

Stricken language would be deleted from and underlined language would be added to present law.
Act 417 of the Regular Session

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S2/20/19
A Bill

HOUSE BILL 1161

By: Representatives Dotson, Wardlaw

By: Senator Flippo

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES CONTRACTS; TO AMEND THE LAWS CONCERNING STATE AGENCY PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE REVIEW AND REPORTING REQUIREMENTS FOR SERVICE CONTRACTS; TO AMEND THE LAW CONCERNING VEHICLE LEASES BY STATE AGENCIES; AND TO PROVIDE FOR THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY STATE AGENCIES.

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

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

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



~~not limited to, equipment, printing, stationery, supplies, and insurance, but excluding leases 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, ~~real property,~~ or a permanent interest in real property, ~~exempt;~~
- (ii) Exempt commodities and services, ~~and capital;~~
and
- (iii) Capital improvements;

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

(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;

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

(27)(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 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" shall does not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of the Building Authority Division of the Department of Finance and Administration or higher education;

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

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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

~~feasible and price is competitive.~~

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

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

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

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

19-11-265. Submission of contracts required.

(a)(1) A Except for critical emergency procurements and as otherwise provided in this section, a contract requiring the service services of one (1) or more individuals for regular full-time or part-time weekly work persons shall 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 annual contract amount is at least fifty thousand dollars (\$50,000) in any one (1) contract year or if the total initial contract amount or the projected contract amount, including any amendments or possible extensions, is at least one hundred thousand dollars (\$100,000) 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 § 19-11-267 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)(1) In addition to the contracts presented to the Legislative Council or to the Joint Budget Committee under subsection (a) of this section, the director shall compile a monthly report of all executed contracts requiring the service of one (1) or more individuals for regular full-time or part-time weekly work if the total initial contract amount or the total projected contract amount, including any amendments or possible extensions, is at least twenty five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000).~~

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

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

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

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

~~(e)~~ (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.

SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 2, is amended to add additional sections to read as follows:

19-11-273. 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.

19-11-274. 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.

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

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

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

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

~~(3)—The professional services contract or consultant services 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 professional services contract or consultant services contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the professional services contract or consultant services contract.—~~

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

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

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

~~(d)(1)—In addition to the professional services contracts and consultant services contracts presented to the Legislative Council or to the Joint Budget Committee under subsection (a) of this section, the director shall compile a monthly report of all executed professional services contracts and consultant services contracts if the total initial amount or~~

~~the total projected amount, including any amendments or possible extensions, of the professional services contract or consultant services contract is at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000).~~

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

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

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

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

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

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

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

~~(G) The procurement method;~~

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

~~(I) Any other information requested by the Legislative Council or the Joint Budget Committee.~~

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

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

~~(f) 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.~~

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

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

(a) ~~For purposes of~~ 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 lease~~ leases any motor vehicle or ~~renew~~ 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 ~~he or she has first received the approval of~~ the proposed lease has been reviewed by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(3) ~~After receiving the approval of~~ 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.

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

(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.

SECTION 11. DO NOT CODIFY. Rules.

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

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

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

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

/s/Dotson

APPROVED: 3/11/19