

Procurement Contract and Vendor Rules Arkansas Health Insurance Marketplace

Preface: The Purpose of these Rules is to establish the policies and procedures for vendors doing business with the Arkansas Health Insurance Marketplace (AHIM). These Rules are issued pursuant to the authority vested in the AHIM under Ark. Code Ann. § 23-61-801 et seq.

Section 1. Definitions.

- 1.1 "Act" means the Arkansas Health Insurance Marketplace Act.
- 1.2 "Addendum" or "Addenda" means an addition or deletion to, a material change in or general interest explanation of, a solicitation document.
- 1.3 "Advantageous" means in the AHIM's interests, as assessed according to the judgment of the AHIM.
- 1.4 "AHIM" means the Arkansas Health Insurance Marketplace.
- 1.5 "Award" means either the act or occurrence of the AHIM's identification of the person with whom the AHIM will enter into a contract.
- 1.6 "Bid" means a response to an Invitation to Bid.
- 1.7 "Bidder" means a person that submits a bid in response to an Invitation to Bid.
- 1.8 "Board" means the member(s) of the Arkansas Health Insurance Marketplace Board of Directors as appointed under Ark. Code Ann. § 23-61-803.
- 1.9 "Closing" means the date and time announced in a solicitation document as the deadline for submitting offers.
- 1.10 "Competitive Bidding" or "Competitive Bid" means a method of procurement which requires obtaining bids by:
 - 1. Direct mail request to prospective bidders and obtaining written bids;
 - 2. Telephone;
 - 3. Telegraph;
 - 4. Written form; or
 - 5. Electronic media.

- 1.11 "Contract" means agreements, regardless of what they may be called, for the purchase, lease, rental or other acquisition of goods and services and for the disposal of surplus commodities and services not otherwise exempt.
- 1.12 "Contract Price" means as the context requires:
1. The maximum payments that the AHIM will make under a contract if the contractor fully performs under the contract;
 2. The maximum not-to-exceed amount of payments specified in the contract; or
 3. The unit prices for goods and services in the contract.
- 1.13 "Contractor" means the person with whom the AHIM enters into a contract.
- 1.14 "Eligible Entity" means an entity that has experience in individual and small group health insurance, benefit administration, or other experience relevant to the responsibilities to be assumed by the entity. "Eligible Entity" does not mean a health insurer or an affiliate of a health insurer.
- 1.15 "Emergency" means circumstances that:
1. Could not have been reasonably foreseen;
 2. Require prompt execution of a contract to remedy the condition; and
 3. Meet one of the following two conditions:
 - a. The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare, or safety when the circumstances could not have been reasonably foreseen; or
 - b. The circumstances require immediate and decisive action to protect the security, credibility, or integrity of the AHIM.
- 1.16 "Executive Director" means the Executive Director of the AHIM.
- 1.17 "Goods and Services" or "Goods or Services" means supplies, equipment, materials, and services including personal services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the AHIM is authorized by law to procure.

1.18 "Information Technology Contract" means a contract for the acquisition, disposal, repair, maintenance or modification of hardware, software or services for computers or telecommunications.

1.19 "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting bids using a competitive bidding process in which specifications, price and delivery (or project completion) will be the predominant award criteria.

1.20 "Major Procurement" or "Major Procurement Contract" means a contract for a product or service costing more than **seventy-five thousand dollars (\$75,000)** including without limitation:

1. A major advertising contract;
2. An annuity contract;
3. A consulting service;
4. Equipment;
5. **Technical Service**; and
6. Any other product and service unique to the health insurance exchange.

"Major Procurement Contract" does not include a material, supply, equipment, or service common to the ordinary operations of the AHIM.

1.21 "Offer" means a response to a solicitation document.

1.22 "Offeror" means a person who submits an offer.

1.23 "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

1.24 "Personal Services" means the services or type of services performed under a personal services contract.

1.25 "Personal Services Contract" means a contract or member of a class of contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a contract for the services of an accountant, educator, information technology or other consultant, broadcaster or artist (including a photographer, filmmaker, painter, or sculptor.)

- 1.26 "Proposal" means a response to a Request for Proposal.
- 1.27 "Proposer" means a person that submits a proposal in response to a Request for Proposal.
- 1.28 "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals using a competitive proposal process in which price is not the sole determining factor for contract award.
- 1.29 "Request for Qualifications" or "RFQ" 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.
- 1.30 "Responsible Bidder/Proposer/Offeror" means a vendor who submits a bid, offer, quote or proposal in response to a solicitation and who, in the reasonable opinion of the AHIM:
1. Is able and is otherwise qualified in all respects to perform fully the contract requirements without delay; and
 2. Has the integrity and reliability which will assure good faith performance.
- 1.31 "Responsive Bidder/Proposer/Offeror" (also "Responsive Bid", "Responsive Offer" or "Responsive Proposal" as applicable) means an offer that substantially complies in all material respects with applicable solicitation document requirements. When used alone, "Responsive" means having the characteristics of substantially complying in all material respects with applicable solicitation document requirements.
- 1.32 "Scope" means the range and attributes of the goods or services described in the applicable solicitation document, or if no solicitation document, in the contract.
- 1.33 "Signed" or "Signature" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person, with the intent to be bound.
- 1.34 "Solicitation" means all documents, whether attached or incorporated by reference, utilized for soliciting bids, offers, quotes, or proposals with respect to a particular major procurement.
- 1.35 "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite offers from prospective contractors.
- 1.36 "Specification" means any description of the physical or functional characteristics or of the nature of goods or services. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.

1.37 "Vendor" means a person who provides or proposes to provide goods or services to the AHIM under a major procurement contract. Vendor does not include:

1. An employee of the AHIM;
2. A retailer; or
3. A state agency or instrumentality.

"Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract.

1.38 "Work" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual requirement in a contract and successful completion of all duties and obligations imposed by the contract.

1.39 "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

Section 2. General Policies.

2.1 Objective. It is the policy of the AHIM, to the extent that is reasonable given the objectives of the AHIM, to conduct its contracting affairs in an open, competitive manner in accordance with these Rules.

2.2 Authority of the Executive Director.

A. The Executive Director is authorized to initiate procurements and enter into all contracts and contract amendments for goods and services except when:

1. The goods and services are an expense over five thousand dollars (\$5,000) not approved in the AHIM budget, the Executive Director must seek Board approval;
2. The Executive Director determines that the contract should be reviewed by the Arkansas Health Insurance Marketplace Legislative Oversight Committee before it is executed; or
3. As otherwise provided in these Rules.

B. Price Reduction. The Executive Director is authorized without further specific approval action by the AHIM, to execute any contract amendment that results in a reduction of the price paid by the AHIM per item, unit or other measure of the goods or services provided under the contract, and may exercise any option under

a contract previously approved by the AHIM, where the option terms of the approved contract establish a specific price for the goods or services to be acquired under the option.

- C. **Emergency Procurements.** The Executive Director is authorized to make an emergency procurement as defined in Section 1.15 of these Rules.
- D. **Delegation by Executive Director.** The Executive Director may delegate to any of the employees of the AHIM the exercise or discharge of any of the powers, duties or functions of the Executive Director in these Rules.
- E. **Lack of an Executive Director.** If the AHIM does not have an Executive Director to initiate procurement, the Board may designate one of its members or an agent of the AHIM to exercise the authority granted to the Executive Director in these Rules. Prior to the award of a contract under these Rules the designee must seek approval of the award of the contract by the Board.

Section 3. Solicitations.

3.1 Generally.

- A. The provisions of this section are applicable to all solicitations of procurement contracts regardless of the procurement method used by the AHIM. All solicitations shall detail:
 - 1. Terms and conditions clearly detailing the requirements for the response to the solicitation, including the schedule for submitting and evaluating responses to solicitations as well as contract language in the event of award;
 - 2. Where more than one item is specified, the AHIM will have the right to accept proposals either on the basis of each individual item, a group of items, or total of all items; and
 - 3. Any requirement for a performance bond.
- B. Unless the solicitation specifically permits offers of used or reconditioned items, all solicitations shall be deemed to require that all materials, supplies, and equipment offered and furnished must be new and not reconditioned.

3.2 Limitations Regarding Submissions of Solicitations.

- A. The AHIM is committed to a competitive procurement process that maintains the highest level of integrity. Therefore, no communication outside the procurement process initiated by vendors, their attorneys, representatives, or others promoting their position, other than normal business activities not associated with the

procurement, will be allowed with any officer, employee, or member of, or consultant or advisor to, the AHIM. Any attempt to influence any employees, officers, consultants, advisors or Board members with respect to a procurement, whether such attempt is oral or written, formal or informal, is strictly prohibited and will result in disqualification.

- B. All bids, offers, quotes or proposals and the contracts resulting from solicitations are subject to the requirements of and must comply with the Act, regardless of whether or not specifically addressed in either the solicitations or the proposal. All potential vendors shall read and be familiar with the Act, a copy of which may be obtained through a link on the AHIM's web site.
 - C. The AHIM shall not under any circumstance be responsible for any expenses incurred by a vendor in preparing and submitting a proposal.
 - D. All materials submitted to the AHIM by vendors shall upon submission become the property of the AHIM and may be used as the AHIM deems appropriate.
 - E. From the time a solicitation is issued until either: (1) Six (6) months after the award of a contract; or (2) The rejection of all bids, offer, quotes, or proposals received by the AHIM, vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any AHIM employee, officer, or board member.
- 3.3 Signature Required. Each bid, offer, quote or proposal must be signed by the vendor's authorized agent. If a joint proposal that includes multiple vendors is submitted, it must define completely the responsibilities that each entity is proposing to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The proposal must be signed by an authorized officer or agent of each entity. In addition, the AHIM reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or each subcontractor that is expected to provide a specified amount of the procured product or service, to sign the proposal. Such requirement shall be clearly set forth in the solicitation. The proposal must designate a single authorized official from one of the entities to serve as the sole point of contact between the AHIM and the responding joint venture, strategic partnership, or prime contractor team. Any contract resulting from a joint proposal must be signed by an authorized officer or agent of each entity. In addition, the AHIM reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or each subcontractor that is expected to provide a specified amount of the procured product or service, to sign any such contract. Such requirement, or the possibility of such requirement, shall be clearly set forth in the solicitation.
- 3.4 Addenda to Solicitation Documents. The AHIM reserves the right to make changes to any solicitation by issuance of a written addendum or amendment. The AHIM may issue any such addendum or amendment at any time prior to entering a contract regarding the applicable procurement. Any addendum or amendment will be posted on the AHIM's

web page, and notice of the same shall be communicated by facsimile or email, to all vendors who requested and were sent a copy of the applicable solicitation or who have submitted a bid, offer, quote, or proposal in respect of such solicitation. An offeror shall provide written acknowledgement of receipt of all issued addenda with its offer, unless the AHIM otherwise specifies in the addenda.

3.5 Cancellation, Rejection, or Delay of a Solicitation.

- A. Generally. Any procurement described in a solicitation document may be cancelled, or any or all offers may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the AHIM as determined by the AHIM. The reasons for the cancellation or rejection must be made a part of the solicitation file. The AHIM is not liable to any offeror for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation document, offer, or award.
- B. Offer Findings. The AHIM shall reject an offer upon the AHIM's finding that the offer:
 - 1. Is contingent upon the AHIM's acceptance of terms and conditions (including specifications) that differ from the solicitation document;
 - 2. Takes exception to terms and conditions (including specifications) set forth in the solicitation document;
 - 3. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the solicitation document or in contravention of applicable law;
 - 4. Offers goods or services that fail to meet the specifications of the solicitation document;
 - 5. Is late;
 - 6. Is not in substantial compliance with the solicitation document requirements; or
 - 7. Is not in substantial compliance with all prescribed public procurement procedures.
- C. Offeror Findings. The AHIM shall reject an offer upon the AHIM's finding that the offeror:
 - 1. Has been debarred pursuant to Section 3.9 of these Rules;

2. Has not properly executed bid or proposal security as required by the solicitation document;
3. Is non-responsible; or
4. Is not an Eligible Entity and its offer is to assist with the planning, implementation, and operation of the AHIM.

D. Disposition of Offers.

1. Prior to Closing. If the AHIM cancels a solicitation prior to closing, the AHIM shall return all offers it received to offerors unopened, provided the offeror submitted its offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the AHIM shall open the offer to determine the source and then return it to the offeror.
2. After Closing. If the AHIM cancels a solicitation after closing, the AHIM shall keep the offers in the procurement file.
3. Rejection of All Offers. If the AHIM rejects all offers, the AHIM shall keep all offers in the procurement file.

3.6 *Discovery.* The AHIM reserves the right to obtain any information from any lawful source regarding the past business history, practices, and abilities of vendors, their officers, directors, employees, owners, team members, partners, or subcontractors. Such information may be taken into consideration in evaluation of the proposals.

3.7 *Pre-Closing Modifications or Withdrawal of Offers.*

- A. An offeror may modify its offer in writing prior to closing. An offeror shall prepare and submit any modifications to its offer to the AHIM. The last offer received by the AHIM prior to closing will supersede any previous offers received unless the offer is identified by the offeror as an alternate offer.
- B. *Change in Circumstance.* Each offeror is under a continuing obligation to notify the AHIM following the submission of a proposal of any changes to the information, data, or facts submitted in their response that could reasonably be expected to affect the AHIM's consideration of the proposal.
- C. *Withdrawals.* An offeror may withdraw its offer by written notice submitted on the offeror's letterhead, signed by an authorized representative of the offer, delivered to the AHIM and received by the AHIM prior to closing. The offeror or authorized representative of the offeror may also withdraw its offer in person prior to closing, upon presentation of appropriate identification and evidence of authority satisfactory to the AHIM. After the solicitation deadline, a vendor may

withdraw its bid, offer, quote, or proposal, or other response or a portion thereof only upon a written determination by the AHIM that there is an obvious error in such response and where the enforcement of the response would impose an unconscionable hardship on the vendor. A reduction or diminution in profit margin shall not be deemed an unconscionable hardship under this subsection.

3.8 Mistakes.

- A. Generally. To protect the integrity of the competitive procurement process and to assure fair treatment of offerors, the AHIM shall carefully consider whether to permit waiver or correction for mistakes.
- B. AHIM's Treatment of Mistakes. The AHIM shall not allow an offeror to correct or withdraw an offer for an error in judgment. If the AHIM discovers certain mistakes in an offer after closing, but before award of the contract, the AHIM may take the following action:
 - 1. Minor Informality. The AHIM may waive, or permit an offeror to correct a minor informality. A minor informality is a matter of form rather than substance when it is evident on the face of the offer, or an insignificant mistake that can be waived or corrected without prejudice to other offerors. Examples of minor informalities include, but are not limited to, an offeror's failure to:
 - a. Return the correct number of signed offers or the correct number of other documents required by the solicitation document;
 - b. Sign the offer in the designated block, provided a signature appears elsewhere in the offer, evidencing an intent to be bound; and
 - c. Acknowledge receipt of an addendum to the solicitation document, provided that it is clear on the face of the offer that the offeror received the addendum and intended to be bound by its terms; or the addendum involved did not affect price, quality or delivery.
 - 2. Clerical Error. The AHIM may correct a clerical error if the error is evident on the face of the offer or other documents submitted with the offer, and the offeror confirms the AHIM's correction in writing. A clerical error is an offeror's error in transcribing its offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, and instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices shall prevail over extended prices.

3. Burden of Proof. The AHIM may permit an offeror to withdraw an offer based on one or more clerical errors in the offer only if the offeror shows with objective proof and by clear and convincing evidence:
 - a. The nature of the error;
 - b. That the error is not a minor informality under this subsection or an error of judgment;
 - c. That the error cannot be corrected or waived under Subsection B of this Section;
 - d. That the offeror acted in good faith in submitting an offer that contained the claimed error and in claiming that alleged error in the offer exists;
 - e. That the offeror acted without gross negligence in submitting an offer that contained a claimed error;
 - f. That the offeror will suffer substantial detriment if the AHIM does not grant the offeror permission to withdraw the offer;
 - g. That the AHIM's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the AHIM; and
 - h. That the offeror promptly gave notice of the claimed error to the AHIM.
 4. Withdrawing Offers After Closing. The criteria in Subsection 3.7(C) of these Rules shall determine whether the AHIM will permit an offeror to withdraw its offer after closing. This criteria also shall apply to the question of whether the AHIM will permit an offeror to withdraw without forfeiture of its bid bond (or other bid or proposal security), or without liability to the AHIM based on the difference between the amount of the offeror's offer and the amount of the contract actually awarded by the AHIM, whether by award to the next lowest responsive and responsible offeror, the most advantageous and responsible offeror, or by resort to a new solicitation.
- C. Rejection for Mistakes. The AHIM shall reject an offer in which a mistake is evident on the face of the offer and the intended correct offer is not evident or cannot be substantiated from documents submitted with the offer.
- D. Identification of Mistake After Award. The procedures and criteria set forth above are offeror's only opportunity to correct mistakes or withdraw offers

because of a mistake. Following award, an offeror is bound by its offer, and may only withdraw its offer or rescind a contract entered into pursuant to the extent permitted by these Rules and applicable law.

3.9 Debarment of Prospective Offerors.

- A. Generally. The AHIM may debar a prospective offeror from consideration for award of AHIM contracts for the reasons listed in Subsection B of this Section providing the prospective offeror with notice and a reasonable opportunity to be heard.
- B. Factors for Consideration. A prospective offeror may be debarred from consideration for award of AHIM contracts if:
 - 1. The prospective offeror has committed a violation of a material contract provision. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment.
 - 2. The prospective offeror has been convicted of a criminal offense resulting from obtaining or attempting to obtain a public or private contract or subcontract or resulting from the performance of such contract or subcontract.
 - 3. The prospective offeror has been convicted 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 that currently, seriously and directly affects the prospective offeror's responsibility as a contractor or that the AHIM determines may affect the honesty, fairness, integrity or security of the AHIM.
 - 4. The prospective offeror has been convicted under state or federal antitrust statutes.
 - 5. The prospective offeror does not carry worker's compensation or unemployment insurance as required by statute.
- C. Period of Debarment. The AHIM shall determine the period of debarment of a prospective offeror, however, the period shall not exceed three (3) years.
- D. Responsibility. Notwithstanding the limitation on the term for debarment in Section 3.9(C) of these Rules, the AHIM may determine that a previously debarred offeror is not responsible prior to contract award.

- E. **Eligible Entity.** Notwithstanding the limitation on the term for debarment in Section 3.9(C) of these Rules, the AHIM may determine that a previously debarred offeror is not an eligible entity prior to contract award, if the contract is to assist with the planning, implementation, and operation of the AHIM.
- F. **Imputed Knowledge.** The AHIM may attribute improper conduct of a person or its affiliate or affiliates having a contract with a prospective offeror to the prospective offeror for purposes of debarment where the impropriety occurred in connection with the person's duty on behalf of, or with the knowledge, approval, or acquiescence of the prospective offeror.
- G. **Limited Participation.** The AHIM may allow a debarred person to participate in a competitive process and contracts on a limited basis during the debarment period upon written determination by the Executive Director that participation is advantageous to the AHIM. The determination shall specify the factors on which it is based and define the extent of the limits imposed.
- H. **Decision.**
1. The Executive Director shall issue a written decision to debar a prospective offeror under these Rules. The decision must:
 - a. State the reasons for the debarment; and
 - b. Inform the debarred prospective offeror of the appeal rights of the prospective offeror under Subsection 3.9(H) of these Rules.
 2. The AHIM shall send a copy of the decision immediately to the debarred prospective offeror by certified mail, return receipt requested, or by personal service.
- I. **Appeal.**
1. The procedure for appeal from the AHIM's debarment of a prospective offeror under these Rules shall be in accordance with this section.
 2. Upon receipt of a notice from the AHIM of a decision to debar under these Rules, a prospective offeror that wishes to appeal the decision shall within three (3) business days after receipt of the decision, notify the Executive Director that the prospective offeror appeals the decision and requests a hearing as provided in this section.
 3. Upon receipt of the prospective offeror's notice of appeal and request for hearing, the Executive Director shall promptly notify the prospective offeror appealing of the time and place of the hearing. The Executive

Director shall conduct the hearing and decide the appeal within thirty (30) days after receiving the notice from the prospective offeror. The Executive Director shall set forth in writing the reasons for the hearing decision.

4. At the hearing, the Executive Director shall consider de novo the notice of debarment, the reasons listed in Subsection 3.9(B) of these Rules on which the AHIM based the debarment, and any evidence provided by the AHIM and the prospective offeror.
5. The decision of the Executive Director is final and may only be appealed pursuant to the procedures set forth in Section 5.8 of these Rules.

3.10 Inspection of Solicitation Records.

- A. All data, materials, and documentation originated and prepared for the AHIM pursuant to solicitations shall belong exclusively to the AHIM and may be available to the public in accordance with these Rules. Under no circumstances will the AHIM be liable to any vendor or to any other person or entity, for any disclosure of any trade secret or confidential information.
- B. Upon the AHIM's issuance of a notice of intent to award a major procurement contract, the AHIM's procurement files for such major procurement will be open for public inspection. Notwithstanding the foregoing:
 1. The AHIM shall not be required to make available for public inspection information protected by or otherwise not required to be disclosed pursuant to applicable law, or these Rules; and
 2. The AHIM may delay making its procurement files available to the public for such reasonable period of time as the AHIM determines is necessary for it to redact or otherwise secure that portion of its procurement files that will not be made available to the public. The AHIM's procurement records that are made available to the public shall be available for inspection during the AHIM's regular office hours.

3.11 Pre-Solicitation Process. Whenever the AHIM wants to evaluate the availability, durability, adaptability, or other specifications of goods or services in advance of seeking to procure such goods or services, the Executive Director may elect to utilize a pre-solicitation process to identify potential offerors or possible solutions to the need being addressed. The Executive Director may opt to use any or all of the following methods to acquire information:

1. Oral presentations;
2. Pre-solicitation notices;

3. Pre-solicitation conferences;
4. Requests for information;
5. Site visits; or
6. Any other method the Executive Director deems appropriate in his or her discretion.

Section 4. Source Selection.

4.1 Generally. The AHIM will generally conduct a competitive process for goods or services by issuing a solicitation document. The AHIM shall award contracts for goods or services by one of the source selection methods in this section subject to the following exceptions:

- A. Small Procurements. Any procurement of goods or services not exceeding five thousand dollars (\$5,000) may be awarded without a competitive process.
- B. Intermediate Procurements. Any procurement of goods or services between five thousand dollars (\$5,000) and seventy-five thousand dollars (\$75,000) shall be awarded under the procedures for a major procurement or by competitive bidding as follows:
 1. The AHIM shall obtain three (3) competitive bids.
 2. 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.
 3. Only firms which sell the type of commodity or service to be procured shall be contacted.
 4. The procurement contract shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements, criteria, and specifications of the procurement bid request.
 5. Complete justification must be given if award is made to other than the low bidder.
 6. 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.

7. In the event of a tie bid, the person responsible for awarding a procurement contract must ensure that all offers meet specifications. An award will be made by flip of a coin. The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties and the witness.

4.2 Contracts to Assist With the Planning, Implementing, and Operating the AHIM. When contracting with an eligible entity to assist with the planning, implementing, and operating of the AHIM, the AHIM shall give preference to eligible entities that have relevant experience.

4.3 Sole-Source Procurements.

- A. For purposes of these Rules, "sole-source procurements" means those procurements which, by virtue of the performance specification, are available from a single source. Brand name or design specifications shall not be sufficient explanation for sole-source. Such procurements may include but shall not be limited to:
 1. Requirements of performance compatibility with existing commodities or services; or
 2. Repairs involving hidden damage.
- B. Procurements under this section shall be approved in advance by the Board.
- C. 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; and

8. Any program considerations which make the use of a "sole-source" critical to the successful completion of the agency's task.

4.4 Requests for Proposals.

- A. The provisions of this subsection shall be applicable to solicitations of major procurement contracts by means of an RFP.
- B. Issuance of RFP. The AHIM shall prepare and issue an RFP and evaluate proposals in accordance with this subsection. Failure by the AHIM to comply with any technical requirement of this subsection shall not alone be deemed a defect requiring re-issuance of the RFP or rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the AHIM.
- C. RFP Document. An RFP shall set forth provisions including:
 1. A clear description of the scope of products and services. The technical requirements, scope, and other essential requirements shall be in sufficient detail to minimize the likelihood of requests by vendors for clarification;
 2. Complete directions about making proposals;
 3. An RFP schedule of events that specifies all deadline requirements. Vendors must be given a reasonable time, as determined by the AHIM, to consider the required scope of products and services and the proposal evaluation factors before proposals must be submitted;
 4. RFP requirements and proposal restrictions;
 5. A description of the factors that will be used to evaluate the proposals. Factors may include but are not limited to vendor qualifications, experience, technical approach, minority-owned business or female-owned business participation, and cost; and
 6. A declaration of certain contract terms and conditions which shall be required by the AHIM.
- D. RFP Review and Approval. Each RFP must be reviewed and approved by the Executive Director prior to publication against the criteria of sound business principles, adequacy of the scope of products and services description, and adequacy of the RFP's assurance of:
 1. Fairness to potential vendors;
 2. Achievement of procurement objectives; and

3. Protection of the AHIM's interest.

- E. RFP Publication. The AHIM shall publish each RFP solicitation on the AHIM's web page. Notice of the solicitation may also be published in any newspaper or other relevant trade publication. The AHIM shall further solicit interest in each RFP by sending a formal notice of such or notice that the specific RFP has been released to a documented list of potential vendors and if the list of potential vendors are comprised mainly of Arkansas businesses, such notice must be published in a newspaper with statewide circulation. The AHIM shall compile the list of potential vendors from those known to the AHIM's staff. The AHIM shall determine the number of vendors to include on the list by considering the nature of the procurement, the anticipated amount of the resulting contract, and the number of known vendors. To the extent practicable, the AHIM will strive to compile lists of potential offerors which are minority-owned businesses and female-owned businesses. The AHIM will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts. The AHIM is not required to send a solicitation notice to more than a total of three (3) vendors; provided however, that the AHIM may send a solicitation notice to fewer than three (3) vendors, if, in the opinion of the Executive Director, fewer than three (3) vendors are qualified. A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the AHIM.
- F. The AHIM shall require each proposer to submit the cost proposal component of the proposal in a sealed and labeled envelope separate from the technical proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.
1. The cost proposals shall not be opened until after the evaluation of the technical component is completed. After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the total evaluation of the proposals will then be based on the criteria established in the applicable RFP.
 2. Any proposal which fails to adequately separate the cost proposal components from the technical proposal may be considered non-responsive and rejected by the AHIM.
- G. The AHIM shall communicate, clarify, and negotiate in the best interests of the AHIM, provided that all communication is conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their proposal. Specifically, negotiations will only be permitted with the vendor whose bid, offer, quote, or proposal is the highest rated bid, offer, quote, or proposal. In the event that negotiations with the highest rated vendor fail to result in a contract, or if for any

other reason a contract with such vendor is not executed, the AHIM may conduct negotiations with the second highest vendor and so forth until a contract is successfully executed.

- H. The AHIM shall have the right, at its sole discretion, to amend an RFP in writing at any time.
- I. The AHIM shall have the right, at its sole discretion, to reject any and all proposals.
 - 1. Any proposal that does not meet the requirements of an RFP may be considered to be non-responsive, and the proposal may be rejected.
 - 2. Any proposal that restricts the rights of the AHIM or otherwise qualifies the proposal may be considered to be non-responsive, and the proposal may be rejected.
- J. The AHIM has the right, at its sole discretion, to cancel an RFP in its entirety and to reissue or not reissue an RFP.
- K. Evaluation and Award. Proposals shall be evaluated in accordance with the solicitation and in such a manner as to reasonably assure that all proposals are impartially considered and AHIM requirements are adequately met.
 - 1. Proposals shall be evaluated by a committee established by the Executive Director.
 - 2. Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest. The statement shall be retained as procurement file documentation.
 - 3. Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.
 - 4. Neither the technical proposal, nor the cost, or any other single criterion shall be the only criterion for a major procurement contract award recommendation. Rather, evaluations shall be conducted and criteria shall be established to select proposals that provide the greatest overall value, the greatest long-term benefit to the State of Arkansas, the greatest integrity for the AHIM, and the best services and products for the public. However, specific factors may be set forth in the applicable solicitation as criteria for determining whether a vendor who submits a bid, offer, quote, or proposal in response to that solicitation is a responsible bidder/proposer and which proposals shall be considered responsive to the RFP.

5. Pricing discounts for payment within certain time periods or in cash shall not be considered in evaluating bids.
6. Only signed, sealed bids delivered prior to the date and time of bid opening shall be accepted.
7. The past performance of a bidder/proposer/offeror on a contract may be used by the AHIM to determine whether the bidder/proposer/offeror is "responsible". Past performance must be supported by written documentation not greater than three (3) years old. Reports, memos, and files may be in electronic form. Past performance may be positive or negative. Past performance on contracts with Arkansas state agencies may also be used for evaluation. Supporting documentation should be provided. Past performance evaluation should not take the place of suspension or debarment procedures.
8. In the event of a tie bid, the person responsible for awarding a major procurement contract must ensure that all offers meet specifications. An award will be made by flip of a coin. The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties and the witness.

4.5 Requests for Qualifications.

- A. The provisions of this subsection will be applicable to solicitations of major procurement contracts by means of a Request for Qualifications (RFQ).
- B. The request for qualifications procurement method is used when the qualifications or specialized expertise of the vendor is the most important factor in selection.
- C. RFQ Publication. The AHIM shall publish each RFQ solicitation on the AHIM's web page. Notice of the solicitation may also be published in any newspaper or other relevant trade publication. The AHIM shall further solicit interest in each RFQ by sending a formal notice of such or notice that the specific RFQ has been released to a documented list of qualified vendors and if the list of potential vendors are comprised mainly of Arkansas businesses, such notice must be published in a newspaper with statewide circulation. The AHIM shall compile the list of vendors from those known to the AHIM's staff. The AHIM shall determine the number of vendors to include on the list by considering the nature of the procurement, the anticipated amount of the resulting contract, and the number of known vendors. To the extent practicable, the AHIM will strive to compile lists of potential offerors which are minority-owned businesses, female-owned businesses, and the AHIM will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major

procurement contracts. The AHIM is not required to send a solicitation notice to more than a total of three (3) vendors; provided however, that the AHIM may send a solicitation notice to fewer than three (3) vendors. A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the AHIM.

- D. The AHIM shall communicate, clarify, and negotiate in the best interests of the AHIM, provided that all communication is conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their proposal.
- E. The AHIM shall have the right, at its sole discretion, to amend an RFQ in writing at any time.
- F. The AHIM shall have the right, at its sole discretion, to cancel an RFQ in its entirety and to reissue or not reissue an RFQ.
- G. Evaluation and Award. The AHIM will make its initial selection based upon the respondents' 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.
 - 1. Proposals shall be evaluated by a committee established by the Executive Director.
 - 2. Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest. Said statement shall be retained as procurement file documentation.
 - 3. Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.
 - 4. Evaluations shall be conducted and criteria shall be established to select proposals that provide the greatest overall value, the greatest long-term benefit to the State of Arkansas, the greatest integrity for the AHIM, and the best services and products for the public.
 - 5. Time discounts or cash discounts shall not be considered.
 - 6. Only signed, sealed responses delivered prior to the date and time of bid opening shall be accepted.

7. The past performance of a bidder/proposer/offeror on a contract may be used by the AHIM to determine whether the bidder/proposer/offeror is "responsible". Past performance must be supported by written documentation not greater than three (3) years old. Reports, memos, and files may be in electronic form. Past performance may be positive or negative. Past performance on contracts with Arkansas state agencies may also be used for evaluation. Supporting documentation should be provided. Past performance evaluation should not take the place of suspension or debarment procedures.

- H. Compliance with this subsection. Failure by the AHIM to comply with any technical requirement of Section 4.3 of these Rules shall not alone be deemed a defect requiring rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the AHIM.

4.6 Alternative Methods.

- A. The AHIM reserves the right to use an alternative procurement method if that method will be more likely to: (1) Maximize the AHIM's net revenue; (2) Achieve the specific business objective or business objectives of the procurement; or (3) Aid the Executive Director in fulfilling the statutory mandate to operate and administer the AHIM.
- B. Alternative procurement methods may include, but are not limited to, specialized vendor pre-qualifications, multistep bids or proposals, single proposer negotiations, competitive negotiations between two or more proposers, brand name solicitations, and cooperative procurements. The AHIM shall conduct the alternative procurement method in accordance with the process set forth in the applicable solicitation document.

4.7 Emergency Procurements.

- A. The Executive Director may make emergency procurements. The AHIM must, at a minimum, receive three (3) competitive bids unless the emergency is critical. 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.
- B. All emergency procurements shall be approved in advance by the Board. Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date. Requests for approval shall be made in writing and shall include:

1. A copy of the purchase order;

2. A copy of the quotations, including the names of at least three (3) firms contacted in attempting to obtain competition or show the reason three (3) firms were not contacted; and

3. A written explanation of the emergency.

- C. In the event of a tie bid, the person responsible for awarding a procurement contract must ensure that all offers meet specifications. An award will be made by flip of a coin. The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties and the witness.

4.8 Procurement of Printing, Stationary, and Supplies. The AHIM shall purchase printing, stationary, and supplies in accordance with Amendment 54 of the Constitution of the State of Arkansas.

Section 5. Disputes.

5.1 Filing of a Protest.

- A. Any actual or prospective bidder, proposer, offeror, or contractor who is aggrieved in connection with the solicitation or award of a procurement contract may file a protest seeking a determination with respect to any matter related to the solicitation or award of a procurement contract except as otherwise provided herein. An aggrieved person who files a protest is hereinafter referred to as a "Petitioner". Other than as expressly set forth in these Rules, nothing contained herein shall confer any rights or remedies upon any aggrieved person or petitioner, or impose any duties or obligations upon the AHIM.
- B. The protests shall be in writing, shall be filed by delivery by hand or courier to the Executive Director with a copy to the **Business Manager** of the AHIM at the headquarters of the AHIM.
- C. The protest shall include the following information:
1. The name, address, and telephone number of the petitioner;
 2. The signature of the petitioner;
 3. Identification of the solicitation or contract number that is the subject of the dispute;
 4. A statement of the legal and factual grounds supporting the position of the petitioner, including copies of relevant documents;

5. Any other documentation the petitioner wishes to submit in support of petitioner's position; and
 6. A statement of the relief requested whether legal, equitable, or otherwise. If a monetary award is requested, the amount shall be stated.
- D. For a protest to be timely filed, the original protest manually signed by the petitioner must be physically received by the AHIM within the time period prescribed in Section 5.2 of these Rules. Facsimile or other electronically transmitted copies of the protest will not be accepted.
- E. The petitioner shall be required to provide a suitable bond to the AHIM in certified funds at the time the protest is filed. The purpose of this bond is to:
1. Discourage frivolous petitions and litigations;
 2. Assure payment by the petitioner of the costs incurred as a result of the protest; and
 3. Assure payment of all other amounts for which the petitioner may be found liable, including without limitation any loss of income to the AHIM resulting from the institution of a frivolous appeal.
- F. Failure to provide such bond with any protest will result in the dismissal of such protest. A petitioner shall not have met the requirement in Section 5.2 of these Rules to timely file a protest unless the applicable bond accompanies the protest when it is filed. This requirement does not apply to any petitioner who has already provided bond in the proper bond amount as part of a solicitation process.
- G. The amount of the bond shall be the amount established in the applicable solicitation. In the event that no amount is specified in the applicable solicitation, the bond shall be seventy-five thousand dollars (\$75,000) or fifty percent (50%) of the value of the procurement contract amount in controversy, whichever is less.

5.2 Time for Filing a Protest.

- A. Protests concerning a solicitation.
1. A protest in regard to a procurement contract solicitation for which the basis for the protest is reasonably apparent before the closing date for receipt of initial proposals shall be filed within five (5) business days after the deadline for vendor questions established in the solicitation. A protest in regard to any other solicitation for which the basis for the protest is reasonably apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals. A

protest based upon a solicitation that is reasonably apparent before the bid opening shall be filed before bid opening.

2. Protests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the AHIM with respect to any solicitation or response thereto, that is reasonably apparent before the closing date for receipt of proposals or any supplemental information requested by the AHIM shall be filed within five (5) business days after the deadline for vendor questions or the date of the amendment, whichever date is later.
3. If a protest is timely filed with the Executive Director and the **Business Manager** of the AHIM before the award of a contract, the award of such contract may be made before a decision is rendered on the protest.

B. Protest concerning an award of contract.

1. Any aggrieved person may protest the AHIM's decision to award a procurement contract. Only persons or entities that submit a bid, offer, quote, or proposal with respect to a procurement solicitation for a competitively bid procurement contract may be considered an "Aggrieved Person" with standing to file a protest with respect to the award of such contract or the issuance of a notice of intent to award such contract.
2. Any written protest shall be filed:
 - a. In the case of a procurement contract that has not been competitively bid by the AHIM, within five (5) business days after either the AHIM's issuance of a notice of intent to award such procurement contract or the AHIM's award of such procurement contract is posted, published, or otherwise made publicly available, whichever occurs first; or
 - b. In the case of a procurement contract that has been competitively bid by the AHIM, within five (5) business days after the AHIM's issuance of a notice of intent to award such procurement contract is posted, published, or otherwise made publicly available.
3. If a protest seeking equitable relief regarding the award of any procurement contract is timely filed with the Executive Director and the **Business Manager** of the AHIM, the AHIM may award and enter into such procurement contract only if: (1) Such protest has been resolved in accordance with these Rules; or (2) The AHIM has made a written determination that the award of such procurement contract without delay is necessary to protect substantial interests of the AHIM.

- C. In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in Subsections (A) and (B) of this Section, a protest must be filed within five (5) business days after the announcement of the AHIM's decision to award is posted, published, or otherwise made publicly available, whichever occurs first.
 - D. In any other case not covered by Subsections (A) through (C) of this Section, the protest must be filed within five (5) business days after the aggrieved person knows or should have known of the facts giving rise to the action complained of.
 - E. Failure to timely file a written protest shall bar any further administrative, legal, or equitable action.
 - F. Failure to timely provide the applicable bond in the amount required shall result in an untimely filing and bar any further administrative, legal, or equitable action.
- 5.3 Notice to Others. In the event a protest is filed, the Executive Director shall immediately provide a copy of the protest to the Board and to the successful person or entity, if an award has been made, or, if no award has been made, to all persons or entities who have submitted bids or proposals.
- 5.4 Confidential Information.
- A. If the petitioner believes the protest contains material that should be withheld, a statement advising the Business Manager of the AHIM of this fact shall accompany the protest submission.
 - B. Material submitted by a petitioner shall not be withheld from any interested party except to the extent required by law.
- 5.5 Decision by the Executive Director.
- A. The Executive Director, or a hearing officer designated by him or her, shall have the exclusive authority to decide all protests.
 - B. After submittal of a timely protest and prior to issuance of a written decision to that protest, the petitioner shall be afforded an opportunity to discuss with the Executive Director the issues giving rise to the protest.
 - C. Before agreeing to settle any protest by the award of costs, the Executive Director shall consult the AHIM General Counsel. The award of costs shall be allowed only to compensate a petitioner for reasonable expenses incurred in preparation and submission of a bid or proposal for which the petitioner was wrongfully denied a contract award. The costs which are allowable shall be those which the petitioner is able to prove that are incurred in preparation and submission of the bid or proposal in question, but exclude travel and production costs that may

result from participation in pre-bid conferences; attending on-site inspections, and demonstrations or presentations made in responding to formal solicitations issued by the AHIM. A petitioner may not recover profit which it anticipates would have made if the petitioner had been awarded the procurement contract. Attorney's fees associated with the filing and prosecution of the protest are not recoverable.

- D. If the protest is not resolved by mutual agreement, the Executive Director or hearing officer shall issue a written decision within thirty (30) calendar days after a protest has been filed. The decision shall include:
1. A brief description of the claim;
 2. A reference to the pertinent contract provision;
 3. A brief statement of the factual and legal issues; and
 4. A statement of the Executive Director's or hearing officer's decision, with supporting rationale and the remedial action or award, if any.
- E. The Executive Director or hearing officer shall furnish a copy of the decision to the petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, express mail or overnight express courier.
- F. The time limit for decisions set forth in Subsection (D) of this Section may be extended by the Executive Director or hearing officer for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The Executive Director or hearing officer shall notify the petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- G. If the Executive Director or hearing officer fails to issue a decision within the time limits set forth in Subsections (D) or (F) of this Section, the petitioner may proceed as if the Executive Director or hearing officer had issued an adverse decision.
- H. In lieu of a written decision, the Executive Director may, in his or her sole discretion, within thirty (30) calendar days after a protest is filed, give written notice to the petitioner that the protest shall be resolved by a hearing conducted by the Executive Director or hearing officer pursuant to the procedures for hearing set forth in Section 5.7. Notwithstanding the foregoing, the Board may at any time on its own motion direct that a protest be resolved by a hearing conducted by the Executive Director or hearing officer pursuant to the procedures for hearing set forth in Section 5.6.

- I. Nothing in Section 5 of these Rules shall prohibit a contractor who is also an aggrieved person or petitioner from submitting an invoice to the AHIM for final payment after the work is completed and accepted.
- J. Pending claims shall not delay payment for undisputed amounts from the AHIM to a contractor who is also an aggrieved person or petitioner.

5.6 Hearing Procedures.

- A. All hearings conducted under these Rules shall be conducted by the Executive Director or by a hearing officer designated by the Executive Director. The decision as to whether the Executive Director or a hearing officer will conduct the hearing shall be in the sole discretion of the Executive Director. The hearing officer's actions, decisions, and orders shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director, subject to the appeals procedures as hereinafter provided.
- B. If the Executive Director determines under Section 5.5(H) of these Rules that a hearing will be used to resolve a protest, the hearing shall be held within thirty (30) calendar days following the Executive Director's determination. A notice which will set forth the time, date, and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.
- C. In connection with the hearing, the Executive Director or hearing officer may:
 - 1. Conduct the hearing in an informal manner without formal Rules of evidence or procedure;
 - 2. Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;
 - 3. Require each party to produce for examination those relevant witnesses and documents under its control;
 - 4. Rule on motions and other procedural items pending before him or her, including without limitation the methods, scope and extent of discovery available to the parties;
 - 5. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
 - 6. Establish time limits for submission of motions or memoranda;

7. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;
 8. Administer oaths or affirmations;
 9. Issue subpoenas; and
 10. Join any necessary parties to the hearing.
- D. The hearing shall be conducted before a court reporter. The petitioner shall procure, at petitioner's own cost and on petitioner's own initiative, the court reporting services (including the preparation of the transcript) for such hearing. The original transcript of any such proceedings shall be submitted to the Executive Director or hearing officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record. The petitioner shall also submit a copy of the transcript to all other parties to the protest as soon as the transcript is available.
- E. Any party may appear and be represented with or without counsel at the hearing.
- F. If a hearing officer conducts the hearing, he or she shall make a written recommendation containing the hearing officer's ruling, in the form of a proposed decision, to the Executive Director, within thirty (30) calendar days after receiving an original transcript of the hearing. If a proposed decision is received by the Executive Director, he or she must render a decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the proposed decision from the hearing officer.
1. If the Executive Director receives a recommendation in a proposed decision from a hearing officer, he or she may:
 - a. Accept, modify, or reject the hearing officer's recommendation in whole or in part;
 - b. Return the matter to the hearing officer with instruction;
 - c. Make any other appropriate disposition; or
 - d. Issue a no action response.
 2. If the Executive Director issues a no action response, then the determination in the proposed decision of the hearing officer will be deemed to be accepted by the Executive Director.

- G. If the Executive Director conducts the hearing, he or she must render a decision in writing and deliver the decision to the petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.
- H. The Executive Director's decision and any proposed decision made by a hearing officer shall be sent to the petitioner by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier.

5.7 Procedure for Filing an Appeal to the Board.

- A. A petitioner may appeal a decision of the Executive Director or hearing officer to the Board. Any appeal from a decision of the Executive Director or hearing officer must be filed within the Chair of the Board at the AHIM headquarters within five (5) business days after the receipt of such decision to be considered timely.
- B. Notice of any appeal shall also be filed with the Executive Director and the General Counsel of the AHIM by delivery by hand or courier to the headquarters of the AHIM.
- C. An appeal must be in writing and shall contain the following:
 - 1. Copy of the decision of the Executive Director or hearing officer; and
 - 2. The basis for the precise factual or legal error in the decision of the Executive Director or hearing officer from which the appeal is taken.
- D. The Board shall notify interested parties of the appeal by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail, or overnight express courier within five (5) calendar days after the appeal is filed.
- E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

5.8 Board's Decision.

- A. The Board may review the record without a hearing or oral argument and issue a written decision on behalf of the AHIM. The Board may authorize its legal committee to hear and dispose of administrative appeals from the Executive Director as the Board deems appropriate, including, but not limited to, designating one of its members to consider an act on an appeal on behalf of the Board. Therefore, references in this section to the "Board" shall be read to take this delegation of authority into account.

- B. The Board may in its sole discretion: (1) Conduct its own review or investigation; (2) Conduct a de novo review in whole or in part; or (3) Allow oral argument, in the manner and under procedures that the Board deems appropriate under the circumstances.
 - C. A copy of the Board's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier. The original written decision shall be retained by the AHIM. The written decision of the Board will be final, and no further appeal to the AHIM will be allowed.
 - D. A person appealing the award of a contract may be entitled to the reasonable costs incurred in connection with the contract solicitation, including without limitation bid preparation costs.
- 5.9 Exclusive Remedy. These Rules provide the exclusive procedure for asserting a claim against the AHIM arising out of or relating to any matter related to the procurement process for any procurement contract. Neither an aggrieved person, nor petitioner, nor any other interested party has a right to any remedy against the AHIM with respect to any matter related to the procurement process for any procurement contract except in accordance with the procedures set forth in these Rules.

Section 6. Contracts.

- 6.1 Approval Required. The Executive Director or his or her designee must approve and sign each AHIM purchase order or contract. Only the Executive Director or his or her designee is authorized to bind the AHIM in contractual agreements. A purchase order, notice of contract award, or contract signed by other AHIM personnel is null and void and shall not obligate the AHIM to payment for products and services.
- 6.2 Contractual Award and Agreement. The AHIM shall award the contract to the responsible offeror submitting solicitation whose bid, offer, quote or proposal represents the best value to the AHIM and offers what the AHIM believes will result in the greatest long-term benefit to the State of Arkansas, the greatest integrity for the AHIM, and the best services and products for the public unless otherwise stated in the solicitation document. The AHIM may award by item, groups of items or the entire offer provided such award is consistent with the solicitation document and in the best interest of the AHIM as determined by the AHIM.

allowed, the agency and STP must mutually agree to an extension of the review process.

19-11-233. Emergency procurements.

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 regulations promulgated by the director.

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

R1:19-11-233. Emergency procurements.

(a) **BIDS.** The state agency must, at a minimum, receive three (3) competitive bids unless the emergency is critical. The quotation abstract must show the names of at least three (3) firms contacted in attempting to obtain competition.

(b) **APPROVAL.** All emergency procurements shall 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 shall be made in writing and shall include:

- (1) a copy of the purchase order;
- (2) a copy of the quotation abstract; and
- (3) a written explanation of the emergency.

(c) **TIE BIDS.** 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. An award will be made by lot (flip of a coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee 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 both parties.

(d) **PROFESSIONAL AND CONSULTANT SERVICES.** Emergency procurements of professional and consultant services that total \$25,000 or less may be procured using the method as described in R1:19-11-233(A) through (C). For those PCS contracts that exceed \$25,000, the agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may institute a request for emergency action review of a professional or consultant service contract by providing in writing a request to the Director of State Procurement. The request must detail that to procure using other methods would endanger human life or health, state property or the functional capability of the agency. The State Procurement Director may then approve submission of the contract to the Legislative Council. Under its emergency action procedures, the Co-

chairpersons of the Legislative Council and/or the Co-chairpersons of the Legislative Council Review Committee may review PCS contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting. (This regulation implements Arkansas Legislative Council Rule # 19).

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 \$5,000: "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 five thousand dollars (\$5,000) and is less than or equal to twenty-five thousand dollars (\$25,000) 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.

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 twenty-five thousand dollars (\$25,000) 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 twenty-five thousand dollars (\$25,000) 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 shall 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 which exceed a cost of five thousand dollars (\$5,000) but are less than twenty-five thousand dollars (\$25,000) during the initial period of the contract shall 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 twenty-five thousand dollars (\$25,000).**

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. 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. An award will be made by lot (flip of the coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas. Documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

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 \$5,000: "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 regulations 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 Director of the Department of Finance and Administration when any of those officers deems it necessary.

(c) The State Procurement 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 regulations 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.

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;

West's Arkansas Code Annotated

Title 19. Public Finance (Refs & Annos)

Chapter 11. Purchasing and Contracts (Refs & Annos)

Subchapter 2. Arkansas Procurement Law (Refs & Annos)

A.C.A. § 19-11-234

§ 19-11-234. Competitive bidding process

Effective: August 16, 2013

Currentness

(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 ten thousand dollars (\$10,000) and is less than or equal to fifty thousand dollars (\$50,000) 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.

Credits

Acts of 1979, Act 482, § 35; Acts of 1981, Act 600, § 24; Acts of 1991, Act 1018, §§ 4, 5; Acts of 1995, Act 317, §§ 3, 4; Acts of 1995, Act 340, §§ 3, 4; Acts of 2001, Act 1237, § 27, eff. April 2, 2001; Acts of 2003, Act 487, § 6, eff. July 16, 2003; Acts of 2005, Act 1680, § 7, eff. Aug. 12, 2005; Acts of 2013, Act 1189, § 3, eff. Aug. 16, 2013.

Formerly A.S.A. 1947, § 14-260.

A.C.A. § 19-11-234, AR ST § 19-11-234

Current through end of 2013 Regular Session.

End of Document

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chairpersons of the Legislative Council and/or the Co-chairpersons of the Legislative Council Review Committee may review PCS contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting. (This regulation implements Arkansas Legislative Council Rule # 19).

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 \$5,000: "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.

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- (A) Direct mail request to prospective bidders and obtaining written bids; or
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- (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 five thousand dollars (\$5,000) and is less than or equal to twenty-five thousand dollars (\$25,000) 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.

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LEASES.

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(2) **All contracts for the lease of a commodity which exceed a cost of five thousand dollars (\$5,000) but are less than twenty-five thousand dollars (\$25,000) during the initial period of the contract shall 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 twenty-five thousand dollars (\$25,000).**

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

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- (7) failure to furnish a bid guarantee when required by an invitation for bids; and
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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 regulations 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 Director of the Department of Finance and Administration when any of those officers deems it necessary.

(c) The State Procurement 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 regulations 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.

R1:19-11-235. Nonresponsibility.

(a) (1) Determination of responsibility is made prior to the award of a contract.

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(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;

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West's Arkansas Code Annotated
Title 19. Public Finance (Refs & Annos)
Chapter 11. Purchasing and Contracts (Refs & Annos)
Subchapter 2. Arkansas Procurement Law (Refs & Annos)

A.C.A. § 19-11-244

§ 19-11-244. Resolution of protested solicitations and awards

Effective: July 31, 2009

Currentness

(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 aggrieved person knows or should have known of the facts giving rise to the grievance.

(b)(1) Prior to the commencement of an action in court or any other action provided by law concerning the controversy, 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.

(2) This authority shall be exercised in accordance with laws governing the Arkansas State Claims Commission and the regulations promulgated by the director.

(c)(1) If the protest is not resolved by mutual agreement, and after reasonable notice to the protestor involved and reasonable opportunity for the protestor to respond to the protest issues according to the regulations promulgated by the director, the head of a procurement agency, the director, or a 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 within five (5) days after it is written to the protestor and any other party intervening.

(e) A decision under subsection (c) of this section shall be final and conclusive.

(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 the director or the head of a procurement agency makes a written determination that the award 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.

Credits

Acts of 1979, Act 482, § 57; Acts of 2001, Act 1237, § 34, eff. April 2, 2001; Acts of 2003, Act 487, § 7, eff. July 16, 2003; Acts of 2005, Act 1680, § 10, eff. Aug. 12, 2005; Acts of 2009, Act 677, § 1, eff. July 31, 2009.

Formerly A.S.A. 1947, § 14-276.

Notes of Decisions (1)

A.C.A. § 19-11-244, AR ST § 19-11-244
Current through end of 2013 Regular Session.

End of Document

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