

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

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 476

By: Senators Hickey, Teague, B. Sample, B. King

By: Representatives Hammer, Branscum, Broadaway, Jean

For An Act To Be Entitled

AN ACT CONCERNING PROCUREMENT LAWS; TO AMEND THE LAWS CONCERNING THE PROCUREMENT OF SERVICES; TO AMEND THE REPORTING REQUIREMENTS FOR STATE PROCUREMENTS; TO MAKE RELATED CHANGES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING THE PROCUREMENT OF SERVICES; TO AMEND THE REPORTING REQUIREMENTS FOR STATE PROCUREMENTS; AND TO MAKE RELATED CHANGES.

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

SECTION 1. Arkansas Code § 10-4-304(18), concerning the enumeration of fiscal management laws of the state, is amended to read as follows:

(18) ~~Sections 19-11-201—19-11-259~~ Arkansas Code Title 19, Chapter 11;

SECTION 2. Arkansas Code § 19-1-603(3)(B), concerning the definition of "fiscal responsibility and management laws" used under the State Fiscal Management Responsibility Act, is amended to read as follows:

(B) ~~Arkansas purchasing State procurement laws, § 19-11-101 et seq.~~ Arkansas Code Title 19, Chapter 11;

SECTION 3. Arkansas Code § 19-11-203(23)(A), concerning the



definitions used under the Arkansas Procurement Law, is amended to read as follows:

(23)(A) "Public funds" means all state-appropriated and cash funds of state agencies, as defined by applicable law or official ruling. ~~"Public funds" as used in this subchapter shall not include funds administered by, or under the control of, agencies, except public funds.~~

SECTION 4. Arkansas Code § 19-11-249 is amended to read as follows:
19-11-249. Cooperative purchasing.

(a)(1) Any A public procurement unit may ~~either~~ participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of ~~any~~ commodities or services with one (1) or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

(2) Such A cooperative purchasing agreement under this section may include, ~~but is not limited to,~~ without limitation a joint or multiparty ~~contracts~~ contract between public procurement units and an open-ended state public procurement unit ~~contracts which are~~ contract that is made available to local public procurement units.

(b)(1) The State Procurement Director shall present a quarterly report of all purchases made under cooperative purchasing agreements under this section to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee.

(2) The report required under this subsection shall be in the format required by the Legislative Council and shall include the following:

- (A) The name of the contractor;
- (B) The name of the procuring agency;
- (C) The contact information for the contractor and procuring agency;
- (D) The total cost of the contract, including all available extensions;
- (E) A description of the goods or services procured; and
- (F) Any other information requested by the Legislative Council or the Joint Budget Committee.

SECTION 5. Arkansas Code § 19-11-265 is amended to read as follows:

19-11-265. Submission of contracts required.

(a)(1) ~~All contracts for technical and general services, except for those that are specifically exempt from review, requiring the service of an individual or individuals for regular full-time or part-time weekly work in the areas of information technology, the actual delivery of health care or human services or educational services shall be presented to the Legislative Council or to the Joint Budget Committee, if the General Assembly is in session, before the execution date of the contract if the total contract amount exceeds one hundred thousand dollars (\$100,000).~~ A contract requiring the service of one (1) or more individuals for regular full-time or part-time weekly work shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the contract if the total initial contract amount or the total projected contract amount, including any amendments or possible extensions, is at least one hundred thousand dollars (\$100,000).

(2) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with ~~their~~ its review as to the propriety of the contract within thirty (30) days after receipt of the proposed contract.

(3) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Office of State Procurement has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

(b) The Legislative Council or the Joint Budget Committee may review or exempt from review any contract or group of contracts contemplated by this section.

(c)(1)(A) ~~In addition to the contracts for technical and general services that are~~ presented to the Legislative Council or to the Joint Budget Committee under subsection (a) of this section, the director shall compile a monthly report of ~~each commodities contract that includes services and has a projected total cost of two hundred fifty thousand dollars (\$250,000) or more~~ all executed contracts requiring the service of one (1) or more individuals for regular full-time or part-time weekly work if the total initial contract amount or the total projected contract amount, including any amendments or possible extensions, is at least twenty-five thousand dollars (\$25,000) and

less than one hundred thousand dollars (\$100,000).

~~(B) The director shall include in the monthly report under subdivision (c)(1)(A) of this section a commodities contract that is procured by a state agency with an agency procurement official.~~

(2) The monthly report required under this subsection shall include without limitation:

(A) The name of the contractor ~~if the commodities contract is a state contract;~~

(B) The state agency name ~~if the commodities contract is procured by a state agency with an agency procurement official;~~

(C) The contact information for the contractor or state agency;

(D) The total initial cost of the contract, the cost of ~~the~~ any commodities included in the contract, and the cost of the services;

(E) The type of ~~commodity or~~ commodities and services contracted;

(F) The quantity of ~~the commodity or~~ commodities and services contracted; ~~and~~

(G) The procurement method;

(H) The total projected contract amount that includes any amendments and all available extensions; and

(I) Any other information requested by the Legislative Council or the Joint Budget Committee.

(3) The director shall remit the report required under this subsection each month to the Legislative Council or to the Joint Budget Committee as directed by the Legislative Council.

~~(4) The Legislative Council or the Joint Budget Committee may review or may exempt from review any commodities contract or group of commodities contracts under this subsection.~~

(d) A contract that is procured by a state agency with a state agency procurement official is subject to the reporting and presentment requirements under this section.

(e) It is a violation of state procurement laws, Arkansas Code Title 19, Chapter 11, for a state agency official to procure services in an incremental or split purchase arrangement to avoid the reporting or presentment requirements of this section.

SECTION 6. Arkansas Code Title 19, Chapter 11, Subchapter 2, is amended to add additional sections to read as follows:

19-11-267. Development and use of performance-based contracts.

(a) The General Assembly finds that:

(1) Performance-based contracts provide an effective and efficient method of monitoring and evaluating the overall quality of services provided; and

(2) The practice of including benchmark objectives that the provider must attain at specific intervals during the term of the contract is an essential requirement for measuring performance.

(b) A state agency, board, commission, or institution of higher education that enters into a contract under this subchapter to procure services shall use performance-based standards in the contract.

(c)(1) The State Procurement Director shall promulgate rules necessary to implement and administer this section.

(2) Rules promulgated under this subsection are subject to approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

19-11-268. Vendor performance reporting.

(a)(1) A state agency shall report a vendor's performance under a contract executed under this subchapter that has a total initial contract amount or total projected contract amount, including any amendments to or possible extensions of the contract, of at least twenty-five thousand dollars (\$25,000).

(2) A state agency shall use the form prescribed by the State Procurement Director and approved by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, to report a vendor's performance under this section.

(b) The report required under this section shall be:

(1) Completed and submitted:

(A) At least one (1) time every three (3) months for the entire term of the contract; and

(B) At the end of the contract;

(2) Filed with the Office of State Procurement and maintained

for a minimum of three (3) years from the termination of the relevant contract, including any extensions and amendments; and

(3) Signed by the director of the state agency or his or her designee.

19-11-269. Review of information technology plans.

The Office of State Procurement shall ensure that all required information has been submitted to the Office of Intergovernmental Services of the Department of Finance and Administration for review of proper planning and technical requirements before the execution of:

(1) A contract issued under this subchapter that procures information technology products or services with a total projected contract amount, including any amendments to or possible extensions of the contract, of at least one hundred thousand dollars (\$100,000); or

(2) A purchase of information technology products or services made under a cooperative purchase agreement under § 19-11-249.

19-11-270. Penalty for intentional violation.

A person who purposely violates state procurement laws, Arkansas Code Title 19, Chapter 11, upon conviction is guilty of a Class D felony.

19-11-271. Compliance reporting.

(a) Each report required under this subchapter shall be copied to the Director of the Department of Finance and Administration, who shall review each report for compliance with the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq.

(b) If the director determines that a state agency, agency procurement official, or state official or employee may be in violation of the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq., the director shall notify the chief executive officer of the relevant state agency.

SECTION 7. Arkansas Code § 19-11-1006 is amended to read as follows:

19-11-1006. Submission of contracts required.

(a)(1) ~~All contracts for professional services or consultant services,~~

~~except for those which are specifically exempt from review, requiring the services of an individual for regular full time or part time weekly work where the total contract amount exceeds fifty thousand dollars (\$50,000) must be presented to the Legislative Council, or to the Joint Budget Committee if the General Assembly is in session, before the execution date of the contract.~~ A professional services contract or consultant services contract shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the professional services contract or consultant services contract if the total initial amount or the total projected amount, including any amendments or possible extensions, of the professional services contract or consultant services contract is at least fifty thousand dollars (\$50,000).

(2) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with ~~their~~ its review as to the propriety of the professional services contract or consultant services contract within thirty (30) days after receipt of the proposed professional services contract or consultant services contract.

(3) The professional services contract or consultant services contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Department of Finance and Administration has reviewed the professional services contract or consultant services contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the professional services contract or consultant services contract.

(b) The Legislative Council or the Joint Budget Committee may review or exempt from review any professional services contract or consultant services contract or group of professional services contracts or consultant services contracts contemplated by this subchapter.

(c)(1) Funds from grants and contracts to ~~any~~ a state institution of higher education may be used for the purpose of subcontracting with institutions under the performance conditions of the grants or contracts.

(2) Subcontracts for research that are derived from grants and contracts to ~~any~~ a state institution of higher education require the prior approval of the director and a review by the Legislative Council or by the Joint Budget Committee.

(d)(1) In addition to the professional services contracts and

consultant services contracts presented to the Legislative Council or to the Joint Budget Committee under subsection (a) of this section, the director shall compile a monthly report of all executed professional services contracts and consultant services contracts if the total initial amount or the total projected amount, including any amendments or possible extensions, of the professional services contract or consultant services contract is at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000).

(2) The monthly report required under this subsection shall include without limitation:

(A) The name of the contractor;

(B) The state agency name;

(C) The contact information for the contractor or state agency;

(D) The total initial cost of the professional services contract or consultant services contract;

(E) The type of services contracted;

(F) The quantity of services contracted;

(G) The procurement method;

(H) The total projected amount of the professional services contract or consultant services contract that includes any amendments and all available extensions; and

(I) Any other information requested by the Legislative Council or the Joint Budget Committee.

(3) The director shall remit the report each month to the Legislative Council or to the Joint Budget Committee as directed by the Legislative Council.

(e) A contract that is procured by a state agency with a state agency procurement official is subject to the reporting and presentment requirements under this section.

(f) It is a violation of state procurement laws, Arkansas Code Title 19, Chapter 11, for a state agency official to procure services in an incremental or split purchase arrangement to avoid the reporting or presentment requirements of this section.

SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 10, is

amended to add additional sections to read as follows:

19-11-1013. Vendor performance reporting.

(a)(1) A state agency shall report a vendor's performance under a contract issued under this subchapter that has a total initial contract amount or total projected contract amount, including any amendments to or possible extensions of the contract, of at least twenty-five thousand dollars (\$25,000) for contracts.

(2) A state agency shall use the form prescribed by the State Procurement Director and approved by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, to report a vendor's performance under this section.

(b) The report required under this section shall be:

(1) Completed and submitted:

(A) At least one (1) time every three (3) months for the entire term of the contract; and

(B) At the end of the contract;

(2) Filed with the Office of State Procurement and maintained for a minimum of three (3) years from the termination of the relevant contract, including any extensions and amendments; and

(3) Signed by the director of the state agency or his or her designee.

19-11-1014. Compliance reporting.

(a) Each report required under this subchapter shall be copied to the Director of the Department of Finance and Administration, who shall review each report for compliance with the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq.

(b) If the director determines that a state agency, agency procurement official, or state official or employee may be in violation of the fiscal responsibility and management laws of the state under the State Fiscal Management Responsibility Act, § 19-1-601 et seq., the director shall notify the chief executive officer of the relevant state agency.

SECTION 9. EFFECTIVE DATE. Sections 1 through 8 of this act are effective on and after August 1, 2015.