

State of Arkansas
92nd General Assembly
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As Engrossed: S2/20/19
A Bill

HOUSE BILL 1179

By: Representative Wardlaw

By: Senator Flippo

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO AMEND ARKANSAS PROCUREMENT LAWS CONCERNING THE DELEGATION AUTHORITY OF THE STATE PROCUREMENT DIRECTOR; TO AMEND THE LAW CONCERNING PROTESTS OF SOLICITATIONS AND AWARDS UNDER THE ARKANSAS PROCUREMENT LAW; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE DELEGATION AUTHORITY OF THE STATE PROCUREMENT DIRECTOR; AND TO AMEND THE LAW CONCERNING PROTESTS OF SOLICITATIONS AND AWARDS UNDER THE ARKANSAS PROCUREMENT LAW.

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

SECTION 1. Arkansas Code § 19-11-218 is amended to read as follows:

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., 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 ~~any a~~ state agency ~~as the director may deem appropriate~~ by issuing a written delegation order, within the limitations of state law and the state procurement



regulations.

(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(iii) Remain in effect under the original terms unless the terms of the written delegation order are modified or rescinded in writing by the director;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.

SECTION 2. Arkansas Code § 19-11-244(a)(3), concerning the resolution of protested solicitations and awards under the Arkansas Procurement Law, is amended to read as follows:

(3) The protest shall be submitted in writing within fourteen (14) calendar days after the ~~aggrieved person knows or should have known of the facts giving rise to the grievance~~ 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.

SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of protested solicitations and awards under the Arkansas Procurement Law, is amended to read as follows:

(f) In the event of a timely protest under subsection (a) of this section, the state shall not ~~proceed further with the solicitation or with the award of the contract until~~ execute a contract that is the result of the protested solicitation or award unless the director or the head of a the relevant procurement agency makes a written determination that the ~~award~~ execution of the contract without delay is necessary to protect substantial interests of the state.

SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of protested solicitations and awards under the Arkansas Procurement Law, is amended to add an additional subsection to read as follows:

(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.

SECTION 5. 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/Wardlaw

APPROVED: 3/11/19