

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

State of Arkansas *As Engrossed: S3/16/17 S3/16/17 S3/22/17 S3/23/17*

91st General Assembly

# A Bill

Regular Session, 2017

SENATE BILL 521

By: Senator Hickey

By: Representative Hammer

## For An Act To Be Entitled

AN ACT TO AMEND THE LAWS RELATING TO PUBLIC CONTRACTS; TO AMEND THE PROCESS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS AND REQUESTS FOR QUALIFICATIONS; TO LIMIT THE TERM OF PUBLIC CONTRACTS; TO REQUIRE CERTAIN DISCLOSURES BY MEMBERS OF AN EVALUATION COMMITTEE AND BY OFFERORS; TO REQUIRE THE PROMULGATION OF RULES REGARDING THE CHANGES TO THE PROCUREMENT LAWS; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE PROCESS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS AND REQUESTS FOR QUALIFICATIONS; TO LIMIT THE TERM OF PUBLIC CONTRACTS; AND TO REQUIRE CERTAIN DISCLOSURES IN PROCURING PUBLIC CONTRACTS.

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

SECTION 1. Effective July 1, 2018, Arkansas Code § 19-4-704(a), concerning the prohibition on paying obligations without an appropriation, is amended to read as follows:

(a)(1) ~~No obligations will~~ An obligation shall not be paid from appropriated funds until the General Assembly ~~shall have~~ has made an appropriation for that purpose; ~~nor shall any.~~



(2) A state agency shall not enter into any a contract which would contemplate that permits payments under the contracts would contract to be made beyond after the expiration of the biennial period unless the:

(A) The General Assembly, prior to before the expiration of the biennial period, makes an appropriation for that purpose,; or in the ease of

(B) A written determination has been made by the State Procurement Director concerning multiyear contracts for commodities or services under § 19-11-238, a determination in writing has been made prior to use stating that the:

(1) (i) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract would serve (ii) Contract is in the best interests interest of the state by encouraging:

(a) Encouraging effective competition or otherwise promoting;

(b) Promoting economies in state procurement;  
or

(c) Providing a substantial cost avoidance or savings to the state.

(b) In no event shall any obligations Obligations shall not be incurred unless there are sufficient funds or an approved federal grant on hand, or estimated to become available, to meet the obligations when they become due.

SECTION 2. Effective July 1, 2018, Arkansas Code § 19-4-705(a), concerning obligations being limited to funds available, is amended to read as follows:

(a) No A state agency for which regular operating appropriations are made on a fiscal-year basis shall not: incur any obligations

(1) Incur an obligation under the appropriations unless, to satisfy the obligation, there are:

(A) Are funds on hand or;

(B) Is an approved federal grant,; or

(C) Is funding or one (1) or more grants that are estimated to become available, during the fiscal year for the payment of the

obligation; ~~nor shall any agency; or~~

(2) ~~create any~~ Create an obligation in one (1) fiscal year ~~which~~ that will make it necessary to use the revenues of the following fiscal year in order to meet the obligation except in the case of multiyear contracts for commodities or services and as provided in §§ 19-4-707 and 19-11-238.

SECTION 3. Effective July 1, 2018, Arkansas Code § 19-4-707 is amended to read as follows:

19-4-707. Obligations for improvements.

(a) ~~Notwithstanding the fact that no disbursements may~~ A disbursement shall not be made during any fiscal period in excess of the appropriations made available by the General Assembly for the fiscal period, ~~it is~~ except as provided that for contracts for improvements which an appropriation has been made available for that purpose, including without limitation:

(1) Improvements, including major repairs, alterations, and construction of new buildings and facilities ~~may be let to the extent of the appropriations made available for those purposes for the biennial period; and~~

(2) Multiyear contracts under § 19-11-238.

(b) ~~However, no such contracts may~~ a contract shall not be ~~let in~~ entered into for an amount that exceeds the probable funds: ~~amounts exceeding~~

(1) Currently available; ~~or which are estimated~~

(2) Estimated to become available during the fiscal period.

SECTION 4. Effective July 1, 2018, Arkansas Code § 19-4-1103(a), concerning the responsibilities of agency heads related to the approval of expenditures, is amended to read as follows:

(a) It ~~shall be~~ is the responsibility of each executive head of a state agency to ~~establish:~~

(1) Establish adequate internal administrative procedures and controls ~~to ensure;~~

(2) Ensure prompt and accurate payment of obligations in order to promote good public relations; ~~and to take~~

(3) Take advantage of all available discounts, including without limitation the discounts available under § 19-11-238; and

(4) ~~It shall also be the responsibility of each executive head of a state agency to establish~~ Establish adequate administrative procedures

to ensure that all financial transactions of the state agency are posted in the state's financial management system in accordance with procedures established by the Chief Fiscal Officer of the State.

SECTION 5. Arkansas Code § 19-11-204(10), concerning definitions concerning source selection and contract formation under the Arkansas Procurement Law, is amended to read as follows:

(10)~~(A)~~ "Request for qualifications" means a solicitation document requiring submittal of qualifications or specialized expertise under § 19-11-801 et seq. in response to the scope of work or services required ~~and does not require pricing.~~

~~(B) Other than as provided in § 19-11-801 et seq., the request for qualifications process may only be used when, under rules promulgated by the State Procurement Director, the director determines in writing that the request for qualifications process is warranted;~~

SECTION 6. Arkansas Code § 19-11-230 is amended to read as follows:

19-11-230. Competitive sealed proposals – Definition – Requirements.

(a) Definition. "Competitive sealed proposals" means a method of procurement ~~which~~ that involves, but is not limited to:

(1) Solicitation of proposals through a request for proposals;  
 (2) Submission of cost or pricing data from the ~~offeror where~~ required offerors;

(3) Discussions and negotiations with responsible offerors whose proposals have been determined to be reasonably susceptible to being selected for award; and

(4) An award made to the responsible offeror whose proposal is determined in writing to be the most advantageous considering price, ~~and other~~ other evaluation factors ~~set forth~~ stated in the request for proposals, ~~and the results of any discussions and negotiations conducted with responsible offerors.~~

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

(c)~~(1)~~ Public notice of the request for proposals shall be given ~~in the same manner as provided in § 19-11-229(d), which refers to public notice of competitive sealed bidding at least fourteen (14) days before the~~

evaluation process begins.

(2) If a request for proposals is amended, the evaluation process for the proposals submitted in response to the request for proposals shall not begin unless notice of the amended request for proposals, including without limitation the substance of the amended request for proposals, is provided at least seven (7) calendar days before the evaluation process begins.

(3) Notice under this subsection shall:

(A) Be given by:

(i) Posting the request for proposals, including a request for proposals performed outside of the Office of State Procurement, on the official website of the office; and

(ii) Any additional means of advertising deemed appropriate;

(B) Include a description of the commodities or services to be procured; and

(C) State how, when, and where the:

(i) Request for proposals may be obtained; and

(ii) Proposals should be submitted.

(d)(1) The request for proposals shall indicate the relative importance of price and other evaluation factors.

(2)(A) Except as provided under subdivision (d)(2)(B) of this section, price shall receive at least thirty percent (30%) of the total weight of the evaluation factors.

(B) The total weight given to price in an evaluation may be less than thirty percent (30%) if approved by:

(i)(a) The Governor if the request for proposals is issued by a state agency.

(b) A state agency that received approval under this subdivision (d)(2)(B)(i) shall notify the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, of the total weight approved by the Governor; or

(ii) A vote of more than fifty percent (50%) of the members of the governing body of an institution of higher education or a political subdivision if the request for proposals is issued by an institution of higher education or a political subdivision.

(e)(1) Before the evaluation process begins:

(A) Each offeror shall disclose in writing:

(i) Any conflicts of interest; and

(ii) Any pending litigation that pertains to the subject of the request for proposals in which the offeror or any of its affiliates or subsidiaries is a party; and

(B)(i) The identity of the members of the evaluation committee shall be disclosed to the offerors.

(ii)(a) The offerors shall have five (5) business days to protest the participation of any member of the evaluation committee.

(b) A protest under this subdivision (e)(1)(B)(ii) is limited to a protest regarding a perceived bias of the member of the evaluation committee as the result of a familial relationship or a financial interest of the member of the evaluation committee, an immediate family member of the member of the evaluation committee, or a business organization owned in part by the member of the evaluation committee or an immediate family member of the member of the evaluation committee.

(c) The burden of proving the existence of a bias under this subdivision (e)(1)(B)(ii) is on the offeror filing the protest.

(iii)(a) After the identity of the members of the evaluation committee are disclosed under this subdivision (e)(1)(B), any person who has a financial interest in the awarding of a contract based on the proposals being evaluated by the identified members of the evaluation committee shall not contact a member of the evaluation committee in any way.

(b) Persons prohibited from contacting members of the evaluation committee under this subdivision (e)(1)(B)(iii) include without limitation an officer, employee, or agent of an offeror that submitted a proposal being evaluated by the committee; an officer, employee, or agent of a parent, subsidiary, or affiliate of an offeror that submitted a proposal being evaluated by the committee; a lobbyist employed by an offeror that submitted a proposal being evaluated by the committee; and a lobbyist employed by a parent, subsidiary, or affiliate of an offeror that submitted a proposal being evaluated by the committee.

(2) Each member of the evaluation committee shall:

(A) Evaluate the proposals independently before meeting or

discussing the proposals with any other member of the evaluation committee;

(B) Document the specific justification for any modification made to his or her scoring during or after the consensus meeting of the evaluation committee; and

(C) In accordance with § 19-11-701 et seq., disclose in writing any potential conflict of interest as soon as the member is aware of the potential conflict of interest.

~~(e)(1) As provided in the request for proposals and under regulations, discussions may~~ (f)(1) 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 the solicitation requirements to assure full understanding of, and responsiveness to, the solicitation requirements; and

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

(2) ~~Offerors~~ Responsible offerors who are reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to ~~any~~ the opportunity for discussion, negotiation, and revision of proposals, and such revisions ~~may~~ shall be permitted after submissions and ~~prior to~~ before award for the purpose of obtaining the best and final ~~offers~~ offer from each offeror.

(3) In conducting discussions and negotiations, ~~there shall be no disclosure of any~~ information derived from proposals submitted by competing offerors shall not be disclosed.

~~(f)(1)~~ (g)(1) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, the other evaluation factors ~~set forth~~ stated in the request for proposals, and the results of ~~any~~ the discussions and negotiations conducted with responsible offerors.

(2) No other factors or criteria shall be used in the evaluation.

~~(g)~~ (h) A competitive sealed proposal may be cancelled or any or all proposals may be rejected in writing by the State Procurement Director or the agency procurement official.

SECTION 7. Arkansas Code § 19-11-234(b)(1), concerning competitive bidding under the Arkansas Procurement Law, is amended to read as follows:

(b)(1) ~~Contracts in which the~~ Competitive bidding may be used to solicit a contract if:

(A) 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; or

(B) The contract will be with a professional person selected from a qualified vendor list under § 19-11-804.

SECTION 8. Arkansas Code § 19-11-235(a)(1), concerning the responsibility of bidders and offerors under the Arkansas Procurement Law, is amended to read as follows:

(a)(1)(A) A determination of nonresponsibility of a bidder or offeror shall be made in accordance with ~~regulations~~ rules promulgated by the State Procurement Director.

(B) However, in determining the responsibility of a bidder or offeror, the following shall be considered in addition to any factors identified in a rule promulgated by the director:

(i) The past performance of the bidder or offeror;  
and

(ii) Any conflicts of interest of the bidder or offeror.

SECTION 9. Effective July 1, 2018, Arkansas Code § 19-11-238(a), concerning multiyear contracts under the Arkansas Procurement Law, is amended to read as follows:

(a) Specified Period.

(1) Unless ~~Except as~~ otherwise provided by law in this section and § 24-2-618, a contract for commodities or services may be entered into for ~~periods of not more than seven (7)~~ up to four (4) years if funds for the first fiscal year of the contemplated contract are available at the time of contracting.

(2)(A) If a contract is entered into for four (4) years, before the fourth year of the contract expires, the state agency may solicit a request for information to determine whether the contract that is about to

expire is competitively priced.

(B) After soliciting a request for information under this subdivision (a)(2), the state agency may extend the contract that is about to expire for up to three (3) additional years if funds for the first fiscal year of the contemplated extension are available at the time of contracting and the state agency determines that:

(i) The contract about to expire is competitively priced;

(ii) Extending the contract that is about to expire would be more advantageous to the state than conducting a new procurement process for the contract at the end of the four-year period; and

(iii) The vendor currently under contract has received satisfactory vendor performance reports.

(C) A state agency that extends a contract under this subdivision (a)(2) shall inform the State Procurement Director in writing of the extension, including without limitation:

(i) The length of the extension;

(ii) The method the state agency used to distribute the request for information;

(iii) The number of responses received from the request for information; and

(iv) The pricing information included in each submission received in response to the request for information.

(3) A contract for commodities or services may be entered into for up to ten (10) years if:

(A) Funds for the first fiscal year of the contemplated contract are available at the time of contracting;

(B) The total projected contract amount, including any amendments and possible extensions, is at least twenty million dollars (\$20,000,000); and

(C) The director approves the length of the contract based on a written determination that the extended contract period is likely to result in substantial:

(i) Savings to the state by avoiding, reducing, or amortizing nonrecurring startup costs over the life of the contract; or

(ii) Cost avoidance or savings to the state, as

explicitly identified in writing by the director.

(4) A technology maintenance agreement or software maintenance agreement that satisfies the requirements stated in the rules promulgated under this subchapter and offers a discount of at least twenty percent (20%) if paid in advance may be entered into for up to:

(A) Seven (7) years as provided under subdivision (a)(2) of this section; or

(B) Ten (10) years as provided under subdivision (a)(3) of this section.

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

SECTION 10. Arkansas Code § 19-11-239(3), concerning the finality of determinations required by certain portions of the Arkansas Procurement Law, is amended to read as follows:

(3) Section ~~19-11-230(f)~~ 19-11-230(g), which refers to competitive sealed proposals, award;

SECTION 11. Arkansas Code § 19-11-268(b)(1), concerning the requirements for vendor performance reporting under the Arkansas Procurement Law, is amended to read as follows:

(1) Completed and submitted:

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

(B) At the end of the contract;

SECTION 12. Arkansas Code Title 19, Chapter 11, Subchapter 2, is amended to add additional sections to read as follows:

19-11-273. Expert evaluator – Definition.

(a)(1) As used in this section, “expert evaluator” means an individual who, through education or experience, or both, has special expertise, experience, or training in the subject matter area of the solicited procurement.

(2) An expert evaluator may be an employee, volunteer, or contractor.

(b) A state agency shall:

(1) Include at least one (1) expert evaluator on an evaluation committee for the purpose of evaluating responses to a request for proposals or a request for qualifications for a contract that:

(a) Is for services that will require a high level of knowledge or expertise in a particular skill area; and

(b) Will have a total projected contract amount, including any amendments and possible extensions, of at least ten million dollars (\$10,000,000); or

(2) Assemble an evaluation committee composed of at least sixty percent (60%) of expert evaluators for the purpose of evaluating responses to a request for proposals or a request for qualifications for a contract that:

(a) Is for services that will require a high level of knowledge or expertise in a particular skill area; and

(b) Will have a total projected contract amount, including any amendments and possible extensions, of at least one hundred million dollars (\$100,000,000).

(c) If one (1) or more expert evaluators are used as required under subsection (b) of this section, the state agency may:

(1) Pay the cost of the expert evaluators from any funds available and authorized for that purpose; or

(2)(A) Require the payment of a fee to cover the cost of using the expert evaluators by each offeror at the time the offeror submits a response to the state agency's request for proposals or request for qualifications.

(B) If the total amount of the fees collected by the state agency for any expert evaluators required under this section exceeds the actual cost of hiring the expert evaluators, the state agency shall refund the excess fees on a pro rata basis to each offeror that paid the fee.

(d) An expert evaluator that is:

(1) Employed for the sole purpose of evaluating a solicitation under this section is exempt from § 21-3-802; or

(2) Contracted with for the sole purpose of evaluating a solicitation under this section is exempt from the Arkansas Procurement Law, § 19-11-201 et seq., and § 19-11-801 et seq.

19-11-274. Review of certain contracts by attorneys.

(a) A proposed contract for goods or services shall be reviewed by an attorney at the Office of State Procurement or the Attorney General's office before the contract is executed if the total projected contract amount, including any amendments and possible extensions, is at least ten million dollars (\$10,000,000).

(b)(1) As part of the solicitation for the contract, a state agency may require each vendor submitting a response to the solicitation to pay a fee to reimburse the Office of State Procurement or the Attorney General's office for the review of the proposed contract at the time the vendor submits a response to the state agency's solicitation.

(2) If the total amount of fees collected by the state agency for review of the proposed contract under this subsection exceeds the actual cost of reimbursement, the state agency shall refund the excess fees on a pro rata basis to each vendor that paid a fee.

19-11-275. Public notice of solicitation opportunities.

The Office of State Procurement shall publish a notice at least one (1) time per month in a newspaper having general circulation in the state of the website address where the public may view currently available solicitation opportunities for competitive sealed bids, competitive sealed proposals, and requests for qualifications.

SECTION 13. Arkansas Code §§ 19-11-801 – 19-11-805 are amended to read as follows:

19-11-801. Policy – Definitions – ~~Rules~~.

~~(a)(1)(A) It is the policy of the State of Arkansas that~~ Except as otherwise provided in this section, state agencies, state-supported institutions of higher education, and political subdivisions shall follow the procedures stated in this ~~section, except that~~ subchapter.

(B) However, in addition to the request for qualifications method of procurement permitted under this subchapter, competitive bidding under § 19-11-234, competitive sealed bidding under § 19-11-229, and procurement of professional consultant services contracts for legal, architectural, engineering, construction management, and land surveying ~~professional consultant services if~~ desired by the state and land surveying

~~professional consultant services if+ desired by the state agency, the state-supported institution of higher education, or the political subdivision.~~

~~(1) State agencies~~ (2) A state agency that is not exempt from review and approval of the Building Authority Division of the Department of Finance and Administration shall follow procedures established by the division for the procurement of architectural, engineering, land surveying, and construction management services; ~~and.~~

~~(2) Institutions of higher education exempt from review and approval of the division shall follow procedures established by their governing boards for the procurement of architectural, engineering, land surveying, and construction management professional consultant services.~~

~~(b) It is the policy of the State of Arkansas and its political subdivisions that political subdivisions shall follow the procedures stated in this section, except that competitive bidding shall not be used for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consultant services. The request for qualifications method of procurement stated in this subchapter shall be used only when:~~

~~(1) The price for the service being procured is predetermined by law or by the state agency or political subdivision;~~

~~(2) It is necessary to secure a qualified vendor list; or~~

~~(3) The contract being procured is one hundred percent (100%) funded by federal funds.~~

~~(c) For purposes of this subchapter, a political subdivision of the state may elect to not use competitive bidding for other professional services not listed in subsection (b) of this section with a two thirds (2/3) vote of the political subdivision's governing body.~~

~~(d)(1) (c)(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 a series of services that include, but are not limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

~~(2) "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 administration and management services.

(ii) The construction manager shall not hold subcontracts for the project or provide project bonding for the project;

(B) “At-risk construction management”, in which the construction entity, after providing agency services during the preconstruction period, serves as the general contractor and the following conditions are met:

(i) The construction manager provides a maximum guaranteed price;

(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

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

(ii) The general contractor shall hold all trade contracts and purchase orders and shall bond and guarantee the project.

~~(e)~~ (d) As used in this subchapter:

(1) “Competitive bidding” means the procurement method established under § 19-11-234;

(2) “Political subdivision” means counties, school districts, cities of the first class, cities of the second class, and incorporated towns; and

~~(2) “Other professional services” means professional services not listed in subsection (b) of this section as defined by a political subdivision with a two thirds (2/3) vote of its governing body.~~

(3) “Professional person” means an individual, corporation, organization, or other legal entity licensed or certified to engage in an occupation that requires a high level of training or expertise;

(4) “Qualified vendor list” means a list of professional persons, all of which:

(A) Meet the qualifications identified in a request for qualifications;

(B) Agree to the terms of the request for qualifications;  
and

(C) Are willing and able to provide the services necessary to meet a scope of work specified in the request for qualifications; and

(5) "Request for qualifications" means a solicitation document requiring submittal of qualifications or specialized expertise under this subchapter in response to the scope of work or services required.

(e) The State Procurement Director shall promulgate rules to administer this subchapter.

19-11-802. Annual statements of qualifications and performance data – Restrictions on competitive bidding.

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

(2) A professional person may be removed from a qualified vendor list if the professional person:

(A) Fails to perform at a satisfactory level as determined by the state agency;

(B) Fails to provide annual statements of qualifications and performance data as requested; or

(C) Requests to be removed.

(3) If a state agency, state supported institution of higher education, or political subdivision secures a qualified vendor list under this subchapter, the state agency, state-supported institution of higher education, or political subdivision shall annually reissue the original request for qualifications and provide an opportunity for additional professional persons to be added to the qualified vendor list.

~~(b) The state agency or political subdivision shall evaluate current statements of qualifications and performance data of firms on file or may request such information as needed for a particular public project whenever a~~

~~project requiring professional services is proposed. In submitting a request for qualifications under subsection (a) of this section, a state agency or a political subdivision shall give public notice of the request in the same manner as provided in § 19-11-230.~~

~~(c)(1) The political subdivision shall not use competitive bidding for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consulting services.~~

~~(2) A political subdivision shall not use competitive bidding for the procurement of other professional services with a two thirds (2/3) vote of its governing body.~~

~~(d)(1) (c)(1)(A)~~ A public school district that utilizes construction management services ~~shall~~ may issue a request for qualifications to encourage construction management firms to submit to the school district annual statements of qualifications and performance data or may request such information issue a request for qualifications as needed for a particular public project.

(B) If a public school district secures a qualified vendor list under this subchapter, the public school district shall reissue annually the original request for qualifications and provide an opportunity for additional professional persons to be added to the qualified vendor list.

~~(2) The public school district shall evaluate current statements of qualifications and performance data on file with the school district or when submitted as requested whenever a project requiring professional services of a construction manager is proposed. In submitting a request for qualifications under subdivision (d)(1) of this section, a public school district shall give public notice of the request in the same manner as provided in § 19-11-230.~~

~~(3) The public school district shall not use competitive bidding for the procurement of professional services of a construction manager.~~

(e) If a request for qualifications is amended, the evaluation process for the statements of qualifications and performance data submitted in response to the request for qualifications shall not begin unless notice of the amended request for qualifications, including without limitation the substance of the amended request for qualifications, is provided at least seven (7) calendar days before the evaluation process begins.

(f) A request for qualifications may be used only as provided in this

subchapter.

## 19-11-803. Evaluation of qualifications.

In evaluating the qualifications of each firm submitting a response to a request for qualifications under this subchapter, the state *agency*, the state-supported institution of higher education, or the political subdivision shall consider:

- (1) The specialized experience and technical competence of the firm with respect to the type of professional services required;
- (2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
- (3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and
- (4) The firm's proximity to and familiarity with the area in which the project is located.

## 19-11-804. Selection.

(a)(1) The If a state agency, a state-supported institution of higher education, or a political subdivision issues a request for qualifications under this subchapter, the state agency, the state-supported institution of higher education, or the political subdivision shall select at least three (3) qualified firms based on the evaluation of the statements of qualifications and performance data received under § 19-11-802.

(2) If a state agency, a state-supported institution of higher education, or a political subdivision receives fewer than three (3) responses to a request for qualifications from professional persons, the state agency, the state-supported institution of higher education, or the political subdivision shall select all qualified professional persons.

(b)(1) The If the request for qualifications was issued under § 19-11-801(b)(1) or § 19-11-801(b)(3), the state agency, the state-supported institution of higher education, or the political subdivision shall then select the firm considered the best-qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.

(2) If the request for qualifications was issued to professional

persons based on a qualified vendor list under § 19-11-801(b)(2), the state agency, the state-supported institution of higher education, or the political subdivision shall:

(A) Use competitive bidding to select the professional person from the qualified vendor list that is considered the best-qualified and capable of performing the desired work for the lowest price; and

(B) Negotiate a contract for the project under § 19-11-805 with the professional person selected.

19-11-805. Negotiation of contracts.

(a) For the basis of negotiations, the state *agency, the state-supported institution of higher education,* or the political subdivisions subdivision and the selected firm or professional person shall jointly prepare a detailed, written description of the scope of the proposed services.

(b)(1)(A) If the state *agency, the state-supported institution of higher education,* or the political subdivision is unable to negotiate a satisfactory contract with the firm or professional person selected, negotiations with that firm shall be terminated.

(B)(i) The state *agency, the state-supported institution of higher education,* or the political subdivision shall then undertake negotiations with another of the qualified firms selected.

(ii) If the state agency, the state-supported institution of higher education, or the political subdivision is selecting from a qualified vendor list, the state agency or the political subdivision shall undertake negotiations with the professional person that submitted the next lowest bid.

(2)(A) If there is a failing of accord with the second firm or professional person, negotiations with the firm shall be terminated.

(B)(i) The state *agency, the state-supported institution of higher education,* or the political subdivision shall undertake negotiations with the third qualified firm.

(ii) If the state agency, the state-supported institution of higher education, or the political subdivision is selecting from a qualified vendor list, the state agency or the political subdivision shall undertake negotiations with the professional person that submitted the

next lowest bid.

(c) If the state *agency, the state-supported institution of higher education,* or the political subdivision is unable to negotiate a contract with any of the selected firms or professional persons on the qualified vendor list, the state *agency, the state-supported institution of higher education,* or the political subdivision shall reevaluate the necessary professional services, including the scope and reasonable fee requirements, ~~again compile a list of qualified firms and proceed in accordance with the provisions of this subchapter~~ and issue a new request for qualifications under this subchapter.

(d) When unable to negotiate a contract for construction management, a public school district also shall perform a reevaluation of services in accordance with subsection (c) of this section.

SECTION 14. Arkansas Code § 19-11-1005 is amended to read as follows:  
19-11-1005. General guidelines and ~~regulations~~ rules.

The State Procurement Director, after soliciting suggestions from state agencies and after seeking and receiving the advice of the Attorney General and ~~review~~ approval by the Legislative Council, or by the Joint Budget Committee, if the General Assembly is in session, shall publish general guidelines for the procurement of professional and consultant services contracts and general ~~regulations~~ rules governing the use of each type of contract.

SECTION 15. *Arkansas Code § 19-11-1013(b)(1), concerning vendor performance reporting in relation to professional and consultant services contracts, is amended to read as follows:*

(1) *Completed and submitted:*

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

(B) *At the end of the contract;*

SECTION 16. *DO NOT CODIFY. Legislative intent – Exemption.*

(a) The General Assembly intends that Section 13 of this act have a delayed effective date as applicable to the procurement of professional consultant services contracts for the services stated in subsection (b) of

this section.

(b) Effective June 30, 2019, Section 13 of this act applies to the procurement of professional consultant services contracts for legal, architectural, engineering, construction management, or land surveying services.

SECTION 17. DO NOT CODIFY. Study of procurement processes and requirements.

The Legislative Council shall:

(1) Study current procurement processes and requirements, including without limitation the process and requirements for requests for qualifications and the process and requirements for evaluating responses to requests for proposals and requests for qualifications;

(2) Invite the participation of members of the legal, architectural, engineering, construction management, and land surveying professions in the study required under this section; and

(3) Complete the study required under this section by January 1, 2019.

SECTION 18. DO NOT CODIFY. The State Procurement Director shall promulgate rules and revise rules to comply with, implement, and administer this act.

/s/Hickey