

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 91st General Assembly
3 Third Extraordinary Session, 2018
4

A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE PROCUREMENT LAWS; TO AMEND THE
9 LAWS CONCERNING VARIOUS PROCUREMENT METHODS; TO ALLOW
10 FOR NEGOTIATED BIDS UNDER THE ARKANSAS PROCUREMENT
11 LAW; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 TO AMEND THE PROCUREMENT LAWS; TO AMEND
15 THE LAWS CONCERNING VARIOUS PROCUREMENT
16 METHODS; AND TO ALLOW FOR NEGOTIATED BIDS
17 UNDER THE ARKANSAS PROCUREMENT LAW.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
24 amended to add additional sections to read as follows:

25 19-11-273. Requests for information.

26 (a) As used in this section, "request for information" means a
27 noncompetitive solicitation to obtain information, data, comments, or
28 reactions from prospective bidders or offerors.

29 (b) The State Procurement Director, a head of a procurement agency, or
30 a designee of the director or of a head of a procurement agency, may issue or
31 authorize another person to issue a request for information.

32 (c) A request for information under this section shall be published in
33 the same manner and location as an invitation for bids, a request for
34 proposals, or a request for qualifications.

35 (d) A contract shall not be awarded directly from a request for
36 information.

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2 19-11-274. Negotiated bids.

3 (a) As used in this section, "negotiated bid" means a method of
4 procurement in which:

5 (1) An invitation for bids is issued with a purchase description
6 and all of the contractual terms and conditions applicable to the
7 procurement;

8 (2) The bids are opened contemporaneously at a predesignated
9 time and place in front of a state witness and recorded in the bid register
10 but are not opened publicly;

11 (3) Negotiations are entered into under this section with
12 responsible bidders before an award is determined; and

13 (4) The contract is awarded to the responsive and responsible
14 bidder that has submitted the lowest bid following negotiation that meets the
15 requirements and criteria stated in the invitation for bids.

16 (b) The State Procurement Director or an agency procurement official
17 may issue a negotiated bid.

18 (c) Public notice of a negotiated bid shall be given in the same
19 manner as provided in § 19-11-229(d).

20 (d) A negotiated bid shall be:

21 (1) Evaluated in the same manner as provided in § 19-11-229(f);
22 and

23 (2) Corrected in the same manner as provided in § 19-11-229(g).

24 (e)(1) Before a state agency determines the lowest responsible bidder,
25 the state agency shall conduct negotiations with all responsible bidders that
26 are reasonably susceptible of being selected for award.

27 (2) Following negotiations with the director or the agency
28 procurement official, a responsible bidder is entitled to submit a final bid
29 price lower than the responsible bidder's original bid price.

30 (f) A bid register shall:

31 (1) Be prepared upon the initial opening of a negotiated bid and
32 maintained following any negotiations;

33 (2) Contain the following:

34 (A) A copy of all documents that are included as part of
35 the negotiated bid;

36 (B) A list of all the bids received in response to the

1 negotiated bid, including without limitation the:

2 (i) Name and address of each bidder;

3 (ii) Dollar amount of all of the bid prices received
4 during the process of soliciting and negotiating the negotiated bid;

5 (iii) The name of the bidder to which the contract
6 is awarded; and

7 (iv) The dollar amount of the bid made by the bidder
8 to which the contract is awarded; and

9 (C) Documentation of the negotiation process with the
10 bidders under this section, including without limitation:

11 (i) A log of the date and time of each meeting with
12 a bidder;

13 (ii) A description of the nature of each
14 communication with a bidder;

15 (iii) A copy of all written communications with each
16 bidder, including without limitation any electronic communications; and

17 (iv) The entire contents of the contract file,
18 except for any proprietary information included with a bid; and

19 (3) Be subject to public inspection under the Freedom of
20 Information Act of 1967, § 25-19-101 et seq., only after the award of the
21 contract.

22 (g)(1) After negotiations are concluded, a contract shall be awarded
23 under this section with reasonable promptness by written notice to the lowest
24 responsible bidder whose bid meets the requirements and criteria stated in
25 the invitation for bids.

26 (2) After providing written notice to the lowest responsible
27 bidder under subdivision (g)(1) of this section, the director or agency
28 procurement official shall promptly notify all other bidders that requested
29 to be notified of the award decision.

30 (h) An invitation for a negotiated bid under this section may be
31 cancelled or any and all bids may be rejected in writing by the director or
32 the agency procurement official.

33 (i) A person shall not submit a protest under § 19-11-244 on the basis
34 that the person was not afforded the opportunity to negotiate a negotiated
35 bid.

36

1 SECTION 2. Arkansas Code § 19-11-802, concerning requests for
2 statements of qualifications and performance data, is amended to add an
3 additional subsection to read as follows:

4 (e)(1)(A) A request for statements of qualifications and performance
5 data under this section may be used for certain procurements through a
6 request for qualifications.

7 (B) Absent a sole-source justification, a request for
8 qualifications is the recommended procurement method when contracting for
9 architectural, engineering, land surveying, legal, and interior design
10 services.

11 (C) A request for qualifications may be used as the
12 procurement method when contracting for services other than architectural,
13 engineering, construction management, land surveying, legal, and interior
14 design services if the State Procurement Director approves its use and
15 determines that it is the most suitable method of procurement.

16 (2) In determining whether a request for qualifications under
17 this subsection is the most suitable method of procurement, the director
18 shall consider, based on information submitted by the requesting state agency
19 or political subdivision:

20 (A) Why the request for qualifications is the most
21 suitable method of procurement;

22 (B) Why cost should not be considered in the procurement;
23 and

24 (C) How the cost of the contract will be controlled if
25 cost is not a factor in the procurement.

26
27 SECTION 3. DO NOT CODIFY. Additional duties of State Procurement
28 Director – Rules.

29 (a) The State Procurement Director shall provide for enhanced training
30 on the drafting of specifications for procurements.

31 (b) The director shall adopt rules to:

32 (1)(A) Amend the rules relating to § 19-11-229 to allow for the
33 clarification of bids under § 19-11-229 and proposals under § 19-11-230.

34 (B) The rules shall provide that:

35 (i) A written response by a bidder or offeror shall
36 not add to or enhance the submitted bid or proposal or change the terms of

1 the submitted bid;

2 (ii) If the bidder or offeror fails or refuses to
 3 clarify any matter questioned about the bidder's or offeror's bid or proposal
 4 in writing by the deadline set by the director or agency procurement
 5 official, the bid or proposal shall be evaluated as is; and

6 (iii) If the bidder or offeror clarifies the matter
 7 questioned in writing, the clarification shall be evaluated and become a part
 8 of any contract awarded on the basis of the bidder's or offeror's bid or
 9 proposal;

10 (2) Define "critical emergency" with respect to § 19-11-233 as
 11 an emergency in which human life or health is imminently endangered;

12 (3) In addition to the requirement to list the names of at least
 13 three (3) firms contacted, require that a quotation abstract for an emergency
 14 procurement under § 19-11-233 include the:

15 (A) Time that each firm was contacted;

16 (B) Quoted price obtained from each contacted firm; and

17 (C) Method used for contacting each firm; and

18 (4) Amend existing rules relating to § 19-11-229 to:

19 (A) Provide that time discounts or cash discounts may be
 20 considered in the evaluation of a bid only;

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

23 (ii) Under the structured terms of the invitation
 24 for bids; and

25 (B) Clarify that if a bidder offers a time discount or
 26 cash discount as part of its bid without solicitation of such discounts by
 27 the state agency, the discount shall not be considered.

28 (c)(1) When adopting the initial rules required under this section,
 29 the final rules shall be filed with the Secretary of State for adoption under
 30 § 25-15-204(f):

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

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

34 (2) The director shall file the proposed rules with the
 35 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
 36 2020, so that the Legislative Council may consider the rules for approval

1 before January 1, 2020.
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1 State of Arkansas
2 91st General Assembly
3 Third Extraordinary Session, 2018
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A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
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For An Act To Be Entitled

8 AN ACT CONCERNING THE REJECTION OF A BID OR PROPOSAL
9 UNDER THE ARKANSAS PROCUREMENT LAW; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12 CONCERNING THE REJECTION OF A BID OR
13 PROPOSAL UNDER THE ARKANSAS PROCUREMENT
14 LAW.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. DO NOT CODIFY. Rules – Additional duties of State
22 Procurement Director.

23 (a) The State Procurement Director shall:

24 (1) Adopt rules to:

25 (A) Provide that before the rejection of a bid or proposal
26 by the Office of State Procurement, the decision to reject the bid or
27 proposal may be validated with the state agency for which the procurement is
28 being conducted, or in the case of a proposal received in response to a
29 request for proposals issued by the office for a state contract, with the
30 evaluation committee that evaluated the proposal;

31 (B) Amend the rules relating to §§ 19-11-229 and 19-11-230
32 to clarify that a bid or proposal may be rejected for failure to adhere to
33 mandatory requirements;

34 (C) Amend the rules relating to § 19-11-230 to provide
35 that the state's prior experience with an offeror may be considered and
36 scored as part of the offeror's proposal only;

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

3 (ii) If the offeror’s past performance with the
4 state occurred no more than three (3) years before the offeror submitted the
5 proposal; and

6 (D) Clarify that a state agency shall not include prior
7 experience with the state as a mandatory requirement for submitting a
8 proposal; and

9 (2) Maintain records of bids and proposals that are rejected by
10 the office for failure to adhere to the mandatory requirements of a
11 solicitation.

12 (b)(1) When adopting the initial rules required under this section,
13 the final rules shall be filed with the Secretary of State for adoption under
14 § 25-15-204(f):

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

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

18 (2) The director shall file the proposed rules with the
19 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
20 2020, so that the Legislative Council may consider the rules for approval
21 before January 1, 2020.

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A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING REQUESTS FOR
9 PROPOSALS UNDER THE ARKANSAS PROCUREMENT LAW; TO
10 REQUIRE THAT COST BE WEIGHTED A CERTAIN AMOUNT IN
11 EVALUATING RESPONSES TO A REQUEST FOR PROPOSALS; TO
12 ALLOW FOR THE USE OF PRIVATE EVALUATORS IN EVALUATING
13 RESPONSES TO A REQUEST FOR PROPOSALS; TO REGULATE THE
14 EVALUATION OF RESPONSES TO A REQUEST FOR PROPOSALS;
15 AND FOR OTHER PURPOSES.
16
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Subtitle

18 TO AMEND THE LAW CONCERNING REQUESTS FOR
19 PROPOSALS; TO REQUIRE THAT COST BE
20 WEIGHTED A CERTAIN AMOUNT IN EVALUATING
21 RESPONSES TO A REQUEST FOR PROPOSALS; AND
22 TO REGULATE THE EVALUATION OF RESPONSES
23 TO A REQUEST FOR PROPOSALS.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 19-11-230(d), concerning competitive sealed
30 proposals under the Arkansas Procurement Law, is amended to read as follows:

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

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

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1 (B) The State Procurement Director or the agency
 2 procurement official for the state agency conducting the procurement may
 3 approve that cost be weighted at a lower percentage of the total evaluation
 4 score for a proposal submitted in response to a request for proposals if the
 5 director or agency procurement official makes a written determination that
 6 the lower percentage is in the best interest of the state.

7 (C) The use of a lower percentage under subdivision
 8 (d)(2)(B) of this section and the corresponding written determination by the
 9 director or the agency procurement official shall be reported to the
 10 Legislative Council or, if the General Assembly is in session, the Joint
 11 Budget Committee.

12
 13 SECTION 2. DO NOT CODIFY. Rules – Additional duties of State
 14 Procurement Director.

15 (a) The State Procurement Director shall:

16 (1) Adopt rules to:

17 (A)(i) Provide for the use of private evaluators, who
 18 shall be:

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

21 (b) Qualified volunteers, unless the state
 22 does not have the necessary expertise to evaluate the proposals, in which
 23 case a paid private evaluator may be used; and

24 (c) Eligible for travel reimbursement if the
 25 state agency decides to make travel reimbursement available.

26 (ii) However, the use of private evaluators shall
 27 not be required;

28 (B) Require the disclosure of the use of one (1) or more
 29 private evaluators in the file and in any information submitted to the
 30 Legislative Council or, if the General Assembly is in session, the Joint
 31 Budget Committee; and

32 (C) Require discussion by the evaluation team of each
 33 scored attribute when evaluating proposals submitted in response to a request
 34 for proposals, including without limitation requiring that each evaluator
 35 lead discussion on at least one (1) scored attribute;

36 (2) Clarify with state agencies that a person who assisted in

1 drafting a request for proposals is not automatically disqualified from
2 serving on the evaluation team that scores the proposals submitted in
3 response to that request for proposals;

4 (3) Encourage state employees who draft a request for proposals
5 to serve on the evaluation team that scores the proposals submitted in
6 response to that request for proposals unless the state employee has a
7 conflict of interest that would otherwise disqualify the state employee;

8 (4) Clarify with state agencies that a person's engagement or
9 familiarity with an incumbent vendor does not automatically disqualify the
10 person from serving on the evaluation team that would score the incumbent
11 vendor's proposal submitted in response to a request for proposals; and

12 (5) When developing tools and templates to be used in evaluating
13 proposals submitted in response to a request for proposals, consider the use
14 of fewer scored attributes.

15 (b)(1) When adopting the initial rules required under this section,
16 the final rules shall be filed with the Secretary of State for adoption under
17 § 25-15-204(f):

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

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

21 (2) The director shall file the proposed rules with the
22 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
23 2020, so that the Legislative Council may consider the rules for approval
24 before January 1, 2020.

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A Bill

DRAFT JLL/JLL
SENATE BILL

5 By: Senator <NA>
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE PROCUREMENT OF
9 PROFESSIONAL SERVICES CONTRACTS; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13 TO AMEND THE LAW CONCERNING THE
14 PROCUREMENT OF PROFESSIONAL SERVICES
15 CONTRACTS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 22-2-108(7)(A), concerning the powers and
22 duties of the Building Authority Division of the Department of Finance and
23 Administration, is amended to read as follows:

24 (7)(A) To execute contracts necessary to accomplish the purposes
25 of this chapter, including without limitation a statewide contract for
26 professional services to expedite the procurement of services by a state
27 agency or political subdivision in an emergency.
28

29 SECTION 2. Arkansas Code Title 22, Chapter 9, Subchapter 1, is amended
30 to add an additional section to read as follows:

31 22-9-105. Poor contractual performance – Additional bids prohibited.

32 (a) A firm that has an existing state contract shall not bid on any
33 additional state contracts if the firm’s existing state contract has one (1)
34 or more material issues, including without limitation a material delay in the
35 commencement or completion of a project or a breach of contract.

36 (b) The Director of the Department of Finance and Administration shall

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1 adopt rules to provide guidance on what is considered to be a material issue
2 under subsection (a) of this section.

3
4 SECTION 3. DO NOT CODIFY. Additional duties of Director of the
5 Department of Finance and Administration.

6 (a) The Director of the Department of Finance and Administration shall
7 encourage the Building Authority Division of the Department of Finance and
8 Administration to include relevant experience in the qualifications of
9 construction contractors to allow state agencies to better evaluate
10 experience as part of the responsiveness of a construction contractor's bid.

11 (b) To the extent that the division includes minimum experience as
12 part of the evaluation of a bidder's responsiveness, the standard being
13 applied to the bidder's experience shall be stated in the invitation for
14 bids.