

Arkansas Bureau of
Legislative Research



Procurement Review
Project Updates

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ikaso

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- The procurement review project is well underway, proceeding smoothly, and is slightly ahead of schedule.
- We have finalized our project framework with the guidance of subcommittee leadership.
- We have reviewed a broad range of procurement documentation, including the State's procurement laws, regulations, procedures, policies, and other related documentation.
- We have also started the process of conducting stakeholder interviews.
- For discussion today we have prepared a set of preliminary observations in three topic areas of interest:
 - The role of cost in RFP evaluations
 - Contract duration
 - Protests

- The Subcommittee has been tasked to:
 - Study current procurement processes and requirements, including without limitation the process and requirements for requests for qualifications and the process and requirements for evaluating responses to requests for proposals and requests for qualifications
 - Study the impact of procurement processes on the legal, architectural, engineering, construction management, and land surveying professions
 - Recommend changes to the procurement laws, regulations, and processes in a report to the full Legislative Council at its December meeting in each even-numbered year
- The Subcommittee issued RFP BLR-170003 and hired Ikaso to assist with:
 - Conducting this study and to provide the Subcommittee with an objective analysis of the procurement laws, regulations, and procedures in the State; and
 - Provide recommendations for revisions and improvements






Project Workplan

We are currently ahead of schedule and have begun the process of conducting interviews with procurement staff and targeted industry representatives.

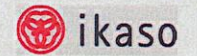
Step	Description	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Dec.
1	Identify the Project Context through Key Stakeholder Interviews								
2	Identify and Confirm the Full Scope of Written Materials for Review								
3	Collaborate with the Subcommittee to Develop the Project Framework								
4	Review of Written Materials to Identify Deficiencies and Improvement Areas								
5	Collaborate with the Subcommittee to Identify a Cross-Section of Procurement Staff and Customers for Structured Interviews								
6	Develop Interview Guides								
7	Conduct Targeted Procurement Staff Interviews								
8	Conduct Targeted Procurement Customer Interviews								
9	Conduct Targeted Industry Interviews								
10	Develop and Deliver Report of Findings and Recommendations								
11	Continue to Provide On-Going Support to Subcommittee								

Today

Ikaso worked with subcommittee leadership to develop a project framework with criteria that will guide our review and recommendations.

Framework Criteria	Key Components
Process Transparency & Integrity 	<ul style="list-style-type: none"> • Appropriate information is readily available to citizens and stakeholders • Procurement and contracting decisions adhere to established procedures
Optimized Oversight & Control 	<ul style="list-style-type: none"> • Accountability to internal and external stakeholders • Appropriate information flows, including but not limited to information provided to the legislature in the execution of its duties
Thoughtful Vendor Selection Process 	<ul style="list-style-type: none"> • Proposals and bids evaluated by capable, objective individuals • Evaluation of cost and quality appropriately balanced • Contracts that meet end-user needs, in terms of both quality and cost
Application of Best Practices 	<ul style="list-style-type: none"> • Minimizing barriers and encouraging an enterprise mindset • Strategic, value-added procurement functions • Practices align with business needs • Contracts are optimized to include meaningful performance management tools • Process and tool optimization to mitigate protest risk
Consistent & Efficient Processes 	<ul style="list-style-type: none"> • Consistent, efficient, and predictable practices utilized • Appropriate array of procurement methods and contract structures • Clear criteria for selecting appropriate procurement method and contract structure • Procurements launched and completed on schedule

Written Material Review



Ikaso is conducting a comprehensive review and analysis of current procurement laws, regulations, and policies. This list is constantly growing as the study continues.

Principal Laws and Regulations

1. **Arkansas Code**
 - Title 19, Chapter 11
 - Title 12, Chapter 30, Subchapter 2
2. **Administrative Rules**
 - Office of Purchasing
 - Office of Procurement

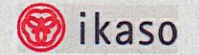
Forms and Supplemental Materials

1. **Technical and General Services Forms, Processes and Procedures**
2. **Professional Consultant Services Forms, Processes and Procedures**
3. **Service Bureau Forms**
4. **Delegation Orders**
5. **Forums**
6. **Recent Sole Source Contracts**

Agency Procurement Policies

1. **OSP Procurement Materials**
 - Anticipation to Award
 - Cooperative Procurement
 - Cooperative Buying
 - Cooperative Contracts
 - Sole Source Procurement
 - Evaluation of Proposals
 - Contracts for Legal Services
 - Printing Guidelines
 - Request for Qualifications (RFQ)
 - Special Procurement Policy
 - Memoranda and Announcements
2. **DF&A Procurement Materials**
 - Appendix 8 (Procurement Codes)
 - Executive Order 09-07, 09-04
 - Markup Rule 2015-3
 - Act 542
 - Act 557
 - Act 1004
 - Amendment 54
 - Memoranda and Announcements
3. **Arkansas Building Authority Materials**
 - 2012 Minimum Standards and Criteria Manual
 - Construction Forms and Resources
 - Design Review Forms and Resources

Stakeholder Interviews



Ikaso has identified the following parties and has begun scheduling and conducting interviews. This list will adjust to incorporate more individuals and groups as the study progresses.

Interview Roster

State Procurement

- Department of Finance and Administration
- Office of State Procurement
- Office of Intergovernmental Services
- DF&A Building Authority
- Arkansas Department of Information Systems

State Agencies

- Department of Human Services
- Department of Health
- Department of Arkansas Heritage
- Department of Correction
- Department of Education
- Department of Workforce Services

Institutions of Higher Education

- University of Arkansas
- Arkansas State University
- National Park College

Industry Groups

- Arkansas Board of Licensure for Professional Engineers and Professional Surveyors
- Arkansas State Board of Architects, Landscape Architects, and Interior Designers
- Attorney General's Office

Topic Profile: Role of Cost in RFP Evaluations

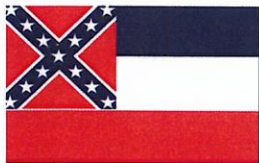
Arkansas Cost Point Allocation Observations

- Arkansas procurement law and regulation contains no statutory controls or guidance for RFP point allocation or weighting of cost vs. non-cost factors in proposal evaluation
- Interviews indicate that OSP has developed and distributed an evaluation policy that establishes a 30% minimum cost evaluation standard

Source: Arkansas Code § 19-11-230 and its associated rules

Mississippi

- Point allocation for cost defined in statute
 - Cost must represent a minimum of 35% of the total points in all evaluations



Source: House Bill 1109, Section 7

West Virginia

- No point allocation for cost included in statute
- Departmental policy manual sets point allocation
 - Cost must represent a minimum of 30 of the 100 total points in the evaluation



Source: West Virginia Purchasing Division Procedures Handbook, Section 7

Tennessee

- No formal written practice in statute, rule, or policy
- Controlled via procurement templates, use of which is mandated in policy
 - Templates require a minimum 30% point allocation to cost
 - Deviation requires approval by oversight examiners



Source: Tennessee CPO Procurement Procedures Manual, Section 11

Topic Profile: Contract Duration

Arkansas Contract Duration Observations

- Total length of contracts capped at 7 years
- Original term of a multiyear contract must end “on the last day of the current biennium”
- Any contract renewal “shall not exceed the next succeeding biennium”
- Contract form includes termination clauses for defunding and convenience

Source: Arkansas Code § 19-11-238; form contract review

Indiana

- Total length of contracts capped at 8 years
- Original term of contract may be up to 4 years; may not be renewed for a term longer than the initial term
- Contract form includes termination clauses for defunding and convenience



Source: IC § 5-22-17-3,4, form contract

Iowa

- Total length of contracts capped at 6 years (10 for certain IT services contracts)
- Original term of contract may be up to 3 years; renewals at 1 year intervals
- Contract form includes termination clauses for defunding and convenience



Source: 11 IAC 118.11(3), DAS-CPB Manual

South Carolina

- Total length of contracts capped at 5 years, but can range up to 10 with board approval
- Original term of contract may be up to 1 year; renewals at 1 year intervals
- Contract form includes termination clauses for defunding and convenience



Source: SC Code § 11-35-2030; form contract

Arkansas Protest Observations

- **Flexible Due Date:** Award protests due 14 calendar days “after the aggrieved person knows or should have known of the facts giving rise to the grievance.” Solicitation protests due 72 hours before filing deadline.
- **No specified or limited grounds for protests**
- **Receipt of a protest halts all negotiations or solicitation progress**
- **No disincentive for frivolous protests**

Source: Arkansas Code § 19-11-244 and its associated rules

Tennessee

- Award protests due 7 calendar days after award notice
- Specified and limited grounds for protest
- Two levels of review
- Requires protest bond¹ equal to 5% of lowest bid (forfeited if protest is found to be ungrounded or in bad faith)



Source: TN Rule 0690-03-01.06

Louisiana

- Award protests due within 14 calendar days of award notice
- Procurements and awards allowed to proceed despite protest if procurement director determines it to be in the best interest of the State



Source: LA Rule 39:1671

Florida

- Notice of award protest due within 3 business days of award, formal protests within 10 calendar days of notice
- Protest bond¹ of 1% of contract (losing party pays)
- Solicitations or awards allowed to proceed in certain circumstances



Source: FL Stat. § 287.042 and Code 28-110

¹Seven states require some form of protest bond

Questions
