

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

State of Arkansas *As Engrossed: H2/26/15 H3/5/15 H3/25/15*
90th General Assembly **A Bill**
Regular Session, 2015

HOUSE BILL 1009

By: Representative Murdock

For An Act To Be Entitled

AN ACT TO CLARIFY ARKANSAS LAWS CONCERNING
CONSTRUCTION MANAGEMENT; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY ARKANSAS LAWS CONCERNING
CONSTRUCTION MANAGEMENT.

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

SECTION 1. Arkansas Code § 19-11-801(d), concerning the definitions used for procurement of professional services, is amended to read as follows:

(d)(1) As used in this section, "construction management" means a project delivery method based on an agreement in which a state agency, political subdivision, public school district, or institution of higher education acquires from a construction ~~entity~~ manager a series of professional services that include, ~~but are not limited to,~~ without limitation:

(A) ~~design~~ Design review_;

(B) ~~scheduling~~ Scheduling_;

(C) ~~cost~~ Cost control_;

(D) ~~value~~ Value engineering_;

(E) ~~constructability~~ Constructability evaluation_;

(F) ~~preparation~~ Preparation and coordination of bid packages for all trade contracts and purchase orders_; and

(G) ~~construction~~ Construction administration.

(2) ~~"Construction~~ As used in this section, "construction management" includes, but is not limited to without limitation:



(A)(i) "Agency construction management", in which a public school district selects a construction manager to serve as an agent ~~for the purpose of providing~~ to provide administration and management services.

(ii) The construction manager shall not hold ~~subcontracts trade contracts or purchase orders~~ for the project or provide project bonding for the project;

(B)(i) "At-risk construction management", in which the construction ~~entity, after providing~~ manager provides agency services during the preconstruction period, and serves as the general contractor ~~and the following conditions are met.~~

~~(i)~~(ii) The construction manager shall:

(a) ~~provides~~ Provide a ~~maximum~~ guaranteed maximum price for work performed as the general contractor; and

(b) Bond and guarantee the part of the project not covered by the trade contracts, vendor contracts, and purchase orders.

~~(ii) The public school district holds all trade contracts and purchase orders; and~~

~~(iii) The portion of the project not covered by the trade contracts is bonded and guaranteed by the construction manager; and~~

(iii) The public school district shall hold all trade contracts and purchase orders; and

(C)(i) "General contractor construction management", in which the construction ~~entity~~ manager, after providing agency services during the preconstruction period, serves as the general contractor.

(ii) The ~~general contractor~~ construction manager shall:

(a) Provide a guaranteed maximum price;

(b) ~~shall hold~~ Hold all trade contracts and purchase orders; and

(c) ~~shall bond~~ Bond and guarantee the project.

SECTION 2. Arkansas Code § 19-11-801(e), concerning the definitions used for procurement of professional services, is amended to add an additional subdivision to read as follows:

(3) "Bid package" means a defined scope of trade work as determined by the construction manager to receive bids from trade contractors

and vendors.

SECTION 3. Arkansas Code § 19-11-801, concerning the competitive bidding practices used for procurement of professional services, is amended to add additional subsections to read as follows:

(f) A construction manager shall:

(1) Comply with this section for the solicitation and submission of all bid packages regardless of the type of construction management services;

(2)(A) Secure at least three (3) bids on all bid packages for trade work and vendor contracts or purchase orders under the applicable procurement laws.

(B)(i) If the construction manager is unable to obtain a minimum of three (3) bids on all bid packages for trade work and vendor contracts or purchase orders, the construction manager shall document its efforts and submit the written documentation to the owner.

(ii) The owner may waive the requirement of a minimum of three (3) bids;

(3) Prepare and present a tabulated form to the owner that accurately represents the range of bids for each bid package for trade work and vendor contracts or purchase orders; and

(4)(A) Be present when the sealed bids are opened for each bid package for trade work and vendor contracts or purchase orders.

(B) An owner or the owner's representative may be present when the sealed bids are opened under subdivision (f)(4)(A) of this section.

(g) A construction manager may perform work for a bid package for trade work if the construction manager submits a sealed bid in the same manner as a trade contractor.

(h) An owner has the right to approve or disapprove:

(1) A list of trade contractors submitted by the construction manager for the project before the solicitation of sealed bids; and

(2) Any trade contractor or vendor before a final decision is made to award a trade contract, vendor contract, or a purchase order.

SECTION 4. Arkansas Code § 19-11-802(d)(1), concerning public school districts' use of construction management services, is amended to read as

follows:

(d)(1) A public school district that utilizes construction management services shall:

(A)(i) encourage Annually publish a public notice of its intention to receive written requests for qualifications for professional construction management ~~firms to submit to~~ services or may request such information as needed for a particular public project.

(ii) The notice under subdivision (d)(1)(A)(i) of this section shall be published for three (3) consecutive days in a newspaper of local distribution.

(iii) The public school district shall allow a minimum of ten (10) working days from the first date of publication of the notice under subdivision (d)(1)(A)(i) of this section for the professional firms to send letters of interest or resumes in response to the newspaper advertisement; and

(B) Provide additional means of notification, if appropriate, as determined by the public school district ~~annual statements of qualifications and performance data or may request such information as needed for a particular public project.~~

SECTION 5. Arkansas Code § 19-11-805(b)(1)(B), concerning the procedure to select a firm if negotiations are unsuccessful with the initial firm selected, is amended to read as follows:

(B) The state agency or political subdivision shall ~~then undertake negotiations~~ negotiate with ~~another~~ of the second qualified ~~firms~~ firm selected.

/s/Murdock