

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

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: S2/20/19  
**A Bill**

HOUSE BILL 1162

By: Representatives Dotson, Wardlaw

By: Senator Flippo

### **For An Act To Be Entitled**

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE CONTENT, TERM, AND REVIEW OF CONTRACTS PROCURED BY THE STATE; TO PROVIDE CERTAIN COMPLIANCE REQUIREMENTS FOR PERSONS CONTRACTING WITH THE STATE; TO REQUIRE AND REGULATE THE USE OF PERFORMANCE-BASED CONTRACTS; TO AMEND THE REQUIREMENT CONCERNING VENDOR PERFORMANCE REPORTS; TO ELIMINATE DUPLICATIVE PROVISIONS IN THE LAW; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE LAW CONCERNING THE CONTENT, TERM, AND REVIEW OF CONTRACTS PROCURED BY THE STATE; TO REQUIRE THE USE OF PERFORMANCE-BASED CONTRACTS; AND TO AMEND VENDOR PERFORMANCE REPORT REQUIREMENTS.

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

SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and duties of the State Procurement Director, is amended to add an additional subdivision to read as follows:

(9) Shall analyze information captured in state systems to measure and track the contract routing process to identify stakeholders that may be contributing to the elongation of the contracting process; and

(10) Ensure that vendor performance reports are available to and



searchable by state agencies.

SECTION 2. Arkansas Code § 19-11-219 is amended to read as follows:  
19-11-219. Legal counsel – Contract review.

(a) The Attorney General shall act as counsel for the State Procurement Director in preparation of necessary contracts and in all legal matters.

(b)(1) A contract that the director has designated as requiring review shall be reviewed by a person employed as an attorney with a state agency.

(2) The review required under this subsection shall occur before the contract is executed.

(c) The director shall adopt rules to implement this section, including without limitation rules to:

(1) Designate contracts that require review under this section, which may include without limitation contracts that:

(A) Exceed a certain dollar amount;

(B) Modify the standard state terms and conditions; and

(C) Are based on other stated criteria; and

(2) Identify the requirements for the attorneys who may review contracts under this section, including without limitation:

(A) An attorney employed with the Office of State Procurement, an institution of higher education, or the Office of the Attorney General; and

(B) Any other attorney employed by the state and licensed to practice law in Arkansas.

SECTION 3. Arkansas Code § 19-11-238(c), concerning multiyear contracts, is amended to read as follows:

(c) Termination Due to Unavailability of Funds in Succeeding Years.

(1) Original terms of such multiyear contracts shall ~~terminate on the last day of the current biennium, and any renewals by the state based upon continuing appropriation shall not exceed the next succeeding biennium~~ not exceed four (4) years.

(2) When funds are not appropriated or otherwise made available to support continuation of performance in a ~~subsequent year of a multi-year a~~ multiyear contract, the contract ~~for such subsequent year~~ shall be terminated

and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the commodities or services delivered under the contract.

(3) The cost of termination under subdivision (c)(2) of this section may be paid from:

~~(1)~~ (A) Appropriations currently available for performance of the contract;

~~(2)~~ (B) Appropriations currently available for procurement of similar commodities or services and not otherwise obligated; or

~~(3)~~ (C) Appropriations made specifically for the payment of such termination costs.

SECTION 4. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to read as follows:

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

(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)(1)~~ (1) A state agency, board, commission, or institution of higher education that enters into a contract under this ~~subchapter~~ chapter to procure services that has a contract amount of at least one million dollars (\$1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars (\$7,000,000) shall use performance-based standards in the contract that are specifically tailored to the services being provided under the contract.

(2) The performance-based standards used under this subsection shall include performance measures based on objective factors.

(3) A state agency, board, commission, or institution of higher education is encouraged to use performance-based standards that are based on objective factors in any other contract in which it would serve the best

interest of the state.

(c)(1) A state agency, board, commission, or institution of higher education that enters into a contract with performance-based standards:

(1)(A) Shall monitor the vendor's performance and adherence to the performance-based standards in the contract.

(B) For state contracts, the Office of State Procurement shall be the state agency that monitors each vendor's performance under this subdivision (c)(1); and

(2) May impose financial consequences, as identified in the contract, on a vendor that is party to a contract with performance-based standards for failure to satisfy the performance-based standards, including without limitation withholding payment or pursuing liquidated damages to the extent allowed by law.

(d)(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)~~ chapter if the vendor fails to satisfy the performance-based standards stated in the contract in a manner that represents a material deviation.

(2) A state agency shall use ~~the~~ a 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)~~ (2) Signed by the director of the state agency or his or her designee; and

(3) Filed monthly until the vendor has performed satisfactorily under the contract for a period of at least ninety (90) consecutive days.

(c) A state agency may report a vendor's performance in the manner prescribed under this section for any contract that would not require reporting of a vendor's performance under this section if the state agency encounters an issue with the vendor's performance of a contract.

(d) A state agency may use a vendor performance report submitted under this section to evaluate an offeror to the extent that the past performance of an offeror may be considered under the law and the rules adopted by the office.

SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 2, is amended to add an additional section to read as follows:

19-11-273. Compliance.

(a) A contractor shall ensure, in cooperation with a state agency, that the contract between the contractor and the state agency adheres to the requirements of this chapter, including without limitation the inclusion of any mandatory language and the submission of the contract for any required review.

(b) The signature of a contractor on a contract with a state agency serves as an acknowledgement that the contractor is:

(1) Equally responsible with the state agency for adhering to the requirements of this chapter related to the content and review of the contract; and

(2) Subject to the relevant ethical provisions of § 19-11-701 et seq.

SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.

~~19-11-1010. Development and use of performance-based contracts—  
Findings.~~

~~(a) Performance-based contracts provide an effective, efficient method~~

~~of monitoring and evaluating the overall quality of services provided.~~

~~(b) 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.~~

~~(c) Under regulations promulgated by the State Procurement Director, all state agencies, boards, commissions, and institutions of higher education shall use performance-based standards in professional and consultant service contracts.~~

SECTION 7. Arkansas Code § 19-11-1013 is repealed as duplicative.

~~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.~~

SECTION 8. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the State Procurement Director shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2020; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(b) The director shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rules for approval before January 1, 2020.

*/s/Dotson*