

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

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/13/17 H3/17/17
A Bill

SENATE BILL 448

By: Senator Hester
By: Representative Wardlaw

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO PROMOTE EFFICIENCY IN STATE PROCUREMENT BY EXPANDING THE ABILITY OF THE STATE TO NEGOTIATE CONTRACTS; TO DEFINE "COLLUSION" UNDER ARKANSAS PROCUREMENT LAW; TO REQUIRE REVIEW OF A CONTRACT BEFORE IT IS RATIFIED OR AFFIRMED; AND FOR OTHER PURPOSES.

Subtitle

TO EXPAND THE ABILITY OF THE STATE TO NEGOTIATE CONTRACTS; TO DEFINE "COLLUSION" UNDER ARKANSAS PROCUREMENT LAW; AND TO REQUIRE REVIEW OF A CONTRACT BEFORE IT IS RATIFIED OR AFFIRMED.

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

SECTION 1. Arkansas Code § 19-11-229(h)(2), concerning competitive sealed bidding, is amended to read as follows:

(2)(A) ~~In the event all bids exceed available funds as certified by the appropriate fiscal officer in situations in which time or economic considerations preclude resolicitation of work of a reduced scope, the~~ Except with respect to a contract being procured for a construction project, the director or the head of a procurement agency may negotiate ~~an adjustment of the~~ a lower bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, ~~in order to bring the bid within the amount of available funds if:~~



(i) All bids received from responsive and responsible bidders exceed available funding as certified by the appropriate fiscal officer of the procurement agency; or

(ii) It appears that additional savings to the state may result from negotiation.

(B)(i)(a) If negotiations with the lowest responsive and responsible bidder conducted under subdivision (h)(2)(A) of this section fail to result in a lower bid price, the state may negotiate for a lower bid price with the next lowest responsive and responsible bidder.

(b) If negotiations with the next lowest responsive and responsible bidder under subdivision (h)(2)(B)(i)(a) of this section fail to result in a lower bid price, the state may negotiate for a lower bid price with the next lowest responsive and responsible bidder until an acceptable lower bid price is negotiated or the state determines that negotiations are no longer in the best interest of the state.

(ii) A bid price resulting from negotiations conducted under this section shall not be higher than:

(a) The bid price originally submitted by the lowest responsive and responsible bidder; or

(b) A price previously offered in negotiations by a responsive and responsible bidder.

(iii) Negotiations conducted under this section do not preclude the use of other methods of source selection or procurement authority provided under this subchapter.

SECTION 2. Arkansas Code § 19-11-230(e), concerning competitive sealed proposals, is amended to read as follows:

(e)(1) As provided in the request for proposals and under ~~regulations~~ rule, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of ~~clarification~~:

(A) Clarifying solicitation requirements to assure full understanding of, and responsiveness to, the solicitation requirements; or

(B) Negotiating a contract that is more advantageous to the state.

(2)(A) Offerors If discussions conducted after the deadline for

the receipt of proposals necessitate material revisions of proposals, each offeror determined to be responsible and reasonably susceptible of being awarded a contract shall be accorded fair and equal treatment with respect to any provided an opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award to revise its proposal for the purpose of obtaining submitting a best and final offers offer.

(B) An offeror may be permitted to revise its original proposal as a result of discussions only after the original submission deadline and before award for the purpose of providing a best and final offer.

(3) In conducting discussions, there shall be no disclosure of any information derived from proposals a proposal submitted by a competing offerors offeror shall not be disclosed until after a notice of anticipation to award is announced.

SECTION 3. Arkansas Code § 19-11-240 is amended to read as follows:

19-11-240. Reporting of suspected collusion - Definition.

(a) As used in this section, "collusion" means cooperation in the restraint of free and open competition in a public procurement, including without limitation:

(1) Price fixing;

(2) Bid rigging;

(3) Customer or market allocation;

(4) Misrepresenting the independence of the relationship between colluding parties; and

(5) Exerting improper influence on public officials to obtain advantage in a public procurement, including without limitation:

(A) Offering bribes or kickbacks;

(B) Extortion; and

(C) Fraudulent misrepresentation.

(b) Notification to the Attorney General. When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the Attorney General.

(b) (c)(1) Retention of All Documents. All documents involved in any a procurement in which collusion is suspected shall be retained until the

Attorney General gives notice that they may be destroyed.

(2) All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt ~~therefor~~ of the request.

(d) Collusion is cause for:

(1) Debarment from consideration for award of a contract under § 19-11-245; and

(2) Suspension from consideration for award of a contract if there is probable cause for suspecting collusion as determined by the Attorney General or the State Procurement Director.

SECTION 4. Arkansas Code § 19-11-247, concerning remedies for unlawful solicitation or award, is amended to add an additional subsection to read as follows:

(d) Before a contract is ratified and affirmed under subdivision (c)(1)(A) of this section, a contract shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, for review if the contract is required to be submitted for review under § 19-11-1006.

/s/Hester