

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/26/15
A Bill

SENATE BILL 996

By: Senator D. Sanders
By: Representative Davis

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO PROCUREMENT;
TO AMEND THE ETHICS PROVISIONS RELATING TO
PROCUREMENT; TO REQUIRE ADDITIONAL REPORTING OF
PROCUREMENT MATTERS; TO CREATE PENALTIES FOR
VIOLATIONS OF PROCUREMENT STATUTES; TO MAKE RELATED
CHANGES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS PERTAINING TO
PROCUREMENT; TO AMEND THE ETHICS
PROVISIONS AND REQUIRE ADDITIONAL
REPORTING RELATING TO PROCUREMENT; AND TO
CREATE PENALTIES FOR VIOLATIONS OF
PROCUREMENT STATUTES.

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

SECTION 1. Arkansas Code § 17-25-101(a) and (b), concerning the definition of "contractor" to be used in contractor licensing laws, are amended to read as follows:

(a)(1) As used in this chapter, "contractor" means ~~any~~ a person, firm, partnership, copartnership, association, corporation, or other organization, or any combination thereof, that, for a fixed price, commission, fee, or wage, attempts to or submits a bid to construct or demolish, or contracts or undertakes to construct or demolish, or assumes charge, in a supervisory capacity or otherwise, or manages the construction, erection, alteration,



demolition, or repair, or has or have constructed, erected, altered, demolished, or repaired, under his or her, their, or its direction, ~~any a~~ building, apartment, condominium, highway, sewer, utility, grading, or ~~any~~ other improvement or structure on public or private property for lease, rent, resale, public access, or similar purpose, except single-family residences, when the cost of the work to be done, or done, in the State of Arkansas by the contractor, including, ~~but not limited to,~~ without limitation labor and materials, is ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) or more.

(2) However, when a person or an entity acts as a contractor in the construction, erection, alteration, demolition, or repair of his or her own or its own property, ~~such the~~ action shall not result in the person or entity being required to obtain a license, but the person or entity shall comply with all other provisions of this subchapter.

(b) However, the ~~twenty-thousand-dollar~~ fifty-thousand-dollar exception ~~shall~~ does not apply to ~~any a~~ project of construction in which any of the construction work necessary to complete the project, except any in-progress change orders, is divided into separate contracts of amounts less than ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000), a purpose being to circumvent ~~the provisions of~~ this chapter.

SECTION 2. Arkansas Code § 19-4-1405(d)(1), concerning the bidding procedure for the construction of buildings and facilities, is amended to read as follows:

(d)(1)(A) ~~Every A~~ bid submitted on state agency construction contracts for projects over ~~the amount of twenty thousand dollars (\$20,000)~~ shall be fifty thousand dollars (\$50,000) is void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond and the agent's power of attorney as his or her authority.

(B) ~~No bid Bid~~ security ~~shall be~~ is not required for projects under or equal to ~~the amount of twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000).

SECTION 3. Arkansas Code § 19-11-101 is amended to read as follows:

19-11-101. Responsibility of disbursing officer – Maintenance of files ~~by Office of State Procurement.~~

(a) The disbursing officer of each agency, board, commission, department, or institution ~~shall be~~ is responsible for reviewing all invoices prepared by commercial printers or suppliers holding commercial contracts to make certain that the charges to the agency, board, commission, department, or institution are proper under the terms of the contract.

(b) The Office of State Procurement ~~of the Department of Finance and Administration~~ and each state agency, as defined in § 19-11-203, shall maintain complete files that ~~shall be~~ are open to public inspection on all commercial term and one-time contracts. The files shall contain:

- (1) A copy of the contract;
- (2) A list of all printing or duplicating done or commodities ordered, as well as the name of the invoiced agency; and
- (3) A copy of all correspondence regarding the contract or jobs performed ~~thereunder~~ under the contract.

SECTION 4. Arkansas Code § 19-11-104(a), concerning equal opportunity policies, is amended to read as follows:

(a) The purpose of this section is to require ~~any~~ an entity or person bidding on a state contract, responding to a request for proposals regarding a state contract, responding to a request for qualifications regarding a state contract, or negotiating a contract with the state for professional or consulting services to submit to the Office of State Procurement ~~of the Department of Finance and Administration~~ the most current equal opportunity policy of the entity or person if the contract has a total value of at least fifty thousand dollars (\$50,000).

SECTION 5. Arkansas Code § 19-11-105(a)(1), concerning the definition of "contractor" used with respect to the prohibition against entering into a public contract for services with a vendor that employs illegal immigrants, is amended to read as follows:

(1) "Contractor" means a person having a public contract with a state agency for professional services, technical and general services, or any category of construction in which the total dollar value of the contract is ~~twenty-five thousand dollars (\$25,000) or greater~~ at least fifty thousand dollars (\$50,000);

SECTION 6. Arkansas Code § 19-11-105(a)(5), concerning the definition of "public contract for services" used with respect to the prohibition against entering into a public contract for services with a vendor that employs illegal immigrants, is amended to read as follows:

(5) "Public contract for services" means any type of agreement between a state agency and a contractor for the procurement of services and all categories of construction with a state agency in which the total dollar value of that contract is ~~twenty-five thousand dollars (\$25,000) or greater~~ at least fifty thousand dollars (\$50,000);

SECTION 7. Arkansas Code § 19-11-203(14)(S), concerning the definition of "exempt commodities and services" under the Arkansas Procurement Law, is repealed.

~~(S) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of these materials;~~

SECTION 8. Arkansas Code § 19-11-203(14)(Y), concerning the definition of "exempt commodities and services" under the Arkansas Procurement Law, is amended to read as follows:

(Y) Capital improvements valued at less than ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000), subject to minimum standards and criteria of the Arkansas Building Authority;

SECTION 9. Arkansas Code § 19-11-203(14)(Z), concerning the definition of "exempt commodities and services" under the Arkansas Procurement Law, is repealed.

~~(Z) Services related to work force development, incumbent work force training, or specialized business or industry training;~~

SECTION 10. Arkansas Code § 19-11-206(3), concerning the definitions used under the Arkansas Procurement Law, is amended to read as follows:

(3) "Local public procurement unit" means:

(A) ~~Any~~ A county, city, town, state agency, and ~~any~~ other

subdivision of the state or public agency thereof;

(B) ~~Any~~ A fire protection district;

(C) ~~Any~~ A regional water distribution district;

(D) ~~Any~~ A rural development authority;

(E) ~~Any~~ A public authority;

(F) ~~Any~~ A public educational, health, or other

institution;

(G) ~~Any~~ A nonprofit corporation during the time that it contracts with the Department of Human Services to provide services to individuals with developmental disabilities or for transportation services, ~~so long as if the contract exceeds seventy-five thousand dollars (\$75,000)~~ one hundred thousand dollars (\$100,000) per year;

(H) ~~Any~~ A nonprofit corporation providing fire protection services to a rural area or providing drinking water to the public in a rural area; and

(I) To the extent not prohibited by law, any other entity that expends public funds for the acquisition or leasing of commodities and services;

SECTION 11. Arkansas Code § 19-11-217(c), concerning the powers and duties of the State Procurement Director, is amended to read as follows:

(c) Except as otherwise specifically provided in this subchapter, the State Procurement Director, within the limitations of this subchapter and the rules ~~and regulations~~ promulgated under ~~authority~~ of this subchapter:

(1) Shall procure or supervise the procurement of all commodities and services for each state agency not having an agency procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract;

~~(2)(A) Shall develop and implement a plan for all state agencies acquiring vehicles that will reduce the overall annual petroleum consumption of those state agencies by at least ten percent (10%) by January 1, 2009, through measures that include:~~

~~(i) The use of alternative fuels, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005;~~

~~(ii) The acquisition of vehicles with higher fuel economy, such as a hybrid vehicle operating on electricity and gasoline or~~

~~diesel or bio-diesel fuel; and~~

~~(iii) The substitution of cars for light trucks.~~

~~(B)(i) By January 30 of each year, the State Procurement Director shall submit to the Legislative Council his or her report evaluating the progress of the plan toward achieving the goal set in subdivision (e)(2)(A) of this section.~~

~~(ii) The report shall include:~~

~~(a) The number and type of alternative fueled vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005, procured;~~

~~(b) The total number of alternative fueled vehicles used by each state agency;~~

~~(c) The difference between the cost of the purchase, maintenance, and operation of alternative fueled vehicles and comparable conventionally fueled motor vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005;~~

~~(d) An evaluation of the plan's success; and~~

~~(e) Suggestions for modifying the plan;~~

~~(3) (2) Shall manage and establish internal procedures for the office;~~

~~(4) (3) Shall sell, trade, or otherwise dispose of surplus commodities belonging to the state;~~

~~(5) (4) May establish and maintain programs for the inspection, testing, and acceptance of commodities and services;~~

~~(6) (5) Shall establish and manage a list of vendors desiring written notice of invitations for bid;~~

~~(7) (6) May establish, by ~~regulation~~ rule, a fee for receiving a written or electronic notice of invitations for bid; and~~

~~(8) (7) Shall ensure compliance with this subchapter and implementing ~~regulations~~ rules by reviewing and monitoring procurements conducted by any designee, department, agency, or official delegated authority under this subchapter.~~

SECTION 12. Arkansas Code § 19-11-220(a)(38), concerning the list of state agencies authorized to have an agency procurement official, is repealed.

~~(38) Department of Higher Education.~~

SECTION 13. Arkansas Code § 19-11-225 is amended to read as follows:
 19-11-225. Regulations Rules.

(a) ~~Regulations shall be promulgated by the~~ The State Procurement Director shall promulgate rules in accordance with ~~the applicable provisions of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

(b) ~~No regulation~~ Except as provided in subsection (d) of this section, a rule shall not change any a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of the ~~regulation rule.~~

(c)(1) ~~No~~ Except as provided in subsection (d) of this section, a clause which that is required by ~~regulation rule~~ to be included shall not be considered to be incorporated by operation of law in ~~any a~~ state contract without the consent of both parties to the contract to the incorporation.

(2) The parties to the contract may give ~~such~~ consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

(d)(1) A rule promulgated by the director with respect to ethical issues related to procurement matters shall be:

(A) Incorporated by operation of law into a state contract; and

(B) Applied retroactively to a state contract.

(2) A state contract shall contain a statement notifying vendors of the effect of this subsection.

SECTION 14. Arkansas Code § 19-11-229(d)(1), concerning competitive sealed bidding, is amended to read as follows:

(d)(1) Notice inviting bids shall be given not fewer than five (5) ~~calendar business days nor more than thirty (30) calendar days~~ preceding the date for the opening of bids by publishing the notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances, adequate notice shall be given.

SECTION 15. Arkansas Code § 19-11-230(b), concerning competitive sealed proposals, is amended to read as follows:

(b)(1) When the use of competitive sealed bidding is not practicable and advantageous, a contract may be awarded by competitive sealed proposals.

(2)(A) If a contract is awarded by competitive sealed proposal under this subsection, then the state agency awarding the contract shall make a written determination stating the reasons that competitive sealed bidding is not practical and advantageous with respect to the contract.

(B) A state agency shall maintain a written determination made under subdivision (b)(2)(A) of this section as part of the bid file required under § 19-11-101.

SECTION 16. Arkansas Code § 19-11-232, concerning proprietary or sole source procurements, is amended to add an additional subsection to read as follows:

(c)(1) The director shall submit a monthly report to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, of each sole source contract.

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

(A) The name of the state agency entering into the sole source contract;

(B) The name of the contractor;

(C) The total projected amount of the contract, including any possible extensions;

(D) The term of the contract; and

(E) The reason for the sole source procurement.

SECTION 17. Arkansas Code § 19-11-235, concerning the responsibility of bidders and offerors, is amended to add an additional subsection to read as follows:

(d) A bidder or offeror shall be determined to be nonresponsible if the bidder or offeror does not provide a signed statement that the bidder or offeror, including any business entity or subsidiary of the bidder or offeror and any individual employed by the bidder or offeror, has not been disqualified from a state contract in Arkansas or any other state as the

result of one (1) or more criminal offenses.

SECTION 18. Arkansas Code § 19-11-238(a), concerning multiyear contracts, is amended to read as follows:

(a) Specified Period.

(1)(A) Unless otherwise provided by law, a contract for commodities or services may be entered into for periods of not more than seven (7) years if funds for the first fiscal year of the contemplated contract are available at the time of contracting.

(B) Payment and performance obligations for succeeding fiscal years shall be are subject to the availability and appropriation of funds ~~therefor~~ for the payment and performance obligations.

(2) However, a contract shall not be extended under this section if a contract was entered into for a period of less than seven (7) years and:

(A) An extension of the contract would exceed the scope of the initial contract by more than one hundred fifty percent (150%); or

(B) The scope of commodities or services contracted for under the amendment providing an extension of the contract substantially exceeds the scope of commodities or services under the initial contract.

SECTION 19. Arkansas Code § 19-11-260 is repealed.

~~19-11-260. Recycled paper products — Preference.~~

~~(a) The State Procurement Director shall issue a recycled paper content specification for each type of paper product.~~

~~(b)(1) The goal of state agencies for the percentage of paper products to be purchased that utilize recycled paper shall be:~~

~~(A) Ten percent (10%) in fiscal year 1991;~~

~~(B) Twenty five percent (25%) in fiscal year 1992;~~

~~(C) Forty five percent (45%) in fiscal year 1993; and~~

~~(D) Sixty percent (60%) by calendar year 2000.~~

~~(2)(A) The Office of State Procurement shall prepare a semiannual report of the state's progress in meeting the goals for the purchase of paper products with recycled content.~~

~~(B) The report shall be made to the Governor.~~

~~(c)(1) Whenever a bid is required, a preference for recycled paper products shall be exercised if the use of the products is technically~~

~~feasible and price is competitive.~~

~~(2)(A) For the purpose of procurement of recycled paper products, "competitive" means the bid price does not exceed the lowest qualified bid of a vendor offering paper products manufactured or produced from virgin material by ten percent (10%).~~

~~(B) An additional one percent (1%) preference shall be allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas.~~

~~(3) A bidder receiving a preference under this section shall not be entitled to an additional preference under § 19-11-259.~~

SECTION 20. Arkansas Code § 19-11-265, as amended by Section 5 of Act 557 of 2015 and concerning submission of contracts under the Arkansas Procurement Law, is amended to add an additional subsection to read as follows:

(f)(1) In addition to the submission and reporting of contracts required under this section, the director shall compile a report to be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, of each project with a total contract amount of at least one hundred thousand dollars (\$100,000) that involves two (2) or more contracts.

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

(A) The name of each contractor;

(B) The state agency name;

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

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

(E) The type of commodities and services contracted;

(F) The quantity of commodities and services contracted;

(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.

SECTION 21. Arkansas Code § 19-11-266 is repealed.

~~19-11-266. High efficiency lighting Preference.~~

~~(a)(1) The General Assembly finds:~~

~~(A) The expansion of state government makes it one of the state's leading purchasers of lighting commodities;~~

~~(B) Recent technological developments have produced energy-efficient devices that reduce energy costs through a reduction in energy usage; and~~

~~(C) Prudent use of taxpayer dollars dictates that the State of Arkansas should be at the forefront of implementing energy-efficient devices in facilities operated with public funds.~~

~~(2) The intent of this section is to promote the use of high efficiency lighting in facilities operated with public funds when feasible.~~

~~(b) As used in this section:~~

~~(1)(A) "Fluorescent lamp" means a gas-discharge lamp that:~~

~~(i) Utilizes a magnetic, electronic, or other ballast; and~~

~~(ii) Uses electricity to excite mercury vapor in argon or neon gas resulting in a plasma that produces short wave ultraviolet light that causes a phosphor to fluoresce and produce visible light.~~

~~(B) "Fluorescent lamp" includes without limitation a compact fluorescent lamp;~~

~~(2) "High efficiency lighting" means fluorescent lamp or solid state lighting;~~

~~(3) "Solid state lighting" means a light device that utilizes light-emitting diodes, organic light-emitting diodes, or polymer light-emitting diodes as sources of illumination rather than electrical filaments or gas; and~~

~~(4)(A) "State agency" means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds.~~

~~(B) "State agency" includes the constitutional departments of the state, the elected constitutional offices of the state, the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the Arkansas~~

~~Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts.~~

~~(c) Whenever a state agency purchases or requires a bid for the purchase of an indoor lamp, a preference for high efficiency lighting shall be exercised if the use of high efficiency lighting is technically feasible and the price is competitive with consideration given to the long term cost effectiveness and savings of high efficiency lighting.~~

~~(d)(1) The goal of state agencies for the percentage of purchased indoor lamps that are high efficiency lighting shall be one hundred percent (100%) by January 1, 2008.~~

~~(2) The Office of State Procurement shall prepare an annual report to the Legislative Council of the state's progress in meeting the goals for the purchase of high efficiency lighting.~~

SECTION 22. Arkansas Code Title 19, Chapter 11, Subchapter 2, as amended by Section 6 of Act 557 of 2015, is amended to add additional sections to read as follows:

19-11-272. Subcontractors.

(a)(1) A bidder or offeror under this subchapter shall include in the bidder's or offeror's bid or proposal a list of the subcontractors the bidder or offeror will use to complete the contract.

(2) If a bidder or offeror does not know the identity of a subcontractor that may be used to complete a contract under this subchapter, the bidder or offeror shall report each subcontractor to the state agency within five (5) business days of selecting the subcontractor.

(b) An entity that enters into a contract with a state agency under this subchapter shall provide a list of subcontractors used to complete the contract at the time of an extension of or amendment to the contract.

(c) A state agency shall maintain information obtained under this section in the bid file required under § 19-11-101.

19-11-273. Civil penalties.

(a) If the Office of State Procurement, after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., determines that a person has violated this subchapter or a rule promulgated by the office under this subchapter, the office may impose a

civil penalty on the person not to exceed one thousand dollars (\$1,000) for each violation.

(b)(1) If a person against whom a civil penalty has been imposed by the office fails to pay the penalty, the office may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(2) If the office prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the office in prosecuting the action.

(c) A person aggrieved by the action of the office in imposing civil penalties may appeal the decision as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

SECTION 23. Arkansas Code § 19-11-701(13), concerning the definitions used in the ethics provisions of state procurement law, is amended to read as follows:

(13) "Person" means ~~any~~:

(A) A business, individual, union, committee, club, or other organization or group of individuals; and

(B) An agent, representative, contractor, or subcontractor of a person or entity listed in subdivision (13)(A) of this section;

SECTION 24. Arkansas Code § 19-11-707, concerning the prohibition of gratuities and kickbacks, is amended to add an additional subsection to read as follows:

(c) A statement describing the prohibitions stated in this section shall be included in:

(1) An invitation for bids, request for proposals, request for qualifications, and any other type of solicitation made by a state agency; and

(2) A contract entered into by a state agency.

SECTION 25. Arkansas Code § 19-11-709(b)(2), concerning restrictions on employment of present and former employees, is amended to read as follows:

(2) ~~One-Year~~ Two-Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It ~~shall be~~

is a breach of ethical standards for ~~any a~~ former employee, within ~~one (1)~~ year two (2) years after cessation of the former employee's official responsibility in connection with any:

- (A) Judicial or other proceeding, application, request for a ruling, or other determination;
- (B) Contract;
- (C) Claim; or
- (D) Charge or controversy,

knowingly to act as a principal or as an agent for anyone other than the state in matters ~~which~~ that were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest.

SECTION 26. Arkansas Code § 19-11-709(d) and (e), concerning restrictions on employment of present and former employees, are amended to read as follows:

(d) *Selling to State After Termination of Employment Is Prohibited.*

(1) It ~~shall be~~ is a breach of ethical standards for ~~any a~~ former employee, unless the former employee's last annual salary did not exceed ten thousand five hundred dollars (\$10,500), to engage in selling or attempting to sell commodities or services, including technical or professional consultant services, to the state for ~~one (1) year~~ two (2) years following the date employment ceased.

(2) As used in this subsection, "sell" means:

- (A) Signing a bid, proposal, or contract;
- (B) Negotiating a contract;
- (C) Contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;
- (D) Settling disputes concerning performance of a contract; or
- (E) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract for the sale is subsequently negotiated by another person.

(e) It is a breach of ethical standards for a former employee to become an employee or officer of an entity with which the former employee

worked in his or her official capacity on any procurement matter while employed by the state in the two (2) years preceding the former employee's cessation of employment with the state.

~~(e)(1)~~ (f)(1) This section ~~is not intended to~~ does not preclude a former employee from accepting employment with private industry solely because his or her employer is a contractor with this state.

(2) This section ~~is not intended to~~ does not preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations of this subchapter.

SECTION 27. Arkansas Code § 19-11-802(a), concerning annual statements of qualifications and performance data, is amended to read as follows:

(a)(1) In the procurement of professional services, a state agency or political subdivision which utilizes these services may encourage firms engaged in the lawful practice of these professions to submit annual statements of qualifications and performance data to the political subdivision or may request such information as needed for a particular public project.

(2) An annual statement of qualifications and performance data submitted under this section shall include a signed statement by the firm that the firm, including any business entity or subsidiary of the firm and any individual employed by the firm, has not been disqualified from a state contract in Arkansas or any other state as the result of one (1) or more criminal offenses.

SECTION 28. Arkansas Code Title 19, Chapter 11, Subchapter 8, is amended to add additional sections to read as follows:

19-11-808. Subcontractors.

(a)(1) A person submitting qualifications under this subchapter shall include in the person's statement of qualifications a list of the subcontractors the person will use to complete the contract for professional services.

(2) If a person submitting qualifications does not know the identity of a subcontractor that may be used to complete a contract for professional services under this subchapter, the person shall report each

subcontractor to the state agency within five (5) business days of selecting the subcontractor.

(b) A person that enters into a contract for professional services with a state agency under this subchapter shall provide a list of subcontractors used to complete the contract for professional services at the time of an extension of or amendment to the contract for professional services.

(c) A state agency shall maintain information obtained under this section in the bid file required under § 19-11-101.

19-11-809. Civil penalties.

(a) If the Office of State Procurement, after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., determines that a person has violated this subchapter or a rule promulgated by the office under this subchapter, the office may impose a civil penalty on the person not to exceed one thousand dollars (\$1,000) for each violation.

(b)(1) If a person against whom a civil penalty has been imposed by the office fails to pay the penalty, the office may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(2) If the office prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the office in prosecuting the action.

(c) A person aggrieved by the action of the office in imposing civil penalties may appeal the decision as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

SECTION 29. Arkansas Code § 19-11-1003(c), concerning contracts that are exempt from the laws concerning professional and consultant services contracts, is repealed.

~~(e) This subchapter does not apply to contracts created under federally approved state plans for services reimbursed under Title V of the Social Security Act, 42 U.S.C. §§ 701—710, or Title XIX of the Social Security Act, 42 U.S.C. §§ 1396—1396v, as they existed on January 1, 2001, if those contracts and services conform to all applicable federal laws and~~

~~rules, and to the ethical standards provided for in § 19-11-704.~~

SECTION 30. Arkansas Code § 19-11-1004, concerning restrictions on professional services and consultant services contracts, is amended to add an additional subsection to read as follows:

(f) A state agency shall not enter into a professional services contract or a consultant services contract unless the contractor provides a signed statement that states that the contractor, including any business entity or subsidiary of the contractor and any individual employed by the contractor, has not been disqualified from a state contract in Arkansas or any other state as the result of one (1) or more criminal offenses.

SECTION 31. Arkansas Code Title 19, Chapter 11, Subchapter 10, as amended by Section 8 of Act 557 of 2015, is amended to add additional sections to read as follows:

19-11-1015. Subcontractors.

(a)(1) A bidder or offeror under this subchapter shall include in the bidder's or offeror's bid or proposal a list of the subcontractors the bidder or offeror will use to complete the consultant services contract or professional services contract.

(2) If a bidder or offeror does not know the identity of a subcontractor that may be used to complete a consultant services contract or professional services contract under this subchapter, the bidder or offeror shall report each subcontractor to the state agency within five (5) business days of selecting the subcontractor.

(b) An entity that enters into a consultant services contract or professional services contract with a state agency under this subchapter shall provide a list of subcontractors used to complete the consultant services contract or professional services contract at the time of an extension of or amendment to the consultant services contract or professional services contract.

(c) A state agency shall maintain information obtained under this section in the bid file required under § 19-11-101.

19-11-1016. Civil penalties.

(a) If the Office of State Procurement, after a hearing conducted in

accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., determines that a person has violated this subchapter or a rule promulgated by the office under this subchapter, the office may impose a civil penalty on the person not to exceed one thousand dollars (\$1,000) for each violation.

(b)(1) If a person against whom a civil penalty has been imposed by the office fails to pay the penalty, the office may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(2) If the office prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the office in prosecuting the action.

(c) A person aggrieved by the action of the office in imposing civil penalties may appeal the decision as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

SECTION 32. Arkansas Code § 22-9-101(b), concerning the requirement for observation by registered professionals in public works projects, is amended to read as follows:

(b) ~~Nothing in this~~ This section shall be held to does not apply to ~~any a~~ public works wherein the contemplated capital improvement expenditure:

(1) For an engineering project does not exceed ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000); or

(2) For an architectural project does not exceed one hundred thousand dollars (\$100,000).

SECTION 33. Arkansas Code § 22-9-203(a), concerning the award procedure for public improvements, is amended to read as follows:

(a) ~~No~~ A contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall not be entered into by the state or ~~any an~~ agency ~~thereof~~ of the state, ~~any a~~ county, municipality, school district, or other local taxing unit with ~~any a~~ contractor in instances ~~where~~ in which all estimated costs of the work ~~shall~~ exceed the sum of ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) unless:

(1) The state or ~~any an~~ agency of the state ~~shall have~~ has first

published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks for projects more than ~~the amount of~~ fifty thousand dollars (\$50,000) and published notice of its intention to receive bids one (1) time each week for not less than one (1) week for projects more than the quote bid limit, as provided under the Arkansas Building Authority minimum standards and criteria, but less than or equal to fifty thousand dollars (\$50,000) in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry; and

(2) ~~Any~~ A county, municipality, school district, or other local taxing unit ~~shall have~~ has first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.

SECTION 34. Arkansas Code § 22-9-203(c)(2)(A), concerning the award procedure for public improvements, is amended to read as follows:

(2)(A)(i) ~~Every~~ A bid submitted on public construction contracts for ~~any~~ a political subdivision of the state ~~shall be~~ is void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond.

(ii) ~~Every~~ A bid submitted on public construction contracts for the state or ~~any~~ an agency or department of the state ~~shall be~~ is void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond, except for projects under ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000).

(iii) ~~No~~ A bid bond shall not be required for public construction contracts for the state or any agency or department of the state under or equal to ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000).

SECTION 35. Arkansas Code § 22-9-204(a), concerning the penalty for having the subcontractors' portion of a project exceed a certain amount, is amended to read as follows:

(a) As a condition to performing construction work for and in the State of Arkansas, ~~all~~ prime contractors shall not use ~~no~~ other subcontractors when the subcontractors' portion of the project is ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) or more, except those licensed by the Contractors Licensing Board and qualified in:

- (1) Mechanical, indicative of heating, air conditioning, ventilation, and refrigeration;
- (2) Plumbing;
- (3) Electrical; and
- (4) Roofing.

SECTION 36. Arkansas Code § 22-9-204(f), concerning the penalty for having the subcontractors' portion of a project exceed a certain amount, is amended to read as follows:

(f)(1) It ~~shall be~~ is a violation of this section for ~~any~~ a prime contractor to submit a bid listing unlicensed contractors or to use unlicensed contractors on a public works project if the listed work of the unlicensed contractors or portion of the unlicensed contractors' work is ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) or more.

(2) It ~~shall be~~ is a violation of this section for ~~any~~ a subcontractor who is not licensed by the board to contract to perform work on a public works project if the listed work of the subcontractor or portion of the subcontractor's work is ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) or more.

(3) The board has jurisdiction over violations of this subsection under § 17-25-103.

SECTION 37. Arkansas Code § 25-36-104 is amended to read as follows to eliminate a duplicative reporting requirement:

25-36-104. Data recording and tracking.

(a)(1) The State Procurement Director shall track data regarding minority participation in state contracts that exceed fifty thousand dollars (\$50,000).

(2) The data shall include, ~~but not be limited to,~~ without limitation information regarding:

- (A) The dollar amount for each contract awarded to a

minority-owned business;

(B) The total dollar amount spent on contracts by each state agency; and

(C) The number and percentage of minority-owned businesses awarded contracts by the agency.

~~(b) The director shall report the data required under subsection (a) of this section semiannually to the Governor and to the cochairs of the Legislative Council and to the Legislative Joint Auditing Committee and the Minority Business Advisory Council.~~

~~(e)(1)~~ (b)(1) Each state agency shall include in its budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding fifty thousand dollars (\$50,000) awarded to minority-owned businesses.

(2) The vice president or vice chancellor for finance of each state college and university shall include in his or her budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding fifty thousand dollars (\$50,000) awarded to minority-owned businesses.

~~(d)~~ (c) The director shall promulgate rules ~~and regulations~~ necessary for the implementation of this chapter.

/s/D. Sanders