

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

State of Arkansas
95th General Assembly
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As Engrossed: S4/2/25 S4/7/25

A Bill

SENATE BILL 538

By: Senators Gilmore, Hickey, Irvin, *J. Dotson*

By: Representative Wardlaw

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS PROCUREMENT LAW.

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 State Procurement Director, is amended to add an additional subdivision to read as follows:

(16) Within one hundred twenty (120) days after the effective date of a new or revised statute or rule relating to procurement, shall review the procurement materials of the office and revise the procurement materials to maintain alignment between the procurement materials and the relevant procurement statutes and rules.

SECTION 2. Arkansas Code § 19-11-229(f), concerning competitive sealed bidding, is amended to add an additional subdivision to read as follows:

(4)(A) A state agency may determine that the cost of the bid is unrealistic.

(B) As used in this subdivision (f)(4), "unrealistic" means too low to reflect the ability of the bidder to meet the requirements of the invitation for bids.

(C) The director shall promulgate rules concerning the requirements for determining that a bid is unrealistic.



SECTION 3. Arkansas Code § 19-11-230(c), concerning competitive sealed proposals, is amended to read as follows:

(c)(1) ~~Public~~ Except as provided in subdivision (c)(2) of this section, 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.

(2)(A) A request for proposals under this section shall be issued at least twenty (20) business days before the deadline for the submission of proposals.

(B) If a request for proposals is reissued before the anticipation to award, the state agency shall extend the original deadline for the submission of proposals by at least ten (10) business days.

SECTION 4. Arkansas Code § 19-11-230(d)(4), concerning competitive sealed proposals, is amended to read as follows:

(4) A state agency shall: ~~not~~

(A) Not include prior experience with the state as a mandatory requirement for submitting a proposal under this section;

(B) Evaluate the cost of each proposal received from a responsible offeror in response to a request for proposals under this section in the state agency's initial evaluation of the proposals; and

(C) Not identify responsible offerors as being reasonably susceptible of being awarded a contract under this section until the cost proposal from each responsible offeror has been evaluated.

SECTION 5. Arkansas Code § 19-11-230(d), concerning competitive sealed proposals, is amended to add an additional subdivision to read as follows:

(5)(A) A state agency may determine that the cost of the proposal is unreasonable or unrealistic.

(B) As used in this subdivision (d)(5):

(i) "Unrealistic" means too low to reflect the ability of the offeror to meet the requirements of the request for proposals; and

(ii) "Unreasonable" means too high for the requirements of the request for proposals.

(C) The director shall promulgate rules concerning the

requirements for determining that the cost of a proposal is unreasonable or unrealistic.

SECTION 6. Arkansas Code § 19-11-230(e), concerning competitive sealed proposals, is amended to add additional subdivisions to read as follows:

(4)(A) Negotiations under this section shall be conducted by a person who is trained and certified in negotiation and procurement processes.

(B)(i) The office shall provide for the training and certification required under subdivision (e)(4)(A) of this section.

(ii) The training provided by the office under this subdivision (e)(4) shall be specific to Arkansas law.

(5) The director shall promulgate rules detailing the requirements for negotiations under this section.

SECTION 7. Arkansas Code § 19-11-230, concerning competitive sealed proposals, is amended to add an additional subsection to read as follows:

(j) A state agency using the method of procurement provided for under this section shall adhere to the procurement rules, policies, and guidance issued by the office concerning the scoring of the technical and cost elements of submitted proposals.

SECTION 8. Arkansas Code § 19-11-244(a)(5)(B), concerning the resolution of a protest by a person named in an anticipation to award a contract, is amended to read as follows:

(B) A response to a protest submitted under subdivision (a)(5)(A) of this section shall be submitted in writing within five (5) calendar days of the date the person is given notice of the protest under subdivision (a)(2)(B) of this section.

SECTION 9. Arkansas Code § 19-11-244(d), concerning the resolution of protested solicitations and awards of contracts, is amended to read as follows:

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished within five (5) calendar days after it is written to the protestor and any other party intervening.

SECTION 10. Arkansas Code § 19-11-244(f), concerning the resolution of protested solicitations and awards of contracts, is amended to read as follows:

(f) In the event of a timely protest under subsection (a) of this section, ~~the~~

(1) The state shall not execute a contract that is the result of the protested solicitation or award unless the director or the head of the relevant procurement agency makes a written determination that the execution of the contract without delay is necessary to protect substantial interests of the state; and

(2) Contract negotiations with the anticipated awardee may proceed.

SECTION 11. Arkansas Code § 19-11-245(e) and (f), concerning debarment and suspension under the Arkansas Procurement Law, are amended to read as follows:

(e) ~~Notice of Decision.~~ A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished within five (5) calendar days after it is written to the debarred or suspended person and any other party intervening.

(f) ~~Finality of Decision.~~ A decision under subsection (d) of this section *shall be final and conclusive and not an order as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., but may be appealed to the Secretary of the Department of Shared Administrative Services in accordance with the rules promulgated by the director.*

SECTION 12. Arkansas Code § 19-11-247(a)-(c), concerning the remedies for unlawful solicitation or award of a contract, are amended to read as follows:

(a) The provisions of this section apply where it is determined upon any review provided by law that ~~a solicitation or award~~ the creation, solicitation, award, management, or modification of a contract is in violation of law.

(b) If ~~prior to award~~ it is determined that a solicitation, ~~or~~ proposed award, or modification of a contract is in violation of law, then the solicitation, ~~or~~ proposed award, or modification shall be:

- (1) Cancelled; or
- (2) Revised to comply with the law.

(c) If ~~after an award~~ it is determined that ~~a solicitation or award~~ the creation, solicitation, award, management, or modification of a contract is in violation of law, then in addition to or in lieu of other remedies provided by law:

(1) If the ~~person awarded the contract~~ vendor has not acted fraudulently or in bad faith:

(A) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or

(B) The contract may be terminated; and

(2) If the ~~person awarded the contract~~ vendor has acted fraudulently or in bad faith:

(A) The contract may be declared null and void; or

(B) The person awarded the contract may be directed to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.

SECTION 13. Arkansas Code § 19-11-279, concerning requests for information, is amended to add an additional subsection to read as follows:

(f) A response to a request for information under this section is not required for a vendor's bid, proposal, or statement of qualifications and performance data to be accepted unless the response requirement is:

(1) Explicitly stated in the invitation for bids, request for proposals, or request for statements of qualifications and performance data; and

(2) Approved by the director or the head of the procurement agency.

SECTION 14. Arkansas Code § 19-11-280(a), concerning the training and certification of procurement personnel, is amended to read as follows:

(a)(1) The State Procurement Director shall establish a an in-person training and certification program to facilitate the training, continuing education, and annual certification of state agency procurement personnel.

(2) The training and certification program required under subdivision (a)(1) of this section may be offered through an in-person

training course or a live, virtual course.

SECTION 15. Arkansas Code § 19-11-280(c), concerning the training and certification of procurement personnel, is amended to read as follows:

(c)(1) ~~Beginning July 1, 2021,~~ a A state agency employee shall not conduct a procurement under this chapter unless the state agency employee is certified annually through the training and certification program required under this section.

(2) To maintain certification under this section, a state agency employee shall complete a reasonable number of hours of continuing education each year, as provided for by rule by the director.

SECTION 16. Arkansas Code § 19-11-280, concerning the training and certification of procurement personnel, is amended to add an additional subsection to read as follows:

(e)(1) The director shall report to the Review Subcommittee of the Legislative Council concerning:

(A) The progress made in developing an implementing the training and certification program required under this section; and

(B) The state agencies that have had employees complete the training and certification program required under this section.

(2) The report required under section shall be presented:

(A) For the first year following the effective date of this act, every ninety (90) days; and

(B) Annually each subsequent year.

SECTION 17. Arkansas Code Title 19, Chapter 11, Subchapter 2, is amended to add an additional section to read as follows:

19-11-282. Notification to Office of State Procurement.

A state agency other than an institution of higher education shall notify the Office of State Procurement that the state agency is going to issue an invitation for bids or a request for proposals at least seven (7) calendar days before issuing the solicitation.

SECTION 18. Arkansas Code § 19-11-802(c)(2), concerning annual statements of qualifications and performance data and restrictions on

competitive bidding, is amended to read as follows:

(2) A political subdivision ~~shall~~ may elect to not use competitive bidding for the procurement of other professional services with a two-thirds ($\frac{2}{3}$) vote of its governing body.

SECTION 19. DO NOT CODIFY. Repromulgation of rules.

(a) Within one hundred twenty (120) days of the effective date of this act, the State Procurement Director shall repromulgate all rules related to the sections of the Arkansas Code amended by this act and the recommendations adopted by the Executive Subcommittee of the Legislative Council upon the conclusion of the procurement study conducted for the 2025 regular session to ensure that the rules promulgated under the sections of the Arkansas Code that are amended by this act are in line with the intent of the General Assembly in enacting this act.

(b) The director shall submit a monthly report to the Review Subcommittee of the Legislative Council concerning his or her progress during the reporting period in complying with subsection (a) of this section.

/s/Gilmore