposal.

(3) A proposal may be rejected for failure to adhere to mandatory requirements.

History. Acts 1979, No. 482, § 30; 1981, No. 600, §§ 17-20; A.S.A. 1947, § 14-255; Acts 2001, No. 1237, § 23; 2007, No. 478, § 6; 2017, No. 696, § 2; 2019, No. 419, §§ 8-10.

R1:19-11-230. COMPETITIVE SEALED PROPOSALS.

Request for Proposals for which OSP is responsible will be posted on the OSP website in adequate time to allow response.

R2:19-11-230. COMPETITIVE SEALED PROPOSALS.

R2-19-11-230.1 CONDITIONS OF USE. The key element in determining the necessity for utilization of the competitive sealed proposal method is the type of evaluation required. Where evaluation involves the relative abilities of offerors to perform, including the degree of technical or professional experience, and price is not the only consideration, use of competitive sealed proposals is appropriate. Further, where the types of supplies or services may require the use of comparative, judgmental evaluation, competitive sealed proposals are the appropriate procurement method.

R2-19-11-230.2 THIRTY PERCENT (30%) WEIGHTED COST WAIVER. In seeking a written determination by the State Procurement Director that it is in the best interest of the state for cost to be weighted at less than thirty percent (30%) of the total evaluation score, the requesting agency shall:

(1) Issue a written request addressed to the State Procurement Director. The written request may be delivered by email or mail, and in either case, should be clearly marked or labeled “Request for Weighted Cost Deviation.”

(2) The written request should clearly articulate the factors for why it is in the best interest of the state for cost to be weighted at a lower percentage than thirty percent (30%), and what percentage the requesting agency seeks. The factors articulated should be specific to the request for proposal under consideration.

(3) If the State Procurement Director issues a written determination approving of the lower percentage, the written determination shall be submitted for review by Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

R3:19-11-230. COMPETITIVE SEALED PROPOSALS.

PROPOSAL SUBMISSION.

(1) Offerors shall submit proposals at the place and on or before the date and time set in the Request for Proposal. Proposals received after the date and time designated for the proposal opening are considered late and shall not be considered.

(2) All proposals and any modifications to the proposals previously filed, received prior to the date and time fixed for opening the proposals, shall be kept secure and unopened. If a

proposal is submitted and the Request for Proposals number is not clearly marked to indicate the date and time of the proposal opening the State Procurement Director or agency procurement official may make a reasonable attempt to determine which solicitation the sealed submission corresponds to.

(3) Retrieval of a proposal for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the offeror who submitted the proposal.

R4:19-11-230. COMPETITIVE SEALED PROPOSALS.

REQUEST FOR PROPOSALS OPENING.

The names of the offerors may be read aloud. An abstract of proposals listing the names of offerors shall be prepared by the entity responsible for the RFP and shall be retained in the Request for Proposals file and shall be available for public inspection.

R5:19-11-230. COMPETITIVE SEALED PROPOSALS.

(a) EVALUATION. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. All members of evaluation committees shall participate in Evaluation Committee Training sponsored either by OSP or the college or university agency procurement official. Evaluations will be conducted in accordance with the OSP Policy. A written recommendation shall be made by the evaluation committee and submitted by the chairperson to the State Procurement Director or agency procurement official stating the basis on which the recommendation for award was found to be most advantageous to the state.

(b) (1) RESPONSIBILITY OF OFFEROR. Past performance of an offeror may be used by the procurement agency to determine whether the offeror is "responsible." No points for past performance may be used in the evaluation scoring criteria unless (i) past performance with the state is a non-mandatory evaluation criteria and (ii) the same amount of points allocated for past performance with the state are also made available in the evaluation scoring criteria in such a way as to not prejudice offerors without past performance history with the state. Past performance must be supported by written documentation and shall have not occurred more than three (3) years before the proposal was submitted. Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(i) Past performance on contracts from other Arkansas State Agencies may also be used for evaluation. Supporting documentation should be provided.

(ii) Past performance evaluation should not take the place of suspension or debarment procedures.

(2) The awarding of points for references may be used as evaluation scoring criteria if set forth in the solicitation.

(c) TIE BIDS.

(1) Definitions: As used in this section

(i) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(ii) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie bid between two or more offers that meet the specifications as required and where one of the offerors is an Arkansas company, then the award shall be made to that Arkansas company.

(4) In the event of a tie bid between two or more offers that meet the specifications as required

(i) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(ii) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the offerors.

(5) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

(d) PRIVATE EVALUATORS.

(1) An agency may use qualified evaluators from non-State governmental entities or the private sector.

(i) There is no limit on the number of private evaluators that may be used on an evaluation committee, but they must abide by all ethical standards and legal requirements a state employee or former state employee would have to meet in order to serve as an evaluator.

R6:19-11-230. REJECTION OF PROPOSALS.

Grounds for rejection of proposals include but shall not be limited to:

(1) failure of a proposal to conform to the essential requirements of a Request for Proposals;

(2) a proposal imposing conditions which would modify the stated terms and conditions of the Request for Proposal;

(3) any proposal determined by the procurement official in writing to be unreasonable as to price;

(4) failure to furnish a bond when required by a Request for Proposals; and

(5) the offeror's record of poor past performance or irresponsibility; and

(6) any or all proposals when the procurement official makes a written determination that it is in the best interest of the State and documents the reason(s) supporting the determination.

R7:19-11-230. CORRECTION OR WITHDRAWAL OF PROPOSALS.

(a) There is a strong public interest in favor of conserving public funds in awarding public contracts, and little, if any, public benefit in disqualifying proposals for technical deficiencies in form or minor irregularities where the offeror does not derive any unfair competitive advantage therefrom. The State Procurement Director or agency procurement official may waive technicalities in proposals or minor irregularities in a procurement which do not affect the material substance of the Request for Proposals when it is in the State's best interest to do so.

(b) Amendments to proposals shall be allowed if the amendments are in writing and signed, are received prior to the date and time of the proposal opening, and clearly indicate the date and time of proposal opening and Request for Proposals number.

(c) If there is a suspected proposal mistake or the State Procurement Director or agency procurement official chooses to seek a clarification on a matter that is evaluated in the proposal, the State Procurement Director or agency procurement official may request a clarification of a proposal.

(1) The response by the offeror must be made in writing. Clarifications made verbally, in demonstration presentations, or communicated in any other matter shall not be considered a clarifying response by the offeror, and should be reduced to a written clarification by the offeror to be considered.

(2) The response of any offeror who fails or refuses to clarify in writing within a reasonable time any matter contained in his or her proposal may be rejected.

(3) Any written clarification submitted shall become a part of the contract awarded on the basis of that proposal.

(d) Proposal prices shall not be increased after the date and hour of the proposal opening.

(e) When a mistake in a proposal is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the proposal, and that due to such mistake the proposal submitted was not the proposal intended, the bidder may be permitted to withdraw his proposal.

R8:19-11-230.1 DISCUSSIONS

(a) DISCUSSIONS GENERALLY. During a request for proposals procurement, Arkansas Procurement Law allows for discussions with responsible offerors whose proposals have been determined to be reasonably susceptible to being selected for award. Discussions may be used to clarify a proposal or the terms of a request for proposals, and for the purpose of negotiation. Pre-award discussions with any offeror or offerors should be conducted in a manner that supports public confidence in the procedures followed in public procurement, ensures fairness in proposal improvement, and fosters effective competition. To safeguard against discussions being used to provide an offeror an unfair competitive advantage:

(1) A request for proposals shall outline how discussions will be held, if at all; and

(2) There shall be no disclosure to any offeror of any information derived from any proposal by any competing offeror during discussions.

(b) CLARIFICATION. While conducting discussions, a procurement agency may identify areas of a proposal that require further clarification. This includes, without limitation, areas where it appears that there may have been ambiguity, miscommunication or misunderstanding as to the State's evaluation factors, specifications, or requirements. The State may seek clarification of a proposal or proposals through written questions, demonstrations, or during negotiations, but shall document any such discussion for the procurement file. Any oral clarification made by an offeror during discussions shall be reduced to writing and adopted by the offeror as a binding statement before it may be considered in evaluating whether the offeror's proposal is responsive or the most advantageous to the State. Note that a clarification sought by the State may be unique to an individual offeror based on unique aspects of the offeror's proposal.

(c) NEGOTIATION. Negotiation is a discretionary type of discussion permitted under Ark. Code. Ann. § 19-11-230 that can be used to seek a proposal or proposals more advantageous to the State than the proposal or proposals initially submitted in response to the solicitation. During a solicitation, the State may only have pre-award discussions with an offeror as provided in the request for proposals and as permitted under procurement rules.

(1) Because negotiation is a type of discussion, a procurement agency interested in the possibility of negotiation in connection with the solicitation of proposals shall

include provisions in its request for proposals outlining how negotiation, if any, may be conducted.

(2) Because negotiation is optional and at the discretion of the State, there is no minimum number of negotiation rounds and no maximum number of negotiation rounds that may be conducted other than any that may have been set forth in the request for proposals.

(3) If and as permitted by the request for proposals, negotiations may be conducted with a group of responsible offerors identified based on an established competitive range (those reasonably susceptible of being awarded a contract based on the evaluation factors set forth in the request for proposals), or just with the highest ranked responsible offeror reasonably susceptible of being awarded a contract.

(4) If a request for proposals only allows for serial negotiation with the highest ranked offeror, then the procurement agency may only abandon negotiation with the highest ranked offeror if it determines, in writing and for identified cause, that the offeror is not responsible or is otherwise not reasonably susceptible of being awarded a contract. The procurement agency may proceed to additional rounds of negotiation with another offeror or offerors if not prohibited by the request for proposals. The procurement agency shall apply the same standard of responsibility and evaluation factors fairly to any subsequent offeror or offerors.

(5) Negotiation may be limited to cost only. All cost only negotiations shall be documented for the procurement file. During cost only negotiation rounds, responsible offerors are not obligated to meet or beat target prices but will not be allowed to increase prices submitted on the initial price sheet.

(d) REASONABLY SUSCEPTIBLE OF BEING AWARDED A CONTRACT – THE COMPETITIVE RANGE. Given the number of proposals and the broad range of competitiveness of responses, it may not be practicable to engage in negotiations with each and every offeror. If the procurement agency receives multiple proposals, it may shorten the list of offerors to negotiate with to a “competitive range” of responsible offerors reasonably susceptible of being awarded a contract. That is the range of responsible offerors that fall within the “competitive range.” The competitive range shall be determined based on criteria set forth in the request for proposals. For example, and not by limitation, a request for proposals may provide that only the three highest ranked vendors are eligible for negotiation. The criteria for selecting the competitive range included in the request for proposals may be established on any rational basis, including, without limitation, one or more of the following:

(1) Price; or

(2) Cost of Ownership; or

(3) Responses that appear to provide the best value based on evaluation criteria in the solicitation; or

(4) Responses most likely to provide greater value after negotiations based on the same criteria; or

(5) Evaluation scores.

(e) MINIMUM SCORE. The agency procurement official, in conjunction with the requesting agency as appropriate, may establish a minimum score in the request for proposals that an offeror must achieve before the offeror will be considered in the competitive range and thus eligible for additional negotiation. However, to foster competition, any such minimum score shall not be set unreasonably high. In the interest of protecting competition, the State Procurement Director may waive the minimum score if it eliminates all but one responsible offeror or otherwise unreasonably narrows the competitive range, and if he or she determines it to be in the best interest of the State.

(f) NEGOTIATION WITH SINGLE OFFEROR VERSUS MULTI-PARTY NEGOTIATION. When deciding whether to structure a request for proposals that limits negotiation to just the

highest evaluated responsible offeror instead of engaging in multi-party negotiations, the procurement agency should consider the following:

(1) The expected dollar value of the award and length of contract. Increased dollar value and a lengthy duration weigh in favor of greater competition; and

(2) The complexity of the acquisition and the variety and complexity of offered solutions, in terms of impact on the likely breadth and depth of the discussions. Increased complexity may signal that more time for negotiation is needed, which may weigh in favor of limiting negotiations to the competitive range of highest ranked vendors if there was not enough lead time to allow for lengthy negotiations; and

(3) The resources available to conduct discussions versus the expected variable administrative costs of discussions; and

(4) The impact on lead-time for award versus the need for timely delivery; and

(5) The extent to which discussions with additional offerors would likely provide diminishing returns; and

(6) The disparity in pricing between the lowest priced offeror and the other offerors; and

(7) The disparity in pricing between the highest rated offeror and the other offerors.

(g) BEST AND FINAL OFFER (BAFO) NEGOTIATION. Best and final offer (BAFO) negotiation is an optional step to help obtain an offer that is more advantageous for the State, such as enhanced value or the most cost-effective pricing available.

(1) The BAFO process may be useful when:

(A) No single response addresses all the specifications; or

(B) The cost submitted by all offerors is too high (e.g., exceeds the State's estimate of expected costs, budget, etc.); or

(C) The scores of two or more offerors are very close after the initial evaluation; or

(D) All offerors submitted responses that are unclear or deficient in one or more areas.

(2) The following rules shall apply to BAFO negotiations:

(A) The procurement agency shall determine if the BAFO process will be conducted and, if so, shall determine which responsible offerors are within the competitive range according to the terms of the request for proposals for receipt of the State's BAFO request; and

(B) The procurement agency may only restrict the BAFO negotiations to a single offeror or engage in a multi-party BAFO negotiation as provided in the request for proposals and consistent with Arkansas Procurement Law, including these rules; and

(C) BAFO negotiation shall only be conducted with responsible offerors. Any offeror determined to be non-responsible shall be excluded. Any offeror whose proposal is rejected as non-responsive or is outside of the competitive range defined in the request for proposals shall be excluded from participation in a BAFO negotiation unless circumstances change which result in their falling within the competitive range; and

(D) The content of the BAFO request may come from questions proposed by the procurement official or the evaluation committee; and

(E) A procurement agency may request that an offeror readdress important aspects of the proposal, including, without limitation, implementation

schedule, level of support, amount of resources proposed, terms and conditions or cost; and

(F) The procurement officer shall dispatch the BAFO request stating the elements to be covered and defining the date, time, and place the BAFO must be returned; and

(G) All communication to and from offerors regarding the BAFO request shall be coordinated by the procurement officer; and

(H) All responses to the BAFO request must be submitted timely to the procurement officer in order to be considered. BAFO's submitted after the deadline shall not be considered, unless the procurement officer or director determines that:

(i) the submission was timely, but that delivery was prevented by a force majeure; or

(ii) the delay in delivery is not substantial and does not prejudice the State; or

(iii) that waiver of the deadline is in the best interest of the State; and

(I) Only the original proposal or one properly clarified, revised through negotiation, or submitted as a best and final offer may be considered for evaluation; and

(J) A BAFO request to multiple offerors shall not identify either the current rank of any of the offerors or any identifiable information derived from a proposal.

(3) All BAFO requests shall contain the following:

(A) Specific information on what is being requested. Offerors may be asked to provide additional clarification to specific sections of their response and to rework their proposal content or cost proposal; and

(B) Submission requirements with time lines; and

(C) Specifics on how the offer or offers will be evaluated and outline the process that will be used to determine the successful offeror, as applicable; and

(D) Language stating the procurement officer or the evaluation committee will evaluate and score the BAFO offer(s) after considering the new content of the BAFO proposal(s); and

(E) Notice to offerors that they are not required to submit a BAFO proposal and may submit a written response stating that their response remains as originally submitted.

(4) All scoring worksheets (e.g., original evaluation scores, best and final scores, etc.) shall be retained for inclusion in the procurement file. Scores for the BAFO responses shall be entered into a new score sheet/summary worksheet by the procurement officer.

(h) TARGET PRICE BAFO. A target price BAFO request is a BAFO request that is limited to allowing responsible offerors an opportunity to improve upon their responses by offering more competitive pricing. Proposers are not obligated to meet or beat target prices, but shall not be allowed to increase overall prices in a target price BAFO negotiation. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in the proposal improvement and does not reveal individual offeror pricing. The State's target price may be reached by considering factors such as the current/last contract price paid for the service, benchmarks, industry standards, budgets, raw materials that influence the pricing of the product, or market trends. If the State opts to engage in target price BAFO negotiation, then after the initial responses have been received the procurement officer shall:

(1) Determine the lowest proposed cost for each line item, as applicable; and

(2) Compare the lowest proposed cost for each line item against current/past contract price and other benchmarks; and

(3) Use market analysis to set a target price for each line item in a spreadsheet; and

(4) Evaluate the reasonableness of the target price for each line item and for the total target price overall; and

(5) Send a request for revised pricing and a target price spreadsheet to offerors deemed responsible and responsive; and

(6) Receive target cost proposals; and

(7) Determine if target price negotiation resulted in improved cost proposals; and

(8) If the receipt of target price proposals did not result in one or more cost proposals at or below the State's target price, the procurement officer shall evaluate whether an additional round of target price negotiation will result in one or more cost proposals at or below the State's target price.

R9:19-11-230. CANCELLATION OF THE REQUEST FOR PROPOSALS.

A notice of cancellation of an OSP Request for Proposals shall be posted on the OSP website. The proposals may be returned if properly identified.

R10:19-11-230. ETHICAL STANDARDS.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars ($20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-231. Small procurements.

(a) Any procurement not exceeding the amount under § 19-11-204(13), which refers to small procurements, may be made in accordance with small procurement procedures promulgated by the State Procurement Director.

(b) However, procurement requirements shall not be artificially divided so as to constitute a small procurement under this section.

History. Acts 1979, No. 482, § 32; 1981, No. 600, § 22; A.S.A. 1947, § 14-257; Acts 2001, No. 1237, § 24.

R1:19-11-231. SMALL PROCUREMENTS – CONDITIONS FOR USE.

(1) LEASE. All state agencies may lease commodities with the exclusion of vehicles (See Ark. Code Ann. § 22-8-102) where the cost does not exceed twenty thousand dollars ($20,000) during the initial period of the contract without seeking competitive bids, provided the lease does not contain an option to purchase. Such leases may not be renewed beyond accumulated expenditures of twenty thousand dollars ($20,000).

(2) PURCHASE OF COMMODITIES SUBJECT TO AMENDMENT 54 TO THE ARKANSAS CONSTITUTION. Purchase of commodities subject to Amendment 54 to the Arkansas Constitution must be procured in accordance with competitive bidding and competitive sealed bidding procedures. (See Ark. Code Ann. § 19-11-222(b) for definitions of printing, stationery, and supplies.)

(3) CERTIFIED MINORITY BUSINESS ENTERPRISE OR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISE. A procurement that does not exceed two (2) times the amount stated in Ark. Code Ann. § 19-11-204 (13) may be procured without seeking competitive bids or competitive sealed bids if the procurement is with a certified minority business enterprise or certified women-owned business enterprise. The certification process is administered by the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission.

19-11-232. Proprietary or sole source procurements.

(a) Under rules promulgated under this subchapter, a contract may be awarded for a required or designated commodity or service to a sole or mandatory supplier when the State Procurement Director, the head of a procurement agency, or a designee of either officer above the level of agency procurement official determines in writing that it is not practicable to use other than the required or designated commodity or service.

(b) Unless a written determination is made that there is only one (1) source for the required or designated commodity or service, efforts shall be made to obtain price competition.

History. Acts 1979, No. 482, § 33; A.S.A. 1947, § 14-258; Acts 2001, No. 1237, § 25; 2019, No. 315, § 1769.

R1:19-11-232. PROPRIETARY OR SOLE SOURCE PROCUREMENTS.

(a) GENERAL. Sole source procurements of commodities and technical services are those procurements which, by virtue of the performance specification, are available from a single source. Brand name preferences or merely aesthetic design specifications are not sufficient justification for sole source awards. Such procurements may include but are not limited to:

(1) requirements of performance compatibility with existing commodities or services; or

(2) repairs involving hidden damage.

(b) APPROVAL. Request for approval shall be made in writing and shall include in the justification:

(1) a copy of the purchase order or requisition

(2) why the service is needed;

(3) the methods used to determine that a lack of responsible/responsive competition exists for the service;

(4) how it was determined that the provider possesses exclusive capabilities;

(5) why the service is unique;

(6) whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(7) what the agency would do if the provider/service were no longer available;

(8) any program considerations which make the use of a “Sole Source” critical to the successful completion of the agency’s task; and

(9) the “Contract and Grant Disclosure and Certification Form” required by Governor’s Executive Order 98-04, if applicable.

(c) Procurements under this section must be approved in advance by the head of a state agency having an agency procurement official or the State Procurement Director for all other state agencies, or a designee of either officer above the level of agency procurement official.

(d) SOLE SOURCE PROCUREMENTS OF PROFESSIONAL AND CONSULTANT SERVICES. The procurement from a single source, as it relates to professional and consultant service contracts, should only be used when all other methods of contracting are clearly not applicable. The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may authorize the use of sole source purchases.

(e) SOLE SOURCE JUSTIFICATION. Sole source professional and consultant service contracts, except for those exempt by law, must be accompanied by written justification and be approved by the Director of the Office of State Procurement. The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the state. The justification must fully address:

(1) why the service is needed;

(2) the methods used to determine that a lack of responsible/responsive competition exists for the service;

(3) how it was determined that the provider possesses exclusive capabilities;

(4) why the service is unique;

(5) whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(6) what the agency would do if the provider/service were no longer available;

(7) any program considerations which make the use of a "Sole Source" critical to the successful completion of the agency's task.

(f) SOLE SOURCE BY LAW. The procurement of professional and consultant services from a specific provider that results from a mandate issued by the court systems or state or federal law.

R2:19-11-232. ETHICAL STANDARDS.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars ($20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-233. Emergency procurements.

(a) The State Procurement Director, the head of a procurement agency, or a designee of either officer may make or authorize others to make emergency procurements as defined in § 19-11-204(4) and in accordance with rules promulgated by the director.

(b) (1) A person or state agency that makes an emergency procurement under this section shall:

(A) Receive at least three (3) competitive bids unless the emergency is a critical emergency; and

(B) Complete a quotation abstract that includes the:

(i) Names of the firms contacted;

(ii) Time that each firm was contacted;

(iii) Quoted price obtained from each contacted firm; and

(iv) Method used for contacting each firm.

(2) As used in this subsection, "critical emergency" means an emergency in which human life or health is imminently endangered.

History. Acts 1979, No. 482, § 34; 1981, No. 600, § 23; A.S.A. 1947, § 14-259; Acts 2001, No. 1237, § 26; 2019, No. 419, § 11; 2019, No. 315, § 1770.

R1:19-11-233. EMERGENCY PROCUREMENTS.

(a) APPROVAL. All non-critical emergency procurements must be approved in advance by the State Procurement Director, the head of a procurement agency, or a designee of either officer. Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date. Requests for approval must be made in writing and include:

(1) a copy of the purchase order;

(2) a copy of the quotation abstract Competitive Bid Tabulation form; and

(3) a written explanation of the emergency.

(b) TIE BIDS.

(1) Definitions: As used in this section

(i) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(ii) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie bid between two or more offers that meet the specifications as required and where one of the offerors is an Arkansas company, then the award will be made to that Arkansas company.

(4) In the event of a tie bid between two or more offers that meet the specifications as required

(i) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(ii) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the bidders.

(5) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

(c) LEGISLATIVE REVIEW. Except in the case of a "critical emergency" procurement, as that term is defined in Ark. Code Ann. § 19-11-233(b)(2), all services contracts must be presented for legislative review as required under Ark. Code Ann. § 19-11-265.

R2:19-11-233. ETHICAL STANDARDS.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars ($20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-234. Competitive bidding.

(a) (1) Competitive bidding is a method of procurement which requires obtaining bids by:

(A) Direct mail request to prospective bidders and obtaining written bids; or

(B) Telephone; or

(C) Telegraph; or
(D) Written form; or
(E) Electronic media.

(2) A competitive bid form authorized by the State Procurement Director must be completed.

(3) If three (3) competitive bids are not obtained on purchases when bids are required, the form must show the names of at least three (3) firms contacted in attempting to obtain competition or show the reason three (3) firms were not contacted.

(4) (A) Only firms which sell the type of commodity or service to be procured shall be contacted.

(B) The purchase procedures outlined in this section shall not apply to commodities, technical and general services, and professional and consultant services under state contract.

(b) (1) Contracts in which the purchase price exceeds twenty thousand dollars ($20,000) and is less than or equal to seventy-five thousand dollars ($75,000) may be awarded by use of competitive bidding procedures.

(2) However, in any such instances, competitive sealed bidding is permitted.

(c) (1) (A) All procurements shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements, criteria, and specifications.

(B) Delivery time required must be reasonable and consonant with current industry norms.

(2) Complete justification must be given if award is made to other than the low bidder.

(d) Repeated small quantity procurements to circumvent the competitive bid limits or failure to obtain competitive bids without justification shall constitute a violation of these procedures and shall result in withdrawal of the state agency's competitive bid privileges.

History. Acts 1979, No. 482, § 35; 1981, No. 600, § 24; A.S.A. 1947, § 14-260; Acts 1991, No. 1018, §§ 4, 5; 1995, No. 317, §§ 3, 4; 1995, No. 340, §§ 3, 4; 2001, No. 1237, § 27; 2003, No. 487, § 6; 2005, No. 1680, § 7; 2013, No. 1189, § 3; 2017, No. 1004, § 4.

R1:19-11-234. COMPETITIVE BIDDING – CONDITIONS FOR USE.

PURCHASE OF COMMODITIES SUBJECT TO THE ARKANSAS CONSTITUTION, AMENDMENT 54. The commodities subject to Amendment 54 to the Arkansas Constitution are printing, stationery, and supplies. (See also Ark. Code Ann. § 19-11-222(b).)

(1) SUPPLIES. All state agencies may purchase certain supplies subject to Amendment 54 under the following condition: If the cost of the commodity is seventy-five thousand dollars ($75,000) or less, the state agency must obtain, wherever possible, at least three (3) written competitive bids.

(2) PRINTING AND STATIONERY. The State Procurement Director or his designee shall purchase all printing and stationery subject to Amendment 54 under the following condition: If the cost of the commodity is seventy-five thousand dollars ($75,000) or less, the State Procurement Director or his designee must obtain, wherever possible at least three (3) written competitive bids.

R2:19-11-234. COMPETITIVE BIDDING.

LEASES.

(1) Lease of commodities on state contract. No contract greater than ninety (90) days for the lease of commodities on state contract will be approved unless the State Procurement Director determines in writing that it is in the best interest of the State and states the reason therefore.

(2) All contracts for the lease of a commodity that exceed a cost of twenty thousand dollars ($20,000) but are less than seventy-five thousand dollars ($75,000) during the initial period of the contract will be awarded on the basis of competitive bidding. A purchase option and/or lease renewal is allowed as long as the accumulated expenditure does not exceed seventy-five thousand dollars ($75,000).

R3:19-11-234. COMPETITIVE BIDDING.

(1) LIFE CYCLE COST. Life cycle or total ownership costs may include but are not limited to costs of operation, maintenance, repair, disposal and/or acquisition.

(2) APPLICATION. Life cycle cost formulas may be used for procurements. Certain specified commodities may be procured using life cycle cost formulas provided by the Office of State Procurement. For those specified commodities, the State Procurement Director may provide formulas to be used in the evaluation of bids by the State Procurement Director, the agency procurement officials or the procurement agents.

R4:19-11-234. COMPETITIVE BIDDING.

CANCELLATION. Bids may be cancelled by the State Procurement Director, agency procurement official or procurement agent prior to contract award. Notice of cancellation shall be given to all bidders who have submitted bids. (Posted on OSP website http://www.arkansas.gov/dfa/procurement)

R5:19-11-234. COMPETITIVE BIDDING.

REJECTION. Grounds for rejection of bids include but shall not be limited to:

(1) failure of a bid to conform to the essential requirements of an invitation for bids;

(2) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;

(3) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(4) a bid imposing conditions which would modify the terms and conditions of the invitation for bids;

(5) any bid determined by the procurement official in writing to be unreasonable as to price;

(6) bids received from bidders determined to be non- responsible bidders;

(7) failure to furnish a bid guarantee when required by an invitation for bids; and

(8) any or all bids when the procurement official determines it to be in the best interest of the state.

R6:19-11-234. COMPETITIVE BIDDING.

TIE BIDS.

(a) Definitions: As used in this section

(1) “Arkansas company” means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(2) “Out-of-state company” means all foreign entities as defined by Arkansas law.

(b) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(c) In the event of a tie bid between two or more offers that meet the specifications as required and where one of the offerors is an Arkansas company, then the award shall be made to that Arkansas company.

(d) (1) In the event of a tie bid between two or more offers that meet the specifications as required.

(A) and where at least two of the offerors are Arkansas companies, then an award will be determined by lot (flip of a coin) between those Arkansas companies;

(B) or if all of the offerors are out-of-state companies, then an award will be determined by lot (flip of a coin) among all the bidders.

(2) The coin flip will be done in the presence of at least one witness by the person responsible for awarding the contract. All witnesses must be employees of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

R7:19-11-234. ETHICAL STANDARDS.

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars ($20,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-235. Responsibility of bidders and offerors.

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

(2) A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted.

(3) The unreasonable failure of a bidder or offeror to promptly supply information in connection with such an inquiry may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(4) If a bidder or offeror is determined to be nonresponsible, the reasons therefor shall be included in the determination.

(b) (1) Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the Office of State Procurement or the procurement agency without prior written consent by the bidder or offeror.

(2) This section is not intended to prohibit the office from disclosing such information to the Governor, the Attorney General, or the Secretary of the Department of Transformation and Shared Services when any of those officers deems it necessary.

(c) The director or the agency procurement official may require the posting of a bid bond, a performance bond, or a similar assurance by any actual or prospective bidder, offeror, or contractor, under rules promulgated under this subchapter.

History. Acts 1979, No. 482, § 36; A.S.A. 1947, § 14-261; Acts 1991, No. 1018, § 6; 2001, No. 1237, § 28; 2019, No. 315, §§ 1771, 1772; 2019, No. 910, § 6112.

R1:19-11-235. NONRESPONSIBILITY.

(a) (1) Determination of responsibility is made prior to the award of a contract.

(2) A non-responsible bidder or offeror is one who has been determined through evaluation of bid/offer to lack the capability, integrity and/or reliability to fully perform the contract.

(b) Determination of responsibility may include, but not be limited to, one or any combination of the following:

(1) the ability, capacity and skill to perform the contract or provide the service;

(2) the responsibility and experience of the business;

(3) the quality of performance on previous contracts or services;

(4) the previous and existing compliance by the business with laws relating to the contract or services;

(5) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.

R2:19-11-235. BONDS.

(1) GENERAL. Bidders shall submit bid bonds or performance bonds or similar assurances when required by the terms and conditions of the invitation for bids, solicitation or request for proposals, as obligee with surety satisfactory to the procurement agency, in a sum not to exceed one hundred percent (100%) of the contract price.

(2) AWARD. A bid shall not be awarded to any bidder who fails or refuses to provide a bond when required by the invitation for bids.

(3) DEFAULT. A contractor may be declared in default of his contract with the state, and his bond forfeited, when it is determined by the procurement official that the contractor is in breach of the terms and conditions of the contract.

19-11-236. Prequalification of suppliers.

(a) (1) The State Procurement Director may provide for prequalification of suppliers as responsible prospective contractors for particular types of commodities, technical and general services, and professional and consultant services.

(2) Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

(b) Prequalifications shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and making of an award that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

History. Acts 1979, No. 482, § 37; A.S.A. 1947, § 14-262; Acts 2005, No. 1680, § 8.

19-11-237. Cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee contracts.

As used in this subchapter, unless the context otherwise requires, the cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee system may be used under the authority of the State Procurement Director when:

(1) There exists no other economically practicable price arrangement to secure the commodity;

(2) A cost saving may be proved over the least expensive alternative; or

(3) The pricing schedule involved is tied to an industry standard or other reliable system of cost prediction.

History. Acts 1979, No. 482, § 39; 1983, No. 517, § 2; A.S.A. 1947, § 14-264; Acts 1995, No. 1234, § 1; 2001, No. 1237, § 29.

19-11-238. Multiyear contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for commodities or services may be entered into for periods of not more than seven (7) years if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefor.

(b) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing that:

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

(2) Such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement; and

(3) In the event of termination for any reason, the contract provides for cessation of services and/or surrender by the state of the commodities and repayment to the state of any accrued equity.

(c) Termination Due to Unavailability of Funds in Succeeding Years.

(1) Original terms of such multiyear contracts shall not exceed four (4) years.

(2) When funds are not appropriated or otherwise made available to support continuation of performance in a multiyear contract, the contract shall be terminated and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the commodities or services delivered under the contract.

(3) The cost of termination under subdivision (c)(2) of this section may be paid from:

(A) Appropriations currently available for performance of the contract;

(B) Appropriations currently available for procurement of similar commodities or services and not otherwise obligated; or

(C) Appropriations made specifically for the payment of such termination costs.

History. Acts 1979, No. 482, § 43; A.S.A. 1947, § 14-267; Acts 1995, No. 317, § 5; 1995, No. 340, § 5; 1995, No. 912, § 1; 2019, No. 418, § 3.

R1:19-11-238. INITIAL TERM.

A contract may be entered into for up to a maximum period of a total of seven (7) years. It may be advantageous for agencies to have a contract expire annually unless renewed, however, they may opt to make the initial term of a contract extend for up to four (4) years before the first renewal. The aggregate number of years under a non-exempt contract remains seven (7) regardless of the length of the initial term of the contract.

19-11-239. Finality of determinations.

The determinations required by:

(1) Section 19-11-229(h), which refers to competitive sealed bidding, award;

(2) Section 19-11-230(b), which refers to competitive sealed proposals, conditions for use;

(3) Section 19-11-230(g), which refers to competitive sealed proposals, award;
(4) Section 19-11-232, which refers to proprietary or sole source procurements;
(5) Section 19-11-233, which refers to emergency procurements;
(6) Section 19-11-234, which refers to competitive bidding;
(7) Section 19-11-235, which refers to responsibility of bidders and offerors, determination of responsibility;
(8) Section 19-11-238(b), which refers to multiyear contracts, determination prior to use; and
(9) Section 19-11-263, which refers to special procurements,
are final and conclusive, unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

History. Acts 1979, No. 482, § 46; 1981, No. 600, § 27; A.S.A. 1947, § 14-270; Acts 2001, No. 1237, § 30.

19-11-240. Reporting of suspected collusion – Definition.

(a) As used in this section, "collusion" means cooperation in the restraint of free and open competition in a public procurement, including without limitation:

(1) Price fixing;
(2) Bid rigging;
(3) Customer or market allocation;
(4) Misrepresenting the independence of the relationship between colluding parties; and
(5) Exerting improper influence on public officials to obtain advantage in a public procurement, including without limitation:
(A) Offering bribes or kickbacks;
(B) Extortion; and
(C) Fraudulent misrepresentation.

(b) When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the Attorney General.

(c) (1) All documents involved in a procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be destroyed.

(2) All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt of the request.

(d) Collusion is cause for:

(1) Debarment from consideration for award of a contract under § 19-11-245; and
(2) Suspension from consideration for award of a contract if there is probable cause for suspecting collusion as determined by the Attorney General of the State Procurement Director.

History. Acts 1979, No. 482, § 47; A.S.A. 1947, § 14-270.1; 2017, No. 696, § 3.

19-11-241. Specifications.

(a) Definition.

(1) "Specification" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature, of a commodity or service.
(2) "Specification" may include a description of any requirement for inspecting, testing, or preparing a commodity or service for delivery.

(b) The State Procurement Director shall promulgate rules governing the preparation, maintenance, and content of standard and nonstandard specifications for commodities,

technical and general services, and professional and consultant services procured by the Office of State Procurement.

(c) Maximum Practicable Competition. All specifications shall be drafted so as to assure the maximum practicable competition for the state's actual requirements.

History. Acts 1979, No. 482, §§ 49-51; 1981, No. 600, § 28; A.S.A. 1947, §§ 14-271 — 14-272.1; Acts 2001, No. 1237, § 31; 2005, No. 1680, § 9; 2019, No. 315, § 1773.

R1:19-11-241. ISSUANCE OF RESTRICTIVE SPECIFICATIONS.

RESTRICTIVE SPECIFICATIONS. A specification may be drafted which describes a product which is proprietary to one manufacturer only where there is a requirement for specifying a particular design or make of product due to factors of compatibility, standardization, or maintainability.

R2:19-11-241. ISSUANCE OF QUALIFIED PRODUCTS LIST SPECIFICATIONS – QUALIFIED PRODUCTS LIST.

(1) RESTRICTIONS ON USE. A specification for commodities may include a qualified products list only when the State Procurement Director has approved in writing the written determination of the Agency Procurement Official or Office of State Procurement that:

(A) the interests of the state require assurance before award that the desired commodity is satisfactory; and

(B)the cost or the time required to test before award would be excessive.

(2) NOTICE OF INTENT TO ADOPT A QUALIFIED PRODUCTS LIST. Whenever it is determined to include a qualified products list in any specification or to adopt such a list, prompt notice of the intent will be given to all reasonably known makers and suppliers of the affected commodity. Such notice must describe all requirements for achieving qualification.

(3) WRITTEN RECORDS OF EVALUATION. Detailed written records must be made of the evaluation of any and all commodities offered for inclusion on any qualified products list. Except for records which contain trade secrets or other proprietary information, those records will be made available for inspection by any member of the public upon request.

19-11-242. Commodity management rules.

The State Procurement Director shall promulgate rules governing:

(1) The sale, lease, or disposal of surplus commodities by public auction, competitive sealed bidding, or other appropriate method designated by rule, and no employee of the Department of Transformation and Shared Services or member of the employee's immediate family shall be entitled to purchase any such commodities; and

(2) Transfer of excess commodities within the state; and

(3) The sale, lease, or disposal of surplus commodities to not-for-profit organizations under § 22-1-101.

History. Acts 1979, No. 482, § 55; A.S.A. 1947, § 14-275.1; Acts 2001, No. 1237, § 32; 2013, No. 1020, § 1; 2019, No. 315, § 1774.

R1:19-11-242. AGENCY COMMODITY MANAGEMENT PROCEDURES – DISPOSITION OF COMMODITIES OTHER THAN COMPUTERS AND ELECTRONIC EQUIPMENT.

(a) RESALE. Marketing and Redistribution ("M&R") will make available to agencies, tax-supported entities, or not-for-profit organizations as defined in Ark. Code Ann. § 22-1-101 commodities in serviceable condition and/or commodities of potential use by agencies, tax-supported entities, or not-for-profit organizations for a twenty-day period prior to making them

available to the general public. During the twenty-day hold period, commodities may only be sold to agencies, tax-supported entities, or not-for-profit organizations by Marketing and Redistribution. At the sole discretion of the Director or the Director's designee at Marketing and Redistribution, commodities which the Director or the Director's designee at Marketing and Redistribution reasonably believe to be valued at one hundred dollars ($100) or less per individual item, or commodities that historically have not sold to agencies, tax-supported entities, or not-for-profit organizations or items that are unserviceable may be offered for sale to the general public without the requirement of the twenty-day hold period. The Director or the Director's designee at Marketing and Redistribution may waive the twenty-day requirement when he determines that such waiver is in the state's best interest.

(b) INTRASTATE AGENCY SALE. Commodities that are no longer needed by an agency may be sold to another agency by completing and submitting an Intrastate Agency Sale Form, which can be found on the M&R website under forms, to Marketing & Redistribution. This form must be completed and forwarded electronically from the selling agency to the purchasing agency, then to M&R, where it is forwarded to DFA Office of Accounting for completion and transfer of funds.

(c) DISPOSAL. When commodities have no scrap or resale value, a certificate of property disposal ("CPD") form must be submitted to Marketing and Redistribution, which will then return to the requestor within ten (10) working days, a certificate of property disposal authorization, indicating the proper handling procedure for the commodities.

(d) CANNIBALIZATION. "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

(1) The disassembly of an item for use of its component parts for repair or maintenance of a similar item will only be authorized if such action has greater potential value and benefit than disposal or trade-in of the item in its existing form. Authorization for cannibalization will be approved by Marketing and Redistribution prior to any disassembly or removal of components parts. If authorized, the item will be removed from the agency's property listing by the requesting agency. Any residual material remaining after cannibalization must be processed through Marketing and Redistribution. Requests for authorization for cannibalization will be expedited. If properly marked, authorization should be returned to agency with ten (10) working days. It is understood that there may be no residual material remaining after cannibalization, but if any, residual material must be processed through Marketing and Redistribution.

(2) Motor vehicles eligible to be registered for highway use (cars and trucks), whether registered or not, may be cannibalized after obtaining authorization from Marketing and Redistribution. These vehicles WILL NOT be removed from the property listing until the carcass of the vehicle has been disposed of by Marketing and Redistribution. In no event should more than ninety days (90) elapse between the authorization of cannibalization and processing of the carcass by Marketing and Redistribution. These procedures do not exempt an agency from compliance with any other requirements relating to the disposal or acquisition of motor vehicles.

(e) HANDLING OF SURPLUS EQUIPMENT. Agencies with surplus items must contact Marketing and Redistribution to schedule a delivery or pick-up date. A Surplus Disposal Form ("SDF") must be transmitted by the agency showing the agency name, address, phone number, contact person and listing of all items with serial and property numbers (if available). The Surplus Disposal Form will be processed by Marketing and Redistribution when the surplus items are delivered or picked up.

R2:19-11-242. AUCTION AND ON-SITE SALES.

DISPOSITION OF COMMODITIES.

(1) GENERAL REQUIREMENTS. Commodities that are not subject to or have completed the twenty-day hold period, pursuant to R1:19-11-242 (a), may be offered for sale. Furniture or equipment may be loaned or rented to a state agency with the approval of the owning agency. The rental fee(s) less applicable handling fee(s) will be remitted to the owning agency.

(2) NOTICE REQUIRED. Public notice of commodities sold by competitive sealed bid should be given at least five days prior to the date established for the sale. The notice will include publication in any electronic or printed medium.

(3) PUBLIC AUCTION.

(A) Public auction whether electronic or traditional may be used when deemed in the best interest of the State. Auction costs will be paid from proceeds. In a traditional auction, if proceeds do not cover the costs, the agency requesting the auction will be responsible for any expenses not covered from the proceeds. Any cost associated with an electronic auction will be covered by proceeds from the sale.

(B) PROCEDURES. In a traditional auction a licensed auctioneer will be used. The solicitation to bidders must stipulate, at a minimum: all terms and conditions of any sale, that the purchaser must remove all items purchased within a stated time, and that the state retains the right to reject any and all bids. In an electronic auction the purchaser must pick up or otherwise cause the items purchased to be removed within a stated time.

(4) COMPETITIVE SEALED BIDDING.

(A) Competitive sealed bidding will be used when:

(i) the value of the item cannot be determined based on market value or past history of same or similar items sold; or

(ii) it is determined by Marketing and Redistribution that it is in the best interest of the State.

(B) Procedures.

(i) When surplus commodities are to be sold by competitive sealed bidding, the procedures followed must be in accordance with Ark. Code Ann. § 19-11-204, § 19-11-228, § 19-11-229 and the regulations promulgated hereunder except:

(ii) the award will be made to the highest bidder with the state retaining the right to accept or reject any or all bids when in the best interest of the State.

(5) ONSITE SALES.

(A) DEFINITION. Onsite sales includes the process of (1) internet auctioning and (2) sale of commodities to the general public from the Marketing and Redistribution office, a satellite location and/or other agency locations when approved by Marketing and Redistribution.

(B) Onsite sales will be used for surplus items not purchased by other state agencies or tax supported entities.

(C) PROCEDURE. Selling price will be established by Marketing and Redistribution based upon demand, condition of commodities, past experience gained from auction or competitive sealed bid sales; and prevailing retail prices for same or similar commodities in the local market.

(6) NEGOTIATED SALE. Negotiated sale may be used if no acceptable bids were received during the bid process and an offer is made “after the fact” for the item. Offers will only be accepted from bidders that participated in the sealed bid offering the item.

(7) TRADE-IN. Surplus commodities may be traded in when the Marketing and Redistribution Manager or Assistant Marketing and Redistribution Manager determines that the

trade-in value is expected to exceed the value estimated to be obtained through the sale of the commodity less administrative expenses incurred during a sale.

(8) LEASE OR DONATION. Surplus commodities may be leased or donated to tax supported entities or non-profit organizations when requested in writing by the owning agency and approved by the Director of the Office of State Procurement.

(A) Written requests must be submitted to the Marketing and Redistribution Manager identifying the equipment by name, serial number, property number, the benefit to the public in cases of proposed donations, and lease terms in cases of proposed property leasing. The Marketing and Redistribution Manager will estimate the property value and forward the request to the Director of the Office of State Procurement for his approval/disapproval.

(B) The Director of the Office of State Procurement will respond in written communication to the requesting agency on a case-by-case basis.

(C) The requesting agency must maintain a copy of the original written request and the written approval/disapproval from the Director of the Office of State Procurement for audit purposes.

(D) Copies of the request and approval/disapproval will also be maintained at Marketing and Redistribution.

(9) The Arkansas State Highway and Transportation Department may dispose of commodities without the assistance of the Office of State Procurement, but it must comply with the procedures outlined herein for said disposition. Nothing herein is intended to prohibit the use of the Office of State Procurement for the disposition of those commodities, and the Department may request the Office of State Procurement make the disposition.

(10) Excess commodities in remote locations and/or property too heavy or expensive to transport to Marketing and Redistribution.

(A) Excess commodities that are in remote locations and/or commodities where the cost to transport to Marketing and Redistribution would be prohibitive should be reported by written communication to Marketing and Redistribution with a complete description and details of the condition of the equipment. Marketing and Redistribution will make one of the following recommendations:

(i) The commodity should be redistributed for state use and Marketing and Redistribution will notify agencies and/or tax- supported entities that could utilize the commodity. When the property is sold, the receiving agency will be responsible for the removal of the item(s), with the expense of moving being taken into consideration when price is determined.

(ii) Marketing and Redistribution will prepare an invitation for bids or authorize the agency to prepare an invitation for bids with inspection being held at the agency location.

(iii) A certificate of property disposal will be transmitted to the owning agency designated as follows:

(a) The property identified is authorized for cannibalization by the Marketing and Redistribution Manager who hereby authorizes the agency to perform the cannibalization.

(b) The property identified is authorized for destruction by the Marketing and Redistribution manager who hereby authorizes the agency to perform the destruction.

(c) Property that has a material content of lead, copper, brass, iron, etc. will be disposed of by sale to a local scrap dealer(s) at local prices. Payment(s) received are to be sent and made payable to: Marketing and Redistribution with a copy of the Certificate of Property Disposal authorizing the sale.

(d) Property with resale value that is not feasible for transport to Marketing and Redistribution may be disposed of by obtaining quote bids "as is, where is." Owning agencies should attempt to obtain (3) bids. A copy of the bid quotes, a copy of the Certificate of Property Disposal authorizing the sale and the proceeds are to be sent and made payable to Marketing and Redistribution.

(11) Specialized commodities may be offered for trade-in with the trade-in price offered being forwarded in a written transmission to Marketing and Redistribution for determination of price acceptability.

(12) If none of the above procedures are applicable, the Director of the Office of State Procurement will make an individual determination.

R3:19-11-242. DEFINITIONS OF TERMS USED IN THIS SECTION.

(1) "Not-for-profit organization" means a private corporation under § 4-28-201 et seq., that is an exempt organization as described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that:

(A) Has a benevolent, philanthropic, patriotic, or charitable purpose; and

(B) Performs a function that would be performed at the public expense if it were not performed by the organization.

(2) "Lease" means a transfer of the right to possession and use of surplus commodities, for a specified term length not to exceed a seven-year period, for a monetary fee or other consideration, while retaining ownership and title in the surplus commodities. Monetary fees or other consideration may not be nominal.

(3) "Donation", as used in R2:19-11-242 (8), means a transfer of ownership and title in surplus commodities for no monetary fees or consideration.

19-11-243. Proceeds from surplus commodities.

The State Procurement Director shall promulgate rules for the allocation of proceeds from the sale, lease, or disposal of surplus commodities, to the extent practicable, to the using agency which had possession of the commodity.

History. Acts 1979, No. 482, § 56; A.S.A. 1947, § 14-275.2; Acts 2001, No. 1237, § 33; 2019, No. 315, § 1775.

R1:19-11-243. ALLOCATION OF PROCEEDS FROM SALE OR DISPOSAL OF SURPLUS COMMODITIES.

(a) USING AGENCY. The allocation of proceeds from the sale, lease, or disposal of surplus commodities, and proceeds from an insurance policy for loss of property because of fire, storm or other causes, less appropriate fees, will be made and deposited to the using agency which had possession of the commodity. Such allocations and deposits will be made at the sooner of when the using agency's account balance has reached at least fifty dollars ($50.00) or the end of each fiscal year.

(b) FEE SCHEDULE. The Office of State Procurement will develop a fee schedule to defray the costs of the commodity management program. The fee schedule will set forth various charges for services rendered.

25-8-106. Marketing and redistribution of state personal property.

(a) (1) This section applies only with respect to personal property.

(2) This section does not apply to or affect the:

(A) Disposition of surplus real property of the state; or

(B) Sale of plants, animals, or commodities of plants or animals by a public institution of higher education if the proceeds from the sale are used solely for agricultural research, extension, or teaching programs, including without limitation 4-H Foundation programs and Future Farmers of America programs.

(b) (1) There is created within the Office of State Procurement a Marketing and Redistribution Section for the purpose of promoting and ensuring effective utilization of surplus state property.

(2) (A) All state agencies, boards, commissions, departments, and colleges and universities are required and county, municipal, or other tax-supported institutions are authorized to utilize the services of the Marketing and Redistribution Section, unless specifically exempted in writing by the Director of the Office of State Procurement.

(B) (i) Nothing in this section shall be construed to make it mandatory that county, municipal, or other local government units utilize the services of the Marketing and Redistribution Section.

(ii) Nothing in this section shall be construed to make it mandatory that any agency, department, division, office, board, commission, or institution of this state, including state-supported institutions of higher education, utilize the services of the Marketing and Redistribution Section in the sale of surplus computer equipment and electronics to state agency employees for a price not less than ten percent (10%) above depreciated value.

(3) The Department of Transformation and Shared Services shall maintain adequate and accurate records of the costs for operating the Marketing and Redistribution Section and is authorized to establish fair and reasonable charges for the services of the section. The charges for services shall be deposited in the State Treasury as nonrevenue receipts, there to be credited to the Property Sales Holding Fund for the operation, maintenance, and improvement of the Marketing and Redistribution Section.

(c) The Office of State Procurement may maintain an inventory of furniture, equipment, and other items which shall be made available to state agencies on rental agreements based upon fair and reasonable rental values.

(d) The department is authorized to establish a fair and reasonable fee schedule for redistributing property between state agencies upon their request.

(e) Proceeds from the sale, transfer, or rental of property by the Director of the Office of State Procurement shall be accounted for as follows:

(1) The purchasers, transferees, and lessees of property available for such purposes as are authorized by this section shall transmit to the Office of State Procurement the agreed sale price, service charge, or rental fee;

(2) The Office of State Procurement shall deposit the full amount of proceeds received, as set out above, in the State Treasury in the manner as provided by law;

(3) (A) Proceeds from the sale or transfer of property deposited in the State Treasury shall be classified as nonrevenue receipts and credited to the Property Sales Holding Fund herein created on the books of the Treasurer of State as a trust fund.

(B) Funds deposited in the Property Sales Holding Fund may be expended only by the selling or transferring agency under procedures established by the Chief Fiscal Officer of the State and appropriations provided by the General Assembly.

(C) However, funds deposited in the Property Sales Holding Fund from the sale of property purchased from agency cash funds may be refunded to the agency cash fund from which the original expenditure was made by the issuance of a warrant under procedures established by the Chief Fiscal Officer of the State and

the Auditor of State to be payable from appropriations provided by the General Assembly for disposition of the proceeds.

(f) The Secretary of the Department of Transformation and Shared Services is authorized to promulgate reasonable rules, not inconsistent with law, for compliance with the provisions of this section, the Arkansas Procurement Law, § 19-11-201 et seq., and the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., and the sale of surplus commodities to not-for-profit organizations under § 22-1-101.

History. Acts 1968 (1st Ex. Sess.), No. 44, §§ 1-7; 1972 (Ex. Sess.), No. 50, § 1; 1973, No. 806, §§ 4, 5; 1973, No. 876, § 30; 1977, No. 436, § 1; A.S.A. 1947, §§ 5-812 — 5-818; Acts 2001, No. 589, § 1; 2001, No. 1410, § 13; 2013, No. 1020, § 3; 2015, No. 686, § 1; 2017, No. 307, § 1; 2019, No. 910, §§ 3568, 3570.

25-34-107. Surplus equipment not sold.

(a) (1) Unsold surplus computer and electronic equipment may be donated by the owning agency to Arkansas public schools or local governments if the agency policy so provides.

(2) Arkansas public schools and local governments are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(b) (1) Unsold surplus computer and electronic equipment may be donated by the owning agency to law enforcement agencies if the agency policy so provides.

(2) Law enforcement agencies are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(c) (1) Unsold surplus computer equipment may be sent to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration for sale, auction, recycling, donation, demanufacturing, or disposal.

(2) Alternatively, the agency may maintain possession of computers and electronics and allow the Marketing and Redistribution Section to sell or auction the computer or electronic equipment via an Internet website.

History. Acts 2001, No. 1410, § 7; 2003, No. 1028, § 1; 2005, No. 970, § 5.

R1:25-34-107. MARKETING AND REDISTRIBUTION SURPLUS COMPUTER SALES PROCEDURES.

(a) SALES MADE WITHIN THE AGENCY. The agency will:

(1) Create a customer receipt for the sales price and calculate sales tax. Included on the receipt will be the type of equipment, model number, serial number and property tag number, who the equipment was sold to and the amount.

(2) Record the receipt in the cash journal as a customer payment.

(3) Request a funds transfer through DFA-Office of Accounting from the receipting agency's fund to:

(A) Marketing and Redistribution's Cost Center 383333, Fund MPH0000 – 15% of the sales price.

(B) Arkansas Department of Environmental Quality's Cost Center 451346, Fund MER0100 – 25% of the sales price.

(4) The sales tax will be paid when DFA-Office of Accounting does their (owning agency's) monthly billing for Sales & Use tax.

(b) SALES MADE THROUGH MARKETING AND REDISTRIBUTION ON BEHALF OF THE AGENCY. Marketing and Redistribution will:

(1) Create a customer receipt to record the sales price and sales tax;

(2) Record the receipt as a customer payment in the cash journal; and

(3) Request funds transfer through DFA – Office of Accounting from Marketing and Redistribution fund MPH0000 to Agency fund and cost center – 50% of the sales price Arkansas Department of Environmental Quality Cost Center 451346, Fund MER0100 – 25% of the sales price.

(4) The sales tax due will be included in the DFA monthly report of Sales & Use tax.

25-34-108. Disbursement of revenues.

Funds generated from the sale of agency surplus computer and electronic equipment to state employees, public schools, or by other sale shall be allocated as follows:

(1) If the sale of surplus computer or electronic equipment is made within the agency:

(A) Sixty percent (60%) of the proceeds shall be returned to the owning agency;

(B) Fifteen percent (15%) of the proceeds shall be deposited with the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration; and

(C) Twenty-five percent (25%) of the proceeds shall be deposited in the Computer and Electronic Recycling Fund established by this chapter;

(2) If the sale of surplus computer or electronic equipment is outside the agency and conducted by the Marketing and Redistribution Section:

(A) Fifty percent (50%) of the proceeds shall be returned to the owning agency;

(B) Twenty-five percent (25%) of the proceeds shall be deposited with the Marketing and Redistribution Section; and

(C) Twenty-five percent (25%) of the proceeds shall be deposited in the Computer and Electronic Recycling Fund established by this chapter and § 19-5-1213.

History. Acts 2001, No. 1410, § 8.

R1:25-34-108. SURPLUS COMPUTER SALE REPORTING.

(a) Each agency shall be responsible for providing to Marketing and Redistribution by the 10th of the month following the sale a list of all items sold. Include the type of equipment, model number, serial number, and property tag number, to whom the equipment was sold and the amount.

(b) If the sale is conducted by Marketing and Redistribution outside the agency, the agency will receive 50% of the proceeds, 25% of the proceeds will be retained by Marketing and Redistribution, and 25% of the proceeds will go to the Computer and Electronic Recycle Fund at ADEQ.

19-11-244. Resolution of protested solicitations and awards.

(a) (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of a contract may protest by presenting a written notice at least seventy-two (72) hours before the filing deadline for the solicitation response to the State Procurement Director or the head of a procurement agency.

(2) Any actual bidder, offeror, or contractor who is aggrieved in connection with the award of a contract may protest to the:

(A) Director; or

(B) Head of a procurement agency.

(3) The protest shall be submitted in writing within fourteen (14) calendar days after the award or notice of anticipation to award has been posted.

(4) A protest submitted by an aggrieved person under this section shall:

(A) Be limited to one (1) or more of the following grounds:

(i) The award of the contract exceeded the authority of the director or the procurement agency;

(ii) The procurement process violated a constitutional, statutory, or regulatory provision;

(iii) The director or the procurement agency failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules of the procurement materially affected the contract award;

(iv) The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; or

(v) The award of the contract resulted from a technical or mathematical error made during the evaluation process; and

(B) State facts that substantiate each ground on which the protest is based.

(b) (1) (A) The director, the head of a procurement agency, or a designee of either officer may settle and resolve a protest concerning the solicitation or award of a contract before rendering an administrative protest determination.

(B) (i) A meeting in an attempt to settle or resolve a protest is not a public meeting.

(ii) However, a final settlement or resolution of a protest made under this section shall not be kept secret, sealed, or withheld from public disclosure.

(2) The authority to settle or resolve a protest under this section shall be exercised in accordance with laws governing the Arkansas State Claims Commission, which has exclusive jurisdiction over all claims against the state in connection with the solicitation or award of a contract, and the rules promulgated by the director.

(c) (1) If a protest is not settled or resolved by mutual agreement under subsection (b) of this section, the director, the head of a procurement agency, or a designee of either officer shall promptly issue an administrative protest determination in writing.

(2) The administrative protest determination shall state the reasons for the action taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the protestor and any other party intervening.

(e) An administrative protest determination under subsection (c) of this section is:

(1) Final and conclusive; and

(2) Not an order as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) In the event of a timely protest under subsection (a) of this section, the state shall not execute a contract that is the result of the protested solicitation or award unless the director or the head of the relevant procurement agency makes a written determination that the execution of the contract without delay is necessary to protect substantial interests of the state.

(g) When the protest is sustained and the successfully protesting bidder or offeror was denied the contract award, the protesting bidder or offeror may be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs, through the commission.

(h) An actual or prospective bidder, offeror, or contractor who is aggrieved by a protest submitted under this section that was without merit or intended purely to delay the award of a

contract may bring a private cause of action for tortious interference with a business expectancy against the person or entity that submitted the protest.

History. Acts 1979, No. 482, § 57; A.S.A. 1947, § 14-276; Acts 2001, No. 1237, § 34; 2003, No. 487, § 7; 2005, No. 1680, § 10; 2009, No. 677, § 1. 2017, No. 882, §§ 1, 2; 2019, No. 420, §§ 2-4.

R1:19-11-244 DEFINITIONS.

R1:19-11-244.1 "Aggrieved in connection with the award of a contract" is the condition of being an actual bidder, offeror, or contractor who has been denied the award of a contract as the result of the improper or unlawful award of the contract.

R1:19-11-244.2 "Aggrieved in connection with a solicitation" is the condition of being an actual or prospective bidder, offeror, or contractor interested in submitting a bid, offer, or qualifications (as applicable) in response to a solicitation, but who is denied the opportunity to compete fairly for award of a contract because of improper or unlawful solicitation terms or conduct.

R1:19-11-244.3 "Anticipation to award a contract" means the State's identification of the person (or persons) it anticipates contracting with as the result of a solicitation.

R1:19-11-244.4 "Award of a Contract" means the State's process for formally accepting a responsive bid, proposal, or qualifications as the basis for a contract with the State. Award of a contract is generally preceded by notice of the State's anticipation to award a contract.

R1:19-11-244.5 "Constructive knowledge", as used in these rules, means knowledge or information that a protestor would have by a given date if the protestor had exercised reasonable care or diligence, regardless of whether the protestor actually had the knowledge or information. It includes knowledge of:

(i) applicable provisions of Arkansas Procurement Law and other applicable law and administrative rules;

(ii) solicitation instructions, criteria, deadlines, and requirements contained in solicitation documents or otherwise available to persons interested in the solicitation or provided in a mandatory pre-solicitation meeting;

(iii) available public records kept in connection with a solicitation or award of a contract;

(iv) communications or actions regarding the solicitation to any person whose knowledge is imputed to the protestor under the law of agency, fiduciaries, partnership, respondeat superior, or otherwise;

(v) facts not subject to reasonable dispute that are generally known or ascertained by resort to readily available sources whose accuracy cannot reasonably be questioned; and

(vi) any other applicable information discoverable by the exercise of reasonable care or diligence, such as a request for information.

R1:19-11-244.6 "Grounds" of the protest are as defined in § 19-11-244(a)(4).

R1:19-11-244.7 "Interested Party", when used in relation to a protest in connection with a solicitation, means any actual or prospective bidder, offeror, or contractor actually or prospectively participating in a solicitation. When used in relation to a protest in connection with the award of a contract, it means a bidder, offeror, or contractor who actually submitted a bid or offer or who holds a contract to provide the commodities or services solicited.

R1:19-11-244.8 “Protest” means a written objection from a person setting forth facts showing that the person is an interested party who has been aggrieved in connection with: (a) the solicitation of a contract; or (b) the award of a contract.

R1:19-11-244.9 “Solicitation” means an instance of soliciting bids, proposals, or qualifications for a contract for commodities or services, and includes “competitive bidding,” “competitive sealed bidding,” “competitive sealed proposals,” and “request for qualifications,” as those terms are defined in Arkansas Procurement Law.

R1:19-11-244.10 “Submitted” means a protest that conforms to the formal requirements as defined in these rules, that has been received by the State Procurement Director or the head of the relevant procurement agency. It is not sufficient for a protestor to merely claim a protest was submitted; evidence of actual receipt of the protest must be obtained, whether return receipt, confirmation email by the State Procurement Director or the head of the relevant procurement agency, or other adequate evidence of receipt.

R2:19-11-244 PROTEST REQUIREMENTS.

R2:19-11-244.1 Substantive Requirements. A protest must set forth facts showing that the protestor: is an interested party, (ii) has been aggrieved: (a) in connection with a solicitation, or (b) in connection with the award of a contract, and (iii) has Grounds.

R2:19-11-244.2 Formal Requirements. A protest must be Submitted in writing to the State Procurement Director or the head of the relevant procurement agency. To expedite handling of protests, if delivered by mail, the envelope containing a protest should be clearly labeled “Protest.” Protests delivered by email should be identified as a protest in the subject line and marked as important. A protest shall include as a minimum the following:

(a) The name and address of the protestor (or the protestor’s attorney);

(b) Appropriate identification of the solicitation by reference to its number, if a number has been assigned; and

(c) Unless good cause is shown for its absence, a copy of any documents or supporting evidence upon which the protest is based, attached to or enclosed with the protest as an exhibit. Where such documents or supporting evidence substantiating any claims made in a protest are believed or known to exist, but are not available with reasonable diligence to include as an exhibit within the time for submitting a protest, the anticipated documents must be described in the protest so as to explain how they are expected to support the protest and when the protestor reasonably anticipates they will be available, if ever. Failure to provide such supporting exhibits without good cause or within a reasonable time may result in the protest not being sustained.

R2:19-11-244.3 Time Periods for Submission. There are two types of protests permitted under Ark. Code Ann. § 19-11-244: (i) a protest in connection with the solicitation of a contract; and (ii) a protest in connection with the award of a contract. To be timely, a protest, must be Submitted in writing to the State Procurement Director or the head of the procurement agency conducting the procurement:

(a) at least seventy-two (72) hours before the deadline for submitting a response to the solicitation, if it is a protest in connection with the solicitation of a contract; or

(b) within fourteen (14) calendar days after the award or notice of anticipation to award has been posted. In the event that both a notice of anticipation to award and an award have been posted, the protest shall be submitted in writing within fourteen (14) calendar days of whichever occurred first.

R3:19-11-244 BURDEN OF SUPPORTING A PROTEST AND SUPPLYING REQUESTED INFORMATION.

A party submitting a protest has the burden of stating facts showing that the protestor has Grounds in connection with a solicitation or in connection with the award of a contract. The State Procurement Director or the head of a procurement agency determining a protest may, but has no duty to, request a protestor or other interested party to submit documentation or information relevant to the protest. Failure of any person to comply expeditiously with a request for documents or information by the State Procurement Director or the head of a procurement agency determining a protest may result in the protest being determined without consideration of the requested information. Delivery of requested documents or information after three business days from the request is generally not considered expeditious, but the State Procurement Director or the head of a procurement agency may allow additional time for good cause.

R4:19-11-244 STAY OF PROCUREMENTS DURING PROTEST.

When a protest has been timely submitted, no execution of the contract shall be made until the protest has been settled or determined by the State Procurement Director or relevant procurement agency head, unless the State Procurement Director or relevant procurement agency head makes a written determination, after consulting with the head of the using agency or the head of the procurement agency, that the execution of the contract without delay is necessary to protect substantial interests of the State.

R5:19-11-244 MAKING INFORMATION ON PROTESTS AVAILABLE.

In the interest of transparency, a person who is an interested party in a solicitation should be given the same access to solicitation documents that are public records (as defined in Ark. Code. Ann. § 25-19-103(7)) as a citizen of the State of Arkansas is entitled to under the Arkansas Freedom of Information Act of 1967.

R6:19-11-244 DECISION BY THE STATE PROCUREMENT DIRECTOR OR THE HEAD OF A PROCUREMENT AGENCY.

R6:19-11-244.1 TIME FOR DECISIONS. A decision on a protest shall be made by the State Procurement Director or the head of a procurement agency with reasonable promptness after receiving all relevant and requested information, or upon determining that information requested by the State Procurement Director or the head of a procurement agency will not be made readily available. If a protest is sustained, the available remedies include, but are not limited to, those set forth in Ark. Code Ann. § 19-11-244(g), and Ark. Code Ann. § 19-11-247.

R6:19-11-244.2 REMEDIES FOR SUCCESSFUL PROTESTOR. When a protest is sustained and the successfully protesting bidder or offeror denied the contract award, the protesting bidder or offeror may submit a claim for the reasonable costs incurred in connection with the solicitation, including bid preparation costs, through the Arkansas Claims Commission (the "Commission"). The Commission regulates the procedure by which such claims are submitted and determined.

19-11-245. Debarment or suspension.

(a) APPLICABILITY. This section applies to debarment for cause from consideration for award of contracts, or a suspension from such consideration during an investigation, when there is probable cause for such a debarment.

(b) (1) (A) (i) After reasonable notice to the person involved and reasonable opportunity for that person to have a hearing before a committee according to rules promulgated by the State Procurement Director, the director or the head of a procurement agency shall have authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interests of the state.

(ii) The debarment shall not be for a period of more than three (3) years.

(B) (i) The same officer shall have authority to suspend a person from consideration for award of contracts, provided that doing so is in the best interests of the state and there is probable cause for debarment.

(ii) The suspension shall not be for a period exceeding three (3) months.

(2) The authority to debar or suspend shall be exercised in accordance with rules promulgated by the director.

(c) The causes for debarment or suspension because of unsuitability for award of a contract shall be set forth in rules promulgated by the director.

(d) The director or the head of a procurement agency shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(e) NOTICE OF DECISION. A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the debarred or suspended person and any other party intervening.

(f) FINALITY OF DECISION. A decision under subsection (d) of this section shall be final and conclusive.

History. Acts 1979, No. 482, § 58; A.S.A. 1947, § 14-277; Acts 2001, No. 1237, § 35; 2003, No. 487, § 8; 2019, No. 315, §§ 1776-1778.

R1:19-11-245. SUSPENSION.

(a) Prior to any suspension, the contractor will be afforded an opportunity to discuss with the Director or head of a procurement agency the circumstances which led to the possible suspension and to potentially reach a settlement.

(b) SUSPENSION. In the event a bidder is suspended, a written determination shall be made by the State Procurement Director or head of a procurement agency concerning the facts of any allegation or claim that a bidder has done any action in R3:19-11-245(b) and shall be sent to the bidder at the address shown in the procurement agency's records.

R2:19-11-245. DEBARMENT.

Prior to any debarment hearing, the suspended contractor will be afforded an opportunity to discuss with the Director or head of a procurement agency the circumstances which led to the suspension and to potentially reach a settlement.

R3:19-11-245. AUTHORITY TO DEBAR OR SUSPEND.

(a) GENERAL. Any bidder or contractor to the State of Arkansas who, except for good cause shown, has engaged in any of the conduct listed in subsection (2) may be suspended or debarred from consideration for award of contracts.

(b) CAUSES FOR DEBARMENT OR SUSPENSION. The causes for debarment or suspension include, but are not limited to, the following:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(3) conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the State Procurement Director or the head of a procurement agency to be so serious as to justify debarment action:

(A) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor will not be considered to be a basis for debarment;

(5) continuous failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in the form acceptable to the procurement agency in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;

(6) substitution of commodities without the prior written approval of the contracting authority;

(7) failure to replace inferior or defective commodities within a reasonable time after notification by the procurement agency or the agency to which such commodity has been delivered;

(8) refusal to accept a contract awarded pursuant to the terms and conditions of the contractor's bid;

(9) falsifying invoices, or making false representations to any state agency or state official, or untrue statements about any payment under a contract or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(10) collusion or collaboration with another bidder or other bidders in the submission of a bid or bids for the purpose of lessening or reducing competition;

(11) falsifying information in the submission of an application for listing on a state vendor's list;

(12) repeated failure of a vendor or any of its owners to pay all outstanding tax liabilities to the State of Arkansas;

(A) "repeated failure" shall include, but not be limited to,

(i) the existence of seven (7) or more certificates of indebtedness, liens, or other evidence of tax indebtedness that are in the public record during any biennial period;

(ii) the suspension or revocation of a state excise tax permit or any other state permit for non-payment of taxes;

(iii)the existence of three (3) or more writs of garnishment issued for non-payment of taxes during any biennial period;

(B) This rule does not apply to

(i) tax debts that are the subject of an administrative or judicial proceeding contesting the validity of such debt until such proceedings are concluded and such tax debts are adjudicated to be valid, or

(ii) any outstanding individual tax liability of a non-owner employee of a vendor or that of non-controlling, individual shareholders in a Subchapter C corporation;

(13) any other cause the State Procurement Director or head of a procurement agency determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by any other governmental entity for any cause; or violation of the ethical standards set forth in Ark. Code Ann. § 19-11-708.

(c) DEBARMENT. Prior to any action for debarment, the Office of State Procurement or agency procurement official must notify the bidder of the opportunity for a hearing at least fourteen (14) days prior to said hearing. Such notification must state the facts of any allegation or claim. The State Procurement Director or the head of a procurement agency must consult with the Attorney General or his designee prior to debarring a person for cause from consideration for award of contracts.

(d) DEBARMENT HEARING.

(1) The director or head of a procurement agency shall must form a Committee composed of three qualified individuals, from government and private industry to hear the Debarment proceedings.

(2) The Attorney General or his designee representing the Director or the head of a procurement agency will have the right to present evidence and elicit testimony from witnesses and cross examine opposing witnesses before the Committee.

(3) The Contractor may be heard in person or by counsel, may cross-examine witnesses and may offer witnesses, documentary evidence and/or evidentiary depositions in defense of the debarment charges. The committee will subpoena witnesses for the Contractor upon timely request. Should Contractor fail to appear, the Committee shall proceed to hear the state's evidence and make its recommendations to the Director or head of a procurement agency.

(4) After hearing the evidence the Committee will make recommendations to the Director or head of the procurement agency.

(5) The Director or head of a procurement agency will receive the recommendation and review the record of the hearing and make a decision regarding the debarment.

(e) DECISION. The written decision concerning debarment will be sent to the contractor within 14 days and must state the reasons for the action taken and inform the debarred person involved of his rights to judicial review.

(f) OTHER REMEDIES. The procedures in this section do not preclude the taking of other action by the state, based on the same facts, as may be otherwise available, either at law or in equity.

(g) DISTRIBUTION OF DECISIONS. All agency procurement officials must send a copy of any determination of debarment to the Office of State Procurement and the Office of State Procurement must post the results of any debarment on the OSP website.

19-11-246. Resolution of contract and breach of contract controversies.

(a) APPLICABILITY. This section applies to controversies between the state and a contractor which arise under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modifications or rescission.

(b) (1) The State Procurement Director, the head of a procurement agency, or a designee of either officer is authorized, prior to commencement of an action in a court or any other action provided by law concerning the controversy, to settle and resolve a controversy described in subsection (a) of this section.

(2) This authority shall be exercised in accordance with the law governing the Arkansas State Claims Commission and the rules promulgated by the director.

(c) (1) If such a claim or controversy is not resolved by mutual agreement, and after reasonable notice to the contractor and reasonable opportunity for the contractor to present the claim or controversy in accordance with the rules promulgated by the director, the head of a procurement agency, the director, or the designee of either officer shall promptly issue a decision in writing.

(2) The decision shall state the reasons for the action taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the contractor.

(e) The decision under subsection (c) of this section shall be final and conclusive.

(f) If the director, the head of a procurement agency, or the designee of either officer does not issue the written decision required under subsection (c) of this section within one hundred twenty (120) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision has been received.

History. Acts 1979, No. 482, § 59; A.S.A. 1947, § 14-278; Acts 2001, No. 1237, § 36; 2003, No. 487, § 9; 2005, No. 1680, § 11; 2019, No. 315, §§ 1779, 1780.

R1:19-11-246. AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES.

(a) GENERAL. Any contract which is determined in writing by the State Procurement Director, or the procurement official, or a designee of either officer, to be terminable due to a breach of any of the terms and conditions of the contract, mistake, misrepresentation, or other cause, may be terminated as a result of such cause. Declaration of default and/or contract termination may only be determined by the procurement official who awarded the contract, and only after the contractor has been afforded the opportunity, to discuss with the Director or agency procurement official circumstances giving rise to the potential cause for termination and potential cures.

(b) DEFAULT. A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications, or failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.

(c) CONTRACTOR'S LIABILITY. The contractor and/or his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the State for any and all loss or damage as provided in the contract between the State and the contractor as a result of the contractor's default; provided, however, that a contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.

19-11-247. Remedies for unlawful solicitation or award.

(a) The provisions of this section apply where it is determined upon any review provided by law that a solicitation or award of a contract is in violation of law.

(b) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(1) Cancelled; or

(2) Revised to comply with the law.

(c) If after an award it is determined that a solicitation or award of a contract is in violation of law, then in addition to or in lieu of other remedies provided by law:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(A) The contract may be ratified and affirmed if it is determined that doing so is in

the best interests of the state; or

(B) The contract may be terminated;

(2) If the person awarded the contract has acted fraudulently or in bad faith:

(A) The contract may be declared null and void; or

(B) The person awarded the contract may be directed to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.

(d) Before a contract is ratified and affirmed under subdivision (c)(1)(A) of this section, a contract shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, for review if the contract is required to be submitted for review under § 19-11-1006 [repealed].

History. Acts 1979, No. 482, §§ 60-62; A.S.A. 1947, §§ 14-279 — 14-279.2; 2017, No. 696, § 4.

19-11-248. Finality of administrative determinations.

In any judicial action or other action provided by law, factual or legal determinations by employees, agents, or other persons appointed by the state shall have no finality and shall not be conclusive, notwithstanding any contract provision or rule of law to the contrary, except to the extent provided in:

(1) Section 19-11-239, which refers to finality of determinations;

(2) Section 19-11-244(e), which refers to resolution of protested solicitations and awards, finality of decision;

(3) Section 19-11-245(f), which refers to debarment or suspension, finality of decision; and

(4) Section 19-11-246(e), which refers to resolution of contract and breach of contract controversies, finality of decision.

History. Acts 1979, No. 482, § 63; A.S.A. 1947, § 14-280; 2019, No. 315, § 1781

19-11-249. Cooperative purchasing.

(a) (1) A public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of commodities or services in accordance with an agreement entered into between the participants.

(2) (A) A cooperative purchasing agreement is limited to commodities and services for which the public procurement unit may realize savings or material economic value, or both.

(B) (i) For cooperative purchasing agreements entered into by a state agency, the State Procurement Director shall consider the economic justification for using a cooperative purchasing agreement when granting or withholding approval for the cooperative purchasing agreement.

(ii) The State Procurement Director shall adopt rules to create a review policy outlining how the economic justification required under this section may be demonstrated, including without limitation a comparison of:

(a) Current state contract pricing and the pricing under a cooperative purchasing agreement; or

(b) Information obtained from a request for information and pricing under a cooperative purchasing agreement.

(C) The State Procurement Director and the Director of the Department of Finance and Administration shall submit any request for the Office of State Procurement or the Department of Finance and Administration, respectively, to

participate in a cooperative purchasing agreement to the Governor for approval.

(b) (1) (A) The director shall present an annual report of all purchases made under cooperative purchasing agreements by a state agency without an agency procurement official under this section to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee.

(B) A state agency that has an agency procurement official shall present an annual report of all purchases made under cooperative purchasing agreements under this section to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee.

(2) The reports required under this subsection shall be in the format required by the Legislative Council and shall include the following:

(A) The name of the contractor;

(B) The name of the procuring agency;

(C) The contact information for the contractor and procuring agency;

(D) The total cost of the contract, including all available extensions;

(E) A description of the goods or services procured; and

(F) Any other information requested by the Legislative Council or the Joint Budget Committee.

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

History. Acts 1979, No. 482, § 65; A.S.A. 1947, § 14-282; Acts 2015, No. 557, § 4; 2019, No. 417, § 5; 2019, No. 421, § 3.

R1:19-11-249. COOPERATIVE PURCHASING.

When an agency that is subject to Arkansas Procurement Law seeks to participate in a cooperative purchasing agreement that is administered by a public procurement unit or external procurement activity that is not subject to Arkansas Procurement Law, it will first need to submit the cooperative purchasing agreement to the State Procurement Director for a determination as required by A.C.A. § 19-11-256(b) and these rules. In seeking the determination from the State Procurement Director, the agency must include a verifiable economic justification as to why using the cooperative purchasing agreement is more cost effective or likely to realize savings than conducting a solicitation. If a determination has already been made with respect to a cooperative purchasing agreement, any other public procurement unit may rely on that determination.

R2:19-11-249. REPORTING OF COOPERATIVE CONTRACT PURCHASES.

Cooperative contract purchases of state agencies without an agency procurement official must be presented to the Legislative Council or Joint Budget Committee by the Office of State Procurement annually. Agencies shall submit purchases using the appropriate method as determined by the Office of State Procurement within ninety (90) days after the conclusion of the relevant fiscal year.

19-11-250. Sale, etc., of commodities.

Any public procurement unit by agreement with another public procurement unit may sell to, acquire from, or use any commodities belonging to or produced by another public procurement unit or external procurement activity independent of the requirements of:

(1) Sections 19-11-204, 19-11-228 — 19-11-240, and 19-11-263, which refer to source selection and contract formation; and

(2) Sections 19-11-205, 19-11-242, and 19-11-243, which refer to commodity management.

History. Acts 1979, No. 482, § 66; A.S.A. 1947, § 14-283; Acts 2001, No. 1237, § 37; 2003, No. 487, § 10.

19-11-251. Intergovernmental use of commodities or services.

Any public procurement unit may enter into an agreement with any other public procurement unit or external procurement activity for the intergovernmental use of commodities, technical and general services, or professional and consultant services under the terms agreed upon between the parties and in accordance with the rules promulgated under this subchapter, independent of the requirements of:

(1) Sections 19-11-204, 19-11-228 — 19-11-240, and 19-11-263 that refer to source selection and contract formation; and

(2) Sections 19-11-205, 19-11-242, and 19-11-243 that refer to commodity management.

History. Acts 1979, No. 482, § 67; A.S.A. 1947, § 14-284; Acts 2001, No. 1237, § 38; 2005, No. 1680, § 12; 2019, No. 315, § 1782.

R1:19-11-251. INTERGOVERNMENTAL AGREEMENTS.

(a) Intergovernmental agreements should include at a minimum:

(1) Scope of work to be accomplished;

(2) Amount of compensation (if any);

(3) Delineation of responsibilities and duties of each entity;

(4) Term of agreement; and

(5) Authorized signatures from each entity.

19-11-252. Rules.

The State Procurement Director may promulgate reasonable rules pertaining to the sale or acquisition of any commodities, technical and general services, or professional and consultant services belonging to or produced by another public procurement unit or external procurement activity as authorized in §§ 19-11-206 and 19-11-249 — 19-11-258.

History. Acts 1979, No. 482, § 68; A.S.A. 1947, § 14-285; Acts 2001, No. 1237, § 39; 2005, No. 1680, § 13; 2019, No. 315, § 1783.

19-11-253. Joint use of facilities.

Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

History. Acts 1979, No. 482, § 69; A.S.A. 1947, § 14-286.

19-11-254. State information services.

(a) Upon request, the State Procurement Director may make available to public procurement units the following services, among others:

(1) Standard forms;

(2) Printed manuals;

(3) Product specifications and standards;

(4) Quality assurance testing services and methods;

(5) Qualified products lists;
(6) Source information;
(7) Common use commodities listings;
(8) Supplier prequalification information;
(9) Supplier performance ratings;
(10) Debarred and suspended bidders lists;
(11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
(12) Contracts, or published summaries thereof, including price and time of delivery information.

(b) The director may enter into contractual arrangements and publish a schedule of fees for the services provided under this section.

History. Acts 1979, No. 482, §§ 70, 71; A.S.A. 1947, §§ 14-287, 14-288; Acts 2001, No. 1237, § 40.

19-11-255. Use of payments received.

All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying services shall be available to the supplying public procurement unit.

History. Acts 1979, No. 482, § 72; A.S.A. 1947, § 14-289.

19-11-256. Compliance by public procurement units.

(a) PROCUREMENT IN ACCORDANCE WITH REQUIREMENTS. When the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this subchapter, any public procurement unit participating in such a purchase shall be deemed to have complied with this subchapter.

(b) When a public procurement unit or external procurement activity not subject to this subchapter administers a cooperative purchase for a public procurement unit subject to this subchapter, then the State Procurement Director must determine in writing that the procurement system and remedies procedures of the public procurement unit or external procurement activity administering the procurement substantially meet the requirements of this subchapter.

History. Acts 1979, No. 482, § 73; A.S.A. 1947, § 14-290; Acts 2001, No. 1237, § 41.

19-11-257. Review of procurement requirements.

(a) (1) To the extent possible and consistent with efficiency, the State Procurement Director shall collect information concerning the type, cost, quality, and quantity of commonly used commodities or services being procured or used by state public procurement units.

(2) The director may also collect such information from local public procurement units.

(b) The director may make available all such information to any public procurement unit upon request.

History. Acts 1979, No. 482, § 74; A.S.A. 1947, § 14-291; Acts 2001, No. 1237, § 42.

19-11-258. Contract controversies.

Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with §§ 19-11-244 — 19-11-248, which refer to legal and contractual remedies, where the

administering public procurement unit is a state public procurement unit or otherwise subject to §§ 19-11-244 — 19-11-248.

History. Acts 1979, No. 482, § 75; A.S.A. 1947, § 14-292.

19-11-259. Preferences among bidders.

(a) Definitions.

(1) The definitions in this subsection shall not be applicable to other sections of this subchapter.

(2) As used in this section:

(A) "Commodities" means materials and equipment used in the construction of public works projects;

(B) "Firm resident in Arkansas" means any individual, partnership, association, or corporation, whether domestic or foreign, who:

(i) Maintains at least one (1) staffed office in this state;

(ii) For not fewer than two (2) successive years immediately prior to submitting a bid, has paid taxes under the Division of Workforce Services Law, § 11-10-101 et seq., unless exempt, and either the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., on any property used or intended to be used for or in connection with the firm's business; and

(iii) Within the two-year period, has paid any taxes to one (1) or more counties, school districts, or municipalities of the State of Arkansas on either real or personal property used or intended to be used or in connection with the firm's business.

(C) "Lowest qualified bid" means the lowest bid which conforms to the specifications and request for bids;

(D) "Nonresident firm" means a firm which is not included in the definition of a "firm resident in Arkansas"; and

(E) "Public agency" means all counties, municipalities, and political subdivisions of the state.

(b) (1) (A) In the purchase of commodities by competitive bidding, all public agencies shall accept the lowest qualified bid from a firm resident in Arkansas.

(B) This bid shall be accepted only if the bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and if one (1) or more firms resident in Arkansas made written claim for a preference at the time the bids were submitted.

(C) (i) In calculating the preference to be allowed, the appropriate procurement officials, pursuant to §§ 19-11-201 — 19-11-259, shall take the amount of each bid of the Arkansas dealers who claimed the preference and deduct five percent (5%) from its total.

(ii) If, after making such deduction, the bid of any Arkansas bidder claiming the preference is lower than the bid of the nonresident firm, then the award shall be made to the Arkansas firm which submitted the lowest bid, regardless of whether that particular Arkansas firm claimed the preference.

(2) (A) The preference provided for in this section shall be applicable only in comparing bids where one (1) or more bids are by a firm resident in Arkansas and the other bid or bids are by a nonresident firm.

(B) This preference shall have no application with respect to competing bids if both bidders are firms resident in Arkansas, as defined in this section.

(C) (i) All public agencies shall be responsible for carrying out the spirit and intent of this section in their procurement policies.

(ii) Any public agency which, through any employee or designated agent, is found guilty of violating the provisions of this section or committing an unlawful act under it, shall be guilty of a misdemeanor.

(D) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than six (6) months or a fine of not more than one thousand dollars ($1,000), or both.

(E) (i) If any provision or condition of this subchapter conflicts with any provision of federal law or any rule or regulation made under federal law pertaining to federal grants-in-aid programs or other federal aid programs, such provision or condition shall not apply to such federal-supported contracts for the purchase of commodities to the extent that the conflict exists.

(ii) However, all provisions or conditions of this subchapter with which there is no conflict shall apply to contracts to purchase commodities to be paid, in whole or in part, from federal funds.

(c) (1) (A) This section applies only to projects designed to provide utility needs of a county or municipality.

(B) Those projects shall include without limitation pipeline installation, sanitary projects, and waterline, sewage, and water works.

(2) To the extent that federal purchasing laws or bidding preferences conflict, this subchapter does not apply to projects related to supplying water or wastewater utility services, operations, or maintenance to a federal military installation by a municipality of the state.

History. Acts 1979, No. 482, § 76; 1981, No. 600, § 29; 1983, No. 760, § 2; A.S.A. 1947, § 14-293; Acts 1989, No. 477, § 2; 1989 (3rd Ex. Sess.), No. 45, § 1; 1991, No. 846, § 1; 1991, No. 855, § 1; 1993, No. 263, § 1; 1993, No. 678, §§ 1, 2; 2001, No. 1237, § 43; 2003, No. 487, § 11; 2015, No. 147, § 2; 2019, No. 910, § 497.

19-11-260. [Repealed]

19-11-261. Cooperative purchase of paper products for local governments.

(a) (1) All cities, counties, and school districts shall participate in a cooperative purchasing program for the purchase of paper products.

(2) The program shall be administered by the State Procurement Director.

(b) (1) The director shall promulgate rules for administration of the program.

(2) The rules shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

History. Acts 1991, No. 749, § 4; 1997, No. 179, § 18; 2001, No. 1237, § 46; 2019, No. 315, § 1784

19-11-262. Multiple award contracts.

(a) (1) Multiple award contracts may be made only if the State Procurement Director or an agency procurement official determines in writing that a single award is not advantageous to the State of Arkansas.

(2) The determination shall state in writing a rationale and basis for the multiple award contract.

(3) Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the using agencies.

(b) If the director anticipates that multiple award contracts will be made, the invitation for bids shall include a notification of the right of the office to make such an award and the criteria upon which such an award will be based.

History. Acts 1995, No. 428, § 3; 1995, No. 507, § 3; 2001, No. 1237, § 47.

R1:19-11-262. MULTIPLE AWARD CONTRACTS.

No multiple award contracts can be awarded unless the invitation for bids or request for proposals included notification of the right to make multiple awards.

19-11-263. Special procurements.

(a) Notwithstanding any other provision of this subchapter, the State Procurement Director or the head of a procurement agency may initiate a procurement above the competitive bid amount specified in § 19-11-234, when the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest.

(b) A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the director or the head of a procurement agency in the contract file, and he or she shall file a monthly report with the Legislative Council describing all such determinations.

History. Acts 2001, No. 1237, § 48.

R1:19-11-263. SPECIAL PROCUREMENT REPORTING.

Agencies are required to report special procurements to the Office of State Procurement. The reports shall include a copy of the written determination of the basis for the procurement and for the selection of a particular contract, and a copy of the contract. The reports will be reviewed and collated and a consolidated report for the state will be forwarded to the Legislative Council as required.

19-11-264. Submission of contracts with members of the General Assembly required.

(a) All contracts with a member of the General Assembly, his or her spouse, or with any business in which such person or his or her spouse is an officer, a director, or a stockholder owning more than ten percent (10%) of the stock in the business shall be presented to the Legislative Council or to the Joint Budget Committee, if the General Assembly is in session, before the execution date of the contract.

(b) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director and the Director of the Arkansas Ethics Commission with its review as to the propriety of the contract, including without limitation whether the agency properly complied with the procurement process and whether the contract represents an improper conflict of interest between the member and the agency, within thirty (30) days after receipt of the proposed contract.

(c) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Department of Finance and Administration has reviewed the contract and

provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

History. Acts 2007, No. 567, § 1.

R1:19-11-264. SUBMISSION OF CONTRACTS WITH MEMBERS OF THE GENERAL ASSEMBLY.

(a) All contracts or amendments to contracts with a member of the General Assembly, his or her spouse, or with any business in which such a person or his or her spouse is an officer, a director, or a stockholder owning more than ten percent (10%) of the stock in the business must be presented to the Legislative Council or the Joint Budget Committee, if the General Assembly is in session.

(b) Such contracts or amendments to contracts must be submitted to the Office of State Procurement in accordance with all applicable policies and guidelines as prescribed on the Office of State Procurement website.

19-11-265. Submission of contracts required.

(a) (1) Except for critical emergency procurements and as otherwise provided in this section, a contract requiring the services of one (1) or more persons shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, if the annual contract amount is at least fifty thousand dollars ($50,000) in any one (1) contract year or if the total projected contract amount, including any amendments or possible extensions, is at least three hundred fifty thousand dollars ($350,000).

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

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

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

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

(a) An increase in the contract amount;

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

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

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

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

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

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

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

(A) A description of the services being procured;

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

(C) The outcome of any protests.

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

(c) A contract that is procured by a state agency that has a state agency procurement official or procurement authority under a delegation order is subject to the presentment requirements under this section.

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

History. Acts 2007, No. 870, § 1; 2009, No. 396, § 1; 2015, No. 557, § 5; 2019, No. 417, § 7.

R1:19-11-265. SUBMISSION OF CONTRACTS FOR SERVICES.

(a) Contracts requiring "services," as defined in Arkansas Procurement Law and these rules, are to be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the contract if the contract amount is fifty thousand dollars ($50,000) or more in any one year of the contract's term, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars ($350,000) or more unless they are contracts for critical emergency procurements or are otherwise exempted from the submission requirements of Ark. Code Ann. § 19-11-265.

(b) Labor, time, or effort included in or incident to a contractor's production or sale of a commodity or commodities are not considered "services" for purposes of determining whether a contract is a "contract requiring services" within the meaning of Ark. Code Ann. § 19-11-265. Consequently, a contract for the procurement of a commodity or commodities is not a "contract requiring services" for purposes of Ark. Code Ann. § 19-11-265 if it only calls for labor, time, or effort included in or incident to the procurement of the commodity or commodities.

(c) Where a tangible commodity exists and is identifiable at the time of the commodity's procurement, any labor, time, or effort expended in its production are not considered services if no separate consideration is paid beyond the purchase price of the commodity for the labor, time, and effort expended in producing the commodity. Even where a present purchase order is for a tangible commodity yet to be produced, the future labor, time, or effort to be expended in the production of the commodity will not be considered "services" if the only consideration to be paid is the purchase price of the commodity after its receipt (and incidentals, such as taxes, delivery fees, etc.), and no separate consideration is paid for the labor, time, or effort expended in the production of the commodity. However, where a contract requires a contractor to furnish labor, time, or effort to produce a commodity not yet in existence, such as a computer program, and the contract calls for consideration to be paid to the contractor based on the labor, time, or effort furnished in the production of the commodity rather than based on the finished commodity, such labor, time, or effort are considered "services."

(d) If a contract will require procurement of a combination of commodities and services, as those terms are defined in Arkansas Procurement Law and these rules, then it should be submitted for review under Ark. Code Ann. § 19-11-265 if the services component of the

contract is fifty thousand dollars ($50,000) or more in any one contract year, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars ($350,000) or more.

R2:19-11-265. MATERIAL CHANGES TO CONTRACTS FOR SERVICES

(a) A contract that has previously been presented for review does not need to be presented for legislative review again upon its renewal or extension unless it introduces a "material change." There are two classes of material changes that trigger a duty to resubmit a contract for review at either renewal of a contract or extension of a contract term:

(1) an amendment that is a material change in contractual terms, including, without limitation:

(A) An increase in the contract amount;

(B) An increase in the total projected contract amount;

(C) A change in any of the essential terms of the contract;

(D) A change in any performance-based standards stated in the contract; and

(2) a material deviation by a contractor from the performance promised during the period preceding renewal or extension, such as a:

(A) default requiring the imposition of financial consequences as the result of the contractor's failure to satisfy performance-based standards under Ark. Code Ann. § 19–11–267 during the year preceding the renewal or extension of the contract; or

(B) vendor performance resulting in a vendor performance report during the year preceding the renewal or extension of the contract.

Both of these are "material changes" that trigger the duty to re-submit a contract for review prior to a renewal or an extension.

For purposes of Ark. Code Ann. § 19-11-265, renewal refers to re-establishing an existing contract for another term, whereas extension is extending the term of an existing contract that would otherwise expire. Although technically distinguishable, they are functionally similar.

(b) Definitions.

1. "Essential terms of a contract," also called fundamental terms, are provisions that must be included for an enforceable contract to exist between the parties under any applicable statute of frauds.

2. "Initial contract amount" refers to the amount agreed to for the initial term of a contract.

3. "Total projected contract amount" refers to the total amount that the state is projected to expend under the contract over the entire life of the contract, which can be no more than seven (7) years under Ark. Code Ann. § 19-11-238.

R3:19-11-265. TECHNICAL AND GENERAL SERVICES CONTRACTS ON FILE IN THE OFFICE OF STATE PROCUREMENT.

All agencies will be required to maintain copies in accordance with current document retention laws (Ark. Code Ann. § 19-11-214), of all purchase orders issued for the procurement of technical and general services.

19-11-266. High efficiency lighting — Preference.

(a) (1) The General Assembly finds:

(A) The expansion of state government makes it one of the state's leading purchasers of lighting commodities;

(B) Recent technological developments have produced energy-efficient devices that reduce energy costs through a reduction in energy usage; and

(C) Prudent use of taxpayer dollars dictates that the State of Arkansas should be at the forefront of implementing energy-efficient devices in facilities operated with public funds.

(2) The intent of this section is to promote the use of high efficiency lighting in facilities operated with public funds when feasible.

(b) As used in this section:

(1) (A) "Fluorescent lamp" means a gas-discharge lamp that:

(i) Utilizes a magnetic, electronic, or other ballast; and

(ii) Uses electricity to excite mercury vapor in argon or neon gas resulting in a plasma that produces short-wave ultraviolet light that causes a phosphor to fluoresce and produce visible light.

(B) "Fluorescent lamp" includes without limitation a compact fluorescent lamp;

(2) "High efficiency lighting" means fluorescent lamp or solid state lighting;

(3) "Solid state lighting" means a light device that utilizes light-emitting diodes, organic light-emitting diodes, or polymer light-emitting diodes as sources of illumination rather than electrical filaments or gas; and

(4) (A) "State agency" means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds.

(B) "State agency" includes 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.

(c) Whenever a state agency purchases or requires a bid for the purchase of an indoor lamp, a preference for high efficiency lighting shall be exercised if the use of high efficiency lighting is technically feasible and the price is competitive with consideration given to the long-term cost effectiveness and savings of high efficiency lighting.

(d) (1) The goal of state agencies for the percentage of purchased indoor lamps that are high efficiency lighting shall be one hundred percent (100%) by January 1, 2008.

(2) The Office of State Procurement shall prepare an annual report to the Legislative Council of the state's progress in meeting the goals for the purchase of high efficiency lighting.

History. Acts 2007, No. 1597, § 1.

19-11-267. Development and use of performance-based contracts.

(a) The General Assembly finds that:

(1) Performance-based contracts provide an effective and efficient method of monitoring and evaluating the overall quality of services provided; and

(2) The practice of including benchmark objectives that the provider must attain at specific intervals during the term of the contract is an essential requirement for measuring performance.

(b) (1) A state agency, board, commission, or institution of higher education that enters into a contract under this chapter to procure services that has a contract amount of at least one million dollars ($1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars ($7,000,000) shall use performance-based standards in the contract that are specifically tailored to the services being provided under the contract.

(2) The performance-based standards used under this subsection shall include performance measures based on objective factors.

(3) A state agency, board, commission, or institution of higher education is encouraged to use performance-based standards that are based on objective factors in any other contract in which it would serve the best interest of the state.

(c) A state agency, board, commission, or institution of higher education that enters into a contract with performance-based standards:

(1) (A) Shall monitor the vendor's performance and adherence to the performance-based standards in the contract.

(B) For state contracts, the Office of State Procurement shall be the state agency that monitors each vendor's performance under this subdivision (c)(1); and

(2) May impose financial consequences, as identified in the contract, on a vendor that is party to a contract with performance-based standards for failure to satisfy the performance-based standards, including without limitation withholding payment or pursuing liquidated damages to the extent allowed by law.

(d) (1) The State Procurement Director shall promulgate rules necessary to implement and administer this section.

(2) Rules promulgated under this subsection are subject to approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

History. Acts 2015, No. 557, § 6; 2019, No. 418, § 4.

R1:19-11-267. USE OF PERFORMANCE-BASED STANDARDS IN CONTRACTS.

(a) The purpose of performance-based standards is to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.

(b) It is recommended that all services contracts include performance standards.

(c) All services contracts that have a contract amount of at least one million dollars ($1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars ($7,000,000), including any amendments or possible extensions, shall include performance standards.

(d) Performance standards, as a general rule, are highly recommended as an element of any service contract and may be standardized for use with similar service contracts or may be specifically developed for unique requirements. However, performance-based standards are mandatory and must be specifically tailored to the services being provided under any services contract whenever a state agency, board, commission, or institution of higher education that enters into a contract to procure services that has a contract amount of at least one million dollars ($1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars ($7,000,000).

(e) Performance standards should measure, at prescribed points throughout the term of the contract, the quality, quantity, and timeliness of work being performed.

(f) Performance standards may be refined by the agency and the provider as a part of the contract negotiations.

(g) A provider's inability to meet established performance standards may be sufficient cause for declaring default and may also result in cancellation of the contract.

19-11-268. Vendor performance reporting.

(a) (1) A state agency shall report a vendor's performance under a contract executed under this chapter if the vendor fails to satisfy the performance-based standards in the contract in a manner that represents a material deviation.

(2) A state agency shall use the form prescribed by the State Procurement Director and approved by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, to report a vendor's performance under this section.

(b) The report required under this section shall be:

(1) Filed with the Office of State Procurement and maintained for a minimum of three (3) years from the termination of the relevant contract, including any extensions and amendments; and

(2) Signed by the director of the state agency or his or her designee; and

(3) Filed monthly until the vendor has performed satisfactorily under the contract for a period of at least ninety (90) consecutive days.

(c) A state agency may report a vendor's performance in the manner prescribed under this section for any contract that would not require reporting of a vendor's performance under this section if the state agency encounters an issue with the vendor's performance of a contract.

(d) A state agency may use a vendor performance report submitted under this section to evaluate an offeror to the extent that the past performance of an offeror may be considered under the law and the rules adopted by the office.

History. Acts 2015, No. 557, § 6; 2019, No. 418, § 4.

19-11-269. Review of information technology plans.

The Office of State Procurement shall ensure that all required information has been submitted to the Office of Intergovernmental Services of the Department of Finance and Administration for review of proper planning and technical requirements before the execution of:

(1) A contract issued under this subchapter that procures information technology products or services with a total projected contract amount, including any amendments to or possible extensions of the contract, of at least one hundred thousand dollars ($100,000); or

(2) A purchase of information technology products or services made under a cooperative purchase agreement under § 19-11-249.

History. Acts 2015, No. 557, § 6.

R1:19-11-269. PROCEDURES FOR APPROVAL OF INFORMATION TECHNOLOGY PRODUCTS OR SERVICES.

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any bid solicitation, sole source, exempt by law purchase, intergovernmental agreement, or cooperative contract purchase for Information Technology products or services where the total projected contract amount,

including any amendments or possible extensions, is one hundred thousand dollars ($100,000) or more. In addition, any bid solicitation, sole source, exempt by law purchase, intergovernmental agreement, or cooperative contract purchase that includes Information Technology products or services as part of the purchase, where that part is anticipated to have a total projected contract amount, including any amendments or possible extensions, of one hundred thousand dollars ($100,000.00) or more must be submitted to STP for approval.

STP will provide approval through the state's financial management system. STP shall have ten (10) business days from receipt of the documents to complete the necessary reviews. If the STP review is not completed within the time frame allowed, the agency and STP must mutually agree to an extension of the review process.

19-11-270. Penalty for intentional violation.

A person who purposely violates state procurement laws, Arkansas Code Title 19, Chapter 11, upon conviction is guilty of a Class D felony.

History. Acts 2015, No. 557, § 6.

19-11-271. Compliance reporting.

(a) Each report required under this subchapter shall be copied to the Secretary of the Department of Finance and Administration, who shall review each report for compliance with the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq.

(b) If the secretary determines that a state agency, agency procurement official, or state official or employee may be in violation of the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq., the secretary shall notify the chief executive officer of the relevant state agency.

History. Acts 2015, No. 557, § 6; 2019, No. 910, § 3473.

19-11-272. Experience requirement.

(a) (1) The General Assembly finds that:

(A) Invitations for bids and requests for proposals and qualifications often require that bidders and offerors have a certain amount of experience to qualify;

(B) These experience requirements often apply to the business of the bidder or offeror rather than the key personnel of the bidder or offeror;

(C) As a result, new businesses with highly qualified personnel often do not qualify to compete for state contracts even though the executives and employees of the business have the experience required; and

(D) It is in the best interests of the state to encourage new businesses and to seek out the most qualified people to provide products and services to the state.

(2) The General Assembly intends for this section to:

(A) Encourage entrepreneurship;

(B) Level the playing field for new businesses to compete for business opportunities; and

(C) Enable new businesses with highly qualified personnel to compete for state contracts.

(b) If an invitation for bids, a request for proposals, or a request for qualifications under this chapter requires a certain amount of experience or a certain number of years in existence for the bidder or offeror, the requirement shall be satisfied by either:

(1) (A) The amount of experience of the bidder or offeror.

(B) A bidder or offeror may use the combined experience of its owners or senior executive staff to satisfy the requirement under subdivision (b)(1) of this section; or

(2) The combined amount of experience of the key personnel of the bidder or offeror that will be responsible for satisfying the requirements of the contract to be procured.

(c) (1) However, before the issuance of an invitation for bid, request for proposal, or request for qualifications, the Office of State Procurement or a procurement agency may determine in writing that the combined experience of the key personnel of a bidder or offeror under subdivision (b)(2) of this section would be insufficient to adequately satisfy the requirements of the invitation for bids, request for proposals, or request for qualifications.

(2) A written determination under subdivision (c)(1) of this section shall include the following:

(A) A specific description of the products or services that the office or procurement agency seeks to procure; and

(B) A detailed statement of the reasons the combined experience of the key personnel of a bidder or offeror would be insufficient.

History. Acts 2015, No. 281, § 1.

R1:19-11-272. EXPERIENCE REQUIREMENT.

Prior to the release of a bid solicitation, if the agency justifies in writing that the combined experience of the key personnel would be insufficient to adequately satisfy the requirements of the bid solicitation, the agency must include in the bid solicitation a statement indicating that only the experience of the bidder or offeror shall be considered.

19-11-273. Procurements for services in designated positions and designated financial and information technology positions.

A contract for services with a person employed or entity employing persons in a designated position or designated financial or information technology position as defined in § 21-15-101 shall require compliance with the registry records check and criminal history records check laws under § 21-15-101 et seq.

History. Acts 2019, No. 318, § 4.

19-11-274. Reporting requirements.

(a) The State Procurement Director shall compile a monthly report of all executed contracts for services that have a total initial contract amount or a total projected contract amount, including any amendments or possible extensions, of at least twenty-five thousand dollars ($25,000) but less than an annual contract amount of fifty thousand dollars ($50,000) in any one (1) contract year or a total projected contract amount, including any amendments or possible extensions, of three hundred fifty thousand dollars ($350,000).

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

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

(1) Prescribe a cover sheet for the report required under this section that sorts and identifies
contracts within the report that may be candidates for review;
(2) Create instructions for completing the cover sheet prescribed under subdivision (c)(1) of this section; and
(3) Provide for the identification of any contracts included in the report that may need to be reviewed under § 19-11-265.

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

History. Acts 2019, No. 417, § 8.

19-11-275. Tracking requirements.

(a) The State Procurement Director, each agency procurement official, and any state agency with procurement authority under a delegation order shall track the following for the procurements they conduct and the contracts they execute:

(1) Each protest received and the resolution of the protest;
(2) The outcome of any negotiations under this chapter; and
(3) The anticipated procurement needs of the state agency based on the contracts that:
(A) Are set to expire during the next twelve (12) months; and
(B) Will require a new solicitation in the next twelve (12) months.

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

History. Acts 2019, No. 417, § 8.

19-11-276. Compliance.

(a) A contractor shall ensure, in cooperation with a state agency, that the contract between the contractor and the state agency adheres to the requirements of this chapter, including without limitation the inclusion of any mandatory language and the submission of the contract for any required review.

(b) The signature of a contractor on a contract with a state agency serves as an acknowledgement that the contractor is:

(1) Equally responsible with the state agency for adhering to the requirements of this chapter related to the content and review of the contract; and
(2) Subject to the relevant ethical provisions of § 19-11-701 et seq.

History. Acts 2019, No. 418, § 5.

19-11-277. Solicitation conferences.

(a) (1) A state agency may hold a solicitation conference before or after issuing an invitation for bids, a request for proposals, or a request for statements of qualifications and performance data under § 19-11-801 et seq.

(2) A solicitation conference may be held:
(A) In person; or
(B) Online or in another virtual format.

(b) Attendance by a vendor at a solicitation conference is not required for that vendor's bid, proposal, or statement of qualifications and performance data to be accepted unless the attendance requirement is:

(1) Explicitly stated in the invitation for bids, request for proposals, or request for statements of qualifications and performance data; and

(2) Approved by the State Procurement Director or the head of the procurement agency.

(c) A state agency holding a solicitation conference shall:

(1) For an invitation for bids or a request for proposals, include the date and time of the solicitation conference in the notice required under § 19-11-229;

(2) Require vendors in attendance at a solicitation conference to sign in at the solicitation conference or provide a registration record for an online or other virtual solicitation conference, regardless of whether attendance is required under the solicitation; and

(3) Maintain the sign-in sheet or registration records with the other documents related to the solicitation.

(d) A statement made at a solicitation conference does not change the invitation for bids, request for proposals, or request for statements of qualifications and performance data unless a change is made by written amendment to the invitation for bids, request for proposals, or request for statements of qualifications and performance data.

(e) A state agency is encouraged to hold a solicitation conference for a procurement that:

(1) Has a contract amount of at least:

(A) Five million dollars ($5,000,000) for a single contract year; or

(B) Thirty-five million dollars ($35,000,000) for the total anticipated term of the contract, including any extensions, based on the previous contract for the same commodities or services or, if a previous contract is not available, a contract for similar commodities or services; or

(2) Is of strategic importance to the state.

History. Acts 2019, No. 419, § 12.

R1:19-11-277. SOLICITATION CONFERENCES.

A solicitation conference may be held by an agency to provide the following information, without limitation, to prospective bidders:

(1) Names and contact information of state personnel who will serve as points of contact to bidders during the solicitation process:,

(2) Times, dates, locations and other relevant information pertaining to the procurement calendar and process;

(3) A description of the services or commodities sought, as well as the agency's objectives;

(4) A review of the specifications and pricing model being sought;

(5) And to take questions from attendees

R2:19-11-277. MANDATORY SOLICITATION CONFERENCES.

Agencies may make attendance at a solicitation conference mandatory by obtaining approval from the State Procurement Director or the head of the procurement agency. In seeking such approval, the agency shall:

(1) Issue a request letter, addressed to the State Procurement Director or the head of the procurement agency. Email is sufficient to constitute a request. Whether delivered by email or mail, the communication should be clearly marked or labeled "Request for a Mandatory Solicitation Conference."

(2) The written request should clearly articulate the factors and reasoning for why

the solicitation conference should be made mandatory, as well as a citation to the mandatory language for a solicitation conference in the invitation for bids, request for proposals, or request for statements of qualifications and performance data.

(3) A copy of the draft invitation for bids, request for proposals, or request for statements of qualifications and performance data should be attached with the written request.

R3:19-11-277. Nothing discussed during a solicitation conference will augment or change the specifications or terms and conditions of a solicitation, nor shall anything discussed during a solicitation conference be deemed to be binding or incorporated into the specifications or terms and conditions of a solicitation, unless it is subsequently reduced to writing and included in the solicitation.

19-11-278. Vendor training and polling.

The Office of State Procurement shall:

(1) (A) Develop and deliver vendor training to inform interested vendors of how to do business with the state.

(B) The training required under subdivision (1)(A) of this section shall:

(i) Be offered throughout the state; and

(ii) Be delivered as training sessions in person and online or in another virtual format; and

(iii) Periodically poll vendors that have been successful in securing business with the state and vendors that have not been successful in securing business with the state to solicit procurement feedback that can be used to improve vendor training.

History. Acts 2019, No. 419, § 12.

19-11-279. Requests for information – Definition.

(a) As used in this section, "request for information" means a procedure for formally requesting information, data, comments, or reactions from prospective bidders or offerors in contemplation of a possible competitive sealed bidding procurement under § 19-11-229 or a competitive sealed proposal procurement under § 19-11-230.

(b) The State Procurement Director, a head of a procurement agency, or a designee of the director or of a head of a procurement agency, may issue or authorize another person to issue a request for information.

(c) A request for information under this section shall be published in the same manner and location as an invitation for bids, a request for proposals, or a request for qualifications.

(d) A contract shall not be awarded directly from a request for information.

(e) Information provided in response to a request for information under this section is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until:

(1) The bids for a competitive sealed bidding procurement are opened publicly;

(2) The notice of anticipation to award is given for a competitive sealed proposal procurement; or

(3) A decision is made not to pursue a procurement based on the request for information.

History. Acts 2019, No. 419, § 12.

R1:19-11-279. CONDITIONS OF USE.

A request for information ("RFI") solicitation may be issued by an agency for the purposes of information gathering and planning while contemplating a possible competitive sealed bid procurement or competitive sealed proposal procurement. A RFI is not, and should not be construed as, a commitment by the agency to issue a solicitation in the future. Agencies should not seek, and vendors should not provide, proposals or bids. A response to a RFI should be treated by the agency as informational only, and should not be considered a proposal or bid, nor should any contract be awarded directly from a RFI.

R2:19-11-279. PRICING INFORMATION.

A RFI solicitation may request general pricing models, but specific pricing should be expressly prohibited in the RFI, and if provided unsolicited, should not be considered.

19-11-280. Training and certification of procurement personnel.

(a) The State Procurement Director shall establish a training and certification program to facilitate the training, continuing education, and certification of state agency procurement personnel.

(b) As part of the training and certification program required under this section, the director:

(1) Shall conduct procurement education and training for state agency employees and other public employees;

(2) (A) Shall establish a tiered core curriculum that outlines the minimum procurement-related training courses a state agency employee is required to complete for certification.

(B) The tiered core curriculum required under subdivision (b)(2)(A) of this section shall:

(i) Be designed to develop procurement competency; and

(ii) Create a uniform training approach for state agency employees ranging from entry-level procurement personnel to agency procurement officials;

(3) May charge a reasonable fee for each participant to cover the cost of providing the training required under this section;

(4) May conduct, develop, and collaborate with established training programs, if any, for the purpose of providing certifications of proficiency to state agency employees who complete the training and certification program;

(5) May conduct research into existing and new procurement methods; and

(6) May establish and maintain a state procurement library.

(c) (1) Beginning July 1, 2021, a state agency employee shall not conduct a procurement under this chapter unless the state agency employee is certified through the training and certification program required under this section.

(2) To maintain certification under this section, a state agency employee shall complete a reasonable number of hours of continuing education, as provided for by rule by the director.

(d) (1) The director shall revoke the certification of a state agency employee who is certified under this section and who is determined to have knowingly violated state procurement laws, Arkansas Code Title 19, Chapter 11.

(2) The director shall adopt rules regarding the procedure for revoking a state agency employee's certification under this section.

History. Acts 2019, No. 419, § 12.

19-11-281. Cancellation of contract on entry of final business closure order. [Effective January 1, 2020]

(a) As used in this subchapter, “final business closure order” means a business closure order for which a contractor has either:

(1) Waived further administrative review under § 26-18-1001 et seq.; or

(2) Exhausted all remedies to appeal under § 26-18-1001 et seq.

(b) The Revenue Division of the Department of Finance and Administration shall provide to the Office of State Procurement all final business closure orders entered into against a contractor.

(c) Upon receipt of a final business closure order, the Office of State Procurement shall, as soon as reasonably practicable:

(1) Notify each state agency with which the contractor has a contract that the:

(A) Contractor is subject to a final business closure order; and

(B) Provision of any goods or services, or both, under a contract with the contractor that is subject to a final business closure order shall cease as soon as reasonably practicable; and

(2) Notify all state agencies that the contractor that is subject to a final business closure order shall not be awarded or maintain a contract with a state agency unless the Office of State Procurement provides notice under subsection (d) of this section.

(d) Upon receipt of information that a contractor has resolved a business closure, the Office of State Procurement shall notify all state agencies, as soon as reasonably practicable, that:

(1) Any unexpired contracts with the contractor may continue if the contract was not terminated, cancelled, suspended, or discontinued; and

(2) The contractor may be awarded or maintain a contract with a state agency.

History. Acts 2019, No. 866, § 1.

Subchapter 3

Bidding – State Industry Priority

19-11-301. Purpose.

The purpose of this subchapter is to protect Arkansas private industries which employ Arkansas taxpayers and citizens from the unfair advantage held by certain out-of-state penal institutions that utilize convict labor and are exempt from minimum wage requirements, Occupational Safety and Health Act requirements, and other such standards which are imposed on private industries and which increase the costs of products manufactured by private industries. This advantage which is enjoyed by many out-of-state penal institutions allows them to often receive contracts under the Arkansas Procurement Law, § 19-11-201 et seq., bidding process when Arkansas private industries also submit bids, thus hindering a healthy competitive environment for the private industries of this state.

History. Acts 1981, No. 309, § 1; A.S.A. 1947, § 14-294.

19-11-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "State" means the government of the State of Arkansas and all departments, branches, agencies, and subdivisions thereof;
(2) "Private industry" means manufacturers, makers of products, companies, corporations, or firms which are not departments, divisions, or arms of the federal, state, or local governments;
(3) "Private industry located within the State of Arkansas" means private industries, as defined in subdivision (2) of this section, which are located in Arkansas, employing Arkansas citizens and taxpayers as laborers in the process of manufacturing goods and products within this state;
(4) "Bids" means proposals submitted to the state for the sale of products to the state; and
(5) "Penal institution" means a penitentiary, jail, prison, reformatory, or other such establishment owned, operated, or funded by a state or local government wherein incarcerated criminals are kept.

History. Acts 1981, No. 309, § 2; A.S.A. 1947, § 14-294.1.

19-11-303. Provisions controlling.

Where provisions of this subchapter are inconsistent with provisions of the current Arkansas Procurement Law, § 19-11-201 et seq., the provisions in this subchapter shall control.

History. Acts 1981, No. 309, § 7; A.S.A. 1947, § 14-294.5.

19-11-304. Priority for state industries.

In the bidding process for the sale of products for use by the state, bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers shall be given priority over bids submitted by out-of-state penal institutions employing convict labor.

History. Acts 1981, No. 309, § 3; A.S.A. 1947, § 14-294.2.

19-11-305. Award to lowest state bidder — Exceptions.

Subject to any applicable bonding requirements, in all bidding procedures involving a bid by one (1) or more out-of-state penal institutions and a bid by one (1) or more private industries located within the State of Arkansas, the contract shall be awarded to the sole Arkansas bidder or lowest Arkansas bidder if the Arkansas bidder is not underbid by more than five percent (5%), as provided in § 19-11-259, by another representative of private industry located outside the State of Arkansas or by more than fifteen percent (15%) by an out-of-state correctional institution.

History. Acts 1981, No. 309, § 4; A.S.A. 1947, § 14-294.3.

19-11-306. Underbid by nonresident industry or penal institution.

Subject to any applicable bonding requirements, in the event that a private Arkansas bidder is underbid by more than five percent (5%), as provided in § 19-11-259, by another representative of private industry located outside the State of Arkansas or is underbid by more than fifteen percent (15%) by an out-of-state correctional institution, the state contract shall be awarded to the lowest responsible bidder, whether that bidder is a penal or correctional institution or is a representative of private industry.

History. Acts 1981, No. 309, § 5; A.S.A. 1947, § 14-294.4.

TITLE 12
LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

Chapter 30
State Inmate Industries and Labor

Subchapter 2
Prison-Made Goods Act of 1967

12-30-201. Title.

This subchapter may be cited as the “Prison-Made Goods Act of 1967”.

History. Acts 1967, No. 473, § 2; A.S.A. 1947, § 46-235.

12-30-202. Legislative intent.

Whereas, the means now provided for the employment of prison labor are inadequate to furnish a sufficient number of prisoners with diversified employment, it is declared to be the intent of this subchapter:

(1) To further provide more adequate, regular, and suitable employment for the prisoners of this state, consistent with proper penal purposes;
(2) To further utilize the labor of prisoners for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment; and
(3) To effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

History. Acts 1967, No. 473, § 1; A.S.A. 1947, § 46-234.

12-30-203. Establishment of prison industries.

The Board of Corrections may purchase, in the manner provided by law, equipment, raw materials, and supplies and engage supervisory personnel necessary to establish and maintain for this state, at the Division of Correction or institution under control of the board, industries for the utilization of services of prisoners in the manufacture or production of articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, division, institution, or agency supported, in whole or in part, by this state and the political subdivisions of this state.

History. Acts 1967, No. 473, § 3; A.S.A. 1947, § 46-236; 2013, No. 1277, § 3; 2019, No. 910, § 817.

12-30-204. Purchase of goods by state and local agencies.

(a) (1) All offices, departments, divisions, institutions, and agencies of this state which are supported in whole or in part by this state, and all political subdivisions of this state, may purchase, at the discretion of the office, department, division, institution, or agency, from the Board of Corrections any products required by the offices, departments, divisions, institutions,

agencies, or political subdivisions of this state produced or manufactured by the Division of Correction utilizing prison labor as provided for by this subchapter.

(2) (A) (i) The Revenue Division of the Department of Finance and Administration may request that the board propose the purchase of license plates which are necessary as evidence of registration of motor vehicles and trailers to be issued by the Revenue Division of the Department of Finance and Administration's revenue offices.

(ii) The license plates would be produced or manufactured by the Division of Correction utilizing prison labor.

(B) The provisions of this subdivision (a)(2) shall be applicable beginning with the contracts for purchase or any purchases of license plates which are required after the expiration of any contracts for the purchase or manufacture of license plates that are in effect.

(b) Such offices, departments, divisions, institutions, and agencies shall not be required to submit an invitation for bid to the board for all products known to be produced or manufactured by the Division of Correction utilizing prison labor as provided for by this subchapter.

(c) (1) The Division of Correction may enter into an agreement with the Old State House Commission to utilize inmate labor in the production or manufacture of items for resale by the Old State House Museum.

(2) Except as provided in subdivision (c)(3) of this section, the proceeds from the sales of the items produced or manufactured under subdivision (c)(1) of this section shall be used by the Old State House Museum to:

(A) Develop exhibits and programs about the history of the Division of Correction; or

(B) Maintain the Old State House Museum's collection of the Division of Correction artifacts.

(3) The Division of Correction and the commission may by rule modify the use of the proceeds from the sale of items produced or manufactured under subdivision (c)(1) of this section.

(d) All purchases made pursuant to this section shall be made through the Division of Correction's purchasing division, upon requisition by the proper authority of the office, department, division, institution, agency, or political subdivision of this state requiring the articles or products.

History. Acts 1967, No. 473, §§ 4, 5; 1985, No. 825, § 1; A.S.A. 1947, §§ 46-237, 46-238; Acts 1995, No. 944, § 1; 1997, No. 1284, § 1; 2009, No. 307, § 1; 2019, No. 910, § 818.

12-30-205. Purchase of goods by nonprofit organizations and other individuals.

(a) A nonprofit organization may purchase goods produced by the Division of Correction's Industry Division as provided for by this subchapter.

(b) (1) Goods produced by the division as provided for by this subchapter, excluding furniture and seating, may also be purchased by:

(A) Current employees and retirees of the Division of Correction;

(B) (i) All Current employees and retirees of the public offices, departments, divisions, institutions, school districts, and agencies of this state.

(ii) Subdivision (b)(1)(B)(i) of this section shall not include members of the General Assembly; and

(C) Current and former members of the Board of Corrections.

(2) Goods purchased by an individual under subdivision (b)(1) of this section:

(A) Shall be for personal use only and not for resale; and

(B) Exclusive of fees assessed by the division and applicable taxes, may not

exceed two hundred dollars ($200) for any one (1) purchase of home furnishings for any one (1) fiscal year.

(c) Goods or products that are produced, assembled, or packaged in whole or in part by the Division of Correction utilizing prison labor may be sold to inmates of the Division of Correction, Division of Community Correction, or a local correctional facility.

History. Acts 1967, No. 473, § 4; 1985, No. 825, § 1; A.S.A. 1947, § 46-237; Acts 1999, No. 1375, § 1; 2005, No. 1182, § 1; 2009, No. 502, § 1; 2011, No. 779, § 24; 2015, No. 1061, § 1; 2019, No. 910, § 819.

12-30-206. Prices.

(a) The Board of Corrections shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(b) The prices shall be uniform and nondiscriminating to all and shall not exceed the wholesale market prices with the exception of goods or items produced, assembled, or packaged in whole or in part specifically for sale or resale to inmates of the Division of Correction, Division of Community Correction, or a local correctional facility.

History. Acts 1967, No. 473, § 9; A.S.A. 1947, § 46-242; 2015, No. 1061, § 2; 2019, No. 910, § 820.

12-30-207. Catalogues.

(a) The Board of Corrections shall cause to be prepared, at such times as the board may determine, catalogues containing the description of all articles and products manufactured or produced by the board pursuant to the provisions of this subchapter.

(b) Copies of the catalogue shall be sent by the board to all offices, departments, institutions, and agencies of this state and made accessible to all political subdivisions of this state referred to in § 12-30-204.

History. Acts 1967, No. 473, § 7; A.S.A. 1947, § 46-240.

12-30-208. [Repealed.]

12-30-209. Order of distribution.

The articles or products manufactured or produced by prison labor in accordance with the provisions of this subchapter shall be devoted:

(1) First, to fulfilling the requirements of the offices, departments, institutions, and agencies of this state that are supported in whole or in part by this state; and

(2) Second, to supply the political subdivisions of this state with the articles and products.

History. Acts 1967, No. 473, § 8; A.S.A. 1947, § 46-241.

12-30-210. Annual statements.

(a) The Department of Correction's Industry Division shall make an annual full and detailed report of:

(1) All materials, machinery, or other property procured, the cost of the materials, machinery, or other property procured, and the expenditures made during the last preceding year for production purposes, together with a statement of all materials then on hand to be produced, or in process of production, or already produced;

(2) All machinery, fixtures, or other appurtenances for the purpose of carrying out the work of the division; and

(3) The earnings realized during the last preceding fiscal year as the proceeds of the sale of items produced by the division; and

(4) The division's current inventory stock price list.

(b) (1) The report shall be verified by the oath of the Director of the Department of Correction and shall be forwarded to the Board of Corrections by the director within ninety (90) days after the end of the last preceding fiscal year.

(2) The board shall review the report described under this section and shall make the report available on the department's website.

History. Acts 1967, No. 473, § 10; A.S.A. 1947, § 46-243; 2019, No. 910, § 821.

12-30-211. Rules.

The Board of Corrections shall have power and authority to prepare and promulgate rules which are necessary to give effect to the provisions of this subchapter with respect to matters of administration and procedure respecting them.

History. Acts 1967, No. 473, § 11; A.S.A. 1947, § 46-244; 2019, No. 315, § 908.

12-30-212. Auditor bound by voucher or warrant.

No voucher, certificate, or warrant issued on the Auditor of State by any office, department, institution, or agency shall be questioned by the Auditor of State or by the Treasurer of State on the grounds that this subchapter has not been complied with by the office, department, institution, or agency.

History. Acts 1967, No. 473, § 6; A.S.A. 1947, § 46-239.

12-30-213. Intentional violations.

If an intentional violation of this subchapter by any office, department, institution, or agency continues, after notice from the Governor to desist, then the intentional violation shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension or removal from office.

History. Acts 1967, No. 473, § 6; A.S.A. 1947, § 46-239.

12-30-214. Appropriations — Contracts.

(a) Incident to the employment of prisoners as provided in this subchapter, the Board of Corrections is authorized to:

(1) Erect buildings;

(2) Purchase, install, or replace equipment;

(3) Procure tools, supplies, and materials;

(4) Employ personnel; and

(5) Otherwise defray necessary expenses.

(b) (1) To further aid the purposes in subsection (a) of this section, the board is empowered to enter into contracts and agreements with any person or persons upon a self-liquidating basis respecting the acquisition and purchase of any equipment, tools, supplies, and materials to the end that they may be paid for over a period of not exceeding ten (10) years.

(2) The aggregate amount of the purchases or acquisitions are not to exceed five hundred thousand dollars ($500,000) unless specifically approved by the Governor with the amounts to be payable solely out of the revenues derived from the activities authorized by this subchapter.

(c) Nothing in this section shall be construed or interpreted to authorize or permit the incurring of a state debt of any kind or nature as contemplated by the Arkansas Constitution in relation to the debt.

History. Acts 1967, No. 473, § 12; A.S.A. 1947, § 46-245.

12-30-215. Purchase for construction or operation of prison.

Any contractor or subcontractor who has entered into a contract with or for the benefit of a state board, state agency, or state-supported institution of higher education for constructing, equipping, or operating, in whole or in part, any facility of the board, agency, or institution may purchase goods produced by the Division of Correction and the Division of Community Correction for use in the performance of the contract.

History. Acts 1997, No. 877, § 1; 1999, No. 145, § 1; 2019, No. 910, § 822.

Subchapter 4

Bidding — Bonds

19-11-401 — 19-11-405. [Repealed.]

Subchapter 5

Purchases of Workshop-Made Products and Services.

19-11-501 — 19-11-504. [Repealed.]

Subchapter 6

Federal Government Surplus Property

19-11-601. Authority to transfer to state and local agencies.

(a) The Arkansas Department of Emergency Management is authorized to cooperate with the federal government in the transfer of government surplus property to any and all departments and agencies of state and local government and to any and all other agencies eligible to receive surplus property under Pub. L. No. 81-152 and Pub. L. No. 81-754, and any and all other statutory laws that may be enacted by the Congress of the United States covering the disposal of federal government surplus property.

(b) The department is authorized to take any and all action necessary to the proper administration of the surplus property program in the acquisition of and the distribution of government surplus properties to eligible claimants in this state, distribution to be in accordance with the appropriate controlling federal statutes.

(c) The department is authorized to add to the cost of the properties an amount necessary to defray the expenses of this service.

History. Acts 1951, No. 353, §§ 1-3; A.S.A. 1947, §§ 80-135.2 — 80-135.4; Acts 2009, No. 1187, § 2.

19-11-602. Purchase for schools and school districts.

(a) The Division of Emergency Management is authorized to purchase surplus commodities, materials, supplies, equipment, and other property from the federal government through any of its agencies for tax-supported schools and for school districts in Arkansas. The division is authorized to cooperate with the State Procurement Director in the purchase of school items.

(b) Schools and school districts desiring to obtain federal surplus materials, equipment, etc., shall make application to the department on blanks furnished by the board for that purpose.

(c) Schools and school districts making application to the department to purchase surplus materials, equipment, and other property from the federal government shall pay cash for it by drawing a voucher or warrant in favor of the federal government for the purchase price of such materials.

History. Acts 1945, No. 303, §§ 1-3; 1953, No. 384, § 17 [18]; A.S.A. 1947, §§ 80-132—80-134; Acts 2009, No. 1187, § 3; 2019, No. 910, § 6113.

19-11-603. Service charge.

(a) The Arkansas Department of Emergency Management is authorized to add to the cost of surplus properties secured by the agency for surplus property an amount necessary to defray the expense of this service and to repay into the Revolving Loan Fund loans made to the agency as provided in this section.

(b) The department is also authorized to establish service charges in such amounts as may be necessary to cover the expenses of the department in administering special federal service programs for schools and agencies. These charges are to be paid by the school, institution, or agency in the amount designated by the department.

(c) The department is authorized and directed to take such action as is necessary to collect such charges and may, in its discretion, withhold from any state moneys over which the

department has control funds necessary to pay the amounts owing by such school districts and agencies.

(d) It is the intention of the General Assembly that the schools and agencies shall pay for such services amounts sufficient to reimburse the department for expenses incurred in the operation of the federal surplus property program and in the operation of special federal service programs.

History. Acts 1959, No. 357, § 12; A.S.A. 1947, § 80-135.1; Acts 2009, No. 1187, § 4.

19-11-604. Rural water associations.

Rural water associations shall be deemed eligible to participate in the federal surplus property program operated under Pub. L. No. 81-152 and Pub. L. No. 81-754 as now administered by the Arkansas Department of Emergency Management.

History. Acts 1988, (3rd Ex. Sess.), No. 7, § 2; 2009, No. 1187, § 5.

19-11-605. Authority to transfer excess military property to state and local agencies -- Service charge.

The Law Enforcement Support Office of the Department of Public Safety may:

(1) Cooperate with the federal government under 10 U.S.C. § 2576a in the transfer of excess military property to state and local law enforcement agencies:

(A) Whose primary function is the enforcement of applicable federal, state, and local laws; and

(B) Whose compensated law enforcement officers have powers of arrest and apprehension, including without limitation counter-drug and counter-terrorism activities;

(2) Take any action necessary to the proper administration of the acquisition and the distribution of excess military properties to eligible claimants in this state, with distribution to be in accordance with the appropriate controlling federal statutes;

(3) Establish service charges in an amount necessary to cover the expenses of the Department of Public Safety incurred in administering this section; and

(4) Take action as necessary to collect service charges and, from any state moneys over which the department has control, withhold funds necessary to pay an amount owing by a state or local law enforcement agency.

History: Acts 2013, No. 1097, § 1; 2019, No. 910, § 6004.

Subchapter 7

Ethics

19-11-701. Definitions.

As used in this subchapter:

(1) “Blind trust” means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust;
(2) “Business” means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity;
(3) “Commodities” means all property, including, but not limited to:
(A) Equipment;
(B) Printing;
(C) Stationery;
(D) Supplies;
(E) Insurance; and
(F) Real property;
(4) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of this state and is not a matter of public knowledge or available to the public on request;
(5) “Conspicuously” means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it;
(6) “Contract” means all types of state agreements, regardless of what they may be called, for the purchase or disposal of commodities and services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing;
(7) “Contractor” means any person having a contract with a state agency;
(8) “Employee” means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency;
(9) “Financial interest” means:
(A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars ($1,000) per year, or its equivalent;
(B) Ownership of more than a five percent (5%) interest in any business; or
(C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;
(10) “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received;
(11) “Immediate family” means a spouse, children, parents, brothers and sisters, and grandparents;

(12) “Official responsibility” means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct state action;
(13) “Person” means any business, individual, union, committee, club, or other organization or group of individuals;
(14) “Procurement” means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration;
(15) “Services” means technical, professional, or other services involving the furnishing of labor, time, or effort by a contractor; and
(16) “State agency” means any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.

History. Acts 1979, No. 483, § 1; A.S.A. 1947, § 14-1101; Acts 2003, No. 1093, §§ 1, 2.

19-11-702. Penalties.

Any employee or nonemployee who shall knowingly violate any of the provisions of this subchapter shall be guilty of a felony and upon conviction shall be fined in any sum not to exceed ten thousand dollars ($10,000) or shall be imprisoned not less than one (1) nor more than five (5) years, or shall be punished by both.

History. Acts 1979, No. 483, § 15; A.S.A. 1947, § 14-1115; Acts 1995, No. 1296, § 77.

19-11-703. Statement of policy.

(a) Public employment is a public trust. It is the policy of the state to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state. The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.

(b) Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization.

(c) To achieve the purpose of this subchapter, it is essential that those doing business with the state also observe the ethical standards prescribed in this subchapter.

History. Acts 1979, No. 483, § 2; A.S.A. 1947, § 14-1102.

19-11-704. General standards of ethical conduct.

(a) (1) General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee’s duties is a breach of a public trust.

(2) In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in § 19-11-705, which refers to employee conflict of interest; § 19-11-706, which refers to employee disclosure requirements; § 19-11-707, which refers to gratuities and kickbacks; § 19-11-708, which refers to prohibition against

contingent fees; § 19-11-709, which refers to restrictions on employment of present and former employees; and § 19-11-710, which refers to use of confidential information.

(b) General Ethical Standards for Nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this subchapter is also a breach of ethical standards.

History. Acts 1979, No. 483, § 3; A.S.A. 1947, § 14-1103.

19-11-705. Employee conflict of interest.

(a) (1) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application, in any request for ruling or other determination, in any claim or controversy, or in any other particular matter pertaining to any contract or subcontract, and any solicitation or proposal therefor, in which to the employee's knowledge:

(A) The employee or any member of the employee's immediate family has a financial interest;

(B) A business or organization has a financial interest, in which business or organization the employee, or any member of the employee's immediate family, has a financial interest; or

(C) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is a party.

(2) "Direct or indirect participation" shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(b) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest if disclosure of the existence of the blind trust has been made to the Secretary of the Department of Finance and Administration.

(c) Discovery of Conflict of Interest, Disqualification, and Waiver. Upon discovery of a possible conflict of interest, an employee shall promptly file a written statement of disqualification with the secretary and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the secretary in accordance with § 19-11-715(b) for an advisory opinion as to what further application, if any, the employee may have in the transaction, or for a waiver in accordance with § 19-11-715(c).

History. Acts 1979, No. 483, § 4; A.S.A. 1947, § 14-1104; 2019, No. 910, § 3474.

19-11-706. Employee disclosure requirements.

(a) Disclosure of Benefit Received from Contract. Any employee who has or obtains any benefit from any state contract with a business in which the employee has a financial interest shall report such benefit to the Secretary of the Department of Finance and Administration. However, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(b) Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report the benefit to the director secretary is in breach of the ethical standards of this section.

History. Acts 1979, No. 483, § 5; A.S.A. 1947, § 14-1105; 2019, No. 910, § 3475.

19-11-707. Gratuities and kickbacks.

(a) GRATUITIES. It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(b) KICKBACKS. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.

History. Acts 1979, No. 483, § 6; A.S.A. 1947, § 14-1106.

19-11-708. Prohibition against contingent fees.

(a) CONTINGENT FEES. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

(b) REPRESENTATION OF CONTRACTOR. Before being awarded a state contract other than by procedures set forth in the Arkansas Procurement Law, § 19-11-201 et seq., and rules promulgated thereunder for small purchases, every person shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards.

(c) NOTICE. The representation prescribed in subsection (b) of this section shall be conspicuously set forth in all contracts and solicitations therefor.

History. Acts 1979, No. 483, § 7; A.S.A. 1947, § 14-1107; 2019, No. 315, § 1785.

19-11-709. Restrictions on employment of present and former employees.

(a) Contemporaneous Employment Prohibited. It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the state agency by which the employee is employed.

(b) Restrictions of Former Employees on Matters Connected with Their Former Duties.

(1) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest.

(2) One-Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy, knowingly to act as a principal or as an agent for anyone other than the state in matters which were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest.

(c) Disqualification of Partners.

(1) When Partner Is a State Employee. It shall be a breach of ethical standards for a person who is a partner of an employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the state is a party or has a direct and substantial interest.

(2) When a Partner Is a Former State Employee. It shall be a breach of ethical standards for a partner of a former employee knowingly to act as a principal or as an agent for anyone other than the state where such former employee is barred under subsection (b) of this section.

(d) Selling to the State After Termination of Employment Is Prohibited.

(1) It is a breach of ethical standards for a former employee, unless the former employee's last annual salary based on the state fiscal year did not exceed fifteen thousand dollars ($15,000), to engage in selling or attempting to sell commodities or services, including technical or professional consultant services, to the state for one (1) year following the date employment ceased.

(2) As used in this subsection, "sell" means:

(A) Signing a bid, proposal, or contract;

(B) Negotiating a contract;

(C) Contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;

(D) Settling disputes concerning performance of a contract; or

(E) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract for the sale is subsequently negotiated by another person.

(e) (1) This section is not intended to preclude a former employee from accepting employment with private industry solely because his or her employer is a contractor with this state.

(2) This section is not intended to preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations of this subchapter.

History. Acts 1979, No. 483, § 8; A.S.A. 1947, § 14-1108; Acts 2003, No. 1093, § 3; 2015, No. 966, § 1.

19-11-710. Use of confidential information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

History. Acts 1979, No. 483, § 9; A.S.A. 1947, § 14-1109.

19-11-711. Public access to procurement information.

Procurement information shall be public record to the extent provided in the Freedom of Information Act of 1967, § 25-19-101 et seq., except as otherwise provided in this subchapter and the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 1979, No. 483, § 10; A.S.A. 1947, § 14-1110.

19-11-712. Civil and administrative remedies against employees who breach ethical standards.

(a) EXISTING REMEDIES NOT IMPAIRED. Civil and administrative remedies against employees which are in existence on July 1, 1979, shall not be impaired.

(b) SUPPLEMENTAL REMEDIES. In addition to existing remedies for breach of the ethical standards of this subchapter, or rules promulgated thereunder, the Secretary of the Department of Finance and Administration may impose any one (1) or more of the following:

(1) Oral or written warnings or reprimands;
(2) Forfeiture of pay without suspension;
(3) Suspension with or without pay for specified periods of time; and
(4) Termination of employment.

(c) RIGHT TO RECOVER FROM EMPLOYEE VALUE RECEIVED IN BREACH OF ETHICAL STANDARDS. The value of anything received by an employee in breach of the ethical standards of this subchapter, or rules promulgated thereunder, shall be recoverable by the state as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.

(d) DUE PROCESS. Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

History. Acts 1979, No. 483, § 11; A.S.A. 1947, § 14-1111; 2019, No. 315, § 1786; 2019, No. 910, § 3476.

19-11-713. Civil and administrative remedies against nonemployees who breach ethical standards.

(a) EXISTING REMEDIES NOT IMPAIRED. Civil and administrative remedies against nonemployees which are in existence on July 1, 1979, shall not be impaired.

(b) SUPPLEMENTAL REMEDIES. In addition to the existing remedies for breach of the ethical standards of this subchapter, or rules promulgated thereunder, the Secretary of the Department of Finance and Administration may impose any one or more of the following:

(1) Oral or written warnings or reprimands;
(2) Termination of transactions; and
(3) Suspension or debarment from being a contractor or subcontractor under state contracts.

(c) RIGHT TO RECOVER FROM NONEMPLOYEE VALUE RECEIVED IN BREACH OF ETHICAL STANDARDS. The value of anything transferred in breach of the ethical standards of this subchapter, or rules promulgated thereunder, by a nonemployee shall be recoverable by the state from such person as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.

(d) DUE PROCESS. Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

History. Acts 1979, No. 483, § 12; A.S.A. 1947, § 14-1112; 2019, No. 315, § 1787; 2019, No. 910, § 3477.

19-11-714. Recovery of value transferred or received in breach of ethical standards.

(a) GENERAL PROVISIONS. The value of anything transferred or received in breach of the ethical standards of this subchapter, or rules promulgated thereunder, by an employee or a nonemployee may be recovered from both the employee and the nonemployee.

(b) RECOVERY OF KICKBACKS BY THE STATE. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the state and will be recoverable under this subchapter from the recipient. In addition, this value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

History. Acts 1979, No. 483, § 13; A.S.A. 1947, § 14-1113; 2019, No. 315, § 1788.

19-11-715. Duties of Secretary of the Department of the Finance and Administration.

(a) RULES. The Secretary of the Department of Finance and Administration shall promulgate rules to implement this subchapter and shall do so in accordance with this subchapter and the applicable provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) ADVISORY OPINIONS. On written request of employees or contractors and in consultation with the Attorney General, the secretary may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions may be duly published in the manner in which rules of this state are published. Compliance with the requirements of a duly promulgated advisory opinion of the secretary shall be deemed to constitute compliance with the ethical standards of this subchapter.

(c) WAIVER. On written request of an employee, the secretary may grant an employee a written waiver from the application of § 19-11-705, which refers to employee conflict of interest, and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote.

History. Acts 1979, No. 483, § 14; A.S.A. 1947, § 14-1114; 2019, No. 315, § 1789; 2019, No. 910, § 3478.

R1:19-11-715. REQUESTING AN ADVISORY OPINION OR WAIVER.

(1) Requests for advisory opinions or requests for waivers must be submitted in writing to the Director of the Department of Finance and Administration, and should clearly and concisely state whether the request is for an advisory opinion under Ark. Code Ann. § 19-11-715 (b), a waiver under Ark. Code Ann. § 19-11-715 (c), or both. To expedite handling of requests, if delivered by mail, the envelope containing a request should be clearly labeled as a request for an advisory opinion or a request for a waiver, as the case may be. Requests delivered by electronic means should be identified as a request for an advisory opinion or a request for a waiver, as the case may be, in the subject line and marked as important.

(2) Requests for advisory opinions or requests for waivers shall include as a minimum the following:

(a) The name and address of the requester (or the requester's attorney);

(b) Appropriate identification of the proposed contract by reference to its contract number or solicitation number, if a number has been assigned;

(c) Sufficient information and relevant background facts so that it is not necessary to infer any aspect of the situation on which the request is based, including but not limited to

(i) the nature of the disclosed potential conflict of interest, including the relevant persons, relationships, financial interests, and direct or indirect participation in the procurement of the contract;

(ii) information regarding the relevant state employee, including the employing state agency, employee's dates of hire and termination, employee's job scope and duties, and employee's potential conflict of interest;

(iii) information regarding the proposed contract, including the contracting state agency, contract value, work to be done under the contract, and procurement method;

(iv) information regarding the contractor relevant to the contract and potential conflict of interest, including ownership interests and positions of control. Failure to provide such supporting information may result in the request being denied; and

(d) The using agency shall act to coordinate the individuals, requests, and documents involved and ensure sufficient information and relevant background facts are submitted.

(3) Requests for a waiver must additionally articulate why the interests of the state so require a waiver and granting of permission to proceed with the proposed transaction, or that the ethical conflict is insubstantial or remote.

19-11-716. Participation in business incubators —Rules and guidelines.

(a) The provisions of this subchapter shall not be applicable to faculty or staff of state-supported institutions of higher education participating in business incubators within this state.

(b) (1) The Secretary of the Department of Finance and Administration shall promulgate rules pursuant to the procedure for adoption as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and under § 10-3-309 to implement a program allowing admittance to business incubators by faculty or staff of state-supported institutions of higher education or admittance by companies in which faculty or staff may hold an ownership interest.

(2) The program may include guidelines setting forth full disclosure requirements, any limitations on ownership interests, maximum income amounts to be received, annual reporting to the General Assembly, mandatory levels of student participation and such other reasonable restrictions and requirements as are necessary to maintain the public trust while encouraging the facilitation of commercialization of university-generated technology or discovery.

History. Acts 1989, No. 29, § 1; 2019, No. 315, § 1790; 2019, No. 910, § 3479.

19-11-717. State-supported institutions of higher education.

(a) (1) Notwithstanding anything in this subchapter to the contrary, if, in either of the events in subdivisions (a)(1)(A) and (B) of this section, the contract or subcontract, solicitation, or proposal involves patents, copyrights, or other proprietary information in which a state-supported institution of higher education and an employee or former employee of the state-supported institution of higher education have rights or interests, provided that a contract or subcontract shall be approved by the governing board of the state-supported institution of higher education in a public meeting, it shall not be a violation of § 19-11-709, a conflict of interest, or a breach of ethical standards for:

(A) The state-supported institution of higher education to contract with a person or firm in which an employee or former employee of the state-supported institution of higher education has a financial interest; or

(B) The employee or former employee of the state-supported institution of higher education to participate directly or indirectly in a matter pertaining to a contract, subcontract, solicitation, or proposal for a contract or subcontract between a state-supported institution of higher education and a person or firm in which the employee or former employee has a financial interest.

(2) (A) Within thirty (30) days of the approval by the governing board of a state-supported institution of higher education of a contract, subcontract, solicitation, or proposal executed under subdivision (a)(1) of this section, the state-supported institution of higher education shall file a summary of the contract, subcontract, solicitation, or proposal with the president of the state-supported institution of higher education.

(B) Failure to file the required summary with the president of the state-supported institution of higher education as required under subdivision (a)(2)(A) of this section renders the contract null and void.

(b) (1) Nothing in the Arkansas Procurement Law, § 19-11-201 et seq., or in § 19-11-1001 et seq. shall prevent a state agency from contracting for goods or services, including professional or consultant services, with an organization that employs or contracts with a regular, full-time, or part-time employee of a state-supported institution of higher education in situations in which the employee of the state-supported institution of higher education will provide some or all of the goods or services under the contract.

(2) An organization or state agency entering into a contract described under this subsection shall comply with the Arkansas Procurement Law, § 19-11-201 et seq., and § 19-11-1001 et seq. to the extent that the Arkansas Procurement Law, § 19-11-201 et seq., and § 19-11-1001 et seq. do not conflict with this section.

(3) An employee of a state-supported institution of higher education who provides goods or services to a state agency through his or her association with an organization that has a contract with the state agency to provide goods or services shall obtain the requisite approvals under the policies of the state-supported institution of higher education by which he or she is employed and comply with all provisions of this subchapter.

(c) (1) No later than January 31 each year, an employee or former employee contracting or receiving benefits under this section shall file with the Secretary of State on a form provided by the Secretary of State a disclosure of the type and amount of the contract or benefits received during the previous year.

(2) Failure to file the required form with the Secretary of State as required under subdivision (c)(1) of this section is a breach of ethical standards.

History. Acts 1989, No. 875, § 1; 2005, No. 949, § 1; 2009, No. 735, § 1.

19-11-718. Special state employees — Conflicts of interest.

(a) As used in this section:

(1) (A) "Conflict of interest" means a special state employee's direct or indirect pecuniary or other interest in a matter before a covered board.

(B) "Conflict of interest" includes without limitation the following:

(i) An offer of employment from an entity that is involved in a procurement matter with the covered board or is involved in a discussion of a procurement matter with the covered board;

(ii) Being an officer or employee of a business, association, or nonprofit organization that is involved in a procurement matter with the covered board or is involved in a discussion of a procurement matter with the covered board; and

(iii) Receiving compensation from an entity that is involved in a procurement matter or is involved in a discussion of a procurement matter with the covered board;

(2) (A) “Covered board" means:

(i) A commission, board, bureau, office, or other state instrumentality created within the executive branch; and

(ii) An entity that is created by rule, statute, legislative direction, executive order, or other informal means if the entity has decision-making authority over procurement criteria, contracts, appointment of individuals to negotiate procurement directly or indirectly, or the approval of procurements.

(B) "Covered board" does not include the following:

(i) The constitutional departments of the state;

(ii) The elected constitutional offices of the state;

(iii) The General Assembly, including the Legislative Council, the Legislative Joint Auditing Committee, and supporting agencies and bureaus of the General Assembly;

(iv) The Supreme Court;

(v) The Court of Appeals;

(vi) The circuit courts;

(vii) Prosecuting attorneys;

(viii) The Administrative Office of the Courts;

(ix) An institution of higher education;

(x) A municipal government;

(xi) A county government;
(xii) An interstate agency; or
(xiii) A legislative task force or committee if the legislative task force or committee only advises the General Assembly; and

(3) (A) “Special state employee" means a person appointed to a covered board, regardless of whether the person:

(i) Receives compensation for his or her services;
(ii) Receives reimbursement for travel expenses;
(iii) Receives per diem; or
(iv) Was appointed formally or informally.

(B) "Special state employee" does not include a constitutional officeholder or an ex officio or nonvoting member of an entity described in subdivision (a)(2)(A) of this section.

(b) A special state employee shall disclose a conflict of interest in a procurement matter before the covered board:

(1) Either:

(A) In writing to the head of a covered board; or
(B) Orally or in writing at a public meeting of the covered board if the disclosure is included in the minutes of the public meeting; and

(2) By filing a conflict of interest disclosure report with the Secretary of State within five (5) business days of the date the special state employee becomes aware of the conflict of interest.

(c) A special state employee shall not vote on, receive or read confidential materials related to, participate in discussion of, or attempt to influence the covered board's decision on a procurement matter if the special state employee has a conflict of interest in the procurement matter.

(d) A special state employee who is a lobbyist registered under § 21-8-601 shall recuse himself or herself from a procurement matter before the covered board if:

(1) The special state employee receives compensation as a lobbyist from an entity involved in the procurement matter; or
(2) The procurement matter involves a person or entity that is a competitor of a lobbying client of the special state employee.

(e) A special state employee or former special state employee shall not:

(1) Represent an entity other than the state in a matter in which he or she participated in making a decision, rendering approval or disapproval, making a recommendation, or rendering advice on behalf of the covered board; or
(2) Assist or represent a party for contingent compensation in a matter involving a covered board other than in a judicial, administrative, or quasi-judicial proceeding.

(f) A former special state employee shall not lobby the members or staff of a covered board of which he or she is a former member for one (1) year after the cessation of the special state employee's membership on the covered board.

(g) A contract entered into by a covered board, including a renewal, extension, or amendment of a contract entered into by a covered board, shall include a statement that no special state employee has been influenced by the vendor in the course of the procurement.

(h) (1) A complaint about a violation of this section may be filed with the Arkansas Ethics Commission.

(2) A violation of this section is grounds for discipline or removal of the special state employee by the commission.

(i) The commission shall promulgate rules regarding disciplinary and removal proceedings for special state employees.

History. Acts 2015, No. 1287, § 2; 2019, No. 315, § 1791.

Subchapter 8

Procurement of Professional Services

19-11-801. Policy — Definitions.

(a) It is the policy of the State of Arkansas that state agencies shall follow the procedures stated in this section, except that competitive bidding shall not be used for the procurement of legal, architectural, engineering, construction management, and land surveying professional consultant services if:

(1) State agencies not exempt from review and approval of the Building Authority Division shall follow procedures established by the authority for the procurement of architectural, engineering, land surveying, and construction management services; and

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

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

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

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

(2) "Construction management" includes, but is not limited to:

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

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

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

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

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

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

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

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

(e) As used in this subchapter:

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

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

History. Acts 1989, No. 616, § 1; 1995, No. 429, § 1; 1995, No. 1331, § 1; 2003, No. 1315, § 8; 2005, No. 2154, § 1; 2005, No. 2171, § 1; 2019, No. 910, § 6114.

R1:19-11-801. DFA BUILDING AUTHORITY DIVISION CRITERIA.

The guidelines and procedures established by the Department of Finance and Administration Building Authority Division shall be used by all agencies, except those exempt from Building Authority Division review, in selecting architects, land surveyors and engineers for state construction projects. Refer to Architectural Section 6-100 of Building Authority Division Standards and Criteria Professional Services Selection Procedures for State Agencies.

R2:19-11-801. PROCEDURES FOR APPROVAL OF ARCHITECTS, INTERIOR DESIGNERS, AND ENGINEERS AND LAND SURVEYOR CONTRACTS.

With the exception of those agencies exempt from Building Authority Division review all contracts for architectural, interior design, and engineering and land surveyor services must be first reviewed by the Department of Finance and Administration Building Authority Division for its recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts requiring Building Authority Division review in accordance with the time guidelines as prescribed on the Office of State Procurement website. After receiving the recommendation and approval of the Building Authority Division, the Office of State Procurement shall review and prepare such contracts for their ultimate submission to the Legislative Council or the Joint Budget Committee.

In the event the Building Authority Division refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of the Building Authority Division. The Legislative Council may then request the Department of Finance and Administration Building Authority Division to review their previous decision, abide by the decision of the Building Authority Division, or request the agency to make changes in the contract.

In no event shall the Department of Finance and Administration Building Authority Division have the final authority to deny a contract solely on the basis of its propriety.

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

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

(b) The state agency or political subdivision shall evaluate current statements of qualifications and performance data of firms on file or may request such information as needed for a particular public project whenever a project requiring professional services is proposed.

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

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

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

(2) The public school district shall evaluate current statements of qualifications and performance data on file with the school district or when submitted as requested whenever a project requiring professional services of a construction manager is proposed.

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

(e) (1) A request for statements of qualifications and performance data under this section may be used for certain procurements through a request for qualifications other than legal, architectural, engineering, construction management, land surveying, and interior design services if the:

(A) State Procurement Director approves the use of a request for qualifications and determines that it is the most suitable method of procurement; and

(B) Approval of the director under subdivision (e)(1)(A) of this section is submitted to the Legislative Council for review.

(2) In determining whether a request for qualifications under this subsection is the most suitable method of procurement, the director shall consider, based on information submitted by the requesting state agency:

(A) Why the request for qualifications is the most suitable method of procurement;

(B) Why cost should not be considered in the procurement; and

(C) How the cost of the contract will be controlled if cost is not a factor in the procurement.

History. Acts 1989, No. 616, § 2; 1995, No. 429, § 2; 1995, No. 1331, § 2; 2003, No. 1315, § 9; 2005, No. 2171, § 2; 2019, No. 419, § 13.

R1:19-11-802. REQUEST FOR QUALIFICATIONS (RFQ) PROCUREMENT METHOD USED IN THE ESTABLISHMENT OF PROFESSIONAL AND CONSULTANT SERVICE CONTRACTS.

REQUEST FOR QUALIFICATIONS (RFQ): The Request for Qualifications is, in the absence of sole-source justification, the procurement method recommended when contracting for architectural, engineering, land surveying, legal, and interior design services. It may also be used, with prior approval from the Office of State Procurement, as the selection method for other PCS contracts when it is determined to be the most suitable method of contracting.

The RFQ is sent to those vendors registered with the Office of State Procurement for the scope of work or services required, or vendors recommended to the Office of State Procurement as best suited to perform the work specified. Notification to the public must be in accordance with the provisions of Ark. Code Ann. § 19-11-229(d). The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussions may be conducted with responsible offerors who, based upon qualifications submitted, are determined to be reasonably susceptible of being selected for the purpose of clarification to assure full

understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.

19-11-803. Evaluation of qualifications.

In evaluating the qualifications of each firm, the state agency or political subdivision shall consider:

(1) The specialized experience and technical competence of the firm with respect to the type of professional services required;
(2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
(3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and
(4) The firm's proximity to and familiarity with the area in which the project is located.

History. Acts 1989, No. 616, § 3; 2003, No. 1315, § 10.

19-11-804. Selection.

(a) The state agency or political subdivision shall select three (3) qualified firms.

(b) The state agency or political subdivision shall then select the firm considered the best-qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.

History. Acts 1989, No. 616, § 4; 2003, No. 1315, § 11.

19-11-805. Negotiation of contracts.

(a) For the basis of negotiations, the state agency or political subdivisions and the selected firm shall jointly prepare a detailed, written description of the scope of the proposed services.

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

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

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

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

(c) If the state agency or political subdivision is unable to negotiate a contract with any of the selected firms, the state agency or political subdivision shall reevaluate the necessary professional services, including the scope and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of this subchapter.

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

History. Acts 1989, No. 616, § 5; 1995, No. 429, § 3; 1995, No. 1331, § 3; 2003, No. 1315, § 12.

19-11-806. [Repealed]

19-11-807. Design-build construction.

(a) As used in this section:

(1) “Design-build” means a project delivery method in which the school district acquires both design and construction services in the same contract from a single legal entity, referred to as the “design-builder”, without competitive bidding;

(2) (A) “Design-builder” means any individual, partnership, joint venture, corporation, or other legal entity that is appropriately licensed in the State of Arkansas and that furnishes the necessary design services, in addition to the construction of the work, whether by itself or through subcontracts, including, but not limited to, subcontracts for architectural services, landscape architectural services, and engineering services.

(B) Architectural services, landscape architectural services, and engineering services shall be performed by an architect, landscape architect, or engineer licensed in the State of Arkansas.

(C) Construction contracting shall be performed by a contractor qualified and licensed under Arkansas law; and

(3) “Design-build contract” means the contract between the school district and a design-builder to furnish the architecture, engineering, and related services as required and to furnish the labor, materials, and other construction services for the same project.

(b) (1) Any school district may use design-build construction as a project delivery method for building, altering, repairing, improving, maintaining, or demolishing any structure, or any improvement to real property owned by the school district.

(2) The design-builder shall contract directly with subcontractors and shall be responsible for the bonding of the project.

(3) A project using design-build construction shall comply with state and federal law.

(c) The Division of Public School Academic Facilities and Transportation of the Department of Education shall develop and promulgate rules consistent with the provisions of this section concerning the use of design-build construction by school districts.

History. Acts 2005, No. 2155, § 1.

Subchapter 9

Purchases of Disabled Work Center Products and Services

19-11-901. Purchase required — Exception.

(a) All suitable commodities and services, including small purchases, hereafter procured in accordance with applicable state specifications by or for any state department, institution, or agency shall be procured from nonprofit work centers for individuals with disabilities in all cases when such commodities are available within the period specified and at the fair market price for the article or articles so procured.

(b) Services offered by work centers shall be procured by competitive sealed bidding as specified by § 19-11-229, competitive sealed proposals as specified by § 19-11-230, or competitive bidding as specified by § 19-11-234, subject to purchase exceptions set forth in § 19-11-902.

(c) This section shall not apply in any cases in which products and services are available for procurement from any state department, institution, or agency, and procurement therefrom is required under the provisions of any law in effect on or after March 1, 1991.

History. Acts 2001, No. 1718, § 1.

19-11-902. Rules.

(a) The Office of State Procurement shall be responsible for developing rules governing implementation of this subchapter.

(b) As used in this subchapter:

(1) "Commodities" means all property, including without limitation equipment, printing, stationery, supplies, and insurance, but excluding real property, leases on real property, or a permanent interest in real property;

(2) "Fiscal year" means July 1 of one (1) year through June 30 of the next year;

(3) "Individuals with disabilities" means those persons who have a medically or psychiatrically determined physical, mental, or developmental disability constituting a substantial vocational handicap;

(4) "Ordering office" means any state department, independent establishment, board, commission, bureau, service, or division of state government and any wholly owned state corporation;

(5) "Products", for purposes of this subchapter, means commodities or services wherein the price of the commodities includes at least twenty percent (20%) value added when the work center is awarded a contract using the ten percent (10%) preference, and in the case of services, that they are performed by individuals with disabilities;

(6) (A) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

(B) "Services" shall not include employment agreements, collective bargaining agreements, or architectural or engineering contracts requiring approval of the Building Authority Division;

(7) "Sheltered workshop" means a work center which has:

(A) Certification from the United States Department of Labor as a sheltered workshop; and

(B) Been licensed by the Division of Developmental Disabilities Services of the Department of Human Services or certification from Arkansas Rehabilitation Services;

(8) (A) “Work center” means any facility certified by the Arkansas Rehabilitation Services where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing evaluation, training, and gainful employment to individuals with disabilities of Arkansas:

(i) As an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or

(ii) During such time as employment opportunities for them in the competitive labor market do not exist.

(B) “Work center” includes without limitation:

(i) A sheltered work center; and

(ii) A work center for the blind; and

(9) “Work center for the blind” means a facility certified by the Division of State Services for the Blind of the Department of Human Services where any manufacture, handiwork, or provision of services is carried on and that is operated to provide evaluation, training, and gainful employment to individuals in the State of Arkansas eligible for services from the Division of State Services for the Blind:

(A) As an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market;

(B) During such time as employment opportunities for individuals in the State of Arkansas eligible for service from the Division of State Services for the Blind in the competitive labor market do not exist; or

(C) For whom such placement represents informed choice as appropriate employment at a competitive wage.

(c) All state agencies as defined in § 19-11-203 are required to purchase their requirements of needed available and suitable products and purchase suitable services from nonprofit work centers for individuals with disabilities, unless such commodities and services are authorized by prior legislation for production in another state agency, department, or institution.

(d) (1) The Office of State Procurement shall issue to all state agency purchasing agents a schedule of commodities and services made by the work center and the conditions under which they are to be procured from the workshops.

(2) The schedule shall include the item or service description.

(e) Arkansas Rehabilitation Services and the Division of State Services for the Blind shall undertake the inspection on a continuing basis of the workshops certified by each respective state agency to determine that they operate in accordance with the requirements of the statute and the rules of this section.

(f) (1) (A) In order to qualify for participation in the program as a work center, an organization shall submit an application to the Office of State Procurement.

(B) If required for all vendors, there should be included a list of the commodities and services offered for sale to the state.

(2) Work centers shall:

(A) Furnish commodities and services in strict accordance with the allocation and government order;

(B) Maintain records of wages paid, hours of employment, and sales;

(C) Make available pertinent books and records of the state agency for inspection at any reasonable time to representatives of Arkansas Rehabilitation Services or the Division of State Services for the Blind, as applicable; and

(D) (i) Submit to Arkansas Rehabilitation Services or the Division of State

Services for the Blind, as applicable, by September 1 an annual report for the preceding fiscal year.

(ii) This report shall include data on individuals with disabilities who are workers, wages and wage supplements, hours of employment, sales, whether the workshop requires a facilities sheltered workshop certificate from the United States Department of Labor and special minimum rates authorized where such certificate is held, and such other relevant information as may be required.

(g) When a commodity or service is identified in the schedule of work center-made commodities and services as being available through the Office of State Procurement, it shall be obtained in accordance with the requisitioning procedures of the supplying state agency.

(h) An ordering office may purchase from a nonworkshop source commodities or services listed in the schedule of commodities and services made by the work center in any of the following circumstances:

(1) Necessity requires delivery within the specified period, and the work center cannot give assurance of positive availability;

(2) When commodities listed on the schedule of work center-made commodities can be purchased from a non-work-center source by the state agency for a price more than ten percent (10%) lower than commodities made by the work center included in the schedule; or

(3) Services offered by any work center shall be procured by any state agency in accordance with this section at a price not more than ten percent (10%) above the lowest price submitted from a non-work-center source.

(i) Product commodities made by a work center shall be delivered in accordance with the terms of the purchase order.

(j) When a workshop fails to comply with the terms of a government order, the ordering office shall make reasonable efforts to negotiate an adjustment before taking action to cancel the order.

(k) Any alleged violation of these rules shall be investigated by the Office of State Procurement, which shall notify the work center concerned and afford it an opportunity to submit a statement of facts and evidence.

History. Acts 2001, No. 1718, § 1; 2007, No. 186, § 7; 2011, No. 807, § 1; 2019, No. 315, §§ 1792, 1793; 2019, No. 910, § 6115.

R1:19-11-902. WORK CENTER-MADE PRODUCTS PROGRAM RULES.

For the purposes of the Work Center-Made Products Program, the fair market price of commodities offered in a competitive environment shall be at least 20% more than the cost of materials. In the case of services, those services must be performed by disabled individuals directly under the control of Work Center representatives.

R2:19-11-902. WORK CENTER CERTIFICATION.

(a) Before commodities and services may be procured from Work Centers, the Work Center will be required to maintain evidence of: certification from the United States Department of Labor as a “sheltered workshop” and a license from the Division of Developmental Disabilities Services of the Arkansas Department of Human Services or certification from Arkansas Rehabilitation Services.

(b) Before commodities or services may be procured from a work center for the blind, such work center will be required to maintain evidence of certification from the Division of Services for the Blind of the Department of Human Services.

R3:19-11-902. WORK CENTER PRODUCT AND SERVICE SCHEDULES.

Work Centers must provide a schedule of their commodities, services and prices to Office of State Procurement. Schedules will be posted on the Office of State Procurement website (www.arkansas.gov/dfa/procurement). Ordering offices will contract directly with Work Centers.

R4:19-11-902. WORK CENTER APPLICATIONS FOR BIDDING.

(a) All Work Centers who wish to participate in the Work Center Made Products Program will be required to register as a vendor with the Office of State Procurement.

(b) The Office of State Procurement may check with Arkansas Rehabilitation Services, Developmental Disabilities Services and Department of Labor to verify certification(s).

R5:19-11-902. PURCHASE PROCEDURE.

In the case of small order procurement, competitive bidding, and competitive sealed bidding and proposals, the agency shall procure commodities and services from the Work Centers, when contract terms and specifications are equal and the price is not more than 10% above the lowest competitive price, obtained from a non-work center.

Subchapter 10

Professional and Consulting Services Contracts

19-11-1001. Definitions.

As used in this subchapter:

(1) "Consultant services contract" means a contract between a state agency and an individual or organization in which:

(A) The service to be rendered to the state agency or to a third-party beneficiary under the contract is primarily the giving of advice by the contractor on a particular problem facing the state agency or the third-party beneficiary;

(B) The contractor is an independent contractor with respect to the state agency;

(C) The state agency does not exercise managerial control over the day-to-day activities of the contractor; and

(D) The contract specifies the results expected from the services to be rendered by the contractor and the advice or assistance to be provided;

(2) "Contractor" means any person or organization that executes a contract with a state agency under which the person or organization agrees to provide professional services or consultant services to the state agency, and the individuals performing the services are not state employees occupying regular full-time or part-time or extra help positions provided by law;

(3) (A) "Design professional contract" means a contract that is primarily for:

(i) Minor projects that are time critical; and

(ii) Minor remodeling projects that do not exceed one million dollars ($1,000,000) in cost.

(B) Design professional contracts are primarily for the procurement of architectural, engineering, and professional services competitively selected under § 19-11-801 et seq.

(C) Design professional contracts shall be reviewed by the agency or institution at least yearly and adjusted to reflect historical expenditures.

(D) (i) A state agency shall follow applicable Building Authority Division of the Department of Finance and Administration guidelines, procedures, and rules for the selection and award of contracts.

(ii) However, a guideline, procedure, or rule of the authority shall not increase or decrease the:

(a) Dollar amount under subdivision (3)(A)(ii) of this section; or

(b) Specified period under § 19-11-238(a).

(E) Institutions of higher education that are exempt from review and approval of the Building Authority Division shall comply with the provisions of this section;

(4) "Director" means the State Procurement Director;

(5) "Employee" means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing professional services for any state agency;

(6) "Professional services contract" means a contract between a state agency and a contractor in which:

(A) The relationship between the contractor and the state agency is that of an independent contractor rather than that of an employee;

(B) The services to be rendered consist of the personal services of an individual that are professional in nature;

(C) The state agency does not have direct managerial control over the day-to-day activities of the individual providing the services;

(D) The contract specifies the results expected from the rendering of the services rather than detailing the manner in which the services shall be rendered; and

(E) Services rendered under a professional services contract are rendered to the state agency itself or to a third-party beneficiary; and

(7) "State agency" means any department, agency, board, commission, or institution of higher education of the State of Arkansas.

History. Acts 2003, No. 1315, § 13; 2007, No. 478, § 7; 2009, No. 532, § 1; 2019, No. 910, § 6116.

19-11-1002. Purpose of contracts.

The principal purpose of a professional services contract or a consultant services contract is the procurement of services by the state agency rather than the procurement of commodities.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 14.

19-11-1003. Contracts exempted.

(a) This subchapter shall not apply to the contracts of the Arkansas Department of Transportation that are covered by the technical work requirements and administrative controls of the Federal Highway Administration, nor shall the provisions of this subchapter be applicable to contracts entered into by the department in which the costs and fees are established by competitive bidding.

(b) This subchapter shall not apply to contracts of institutions of higher education that are for services related to patents, copyrights, or trademarks.

(c) This subchapter does not apply to contracts created under federally approved state plans for services reimbursed under Title V of the Social Security Act, 42 U.S.C. §§ 701 — 710, or Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 — 1396v, as they existed on January 1, 2001, if those contracts and services conform to all applicable federal laws and rules, and to the ethical standards provided for in § 19-11-704.

(d) [Repealed.]

History. Acts 2003, No. 1315, § 13; 2009, No. 605, § 22; 2009, No. 606, § 22; 2015, No. 218, § 23; 2017, No. 707, § 60.

19-11-1004. Restrictions on contracts.

(a) No contract under this subchapter shall be used to avoid the purpose or the spirit of the General Accounting and Budgetary Procedures Law of Arkansas, § 19-4-101 et seq.

(b) No contract shall be approved that would be in violation of § 19-4-701 et seq. relating to expenditures.

(c) (1) Except as provided in this subsection, no state agency shall engage in a professional services or consultant services contract with a part-time or full-time employee who occupies a position authorized to be paid from extra help or regular salaries for a state agency, except as provided in § 21-1-403.

(2) However, this subsection does not prohibit an institution of higher education from executing a contract with a state agency under which professional or consulting services will be performed by employees of the institution of higher education.

(3) An employee of an institution of higher education performing professional or consulting services to a state agency may receive additional compensation if:

(A) The institution of higher education requests and receives written approval from the Director of the Division of Higher Education concerning the amount of additional compensation to be paid to any employee; and

(B) The total salary payments received from the employee's regular salaried position and amounts received for services performed under a professional services contract do not exceed one hundred twenty-five percent (125%) of the maximum annual salary authorized by law for the employee's position with the institution of higher education.

(d) No director or any other department head of any state agency shall receive additional compensation under this subchapter.

(e) (1) Any contract under which a state agency retains day-to-day managerial control over the person performing the services or in which the relationship between the contractor and the state agency is that of employer and employee is not a professional services contract and is prohibited.

(2) However, the Department of Information Services may employ persons over whom they exercise day-to-day managerial control for those services under § 25-4-112 for which professional services contracts may be used.

History. Acts 2003, No. 1315, § 13; 2017, No. 365, § 6; 2019, No. 910, § 2277.

19-11-1005. General guidelines and rules.

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

History. Acts 2003, No. 1315, § 13; 2019, No. 315, § 1794.

19-11-1006. [Repealed]

19-11-1007. Certification by agency head.

The head of every state agency shall certify by his or her signature on each contract entered into by that state agency that:

(1) All information required by law and by rule is supplied;

(2) The proper contracting form is utilized;

(3) All information contained in the contract is true and correct to the best of his or her knowledge and belief;

(4) All general guidelines prescribed by the State Procurement Director have been complied with;

(5) The services proposed to be provided under the contract are necessary for operation of the state agency in fulfilling its legal responsibilities and cannot be provided by any existing state agency;

(6) The contractor is fully qualified to perform the contract and has no vested interest in the subject matter of the contract that would constitute a conflict of interest and a bar to the contractor's providing services of a professional and disinterested quality;

(7) The contract terms are reasonable and the benefits to be derived are sufficient to warrant the expenditure of the funds called for in the contract;

(8) Sufficient funds are available to pay the obligations when they become due; and

(9) A projected total cost of the contract is provided to include expenditures that may be incurred under all available periods of extension if the extensions were executed.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 15; 2019, No. 315, § 1795.

19-11-1008. Approval or disapproval of contracts.

(a) The State Procurement Director may make whatever additional inquiry he or she deems necessary and may require that additional information be supplied if he or she has reason to believe that the contract should be rejected because it does not comply with this subchapter.

(b) The director shall return to the contracting state agency any contract which fails to comply with the applicable laws and rules governing the contract and shall approve any contract that complies with this subchapter.

(c) (1) The director shall have final and ultimate authority over the supervision and approval of all contracts described in this subchapter.

(2) However, the director shall seek review of the Legislative Council or the Joint Budget Committee before approving or disapproving any contract or class or group of contracts authorized under this subchapter, unless the Legislative Council or Joint Budget Committee specifically exempts the contract or class or group of contracts by formal committee action.

History. Acts 2003, No. 1315, § 13; 2019, No. 315, § 1796.

R1:19-11-1008. PROCEDURES FOR APPROVAL OF ARCHITECTS, INTERIOR DESIGNERS, ENGINEERS AND LAND SURVEYOR CONTRACTS.

(a) With the exception of those agencies exempt from Building Authority Division review, all contracts for architectural, interior design, and engineering and land surveyor services must be first reviewed by the Department of Finance and Administration Building Authority Division for its recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts requiring Building Authority Division review in accordance with the time guidelines as prescribed on the Office of State Procurement website. After receiving the recommendation and approval of the Building Authority Division, the Office of State Procurement shall review and prepare such contracts for their ultimate submission to the Legislative Council or the Joint Budget Committee.

(b) In the event the Building Authority Division refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of the Building Authority Division. The Legislative Council may then request the Department of Finance and Administration Building Authority Division to review their previous decision, abide by the decision of the Building Authority Division, or request the agency to make changes in the contract.

(c) In no event shall the Department of Finance and Administration Building Authority Division have the final authority to deny a contract solely on the basis of its propriety.

19-11-1009. Filing of contracts.

Service contracts filed with a state agency under § 19-4-1109 shall be available for public inspection and auditing purposes.

History. Acts 2003, No. 1315, § 13.

R1:19-11-1009. PROFESSIONAL AND CONSULTANT SERVICE CONTRACTS ON FILE AT A STATE AGENCY.

Professional and Consultant Service Contracts on file with a state agency shall be available for public inspection to the extent permitted by Arkansas State Freedom of Information Laws.

19-11-1010. [Repealed]

19-11-1011. Review requirement.

(a) (1) Every contract for professional consultant services covered by this subchapter that is executed using the professional and consultant service contract form approved by the State Procurement Director shall be filed with the Office of State Procurement.

(2) The execution date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract is to begin and not the date upon which the agreement was made.

(b) (1) No purchase order shall be paid if a copy of the contract under which the payment is being made has not previously been filed with the Office of State Procurement.

(2) No payment shall be made covering services rendered prior to the execution date of the contract.

(c) (1) It is the intent of the General Assembly that this section be strictly construed and enforced.

(2) However, in the unusual event that an obligation has been incurred by a state agency under any contractual agreement or proposed contract prior to the approval of the contract, the Chief Fiscal Officer of the State may approve payment for such services after having first received the review of the Legislative Council.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 16; 2019, No. 910, § 6117.

R1:19-11-1011. PROFESSIONAL AND CONSULTANT SERVICE CONTRACTS ON FILE IN THE OFFICE OF STATE PROCUREMENT.

All agencies will be required to maintain copies in accordance with current document retention laws (Ark. Code Ann. § 19-11-214) of all purchase orders issued for the procurement of professional and consultant services.

19-11-1012. Standard contract forms.

(a) The State Procurement Director shall prescribe standard forms to be utilized by all state agencies.

(b) The standard contract form shall include the following items, plus such additional items as the director shall deem desirable for the purposes of this subchapter:

(1) A section setting forth in reasonable detail the objectives and scope of the contractual agreement and the methods to be used to determine whether the objectives specified have been achieved;

(2) The rates of compensation, transportation, per diem, subsistence, out-of-pocket allowances, and all other items of costs contemplated to be paid the contractor by the state agency;

(3) The method by which the rate of compensation and the total payment shall be calculated;

(4) The maximum number of dollars which the state agency may be obligated to pay to the contractor under the terms of the contract, including all expenses and other items of costs, and the source of funding to be utilized;
(5) The term of the contract;
(6) (A) The names of all individuals who will be supplying services to the state agency or to third-party beneficiaries under the terms of the contracts, so far as those names are known to the contractor at the time of the execution of the contract.

(B) If the names of all individuals supplying services under the contract are not available at the time of the execution of the contract, the contract shall contain a provision requiring the contractor to submit periodically the names of individuals supplying services as soon as the identity of those individuals is known to the contractor;

(7) When the contractor is a business entity, the federal identification number of the business entity shall be listed on the contract form;
(8) (A) A certification signed by the contractor shall be included as follows:
" _____ (name)
_____ (title)
I _____ , certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of any state agency of the State of Arkansas will receive any personal, direct, or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract."

(B) As used in subdivision (b)(8)(A) of this section, it shall be understood that when the contractor is a widely held public corporation "direct or indirect monetary benefit" shall not apply to any regular corporate dividends paid to a stockholder of the corporation who is also a state employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation;

(9) (A) For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the state agency does not exceed fifty thousand dollars ($50,000), a purchase order may be utilized in lieu of the standard form or forms prescribed by the director.

(B) (i) However, should the state agency enter into a subsequent contract with the same individual or organization during the same fiscal year, regardless of the nature of the contract, then the details of the original contract which utilized a purchase order form and of all subsequent contracts, regardless of amount or type, shall be promptly reported to the director.

(ii) This reporting shall be done to allow the director to determine whether the state agency is utilizing a series of contracts to avoid the use of the standard form and to avoid the application of appropriate rules;

(10) Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract forms; and
(11) All professional consultant services contracts shall contain the following clause:
"In the event the State of Arkansas fails to appropriate funds or make moneys available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or moneys made available for such purposes.
"This provision shall not be construed to abridge any other right of termination the agency may have."

(c) For the purpose of reporting methods of finance, a state agency shall disclose the total estimated project cost in addition to any other reporting requirements of the Legislative Council or the Joint Budget Committee.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 17; 2013, No. 1189, § 5; 2019, No. 315, § 1798.

R1:19-11-1012. COMPENSATION.

Each professional and consultant service contract shall clearly state the compensation, and indicate if various levels of expertise are to be supplied by the contractor. A rate for each level and the number of personnel within each level should be listed. All calculations should be extended and totaled. A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to. All items should be listed along with respective rates. Rates should be totaled by item column, and a total compensation provided that is inclusive of reimbursable expenses.

R2:19-11-1012. CONTRACT DATES.

For each professional and consultant service contract form submitted, the agency is required to enter the beginning and ending date of the contract. The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was signed. This date should be arrived at with emphasis placed on the following:

(a) Any contract or amendment to a contract that requires review by the Legislative Council or Joint Budget Committee must be submitted to the Office of State Procurement in accordance with the time guidelines as prescribed on the Office of State Procurement website. The beginning date of the contract must not precede the date of the Arkansas Legislative Council meeting in which such contract is to be reviewed. The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with their review as to the propriety of the contract within thirty (30) days of said submission to the Legislative Council or Joint Budget Committee;

(b) All professional and consultant service contracts with fifty thousand dollars ($50,000) or more in any one year of the contract's term, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars ($350,000) or more unless they are contracts for critical emergency procurements or are otherwise exempted from the submission requirements of Ark. Code Ann. § 19-11-265, must be filed with the Office of State Procurement for review by the Legislative Council or Joint Budget Committee.

R3:19-11-1012. REQUIRED INFORMATION.

Information should be provided on each professional and consultant service contract form listing the name, and relationship of those persons who will be supplying services to the state agency insofar as they are known at the time the contract is signed. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed.

R4:19-11-1012. PROFESSIONAL AND CONSULTANT SERVICE CONTRACT FORM.

Each contract should be completed and include the following information:

(1) Agency assigned contract number or outline agreement and amendment number. For those contracts for which payment will be made wholly or in part against a Method of Financing, enter the assigned Method of Financing on the contract form.

(2) Date the agreement was signed by the agency and the contractor, the outline agreement or contract number and the vendor number. Also enter the agency's code (or business area) and title, division, if applicable, and the contractor's Federal ID number, name and address.

(3) Funding source: State, Federal, Cash, Trust or Other (specify).

(4) Any resources to be provided by the agency to the contractor as part of the agreement.

(5) Name of the agency representative who will represent the agency in coordinating the work of the contractor.

(6) Disclose all information as required under the terms of any existing Executive Order. The contractor shall also require the subcontractor to disclose the same information. Any existing Contract and Grant Disclosure and Certification Form shall be used for this purpose.

19-11-1013. [Repealed]

19-11-1014. Compliance reporting.

(a) Each report required under this subchapter shall be copied to the Secretary of the Department of Finance and Administration, who shall review each report for compliance with the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq.

(b) If the secretary determines that a state agency, agency procurement official, or state official or employee may be in violation of the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq., the secretary shall notify the chief executive officer of the relevant state agency.

History. Acts 2015, No. 557, § 8; 2019, No. 910, § 3480.

19-11-1015. Cancellation of contract on entry of final business closure order.

(a) As used in this subchapter, "final business closure order" means a business closure order for which a contractor has either:

(1) Waived further administrative review under § 26-18-1001 et seq.; or

(2) Exhausted all remedies to appeal under § 26-18-1001 et seq.

(b) The Revenue Division of the Department of Finance and Administration shall provide to the Office of State Procurement all final business closure orders entered into against a contractor.

(c) Upon receipt of a final business closure order, the Office of State Procurement shall, as soon as reasonably practicable:

(1) Notify each state agency with which the contractor has a contract that the:

(A) Contractor is subject to a final business closure order; and

(B) Provision of any goods or services, or both, under a contract with the contractor that is subject to a final business closure 3 order shall cease as soon as reasonably practicable; and

(2) Notify all state agencies that the contractor that is subject to a final business closure order shall not be awarded or maintain a contract with a state agency unless the Office of State Procurement provides notice under subsection (d) of this section.

(d) Upon receipt of information that a contractor has resolved a business closure, the Office of State Procurement shall notify all state agencies, as soon as reasonably practicable, that:

(1) Any unexpired contracts with the contractor may continue if the contract was not terminated, cancelled, suspended, or discontinued; and

(2) The contractor may be awarded or maintain a contract with a state agency.

History. Acts 2019, No. 866, §§ 2,3.

Subchapter 11

Purchase of Technology Systems

19-11-1101. Contracts.

(a) An agency procurement official or procurement agent may enter into contracts to acquire technology systems for performing the revenue-generating functions and duties of the agency, including, but not limited to, registration, processing, and collection functions.

(b) Any contract entered into under this subchapter between an agency procurement official or procurement agent and a vendor of technology systems shall provide for:

(1) Payment of the technology systems on the basis of a percentage of the increase in the amount of specific taxes or fees collected, including interest and penalties thereon, for a fixed time period, which increase exceeds revenues projected prior to the project and is attributable to the implementation and use of the technology system; or

(2) Payment of the technology system on a fixed fee contract basis, the fee to be paid from the increase in the amount of specific taxes or fees collected, including interest and penalties thereon, which increase exceeds revenues projected prior to the project and is attributable to the implementation and use of the technology system.

(c) (1) All contracts authorized by this subchapter shall be entered into pursuant to the requirements of the Arkansas Procurement Law, § 19-11-201 et seq., and amendments thereto.

(2) Prior to execution of the contract, the following process shall be followed:

(A) The requesting agency shall request approval from the Chief Fiscal Officer of the State to prepare a request for proposal for a project authorized under this subchapter;

(B) The request shall include the general nature of the project, the anticipated revenues that will be enhanced, and the forecasted revenues for the current biennium;

(C) Upon approval of the Chief Fiscal Officer of the State, the requesting agency shall prepare a request to the Department of Finance and Administration for approval to prepare a request for proposal for a technology project authorized under this subchapter;

(D) The request must include the revenue source or sources that will be increased as a result of the project and the projected revenues for the anticipated life of the project;

(E) The requesting agency shall prepare a request for proposal, with advice and consultation from the department, for the purchase of technology systems on the basis of a portion of the increase in the agency's revenues produced by the technology system; and

(F) (i) The request for proposal may provide that the agency and the vendor may negotiate an amount or baseline upon which the increase in taxes or fees is measured.

(ii) Any contract other than a fixed fee contract shall include a factor in the baseline calculation to account for an increase in taxes or fees due solely to economic factors and not to the use of the technology.

(3) The agency procurement official or procurement agent and the vendor shall negotiate the contract, with the oversight of the department to assist in negotiating an advantageous contract.

(4) (A) The agency director shall submit the proposed contract and a request for new appropriation to the Governor or his or her designee.

(B) The accompanying information will include the methodology used to calculate the baseline amount proposed by the agency and other justifications and information that detail the program and the expected benefits of the agreement.

(C) The Governor or his or her designee shall study the request and determine whether the appropriation requested and the terms of the proposed contract are in strict compliance with this subchapter.

(D) (i) The Governor may approve or modify the request for new appropriation and the proposed contract.

(ii) Any modification of the proposed contract shall be submitted to the vendor for approval.

(5) (A) Upon approval of the shared benefit agreement and new appropriation request, the Governor shall seek the advice and recommendation of the Legislative Council.

(B) Upon review of the Legislative Council, the Governor shall forward a copy of his or her approvals to the agency director and the Chief Fiscal Officer of the State.

(d) After receipt of the Governor's approvals, the Chief Fiscal Officer of the State shall direct the Auditor of State and the Treasurer of State to establish upon their books of record the necessary appropriation accounts in accordance with the provisions as set out in this section from the Shared Benefit Holding Appropriation.

(e) The requesting agency may utilize these appropriations to implement the approved contract.

(f) Nothing in this section shall prohibit an agency that enters into a contract according to this section from acquiring any goods or services through appropriations for any function or program of that agency not specifically included in any contract entered into according to this section.

(g) The Chief Fiscal Officer of the State may promulgate such rules, rules, procedures, and guidelines as he or she may deem necessary and proper in order to carry out the provisions of this section.

History. Acts 2003, No. 1095, § 1; 2007, No. 751, § 9; 2019, No. 315, § 1799.

19-11-1102. Shared Benefit Payment Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the "Shared Benefit Payment Fund".

(b) (1) All moneys collected under this subchapter shall be deposited into the State Treasury to the credit of the fund as special revenues.

(2) The fund shall also consist of any other revenues as may be authorized by law.

(c) The fund shall be used by the state agencies to pay vendors for contracts entered into under this subchapter.

(d) The fund shall consist of the amount of taxes or fees collected for the relevant time period less the baseline amount stated in each technology purchase contract entered into pursuant to § 19-11-1101, which difference is attributable to the implementation and use of the technology systems as provided in the contract and approved under the provisions of § 19-11-1101(c).

(e) As soon as practical after the close of each month during the biennial period beginning July 1, 2003, and thereafter, each agency purchasing official who has a technology purchase contract shall determine the difference between the amount of taxes or fees collected and the contract baseline amount and report these findings to the Chief Fiscal Officer of the State.

(f) The Chief Fiscal Officer of the State shall certify to the Treasurer of State the following:

(1) The amounts determined in subsection (e) of this section for transfer to the fund; and
(2) That portion of the amount determined in subsection (e) of this section which is currently required to be paid to each technology contract vendor.

(g) The Treasurer of State shall make the transfer of the amount determined in subdivision (f)(1) of this section, after making the deduction required from the net special revenues as set out in § 19-5-203(b)(2)(A).

History. Acts 2003, No. 1095, § 2.

19-11-1103. [Repealed]

Subchapter 12

Guaranteed Energy Cost Savings Act

19-11-1201. Title.

This subchapter shall be known and may be cited as the “Guaranteed Energy Cost Savings Act”.

History. Acts 2005, No. 1761, § 1.

19-11-1202. Definitions.

As used in this subchapter:

(1) (A) “Energy cost savings measure” means:

(i) A new facility that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that:

(a) Do not degrade the level of service or working conditions;

(b) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, as adopted by the Arkansas Pollution Control and Ecology Commission, in the rules required under § 19-11-1207; and

(c) Are measured and verified by an audit performed by a qualified provider; or

(ii) An existing facility alteration that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that conform with subdivisions (1)(A)(i)(a) and (b) of this section.

(B) “Energy cost savings measure” includes:

(i) Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs or systems within the building;

(ii) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(iii) Automated or computerized energy control systems, including computer software and technical data licenses;

(iv) Heating, ventilating, or air conditioning system modifications or replacements;

(v) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(vi) Indoor air quality improvements;

(vii) Energy recovery systems;

(viii) Electric system improvements;

(ix) Life safety measures that provide long-term, operating-cost

reductions;
(x) Building operation programs that reduce operating costs;
(xi) Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy;
(xii) Water and other natural resources conservation; or
(xiii) An alteration or measure identified through a comprehensive audit or assessment of new or existing facilities;

(2) (A) “Guaranteed energy cost savings contract” means a contract for the implementation of one (1) or more energy cost savings measures and services provided by a qualified provider in which the energy and cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term.

(B) “Guaranteed energy cost savings contract” does not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply;

(3) “Operational cost savings” means expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed;

(4) “Public notice” means the same as "public notice" is defined in § 19-11-203;

(5) “Qualified provider” means a person or business, including all subcontractors and employees of that person or business and third-party financing companies, that:

(A) Is properly licensed in the State of Arkansas;
(B) Has been reviewed and certified by the Arkansas Energy Office as a qualified provider under this subchapter;
(C) Is experienced in the design, implementation, measurement, verification, and installation of energy cost savings measures;
(D) Has at least five (5) years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements;
(E) Has the ability to arrange or provide the necessary financing to support a guaranteed energy cost savings contract; and
(F) Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors; and

(6) “State agency” means the same as “state agency” is defined in § 19-11-203.

(7) "Equipment warranty period" means the time following the execution of a guaranteed energy cost savings contract in which a material defect in an installed energy conservation measure is required to be replaced or corrected by the manufacturer or an energy service company; and

(8) "Useful life" means the rated service life of an individual energy conservation measure as defined by the:

(A) American Society of Heating, Refrigerating and Air-Conditioning Engineers;
(B) Illuminating Engineering Society; or
(C) Solar Energy Industries Association.

History: Acts 2005, No. 1761, § 1; 2013, No. 554, §§ 2-4; 2017, No. 271, § 14; 2019, No. 507, § 3.

R1:19-11-1202. DEFINITIONS.

(Rescinded)

19-11-1203. Energy cost savings measures authorized.

(a) (1) A state agency may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities in accordance with this subchapter.

(2) A state agency or several state agencies together may enter into an installment payment contract or lease purchase agreement with a qualified provider for the purchase and installation of energy cost savings measures in accordance with this subchapter.

(b) All energy cost savings measures shall comply with current local, state, and federal construction and environmental codes and regulations.

(c) The provisions of the Arkansas Procurement Law, § 19-11-201 et seq., shall control if there is any conflict with that law and the provisions of this subchapter.

History. Acts 2005, No. 1761, § 1.

R1:19-11-1203. PROCUREMENT AUTHORIZATION.

(Rescinded)

19-11-1204. Method of solicitation.

Any solicitation of a guaranteed energy cost savings contract by a state agency shall be consistent with the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 2005, No. 1761, § 1.

R1:19-11-1204. PROCUREMENT METHOD.

(Rescinded)

19-11-1205. Evaluation of responses to solicitations.

(a) In a state agency's evaluation of each qualified provider's response to a solicitation under § 19-11-1204, the state agency shall include an analysis of:

(1) Whether the qualified provider meets the objectives of the solicitation, including without limitation a reduction in the state agency's energy consumption or operating costs resulting from a guaranteed energy cost savings contract with the qualified provider;
(2) The qualifications and experience of the qualified provider;
(3) The technical approach to the energy cost savings measures;
(4) The financial aspects of the energy cost savings measures;
(5) The overall benefit to the state agency; and
(6) Any other relevant factors.

(b) After evaluating a response to a solicitation as required under subsection (a) of this section, a state agency may:

(1) Reject the response; or
(2) Award a contract to a qualified provider to conduct an energy audit to be used in developing the guaranteed energy cost savings contract.

History. Acts 2005, No. 1761, § 1; 2013, No. 554, § 5.

19-11-1206. Guaranteed energy cost savings contract requirements.

(a) The following provisions are required in a guaranteed energy cost savings contract:

(1) A statement that the state agency shall maintain and operate the energy cost savings measures as defined in the guaranteed energy cost savings contract; and

(2) A guarantee by the qualified provider that:

(A) The energy cost savings and operational cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy cost savings measures; and

(B) If the annual energy or operational cost savings fail to meet or exceed the annual costs of the energy cost savings measure as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the state agency for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract.

(b) (1) If a guaranteed energy cost savings contract includes energy cost savings measures that possess either an active equipment warranty period or a combined useful life in excess of twenty (20) years, a guaranteed energy cost savings contract may be extended to the length of the:

(A) Equipment warranty period; or

(B) Weighted useful life of the relevant energy cost savings measures.

(2) A guaranteed energy cost savings contract shall not exceed twenty (20) years without the approval of the Arkansas Energy Office of the Arkansas Department of Environmental Quality.

(c) Before entering into a guaranteed energy cost savings contract, the state agency shall require the qualified provider to file with the state agency a payment and performance bond or similar assurance as provided under § 19-11-235.

History. Acts 2005, No. 1761, § 1; 2013, No. 554, § 6; 2019, No. 507, § 4.

19-11-1207. Administration of subchapter -- Fees.

(a) The Arkansas Energy Office of the Division of Environmental Quality shall administer this subchapter.

(b) The Arkansas Pollution Control and Ecology Commission may promulgate rules for the administration of this subchapter to include without limitation the following:

(1) Standards for measuring and verifying the performance of energy cost savings measures;

(2) A standard contract form for use by a state agency in entering into a guaranteed energy cost savings contract; and

(3) The adoption of the International Performance Measurement and Verification Protocol as it existed on a specific date; and

(4) To establish and collect a reasonable fee to cover the costs of administering this subchapter.

History: Acts 2013, No. 554, § 7; 2017, No. 271, § 15; 2019, No. 315, § 1800; 2019, No. 910, § 3208.

19-11-1208. Use of maintenance and operation appropriations.

(a) Notwithstanding any law to the contrary, a state agency may utilize maintenance and operations appropriations for the payment of equipment and energy cost savings measures required by a guaranteed energy cost savings contract.

(b) An energy cost savings measure shall be treated as an energy efficiency project under Arkansas Constitution, Amendment 89.

History: Acts 2013, No. 554, § 7; 2013, No. 1252, § 6.

Subchapter 14

Construction Manager-General Contractor Method of Procurement Pilot Program

19-11-1401. Title.

This subchapter shall be known and may be cited as the "Construction 31 Manager-General Contractor Method of Procurement Pilot Program".

History. Act 2017, No. 809, § 1.

19-11-1402. Legislative findings.

The General Assembly finds that:

(1) An efficient transportation system is critical for Arkansas's economy and the quality of life of the state's residents;

(2) Transportation projects are costly and the revenues currently available for highways and local roads are inadequate to preserve and maintain existing infrastructure and to provide funds for highway improvements;

(3) The State Highway Commission has developed an alternative, cost effective, procurement procedure for transportation projects performed by the commission and the Arkansas Department of Transportation;

(4) A construction manager-general contractor method allows the commission to engage a construction manager:

(A) To assist during the design and development process of the transportation project, including without limitation to provide input concerning the transportation project's:

(i) Design;

(ii) Scheduling;

(iii) Pricing; and

(iv) Phasing; and

(B) Who may subsequently become the general contractor and construct the transportation project if the parties agree on a guaranteed maximum price; and

(5) The cost-effective benefits are achieved by shifting the liability and risk for cost containment and transportation project scheduling to the construction manager, which leads many states to call this method the "construction manager at-risk method".

History. Act 2017, No. 809, § 1; 2019, No. 1019, § 1.

19-11-1403. Definitions.

As used in this subchapter:

(1) "Authorized contingency" means a provision prepared and submitted by the construction manager-general contractor as part of the guaranteed maximum price that is designed to cover costs that may result from:

(A) Incomplete design;

(B) Unforeseen and unpredictable conditions; or

(C) Uncertainties within the defined transportation project scope that a prudent

construction manager would not have reasonably detected or anticipated during the discharge of his or her preconstruction duties;

(2) "Construction manager-general contractor" means a business firm or a legal entity selected by the Director of State Highways and Transportation, to act as a construction manager to provide preconstruction services during the design and development phase of a transportation project;

(3) "Construction manager-general contractor method" means a transportation project delivery method using a best value procurement process in which a construction manager is procured to provide preconstruction services and may subsequently construct the whole transportation project or any part of the transportation project as the general contractor if the Arkansas Department of Transportation and the construction manager-general contractor reach an agreement on a guaranteed maximum price;

(4) "Guaranteed maximum price" means:

(A) The total dollar amount agreed to by the construction manager-general contractor to
complete the construction of the transportation project, including without limitation the construction manager-general contractor's:

(i) Direct costs;

(ii) Overhead;

(iii) Profit; and

(iv) Any authorized contingency; and

(B) Any dollar amount added to the total dollar amount of the transportation project
submitted under subdivision (4)(A) of this section to cover additional costs arising from changes in the scope of work as the department may subsequently direct in writing;

(5) "Preconstruction services" means work, labor, or services, including services furnished in connection with the design and development of a transportation project before the construction phase, including without limitation:

(A) Cost estimates;

(B) Schedule analysis;

(C) Sequencing of work;

(D) Risk identification and mitigation;

(E) Constructability reviews;

(F) Evaluation of alternative construction options;

(G) Assistance with various permits;

(H) Coordination with public or private utility service providers;

(I) Communication with third-party stakeholders or the public; and

(J) Development of a guaranteed maximum price; and

(6) "Request for proposals" means a document or publication soliciting proposals for a contract for construction of a transportation project between a construction manager-general contractor and the department.

History. Act 2017, No. 809, § 1.

19-11-1404. Construction Manager-General Contractor Method of 19 Procurement Pilot Program — Creation.

(a) The State Highway Commission may develop a Construction Manager General Contractor Method of Procurement Pilot Program to test the utilization of the construction manager-general contractor method as a cost-effective option for constructing transportation projects.

(b) (1) During the term of the program the commission may select a total of five (5) transportation projects on which to utilize the construction manager-general contractor method.

(2) (A) The sum of the construction cost estimates prepared as required under § 19-11-1407 of all five (5) construction manager-general contractor method transportation projects shall not exceed one hundred million dollars ($100,000,000).

(B) A construction cost estimate of a construction manager-general contractor method transportation project shall not exceed one hundred million dollars ($100,000,000).

(c) The Director of State Highways and Transportation shall send written notice identifying the transportation project and the reasons for deciding to apply the construction manager-general contractor method to that 5 specific transportation project to:

(1) The Chair of the House Committee on Public Transportation; and

(2) The Chair of the Senate Committee on Public Transportation, Technology, and Legislative
Affairs.

(d) The program established under this subchapter shall terminate no later than June 30, 2024.

History. Act 2017, No. 809, § 1; 2019, No. 1019, § 2.

19-11-1405. Project selection.

If the Arkansas Department of Transportation determines that a construction manager-general contractor method of procurement is appropriate for a transportation project, the department shall establish a procedure for awarding the contract for construction of the construction manager-general contractor method transportation project using the criteria listed in § 19-11-1406.

History. Act 2017, No. 809, § 1; 2019, No. 1019, § 4.

19-11-1406. Request for proposals.

(a) A request for proposals under this subchapter shall include without limitation the following:

(1) The minimum qualifications of the construction manager-general contractor;

(2) The procedures for submitting a proposal to the Arkansas Department of Transportation, the criteria for the evaluation of and selection of a construction manager-general contractor to perform preconstruction services, and the relative weight assigned for each criteria as indicated in a technical scoring matrix;

(3) The form of the contract to be awarded for preconstruction services;

(4) A listing of the types and scope of the preconstruction services that will be required;

(5) The scope of the intended contract;

(6) The budget limits for the transportation project and the preconstruction services;

(7) The method of payment and structure of fees for the preconstruction services;

(8) A requirement that the construction manager-general contractor submit relevant information regarding any licenses, registration, or credentials that may be required to construct the transportation project;

(9) A requirement that the construction manager-general contractor provide evidence that establishes that the construction manager-general contractor is capable of obtaining the required bonding and insurance;

(10) A requirement that the construction manager-general contractor submit information concerning the debarment or default from a federal, state, or local government transportation project within the past five (5) years;

(11) A requirement that the construction manager-general contractor provide information

concerning the bankruptcy or receivership of any of its members, including information concerning any work completed by a surety;

(12) A requirement that the construction manager-general contractor provide evidence of competency, capability, and capacity to complete a transportation project of similar size, scope, or complexity; and

(13) A prohibition that excludes a person or firm that has received compensation for assisting the department in preparing the request for proposals from submitting a proposal in response to the request for proposals or participating as a construction manager-general contractor team member.

(b) A request for proposals under this subchapter shall not:

(1) Require that the construction manager-general contractor have prior experience with any particular transportation project procurement method as a condition for submitting a proposal; and

(2) Give any preference for any particular contract delivery method in the scoring of a proposal.

(c) The department shall:

(1) Send a written notice of award to the best-evaluated construction manager-general contractor; or

(2) Send to all the construction manager-general contractors that submitted a proposal a written notice that all proposals have been rejected.

History. Act 2017, No. 809, § 1.

19-11-1407. Construction manager-general contractor selection.

(a) The Arkansas Department of Transportation shall:

(1) Prepare contract plans, specifications, special provisions, and other requirements composing the contract for construction of a transportation project elected for procurement using the construction manager-general contract method authorized by this subchapter;

(2) Prepare a detailed construction cost estimate to evaluate the appropriate price for the construction of the transportation project;

(3) If requested by the Director of State Highways and Transportation, have an independent third-party cost estimator prepare a detailed construction cost estimate to confirm the appropriate price for the construction of the transportation project;

(4) Include in the contract created by subdivision (a)(1) of this section a requirement that the construction manager-general contractor perform at least thirty percent (30%) of the total cost for construction, not including the preconstruction work performed by the construction manager-general contractor; and

(5) (A) Keep the construction cost estimates prepared under subdivisions (a)(2) and (3) of this section confidential and not subject to public disclosure until after the contract has been awarded.

(B) Construction cost estimates prepared under subdivisions (a)(2) and (3) of this section are confidential and exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., but only until after the contract has been awarded.

(b) A construction manager-general contractor shall submit to the department a guaranteed maximum price for the construction of the transportation project using the contract plans, specifications, special provisions, and other requirements prepared by the department as required by subdivision (a)(1) of this section.

(c) The department may award the contract to a construction manager-general contractor if the guaranteed maximum price does not exceed the cost estimate provided by the department or independent third party by more than ten percent (10%).

(d) If the director rejects the proposed guaranteed maximum price, the department may:

(1) Work with the construction manager-general contractor to find a guaranteed maximum price that is acceptable to both parties; or

(2) Request that the construction manager-general contractor provide additional preconstruction services and submit a new guaranteed maximum price as directed by this section.

(e) If the department does not award the contract to a construction manager-general contractor, the department may proceed with the transportation project using a procurement process authorized by law.

History. Act 2017, No. 809, § 1.

19-11-1408. Rules.

The State Highway Commission and the Arkansas Department of Transportation may promulgate rules to implement and administer this subchapter.

History. Acts 2017, No. 809, § 1.

APPENDIX 1

PUBLIC PROPERTY

Title 22
Public Property

Chapter 1
General Provisions

Subchapter 1
General Provisions

22-1-101. Sale of surplus commodities to not-for-profit organizations before being offered for sale to the public.

(a) As used in this section:

(1) "Commodities" means commodities under § 19-11-203; and

(2) "Not-for-profit organization" means a private corporation under § 4-28-201 et seq. that:

(A) Has a benevolent, philanthropic, patriotic, or charitable purpose; and

(B) Performs a function that would be performed at the public expense if it were not performed by the organization.

(b) Before a state, county, or municipal government entity offers surplus commodities for sale to the public, the state, county, or municipal government entity:

(1) Shall consider offers by not-for-profit organizations for the surplus commodities made by not-for-profit organizations; and

(2) May accept a reasonable bid or offer for the surplus commodities from a not-for-profit organization.

History: Acts 2013, No. 1020, § 2.

APPENDIX 2

DISBURSEMENT OF PUBLIC FUNDS

Title 19
Public Finance

Chapter 4
State Accounting and Budgetary Procedures

Subchapter 12
Disbursement of Public Funds

19-4-1206. Duties generally.

(a) The bonded disbursing officer for each state agency or the bonded disbursing officer for any regular or special fund provided for by the General Assembly shall be responsible and held accountable for the proper expenditure of the funds under his or her control.

(b) It shall be the responsibility and duty of each disbursing officer or agent to:

(1) Keep advised as to the availability of the appropriations and funds for which he or she is the disbursing officer and be informed as to the legality of and authority for any obligations which may be incurred before any disbursements are made;

(2) Keep advised as to the laws or administrative rules relating to general accounting procedures and restrictions for the disbursement of funds; and

(3) Certify that:

(A) Any disbursements which he or she may make are in accordance with the terms of any applicable contracts, purchasing procedure, or other authority;

(B) The services have been performed or the goods received; and

(C) The vendor or payee is entitled to the amount set forth in the check or voucher.

History. Acts 1973, No. 876, § 14; A.S.A. 1947, § 13-340; 2019, No. 315, § 1728.

APPENDIX 3

MINORITY BUSINESSES

Title 15
Natural Resources and Economic Development

Chapter 4
Development of Business and Industry Generally

Subchapter 3
Division of Minority Business Enterprise

15-4-301. Title.

This subchapter shall be known and may be cited as the “Minority and Women-Owned Business Economic Development Act”.

History. Acts 1977, No. 544, § 2; A.S.A. 1947, § 5-916.3; Acts 1997, No. 540, § 69; 2009, No. 1222, § 1.

15-4-302. Purpose – Goals – Notice.

(a) The General Assembly finds that it is the policy of the State of Arkansas to support equal opportunity as well as economic development in every sector.

(b) The General Assembly recognizes that it is the purpose of this subchapter to support to the fullest all possible participation of firms owned and controlled by minority persons and women in state-funded and state-directed public construction programs and in the purchase of goods and services for the state.

(c) 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 enterprises:

(1) (A) For minority business enterprises, ten percent (10%).

(B) The ten-percent goal under subdivision (c)(1)(A) of this section shall be allocated as follows:

(i) Two percent (2%) for service-disabled veteran- owned minority business enterprises; and

(ii) Eight percent (8%) for all other minority business enterprises; and

(2) For women-owned business enterprises, five percent (5%).

(d) To facilitate notification of potential respondents to procurement solicitations, a state agency shall publish all state contract solicitations on the website for the Office of State Procurement of the Department of Finance and Administration.

History. Acts 1977, No. 544, § 1; 1979, No. 1060, § 9; 1983, No. 644, § 1; A.S.A. 1947, §§ 5-916.2, 5-916.2a, 5-916.2a note; Acts 1997, No. 540, §§ 24, 70; 2009, No. 1222, § 2.

15-4-303. Definitions.

As used in this subchapter:

(1) (A) "Exempt" means goods and services classified as exempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the Office of State Procurement of the Department of Finance and Administration and the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and submitted to the Arkansas Economic Development Council for its review and consideration for the purposes of this subchapter;

(2) "Minority" means a lawful permanent resident of this state who is:

(A) African American;

(B) Hispanic American;

(C) American Indian;

(D) Asian American; or

(E) Pacific Islander American;

(F) A service-disabled veteran as designated by the United States Department of Veterans Affairs;

(3) "Minority business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons as defined in this section;

(4) "Minority and women-owned business officer" means the individual within each state agency with the responsibility for carrying out the intended purposes of this subchapter;

(5) (A) "Nonexempt" means goods and services classified as nonexempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the office and the division and submitted to the council for its review and consideration for the purposes of this subchapter;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;

(7) "State agency" means a department, an office, a board, a commission, or an institution of this state, including a state-supported institution of higher education; and

(8) "State contract" means a state agreement, regardless of what it may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt; and

(9) "Women-owned business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this state.

History. Acts 1977, No. 544, § 5; A.S.A. 1947, § 5-916.6; Acts 2003, No. 1814, § 2; 2009, No. 1222, § 3; 2011, No. 893, § 1.

15-4-304. Creation.

The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission:

(1) Is established and confirmed within the commission under the jurisdiction of the Arkansas Economic Development Council;

(2) Shall be operated as a division within the commission; and

(3) Shall perform the functions and duties as provided in this subchapter.

History. Acts 1977, No. 544, § 3; A.S.A. 1947, § 5-916.4; Acts 2009, No. 1222, § 4.

15-4-305. Administrator.

(a) The head of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission is the Administrator of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission.

(b) The administrator shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(c) The administrator shall report to the Secretary of the Department of Commerce.

History. Acts 1977, No. 544, § 4; A.S.A. 1947, § 5-916.5; Acts 2009, No. 1222, § 5; 2019, No. 910, § 361.

15-4-306. Duties.

The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall:

(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises and women-owned business enterprises;

(2) With the participation of other state departments and agencies as appropriate:

(A) Develop comprehensive plans and specific program goals for a minority business enterprise and women-owned business enterprise program;

(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and

(C) Evaluate the impact of federal and state support in achieving the objectives established by the commission;

(3) Implement state policy in support of minority business enterprise and development and women-owned business enterprise and development and coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises and women-owned business enterprises;

(4) Coordinate, make application for, and administer federal funding grants from the United States Minority Business Development Agency, the United States Small Business Administration, the United States Department of Veterans Affairs, and other federal agencies when applicable;

(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of other state departments and agencies;

(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises and women-owned business enterprises;

(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise and women-owned business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;

(8) Recommend appropriate legislative or executive actions to enhance minority business enterprise and women-owned business enterprise opportunities in this state;

(9) Assist minority businesses and women-owned business enterprises in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;
(10) Provide services to promote the organization of local development corporations for rural development and assist minority business enterprise and women-owned business enterprise persons in agrarian endeavors;
(11) Assist minority business enterprises and women-owned business enterprises to promote reciprocal foreign trade and investment;
(12) Assist minority and women-owned business persons in business contract procurement from governmental and private commercial sources; and
(13) Provide a program effort to ensure participation of veterans and women in Arkansas minority business enterprise activities and women-owned business enterprise activities.

History. Acts 2009, No. 1222, § 6.

15-4-307. Minority and Women-owned Business Advisory Council.

(a) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall be represented by a statewide Minority and Women-owned Business Advisory Council and shall report to that council.

(b) (1) The council shall consist of nine (9) members.

(2) The council shall:

(A) Monitor progress, make recommendations, and develop strategic plans for performance improvement; and

(B) Report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c) (1) The Governor shall appoint three (3) members of the council with the advice and consent of the Senate.

(2) The President Pro Tempore of the Senate shall appoint two (2) members of the council.
(3) The Speaker of the House of Representatives shall appoint two (2) members of the council.
(4) The Director of the Arkansas Economic Development Commission shall appoint two (2) members of the council.
(5) Appointments shall reflect and be representative of the minority and women-owned business communities, resource organizations, entrepreneurs, corporations, and other minority and women-owned business advocates.

(d) Except as otherwise provided by law, members of the council shall serve without compensation.

(e) The term of office of the council shall:

(1) Be at the pleasure of the appointing officer; and
(2) Not exceed five (5) years.

(f) There is established a formal relationship between the council and the Administrator of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission.

(g) (1) The administrator shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under the provisions of this section.

(2) Their duties in relation to this section shall be considered official duty in the conduct of state business.

(h) The council's duties and responsibilities shall be to:

(1) Review reports and interpret each agency's achievement of its goals under § 15-4-302(c);
(2) Advise the Governor when an agency has not reached its goals under § 15-4-302(c);
(3) Make annual reports to the Secretary of the Department of Commerce, including without limitation:
(A) A summary of the state's performance in relation to the goals stated in § 15-4-302(c); and
(B) Any recommendations for modifications to the division's or other state agency's plans for improving statewide performance in relation to the goals stated in § 15-4-302(c);
(4) Recommend to the state agency, the division, and the Office of State Procurement of the Department of Finance and Administration corrective actions to strengthen minority and women-owned business opportunities in the state; and
(5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out the provisions of this subchapter.

(i) Each state agency, through its minority and women-owned business officer, shall submit to the division and the office the agency's plan to reach its goals for the coming fiscal year and shall:

(1) Be submitted to the division by June 30 of each year;
(2) Contain the name of the state agency submitting the plan;
(3) Contain a policy statement signed by the agency head expressing a commitment to strengthen minority and women-owned business enterprises in all aspects of contracting to the maximum extent feasible;
(4) Identify the name of the minority and women-owned business officer in the agency who is responsible for developing and administering the compliance plan;
(5) Establish a timetable for the agency to reach its goals under the plan and the manner in which the agency intends to reach its goals; and
(6) Contain any other procedures the division deems necessary to comply with the goals and the compliance plan.

History. Acts 2009, No. 1222, § 6; 2019, No. 910, § 362.

15-4-308. Administration.

(a) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall serve as the principal coordinators of the initiative to ensure the successful implementation of this subchapter.

(b) The division and the office shall provide assistance to minority business enterprises and women-owned business enterprises seeking contract opportunities with various state agencies.

(c) The division and the office shall maintain a directory of all minority and women-owned business officers for each state agency.

(d) The division and the office shall provide management and technical assistance to any state agency that experiences difficulty in complying with the provisions of this subchapter.

(e) The division and the office shall maintain a current directory of minority business enterprises and women-owned business enterprises and shall make the directory available to each state agency and minority and women-owned business officer.

(f) The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority business enterprises and women-owned business enterprises may participate.

History. Acts 2009, No. 1222, § 6.

15-4-309. Exempt contracts.

Upon the approval of the Minority and Women-owned Business Advisory Council, the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall determine the classifications of contracts to be exempted from the goals established by this subchapter whenever there exists an insufficient number of minority business enterprises or women-owned business enterprises to ensure adequate competition.

History. Acts 2009, No. 1222, § 6.

15-4-310. Minority and women-owned business officer.

(a) Each state agency shall designate an individual as its minority and women-owned business officer.

(b) The minority and women-owned business officer shall be the person within the agency with whom the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Minority and Women-owned Business Advisory Council shall work in their efforts to accomplish the goals of this subchapter.

(c) Upon the appointment of the minority and women-owned business officer in each state agency, the agency shall notify the division and the Office of State Procurement of the Department of Finance and Administration.

History. Acts 2009, No. 1222, § 6.

15-4-311. Annual minority and women-owned purchasing plan.

(a) Prior to June 30 each year, each state agency shall submit to the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration a minority and women-owned purchasing plan that shall outline the agency's plan to reach its goals for the coming fiscal year.

(b) The minority and women-owned purchasing plan shall include without limitation:

(1) The name of the state agency;
(2) A policy statement signed by the agency head expressing a commitment to use minority business enterprises and women-owned business enterprises in all aspects of contracting to the maximum extent feasible;
(3) The name of the minority and women-owned business officer in the agency who is responsible for developing and administering the compliance plan;
(4) The time table for the state agency to reach its goals under the purchasing plan and the manner in which the state agency intends to reach its goals, including without limitation the manner in which the state agency intends to include minority business enterprises and women-owned business enterprises; and
(5) Any other procedures the agency deems necessary to comply with the goals and the purchasing plan.

(c) The minority and women-owned business officer shall determine the category to which a purchase shall be assigned for purposes of the minority and women-owned purchasing plan required under this section.

History. Acts 1991, No. 698, § 1; 2007, No. 692, § 1; 2009, No. 1222, § 7.

15-4-312. State agencies to submit reports.

Within fifteen (15) days of the close of each six-month period, each state agency shall submit a report to the Minority and Women-owned Business Advisory Council 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.

History. Acts 1991, No. 698, § 2; 2009, No. 1222, § 8.

15-4-313. Accelerated payments.

To ensure that minority business enterprises and women-owned business enterprises are not financially hindered due to delays in payment by state agencies entering into contracts with minority business enterprises and women-owned business enterprises under this subchapter, state agencies shall accelerate payment to minority vendors and women-owned vendors to preclude accounts receivable problems of minority business enterprises and women-owned business enterprises caused by the State of Arkansas.

History. Acts 1991, No. 698, § 3; 1995, No. 1296, § 48; 1997, No. 540, § 25; 2003, No. 487, § 12; 2007, No. 692, § 2; 2009, No. 481, § 1; 2009, No. 1222, § 9.

15-4-314. Minority business enterprises and women-owned business enterprises certification process.

(a) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises and women-owned business enterprises.

(b) The certification process shall include without limitation:

(1) Criteria for certification that shall include without limitation:

(A) A determination that the business is structured as a minority business enterprise or a women-owned business enterprise;

(B) Verification of minority or woman ownership and control of the business; and

(C) Annual updates indicating continuing minority or woman ownership and control;

(2) A formal application process;

(3) An education program to assist minority business enterprises and women-owned business enterprises in achieving certification; and

(4) An outreach to ensure the broadest possible participation of minority business enterprises and women-owned business enterprises and persons proposing new minority business enterprises or women-owned business enterprises.

(c) The Office of State Procurement of the Department of Finance and Administration shall cooperate with the division to the fullest extent possible in sharing information concerning certification and registration of minority business enterprises and women-owned business enterprises carrying out the purposes of this section.

History. Acts 1991, No. 698, § 6; 2009, No. 1222, § 10.

15-4-315. Small procurements

To assist the state in ensuring that the percentages of the total amount expended in state-funded and state-directed public construction programs and procurement of commodities and services for the state each fiscal year under § 15-4-302 are paid to minority business enterprises and women-owned business enterprises under this subchapter, a procurement that does not exceed two (2) times the amount stated in § 19-11-204(13) may be procured without seeking competitive bids or competitive sealed bids if the procurement is with a certified minority business enterprise or certified women-owned business enterprise.

History. Acts 2017, No. 1080, § 2.

25-36-104. Data recording and tracking.

(a) (1) The State Procurement Director shall track data regarding minority participation in state contracts that exceed fifty thousand dollars ($50,000).

(2) The data shall include, but not be limited to, information regarding:

(A) The dollar amount for each contract awarded to a minority-owned business;

(B) The total dollar amount spent on contracts by each state agency; and

(C) The number and percentage of minority-owned businesses awarded contracts by the agency.

(b) The director shall report the data required under subsection (a) of this section semiannually to the Governor and to the cochairs of the Legislative Council and to the Legislative Joint Auditing Committee and the Minority Business Advisory Council.

(c) (1) Each state agency shall include in its budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding fifty thousand dollars ($50,000) awarded to minority-owned businesses.

(2) The vice president or vice chancellor for finance of each state college and university shall include in his or her budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding fifty thousand dollars ($50,000) awarded to minority-owned businesses.

(d) The director shall promulgate rules necessary for the implementation of this chapter.

History. Acts 2003, No. 1814, § 1; 2005, No. 1962, § 113; 2013, No. 1189, § 6; 2019, No. 315, § 2934.22-8-1022-8-101

R1:25-36-104. (RESCINDED)

APPENDIX 4

MOTOR VEHICLES

Title 22
Public Property

Chapter 8
Motor Vehicles

Subchapter 1
General Provisions

22-8-101. Registration of state-owned motor vehicles — Report.

(a) (1) In order that a complete inventory of all state-owned motor vehicles is maintained, every state agency, including the Arkansas Department of Transportation, the Arkansas State Game and Fish Commission, the Division of Arkansas State Police, the Arkansas National Guard, and all constitutional offices shall annually register each motor vehicle owned by the State of Arkansas with the Secretary of the Department of Finance and Administration in a manner prescribed by the secretary.

(2) The registration shall include a description of each motor vehicle, including the year, make, model, license number, vehicle identification number, and other information which the secretary might require.

(3) Whenever any state agency sells or disposes of a motor vehicle, a complete record thereof shall be furnished to the secretary as authorization for the removal of the vehicle from the official state inventory.

(4) Whenever any state agency acquires a new or additional motor vehicle, the information required by this subsection to be placed in the state inventory shall be furnished to the secretary within ten (10) days after the acquisition of the vehicle by the agency.

(5) The secretary shall keep the inventory of motor vehicles owned by the State of Arkansas and its agencies current at all times, categorized in accordance with the motor vehicles owned by each of the respective state agencies.

(b) (1) The secretary shall make an annual report to the Legislative Council as to the number of motor vehicles owned by the State of Arkansas.

(2) The report shall include a comparison of the current inventory of motor vehicles with an inventory of the preceding year.

History. Acts 1977, No. 455, §§ 1, 2; A.S.A. 1947, §§ 14-524, 14-525; 2019, No. 910, § 3502.

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

(a) As used in this section:

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

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

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

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

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

(3) If, after the Legislative Council or the Joint Budget Committee has reviewed the proposed lease of the motor vehicle, the director approves the proposed lease of the motor vehicle, the director shall stamp his or her approval on the request and return it to the state agency, which may then proceed to enter into the lease as proposed and approved by the director.

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

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

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

History. Acts 1977, No. 455, § 3; A.S.A. 1947, § 14-526; Acts 2001, No. 588, § 1; 2019, No. 417, § 10.

R1:22-8-102. AUTHORITY OF DIRECTOR.

(a) For the purposes of this subsection, “the director” shall refer to the Director of the Office of State Procurement.

(b) All state agencies shall submit a written request to the State Procurement Director specifying all needed requirements for a lease of a vehicle. The Office of State Procurement will issue the solicitation based upon the criteria set forth by the agency to determine the lowest responsible and responsive bidder. The Office of State Procurement will award the contract for the lease after review by the Arkansas Legislative Council, or Joint Budget Committee when the General Assembly is in session.

22-8-103. Penalty for noncompliance with §§ 22-8-101 and 22-8-102.

Any department head or employee of the State of Arkansas failing or refusing to carry out the provisions of §§ 22-8-101 and 22-8-102 shall be deemed guilty of a Class B misdemeanor and upon conviction shall be punished in the manner provided by law.

History. Acts 1977, No. 455, § 4; A.S.A. 1947, § 14-527.

22-8-104. Private use of state or county vehicles — Penalty.

(a) It shall be unlawful for any state or county employee who is employed by the Arkansas Department of Transportation or by a county highway department, county judge, or road commissioner to use trucks and automobiles that belong to the state or county for any purpose other than performing actual service for the state or county.

(b) The use of publicly owned cars and trucks for individual use to make pleasure trips on Sundays and other holidays, except when going to and from the place of employment or transporting tools, material, and other supplies to places of necessity, is prohibited.

(c) The provisions of this section shall not be so construed as to prevent judges and road commissioners from making road inspection trips when the judge or road commissioner deems the inspections necessary.

(d) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) and not more than one hundred dollars ($100).

History. Acts 1941, No. 318, §§ 1, 2; A.S.A. 1947, §§ 14-501, 14-502; Acts 2017, No. 707, § 84.

APPENDIX 5

RISK MANAGEMENT

Title 23
Public Utilities and Regulated Industries

Chapter 11
State Insurance Department

Subchapter 6
Risk Management

23-61-601. Title.

This subchapter may be cited as the “Risk Management Act”.

History. Acts 1981, No. 272, § 3; A.S.A. 1947, § 66-5703.

23-61-602. Purpose.

(a) It is the purpose of this subchapter to reduce the cost to the state of insurance coverage, including surety bonds, by establishing the Risk Management Division.

(b) It is also the purpose of this subchapter that the division analyze and make recommendations as to cost-effective loss control and safety programs for the various state agencies.

(c) It is also the purpose of this subchapter to authorize the division to advise and give assistance to municipalities, counties, school districts, and improvement districts as to the procurement of insurance coverage and other risk management techniques.

History. Acts 1981, No. 272, § 1; A.S.A. 1947, § 66-5701.

23-61-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Risk management” means the minimization of loss through the discovery of loss sources, evaluation of the impact of a possible loss on the organization, and the selection of the most effective and efficient technique of dealing with risk of loss;
(2) “Risk manager” means the Administrator of the Risk Management Division; and
(3) “State agencies” means any agencies, boards, bureaus, commissions, councils, departments, institutions, or other establishments of this state.

History. Acts 1981, No. 272, § 2; A.S.A. 1947, § 66-5702.

23-61-604. Risk Management Division — Creation.

There is created a Risk Management Division within the State Insurance Department.

History. Acts 1981, No. 272, § 4; A.S.A. 1947, § 66-5704.

23-61-605. Risk manager — Appointment — Authority.

(a) (1) The Administrator of the Risk Management Division will be appointed by the Insurance Commissioner.

(2) The risk manager shall be knowledgeable and experienced in risk management techniques.

(b) The risk manager shall have the authority to:

(1) Establish standardized specifications for insurance coverage of all state agencies;
(2) Determine all specifications for insurance coverage of state agencies;
(3) Assist and advise state agencies in the procurement of insurance coverage;
(4) Establish a system for reporting insured or uninsured losses incurred by state agencies and purchases of insurance by state agencies within guidelines established by the risk manager;
(5) Develop and promote programs to control losses and encourage safety; and
(6) Perform any other function of risk management as directed by the commissioner.

History. Acts 1981, No. 272, §§ 4, 5; A.S.A. 1947, §§ 66-5704, 66-5705.

23-61-606. Procurement of insurance or surety bonding.

(a) The State Procurement Director shall procure insurance or surety bonding in accordance with the Arkansas Procurement Law, § 19-11-201 et seq., unless the risk manager determines that it is in the best interest of the state for the director to procure insurance or surety bonding by negotiation, or for any state agency to procure all or part of its own insurance or surety bonding.

(b) When the Administrator of the Risk Management Division authorizes state agencies to procure insurance or surety bonding, the authorization shall be made in writing and approved by the Insurance Commissioner. The authorization may be made for, but not limited to, purchases not exceeding an amount established by rules, particular lines of insurance, and purchases by state agencies with a demonstrated expertise in the field of risk management.

(c) Upon approval of the risk manager and the director, a state agency may be authorized to procure insurance or surety bonding under emergency conditions. Emergency conditions exist when life, health, welfare, assets, or functional operations of an agency are or may be threatened or impaired.

(d) The director shall not have jurisdiction over the procurement of surety bonding or insurance coverage for state agencies except as provided by this subchapter.

History. Acts 1981, No. 272, §§ 7-10; 1983, No. 522, §§ 41, 42; A.S.A. 1947, §§ 66-5707 — 66-5710; 2019, No. 315, § 2618.

23-61-607. Rules.

(a) The Administrator of the Risk Management Division shall have the authority to promulgate rules consistent with this subchapter.

(b) All rules shall be subject to the approval of the Insurance Commissioner and conform with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1981, No. 272, § 11; A.S.A. 1947, § 66-5711; 2019, No. 315, § 2619.

23-61-608. Advice and assistance for certain political subdivisions.

(a) At the request of any municipality, county, school district, or improvement district, the risk manager may give advice and assistance on the purchase of insurance coverage and other risk management techniques.

(b) However, counties, municipalities, school districts, and improvement districts may be required to reimburse the State Insurance Department for expenses incurred by providing the assistance. Reimbursements shall not include salary and benefit expenses for full-time state employees.

(c) The reimbursements shall be deposited in the State Treasury as nonrevenue receipts refund to expenditures.

(d) This section shall only be used in the event that budgetary constraint dictates this action to prevent undue fiscal hardships on the department.

History. Acts 1981, No. 272, § 13; 1983, No. 522, § 43; A.S.A. 1947, § 66-5713.

23-61-609. Reports by state agencies.

State agencies shall report to the Administrator of the Risk Management Division information that the risk manager determines to be necessary to analyze and manage the risk of loss of state assets.

History. Acts 1981, No. 272, § 12; A.S.A. 1947, § 66-5712.

23-61-610. Annual report.

The Administrator of the Risk Management Division shall report annually to the Governor and the Legislative Council on his or her findings and recommendations.

History. Acts 1981, No. 272, § 6; A.S.A. 1947, § 66-5706.

APPENDIX 6

THE ARKANSAS FREEDOM OF INFORMATION ACT

Title 25
State Government

Chapter 19
Freedom of Information Act

25-19-101. Title.

This chapter shall be known and cited as the “Freedom of Information Act of 1967”.

History. Acts 1967, No. 93, § 1; A.S.A. 1947, § 12-2801.

25-19-102. Legislative intent.

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this chapter is adopted, making it possible for them or their representatives to learn and to report fully the activities of their public officials.

History. Acts 1967, No. 93, § 2; A.S.A. 1947, § 12-2802.

25-19-103. Definitions.

As used in this chapter:

(1) (A) “Custodian”, except as otherwise provided by law and with respect to any public record, means the person having administrative control of that record.

(B) “Custodian” does not mean a person who holds public records solely for the purposes of storage, safekeeping, or data processing for others;

(2) “Disaster recovery system” means an electronic data storage system implemented and maintained solely for the purpose of allowing a governmental unit or agency to recover operational systems and datasets following the occurrence of a catastrophe, including without limitation an act of war, an equipment failure, a cyber-attack, or a natural disaster such as a tornado, earthquake, or fire;

(3) “Format” means the organization, arrangement, and form of electronic information for use, viewing, or storage;

(4) “Medium” means the physical form or material on which records and information may be stored or represented and may include, but is not limited to, paper, microfilm, microform, computer disks and diskettes, optical disks, and magnetic tapes;

(5) (A) "Municipally owned utility system" means a utility system owned or operated by a municipality that provides:

(i) Electricity;

(ii) Water;

(iii) Wastewater;

(iv) Cable television; or
(v) Broadband service.
(B) "Municipally owned utility system" includes without limitation a:
(i) Consolidated waterworks system under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;
(ii) Utility system managed or operated by a nonprofit corporation under § 14-199-701 et seq.; and
(iii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated public Utility System Improvement District Law, § 14-217-101 et seq.;

(6) “Public meetings” means the meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds;

(7) (A) “Public records” means writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, or any other agency or improvement district that is wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

(B) “Public records” does not mean software acquired by purchase, lease, or license;

(8) “Public water system” means all facilities composing a system for the collection, treatment, and delivery of drinking water to the general public including without limitation reservoirs, pipelines, reclamation facilities, processing facilities, distribution facilities, and regional water distribution districts under the Regional Water Distribution District Act, § 14-116-101 et seq.; and

(9) “Vulnerability assessment” means an assessment of the vulnerability of a public water system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the public water system to provide a safe and reliable supply of drinking water as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188.

History. Acts 1967, No. 93, § 3; 1977, No. 652, § 1; 1981, No. 608, § 1; 1985, No. 468, § 1; A.S.A. 1947, § 12-2803; Acts 2001, No. 1653, § 1; 2003, No. 763, § 1; 2005, No. 259, § 1; 2007, No. 268, § 1; 2007, No. 998, § 1; 2009, No. 631, § 1; 2011, No. 99, § 1; 2011, No. 210, § 2; 2013, No. 235, § 1; 2015, No. 186, § 2; 2015, No. 881, § 1; 2015, No. 999, § 4.

25-19-104. Penalty.

Any person who negligently violates any of the provisions of this chapter shall be guilty of a Class C misdemeanor.

History. Acts 1967, No. 93, § 7; A.S.A. 1947, § 12-2807; Acts 1987, No. 49, § 3; 2005, No. 1994, § 413.

25-19-105. Examination and copying of public records.

(a) (1) (A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any

citizen of the State of Arkansas during the regular business hours of the custodian of the records.

(B) However, access to inspect and copy public records shall be denied to:

(i) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(ii) The representative of a person under subdivision (a)(1)(B)(i) of this section unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

(2) (A) A citizen may make a request to the custodian to inspect, copy, or receive copies of public records.

(B) The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

(C) The request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.

(3) If the person to whom the request is directed is not the custodian of the records, the person shall so notify the requester and identify the custodian, if known to or readily ascertainable by the person.

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax records;

(2) Medical records, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of that act;

(3) The site files and records maintained by the Arkansas Historic Preservation Program of the Division of Arkansas Heritage and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General;

(8) Documents that are protected from disclosure by order or rule of court;

(9) (A) Files that if disclosed would give advantage to competitors or bidders; and

(B) (i) Records maintained by the Arkansas Economic Development Commission related to any business entity's planning, site location, expansion, operations, or product development and marketing, unless approval for release of those records is granted by the business entity.

(ii) However, this exemption shall not be applicable to any records of expenditures or grants made or administered by the commission and otherwise disclosable under the provisions of this chapter;

(10) (A) The identities of law enforcement officers currently working undercover with their agencies and identified in the Arkansas Minimum Standards Office as undercover officers.

(B) Records of the number of undercover officers and agency lists are not exempt from this chapter;

(11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including, but not limited

to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein;
(12) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;
(13) Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees, nonelected municipal employees, nonelected school employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;
(14) Materials, information, examinations, and answers to examinations utilized by boards and commissions for purposes of testing applicants for licensure by state boards or commissions;
(15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date;
(16) Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the United States Environmental Protection Agency for a period of ten (10) years from the date of submission;
(17) [Repealed]
(18) (A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans, containing information relating to security for any public water system or municipally owned utility system.
(B) The records under (b)(18)(A) include:
(i) Risk and vulnerability assessments;
(ii) Plans and proposals for preventing and mitigating security risks;
(iii) Emergency response and recovery records;
(iv) Security plans and procedures;
(v) Plans and related information for generation, transmission, and distribution systems; and
(vi) Other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system or municipally owned utility system;
(19) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under § 5-73-301 et seq., including without limitation all records provided to or obtained by a local, state, or federal government or their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee, and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:
(A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency to assist in a criminal investigation or prosecution or to determine the validity of or eligibility for a license; and
(B) The name of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records;
(20) Personal information of current and former public water system customers and municipally owned utility system customers, including without limitation:
(A) Home and mobile telephone numbers;

(B) Personal email addresses;
(C) Home and business addressees; and
(D) Customer usage data.
(21) Electronic data information maintained by a disaster recovery system.
(22) The date of birth, home address, email address, phone number, and other contact information from county or municipal parks and recreation department records of a person who was under eighteen (18) years of age at the time of the request made under this section.
(23) (A) Information related to taxes collected by particular entities under § 26-74-501 et seq.; the Advertising and Promotion Commission Act, § 26-75-601 et seq.; and § 26-75-701 et seq.
(B) However, this exemption does not apply to information or other records regarding the total taxes collected under § 26-74-501 et seq.; the Advertising and Promotion Commission Act, § 26-75-601 et seq.; and § 26-75-701 et seq. in the county or municipality as a whole.
(24) (A) Undisclosed and ongoing investigations by the Alcoholic Beverage Control Board, Alcoholic Beverage Control Division, or Alcoholic Beverage Control Enforcement Division;
(B) Completed investigations by the Alcoholic Beverage Control Board, Alcoholic Beverage Control Division, or Alcoholic Beverage Control Enforcement Division or investigations by the Alcoholic Beverage Control Board, Alcoholic Beverage Control Division, or Alcoholic Beverage Control Enforcement Division that have been provided to the person or entity 1 under investigation are subject to disclosure under this section.
(25) (A) When the custodian is a governmental entity that has knowledge of the individual's assistance as described in this (b)(25)(A), information that could reasonably be used to identify an individual who is assisting or has assisted a governmental entity in one (1) or more investigations, whether open or closed, of matters that are criminal in nature, if disclosure of the individual's identity could reasonably be expected to endanger the life or physical safety of the individual or a member of the individual's family within the first degree of consanguinity and:
(i) The individual is a confidential informant;
(ii) The individual is a confidential source; or
(iii) The individual's assistance is or was provided under the assurance of confidentiality.
(B) As used in this subdivision (b)(25), "information that could reasonably be used to identify an individual" includes the following:
(i) The individual's name;
(ii) The individual's date of birth;
(iii) A physical description of the individual that could reasonably be used to identify him or her;
(iv) The individual's Social Security number, driver's license number, or other government-issued number specific to him or her;
(v) The individual's work or personal contact 16 information; and
(vi) Any other information about the individual that could reasonably be used to identify the individual.
(26) (A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information relating to security for any medical marijuana cultivation facility, marijuana dispensary, or marijuana laboratory processor.

(B) The records under subdivision (b)(26)(A) include:

(i) Risk and vulnerability assessments;

(ii) Plans and proposals for preventing and mitigating security risks;

(iii) Emergency response and recovery records;

(iv) Security plans and procedures;

(v) Plans and related information for generation, transmission, and distribution systems; and

(vi) Other information that, if disclosed, would jeopardize or compromise efforts to secure and protect the security of a medical marijuana cultivation facility, marijuana dispensary, or marijuana laboratory processor.

(c) (1) Notwithstanding subdivision (b)(12) of this section, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3) (A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B) (i) If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period, the custodian shall send written notice via overnight mail to the subject of the records at his or her last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

(ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d) (1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(2) (A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.

(B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

(C) A custodian is not required to compile information or create a record in response to a request made under this section.

(3) (A) (i) Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency

personnel time associated with searching for, retrieving, reviewing, or copying the records.

(ii) The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

(iii) If the estimated fee exceeds twenty-five dollars ($25.00), the custodian may require the requester to pay that fee in advance.

(iv) Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

(B) The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.

(e) If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days at which time the record will be available for the exercise of the right given by this chapter.

(f) (1) No request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.

(2) Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.

(3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.

(4) If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, or obtain copies of public records, the custodian shall bear the cost of the separation.

(g) Any computer hardware or software acquired by an entity subject to § 25-19-103(5)(A) after July 1, 2001, shall be in full compliance with the requirements of this section and shall not impede public access to records in electronic form.

(h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, any settlement agreement entered into by a state agency shall be deemed a public document for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1967, No. 93, § 4; 1977, No. 652, § 2; A.S.A. 1947, § 12-2804; Acts 1987, No. 49, § 1; 1989 (3rd Ex. Sess.), No. 8, § 1; 1993, No. 895, § 1; 1997, No. 540, § 52; 1997, No. 873, § 1; 1997, No. 1335, § 1; 1999, No. 1093, § 1; 2001, No. 1259, § 1; 2001, No. 1336, § 1; 2001, No. 1653, § 2; 2003, No. 213, § 1; 2003, No. 275, § 2; 2003, No. 763, § 2; 2003, No. 1214, § 1; 2005, No. 259, § 2; 2005, No. 2003, § 1; 2007, No. 268, § 2; 2007, No. 726, §§ 1, 2; 2007, No. 998, § 2; 2009, No. 631, § 2; 2009, No. 1291, § 1; 2011, No. 99, § 2; 2011, No. 168, § 1; 2013, No. 145, § 1; 2013, No. 235, § 2; 2013, No. 411, § 1; 2015, No. 186, § 3; 2015, No. 881, § 2; 2015, No. 1015, § 1; 2015, No. 1102, § 1; 2019, No. 910, § 3585; 2019, No. 1012, § 1; 2019, No. 1034, § 1; 2019, No. 392, § 6; 2019, No. 568, § 1.

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b) (1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

(c) (1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee. The specific purpose of the executive session shall be announced in public before going into executive session.

(2) (A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

(5) (A) Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials that are administered to applicants for licensure from state agencies.

(B) Boards and commissions are excluded from this chapter for the administering of examinations to applicants for licensure.

(6) Subject to the provisions of subdivision (c)(4) of this section, a public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security or municipally owned utility system security as described in § 25-19-105(b)(18).

(d) (1) All officially scheduled, special, and called open public meetings shall be recorded in a manner that allows for the capture of sound including without limitation:

(A) A sound-only recording;

(B) A video recording with sound and picture; or

(C) A digital or analog broadcast capable of being recorded.

(2) A recording of an open public meeting shall be maintained by the public entity for a minimum of one (1) year from the date of the open public meeting.

(3) The recording shall be maintained in a format that may be reproduced upon a request under this chapter.

(4) Subdivisions (d)(1) and (2) of this section do not apply to:

(A) Executive sessions; or

(B) Volunteer fire departments.

(5) Cities of the second class and incorporated towns are exempt from subdivisions (d)(1) and (2) of this section until July 1, 2020.

History. Acts 1967, No. 93, § 5; 1975 (Extended Sess., 1976), No. 1201, § 1; 1985, No. 843, § 1; A.S.A. 1947, § 12-2805; reen. Acts 1987, No. 1001, § 1; 1999, No. 1589, § 1; 2001, No. 1259, § 2; 2003, No. 763, § 3; 2005, No. 259, § 3; 2007, No. 268, § 3; 2007, No. 998, § 3; 2009, No. 631, § 3; 2011, No. 99, § 3; 2013, No. 235, § 3; 2015, No. 186, § 4; 2019, No. 1028, § 1.

25-19-107. Appeal from denial of rights — Attorney's fees.

(a) Any citizen denied the rights granted to him or her by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if the State of Arkansas or a department, agency, or institution of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved.

(b) Upon written application of the person denied the rights provided for in this chapter, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case.

(c) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(d) (1) In any action to enforce the rights granted by this chapter, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified.

(2) If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

(e) (1) Notwithstanding subsection (d)(1) of this section, the court shall not assess reasonable attorney's fees or other litigation expenses reasonably incurred by a plaintiff against the State of Arkansas or a department, agency, or institution of the state.

(2) (A) A plaintiff who substantially prevailed in an action under this section against the State of Arkansas or a department, agency, or institution of the state may file a claim with the Arkansas State Claims Commission to recover reasonable attorney's fees and other litigation expenses reasonably incurred.

(B) A claim for reasonable attorney's fees and litigation expenses reasonably incurred in an action against the State of Arkansas or a department, agency, or institution of the state shall be filed with the commission pursuant to § 19-10-201 et seq. within sixty (60) days of the final disposition of the appeal under subsection (a) of this section.

History. Acts 1967, No. 93, § 6; A.S.A. 1947, § 12-2806; Acts 1987, No. 49, § 2; 2009, No. 440, § 2.

25-19-108. Information for public guidance.

(a) Each state agency, board, and commission shall prepare and make available:

(1) A description of its organization, including central and field offices, the general course and method of its operations, and the established locations, including, but not limited to, telephone numbers and street, mailing, electronic mail, and Internet addresses and the methods by which the public may obtain access to public records;

(2) A list and general description of its records, including computer databases;
(3) (A) Its regulations, rules of procedure, any formally proposed changes, and all other written statements of policy or interpretations formulated, adopted, or used by the agency, board, or commission in the discharge of its functions.
(B) (i) Rules, regulations, and opinions used in this section shall refer only to substantive and material items that directly affect procedure and decision-making.
(ii) Personnel policies, procedures, and internal policies shall not be subject to the provisions of this section.
(iii) Surveys, polls, and fact-gathering for decision-making shall not be subject to the provisions of this section.
(iv) Statistical data furnished to a state agency shall be posted only after the agency has concluded its final compilation and result.
(4) All documents composing an administrative adjudication decision in a contested matter, except the parts of the decision that are expressly confidential under state or federal law; and
(5) Copies of all records, regardless of medium or format, released under § 25-19-105 which, because of the nature of their subject matter, the agency, board, or commission determines have become or are likely to become the subject of frequent requests for substantially the same records.
(b) (1) All materials made available by a state agency, board, or commission pursuant to subsection (a) of this section and created after July 1, 2003, shall be made publicly accessible, without charge, in electronic form via the Internet.
(2) It shall be a sufficient response to a request to inspect or copy the materials that they are available on the Internet at a specified location, unless the requester specifies another medium or format under § 25-19-105(d)(2)(B).

History. Acts 2001, No. 1653, § 3.

25-19-109. Special requests for electronic information.

(a) (1) At his or her discretion, a custodian may agree to summarize, compile, or tailor electronic data in a particular manner or medium and may agree to provide the data in an electronic format to which it is not readily convertible.
(2) Where the cost and time involved in complying with the requests are relatively minimal, custodians should agree to provide the data as requested.
(b) (1) If the custodian agrees to a request, the custodian may charge the actual, verifiable costs of personnel time exceeding two (2) hours associated with the tasks, in addition to copying costs authorized by § 25-19-105(d)(3).
(2) The charge for personnel time shall not exceed the salary of the lowest paid employee or contractor who, in the discretion of the custodian, has the necessary skill and training to respond to the request.
(c) The custodian shall provide an itemized breakdown of charges under subsection (b) of this section.

History. Acts 2001, No. 1653, § 4.

25-19-110. Exemptions.

(a) Beginning July 1, 2009, in order to be effective, a law that enacts a new exemption to the requirements of this chapter or that substantially amends an existing exemption to the

requirements of this chapter shall state that the record or meeting is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) For purposes of this section:

(1) An exemption from the requirements of this chapter is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records; and

(2) An exemption from the requirements of this chapter is not substantially amended if the amendment narrows the scope of the exemption.

History. Acts 2009, No. 184, § 1.

APPENDIX 7A

INFORMATION TECHNOLOGY ACCESS FOR THE BLIND

Title 25
State Government

Chapter 26
Information Technology

Subchapter 2
Information Technology Access for the Blind

25-26-201. Findings and policy.

(a) The General Assembly finds that:

(1) The advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology;
(2) Use of interactive visual display devices by state and state-assisted organizations has become a widespread means of access for employees and the public to obtain information available electronically, but nonvisual access by speech, Braille, or other appropriate means has been overlooked in the development of the latest information technology;
(3) Presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life such as education and employment;
(4) Alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is more likely to be available by both visual and nonvisual means; and
(5) The goals of the state in obtaining and deploying the most advanced forms of information technology properly include universal access so that segments of society with particular needs, including without limitation individuals unable to use visual displays, will not be left out of the information age.

(b) It is the policy of the State of Arkansas that all programs and activities that are supported in whole or in part by public funds shall be conducted in accordance with the following principles:

(1) To the extent provided in this subchapter, individuals who are blind or visually impaired shall be provided access to the advanced technology that is provided to other employees, program participants, and members of the general public;
(2) To the extent provided in this subchapter, technology purchased in whole or in part with funds provided by the state to be used for the creation, storage, retrieval, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be accessible to and usable by individuals who are blind or visually impaired; and
(3) If technology that allows access for individuals who are blind or visually impaired is not reasonably available, individuals who are blind or visually impaired shall be provided

a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

History: Acts 1999, No. 1227, § 1; 2013, No. 308, § 1.

25-26-202. Definitions.

For purposes of this subchapter:

(1) “Access” means the ability to receive, use, and manipulate data and operate controls included in information technology;

(2) “Blind or visually impaired individual” means an individual who:

(A) Has a visual acuity of twenty/two hundred (20/200) or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees;

(B) Has a medically indicated expectation of visual deterioration; or

(C) Has a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability;

(3) “Covered entity” means the state or any state-assisted organization;

(4) “Information technology” means all electronic information processing hardware and software, including telecommunications;

(5) “Nonvisual” means synthesized speech, braille, and other output methods not requiring sight;

(6) “Reasonably available” means developed and available for purchase for a price as provided in this subchapter from:

(A) The vendor that provided the product that is to be used by visual users; or

(B) Another vendor if the technology is available from more than one (1) vendor in the marketplace;

(7) “State” means the state or any of its departments, agencies, public bodies, or other instrumentalities;

(8) “State-assisted organization” means a college, nonprofit organization, person, political subdivision, school system, or other entity supported in whole or in part by state funds; and

(9) “Telecommunications” means the transmission of information, images, pictures, voice or data by radio, video, or other electronic or impulse means.

History: Acts 1999, No. 1227, § 2; 2013, No. 308, § 2.

25-26-203. Assurance of nonvisual access.

In general, the head of each covered entity shall ensure that information technology equipment and software used by employees, program participants, or members of the general public:

(a) Provide blind or visually impaired individuals with access, to the extent provided in this subchapter, to interactive use of the equipment and services that is equivalent to that provided to individuals who are not blind or visually impaired;

(b) Are designed to present information, including, but not limited to, prompts used for interactive communications in formats intended for both visual and nonvisual use; and

(c) Have been purchased under a contract which includes the technology access clause required pursuant to § 25-26-204.

History: Acts 1999, No. 1227, § 3; 2013, No. 308, § 3.

25-26-204. Procurement requirements.

(a) (1) The technology access clause specified in § 25-26-203 shall be developed by the Division of Information Systems and shall require compliance with nonvisual access standards established by the division.

(2) The technology access clause shall be included in all contracts for the procurement of information technology by or for the use of entities covered by this subchapter on or after July 30, 1999.

(b) The nonvisual access standards established by the division under subsection (a) of this section shall:

(1) Include the specifications necessary to fulfill the assurances in § 25-26-203;

(2) Follow the standards for software applications and operating systems provided by 36 C.F.R § 1194.21, as it existed on January 1, 2019, subject to the provisions of 36 C.F.R. §§ 1194.1 -- 1194.4, as they existed on January 1, 2019;

(3) Follow the standards for web-based intranet and Internet information and applications provided by 36 C.F.R § 1194.22, as it existed on January 1, 2019, subject to the provisions of 36 C.F.R. §§ 1194.1 -- 1194.4, as they existed on January 1, 2019; and

(4) Include the following minimum specifications:

(A) That, to the extent provided in this subchapter, effective, interactive control and use of the technology, including without limitation the operating system, software applications , and format of the data presented is readily achievable by nonvisual means;

(B) That, to the extent provided in this subchapter, the technology equipped for nonvisual access is compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;

(C) That, to the extent provided in this subchapter, nonvisual access technology is integrated into networks used to share communications among employees, program participants, and the public; and

(D) That, to the extent provided in this subchapter, the technology for nonvisual access has the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

(c) The minimum specifications under subsection (b) of this section do not prohibit the purchase or use of an information technology product that does not meet these standards if the information manipulated or presented by the product is inherently visual in nature so that its meaning cannot be conveyed nonvisually.

History: Acts 1999, No. 1227, § 4; 2003, No. 1301, § 1; 2011, No. 750, § 1; 2013, No. 308, § 4; 2019, No. 910, § 6308; 2019, No. 218, § 1.

25-26-205. Implementation.

(a) For the purpose of assuring the effective phasing in of nonvisual access technology procurement, the head of any covered entity:

(1) May not approve exclusion of the technology access clause from any contract with respect to:

(A) The compatibility of standard operating systems and software with nonvisual access software and peripheral devices; or

(B) The initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software; or

(2) May approve, with respect to nonvisual access software or peripheral devices obtained during the three-year period beginning upon the date of enactment of this act, exclusion of such technology access clause to the extent that the cost of such software or devices for the covered entity exceeds:

(A) Fifty thousand dollars ($50,000) for the first year;

(B) One hundred thousand dollars ($100,000) for the second year; and

(C) Two hundred and fifty thousand dollars ($250,000) for the third year.

(b) Nothing in this section requires the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(c) Notwithstanding the provisions of subsection (b) of this section, the applications programs and underlying operating systems, including without limitation the format of the data used for the manipulation and presentation of information, shall permit, to the extent provided in this subchapter, the installation and effective use of nonvisual access software and peripheral devices.

(d) Compliance with this subchapter in regard to information technology purchased prior to July 30, 1999, shall be achieved at the time of procurement of an upgrade or replacement of the existing equipment or software.

History: Acts 1999, No. 1227, § 5; 2013, No. 308, § 5.

25-26-206. Action for injunction.

(a) A person injured by a violation of this subchapter may maintain an action for injunctive relief to enforce the terms of this subchapter.

(b) The limitation period for civil action is as follows:

(1) Any such action shall be commenced within four (4) years after the cause of action accrues; and

(2) For the purposes of this subsection, a cause of action for a continuing violation accrues at the time of the latest violation.

History: Acts 1999, No. 1227, § 6.

APPENDIX 7B

TECHNOLOGY ACCESS CLAUSE

TECHNOLOGY ACCESS: When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) or similar documentation to demonstrate compliance with 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- Providing, to the extent required by Ark. Code Ann. § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
- Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
- Integrating into networks used to share communications among employees, program participants, and the public; and
- Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

If the information technology product or system being offered by the Vendor does not completely meet these standards, the Vendor must provide an explanation within the Voluntary Product Accessibility Template (VPAT) detailing the deviation from these standards.

State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that

meet some but not all of the standards, the agency must procure the product that best meets the standards or provide written documentation supporting selection of a different product.

For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

As provided in Act 308 of 2013, if the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

APPENDIX 8

PROCUREMENT CODES

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APPENDIX 9

PROHIBITED CONTRACTS AND INVESTMENTS

Title 25
State Government

Chapter 1
General Provisions

Subchapter 5
Prohibited Contracts and Investments

25-1-501. Legislative findings.

The General Assembly finds that:

(1) Boycotts and related tactics have become a tool of economic warfare that threaten the sovereignty and security of key allies and trade partners of the United States;
(2) The State of Israel is the most prominent target of such boycott activity, which began with but has not been limited to the Arab League Boycott adopted in 1945, even before Israel's declaration of independence as the reestablished national state of the Jewish people;
(3) Companies that refuse to deal with United States trade partners such as Israel, or entities that do business with or in such countries, make discriminatory decisions on the basis of national origin that 1 impair those companies' commercial soundness;
(4) It is the public policy of the United States, as enshrined in several federal acts, to oppose boycotts against Israel, and Congress has concluded as a matter of national trade policy that cooperation with Israel materially benefits United States companies and improves American competitiveness;
(5) Israel in particular is known for its dynamic and innovative approach in many business sectors, and therefore a company's decision to discriminate against Israel, Israeli entities, or entities that do business with or in Israel, is an unsound business practice, making the company an unduly risky contracting partner or vehicle for investment; and
(6) Arkansas seeks to act to implement Congress's announced policy of "examining a company's promotion or compliance with unsanctioned boycotts, divestment from, or sanctions against Israel as part of its consideration in awarding grants and contracts and supports the divestment of state assets from companies that support or promote actions to boycott, divest from, or sanction Israel".

History: Acts 2017, No. 710, § 1.

25-1-502. Definitions.

As used in this subchapter:

(1) (A) (i) "Boycott Israel" and "boycott of Israel" means engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner.

(ii) "Boycott" does not include those boycotts to which 50. U.S.C. § 4607(c) applies.

(B) A company's statement that it is participating in boycotts of Israel, or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, can be considered by the Arkansas Development Finance Authority as a type of evidence, among others, that a company is participating in a boycott of Israel;

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations;

(3) "Direct holdings" in reference to a company means all publicly traded securities of that company that are held directly by the public entity in an actively managed account or fund in which the public entity owns all shares or interests;

(4) "Indirect holdings" in reference to a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one (1) or more persons not employed by the public entity, in which the public entity owns shares or interests together with other investors not subject to the provisions of this act or that are held in an index fund;

(5) "Public entity" means the State of Arkansas, or a political subdivision of the state, including all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state, created by or in accordance with state law or rules, and does include colleges, universities, a statewide public employee retirement system, and institutions in Arkansas as well as units of local and municipal government;

(6) "Restricted companies" means companies that boycott Israel; and

(7) "Retirement system" means a public retirement system in Arkansas.

History: Acts 2017, No. 710, § 1; 2019, No. 315, § 2909.

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 ($1,000).

History: Acts 2017, No. 710, § 1.

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).

25-1-504. Prohibition on direct investments in companies that boycott Israel.

(a) (1) A public entity through its asset managers shall identify all companies that boycott Israel and assemble those identified companies into a list of restricted companies to be distributed to each retirement system.

(2) For each company newly identified and added to the list of restricted companies, the public entity through its asset managers shall send a written notice informing the company of its status and that it may become subject to divestment by the public entity.

(3) If, following the engagement by the public entity through its assets managers with a restricted company, that company ceases activity that designates it as a restricted company and submits a written certification to the public entity that it shall not reengage in such activity for the duration of any investment by the public entity, the company shall be removed from the restricted companies list.

(4) The public entity shall keep and maintain the list of restricted companies and all written certifications from restricted and previously restricted companies.

(b) (1) The public entity shall adhere to the following procedures for companies on the list of restricted companies:

(A) Each public entity shall identify the companies on the list of restricted companies that the public entity owns direct holdings and indirect holdings;

(B) The public entity shall instruct its investment advisors to sell, redeem, divest, or withdraw all direct holdings of 32 restricted companies from the public entity's assets under management in an orderly and fiduciarily responsible manner within three (3) months after the appearance of the company on the list of restricted companies; and

(C) Upon request from the Arkansas Development Finance Authority, each public entity shall provide the Arkansas Development Finance Authority with information

regarding investments sold, redeemed, divested, or withdrawn in compliance under this section.

(2) The public entity shall not acquire securities of restricted companies as part of direct holdings.

(c) (1) Subsection (b) of this section does not apply to the public entity's indirect holdings or private market funds.

(2) The public entity shall submit letters to the managers of those investment funds identifying restricted companies and requesting that those investment funds consider removing the investments in the restricted companies from the funds.

(d) The costs associated with the divestment activities of the public entity shall be borne by the respective public entity.

(e) With respect to actions taken in compliance with this section, including all good-faith determinations regarding companies as required under this section, any statewide retirement system and the Arkansas Development Finance Authority are exempt from any conflicting statutory or common law obligations, including any fiduciary duties and any obligations with respect to choice of asset managers, investment funds, or investments for the statewide retirement systems' portfolios.

History: Act 2017, No. 710

APPENDIX 10

LOCAL FOOD, FARMS, AND JOBS ACT

Title 15
Natural Resources and Economic Development

Chapter 4
Development of Business and Industry Generally

Subchapter 38
Local Food, Farms, and Jobs Act

15-4-3801. Title.

This subchapter shall be known and may be cited as the "Local Food, Farms, and Jobs Act".

History: Acts 2017, No. 617, § 1.

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.

(3) Secure data on the procurement of local farm or food products prepared and consumed within agencies.

History: Acts 2017, No. 617, § 1; 2019, No. 796, § 1.

15-4-3803. Definitions.

As used in this subchapter:

(1) (A) "Agency" means an entity that receives at least twenty-five thousand dollars ($25,000) a year from the state and offers a food service program.

(B) "Agency" includes without limitation:

(i) An institution of higher education;

(ii) A child care facility;

(iii) A state park;

(iv) An after-school program;

(v) A state agency or other entity of the state; and

(vi) A designee under contract to provide a food service program for an agency; and

(vii) A designee under contract to provide wholesale local farm or food products for an agency;

(2) (A) "Distributor" means a person or entity involved in marketing and distributing local farm or food products to another entity, including without limitation to:

(i) A restaurant;

(ii) A healthcare facility;

(iii) An educational institution;

(iv) A hospitality business, including without 18 limitation a hotel or inn;

(v) A government entity; or

(vi) An agency;

(B) "Distributor" includes a person or entity that provides food products at wholesale to another company that provides or manages a food service program;

(3) "Food product" means a substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value; and

(4) "Local farm or food products" means food products that are grown in Arkansas or packaged and processed in Arkansas, or both.

(5) (A) "Food service program" means the preparation and consumption of food products at an on-site cafeteria.

(B) "Food service program" does not include catered events, franchises, or privately owned third party vendors that do not serve as the primary provider for the delivery of food products on behalf of an agency.

History: Acts 2017, No. 617, § 1; 2019, No. 796, § 2.

R1:15-4-3803 DEFINITIONS

(a) Local farm or food products includes Arkansas agricultural products that have met the requirements of the “Arkansas Grown Branding Program” administered through the Arkansas Agriculture Department.

(b) Packaged and Processed means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment or a food processing plant.

(c) 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.

(d) On campus-cafeteria does not include a franchise as defined by Ark. Code Ann. § 4-72-202.

15-4-3804. Procurement goal — Distributor requirements.

(a) For each fiscal year, each agency shall make it a goal to ensure that at least twenty percent (20%) of the amount budgeted for the agency's purchases of food products is spent on local farm or food products.

(b) Each agency shall:

(1) Identify the percentage of funds spent on local farm or food products purchased for fiscal year 2017 to establish a baseline; and

(2) Develop a system for tracking and reporting purchases of local farm or food products each fiscal year.

(c) This section does not require an agency to use any specific procurement method for obtaining food products.

History: Acts 2017, No. 617, § 1; 2019, No. 796, § 3; 2019, No. 384, § 2.

R1:15-4-3804 PROCUREMENT GOAL-PREFERENCE

METHOD OF PROCUREMENT FOR PURCHASE OF FOOD PRODUCTS

(a) 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 of food products as a means of reducing the administrative cost of food procurement.

(b) 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.

15-4-3805. Reporting requirements.

(a) By October 1 of each year, an agency or agency designee shall submit a report to the Arkansas Agricultural Department stating:

(1) The name of the agency and, if applicable, agency designee;

(2) A policy statement signed by the executive head of the agency or agency designee expressing a commitment to complying with this subchapter;

(3) The name of the person in the agency or agency designee who is responsible for developing and administering the report required under this section;

(4) The manner in which the agency intends to reach the procurement goals stated in this subchapter;

(5) The dollar amount the agency spent with providers of local farm or food products in the previous fiscal year; and

(6) The percentage of the total dollar amount the agency spent on purchases of food products with providers of local farm or food products.

(b) By December 31 of each year, the department shall:

(1) Prepare a report compiling the information received under subsection (a) of this section; and

(2) Make the report required under this subsection available to the Governor and the cochairs of the Legislative Council or, if the General Assembly is in session, the cochairs of the Joint Budget Committee, the House Committee on Agriculture, Forestry, and Economic Development, and the Senate Committee on Agriculture, Forestry, and Economic Development.

History: Acts 2017, No. 617, § 1; 2019, No. 796, § 4.

15-4-3806. Promotion.

(a) The Department of Agriculture may use its internet resources to:

(1) Promote, create, and expand local farm and food economies in this state;

(2) Maintain a list of local farm or food products and the providers of local farm or food products; and

(3) Facilitate compliance with this subchapter.

(b) (1) The Department of Agriculture shall establish a program coordinator position, which shall be responsible for developing partnerships among vendors, agencies, and providers of local farm or food products to support the goals of this subchapter.

(2) The program coordinator shall:

(A) Support and assist providers of local farm or food products in:

(i) Developing a business plan;

(ii) Gaining access to agencies, distribution networks, and food service operators; and

(iii) Using available resources, including without limitation agencies and other public and private entities;

(B) Be a resource for agencies to use to assist in tracking and reporting their progress in satisfying the procurement goals stated in this subchapter;

(C) Be a liaison between agencies and providers of local farm or food products to facilitate access to local farm or food products;

(D) Encourage and facilitate involvement and participation in the Farm to School Program administered by the United States Department of Agriculture by working with providers of local farm or food products, vendors, and distributors to assess the need for and availability of local farm and food products; and

(E) Cooperate with the Department of Agriculture and providers of local farm or food products to promote, encourage, and increase participation in the Arkansas Grown program administered by the Department of Agriculture.; and

(F) Work with distributors to ensure that:

(i) Local farm or food products are available for purchase and distribution to an agency;

(ii) A list of local farm or food products is available for an agency; and

(iii) A report is provided to the agency that lists the local farm or food products purchased and the dollar amount spent on the purchase of the local farm or food products.

History: Acts 2017, No. 617, § 1; 2019, No. 910, § 50; 2019, No. 796, § 5.

15-4-3807. Relationship to federal law.

(a) If this subchapter conflicts with federal law pertaining to a federal aid program, the conflicting provision or provisions of this subchapter do not apply to a contract that is subject to that federal law, rule, or regulation to the extent of the conflict.

(b) To the extent a conflict does not exist with federal law, this subchapter applies to contracts paid, in whole or in part, with federal funds.

History: Acts 2017, No. 617, § 1.

15-4-3808. Rules.

The Office of State Procurement may promulgate rules to implement and administer this subchapter, including without limitation a method for:

(1) Identifying and certifying vendors as providers of local farm or food products; and

(2) Determining the means of satisfying and tracking the procurement goals stated in this subchapter.

History: Acts 2017, No. 617, § 1.