

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 476

5 By: Senators Hickey, Teague, B. Sample, B. King
6 By: Representatives Hammer, Branscum, Broadaway, Jean
7

For An Act To Be Entitled

9 AN ACT CONCERNING PROCUREMENT LAWS; TO AMEND THE LAWS
10 CONCERNING THE PROCUREMENT OF SERVICES; TO AMEND THE
11 REPORTING REQUIREMENTS FOR STATE PROCUREMENTS; TO
12 MAKE RELATED CHANGES; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO AMEND THE LAWS CONCERNING THE
16 PROCUREMENT OF SERVICES; TO AMEND THE
17 REPORTING REQUIREMENTS FOR STATE
18 PROCUREMENTS; AND TO MAKE RELATED
19 CHANGES.
20
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 10-4-304(18), concerning the enumeration of
26 fiscal management laws of the state, is amended to read as follows:

27 (18) ~~Sections 19-11-201—19-11-259~~ Arkansas Code Title 19,
28 Chapter 11;
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30 SECTION 2. Arkansas Code § 19-1-603(3)(B), concerning the definition
31 of "fiscal responsibility and management laws" used under the State Fiscal
32 Management Responsibility Act, is amended to read as follows:

33 (B) ~~Arkansas purchasing State procurement~~ laws, § ~~19-11-~~
34 ~~101 et seq.~~ Arkansas Code Title 19, Chapter 11;
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36 SECTION 3. Arkansas Code § 19-11-203(23)(A), concerning the



1 definitions used under the Arkansas Procurement Law, is amended to read as
2 follows:

3 (23)(A) "Public funds" means all state-appropriated and cash
4 funds of state agencies, as defined by applicable law or official ruling.
5 ~~"Public funds" as used in this subchapter shall not include funds~~
6 ~~administered by, or under the control of, agencies, except public funds.~~
7

8 SECTION 4. Arkansas Code § 19-11-249 is amended to read as follows:
9 19-11-249. Cooperative purchasing.

10 (a)(1) Any A public procurement unit may ~~either~~ participate in,
11 sponsor, conduct, or administer a cooperative purchasing agreement for the
12 acquisition of ~~any~~ commodities or services with one (1) or more public
13 procurement units or external procurement activities in accordance with an
14 agreement entered into between the participants.

15 (2) Such A cooperative purchasing agreement under this section
16 may include, but is not limited to, without limitation a joint or multiparty
17 ~~contracts~~ contract between public procurement units and an open-ended state
18 public procurement unit ~~contracts which are~~ contract that is made available
19 to local public procurement units.

20 (b)(1) The State Procurement Director shall present a quarterly report
21 of all purchases made under cooperative purchasing agreements under this
22 section to the Legislative Council or, if the General Assembly is in session,
23 to the Joint Budget Committee.

24 (2) The report required under this subsection shall be in the
25 format required by the Legislative Council and shall include the following:

26 (A) The name of the contractor;

27 (B) The name of the procuring agency;

28 (C) The contact information for the contractor and
29 procuring agency;

30 (D) The total cost of the contract, including all
31 available extensions;

32 (E) A description of the goods or services procured; and

33 (F) Any other information requested by the Legislative
34 Council or the Joint Budget Committee.

35
36 SECTION 5. Arkansas Code § 19-11-265 is amended to read as follows:

1 19-11-265. Submission of contracts required.

2 (a)(1) ~~All contracts for technical and general services, except for~~
3 ~~those that are specifically exempt from review, requiring the service of an~~
4 ~~individual or individuals for regular full-time or part-time weekly work in~~
5 ~~the areas of information technology, the actual delivery of health care or~~
6 ~~human services or educational services shall be presented to the Legislative~~
7 ~~Council or to the Joint Budget Committee, if the General Assembly is in~~
8 ~~session, before the execution date of the contract if the total contract~~
9 ~~amount exceeds one hundred thousand dollars (\$100,000).~~ A contract requiring
10 the service of one (1) or more individuals for regular full-time or part-time
11 weekly work shall be presented to the Legislative Council or, if the General
12 Assembly is in session, to the Joint Budget Committee, before the execution
13 of the contract if the total initial contract amount or the total projected
14 contract amount, including any amendments or possible extensions, is at least
15 one hundred thousand dollars (\$100,000).

16 (2) The Legislative Council or the Joint Budget Committee shall
17 provide the State Procurement Director with ~~their~~ its review as to the
18 propriety of the contract within thirty (30) days after receipt of the
19 proposed contract.

20 (3) The contract shall not be submitted to the Legislative
21 Council or to the Joint Budget Committee until the Office of State
22 Procurement has reviewed the contract and provided the Legislative Council or
23 the Joint Budget Committee with a recommendation regarding the legality of
24 the contract.

25 (b) The Legislative Council or the Joint Budget Committee may review
26 or exempt from review any contract or group of contracts contemplated by this
27 section.

28 (c)(1)~~(A)~~ ~~In addition to the contracts for technical and general~~
29 ~~services that are~~ presented to the Legislative Council or to the Joint Budget
30 Committee under subsection (a) of this section, the director shall compile a
31 monthly report of ~~each commodities contract that includes services and has a~~
32 ~~projected total cost of two hundred fifty thousand dollars (\$250,000) or more~~
33 all executed contracts requiring the service of one (1) or more individuals
34 for regular full-time or part-time weekly work if the total initial contract
35 amount or the total projected contract amount, including any amendments or
36 possible extensions, is at least twenty-five thousand dollars (\$25,000) and

1 less than one hundred thousand dollars (\$100,000).

2 ~~(B) The director shall include in the monthly report under~~
 3 ~~subdivision (c)(1)(A) of this section a commodities contract that is procured~~
 4 ~~by a state agency with an agency procurement official.~~

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

7 (A) The name of the contractor ~~if the commodities contract~~
 8 ~~is a state contract;~~

9 (B) The state agency name ~~if the commodities contract is~~
 10 ~~procured by a state agency with an agency procurement official;~~

11 (C) The contact information for the contractor or state
 12 agency;

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

15 (E) The type of ~~commodity or~~ commodities and services
 16 contracted;

17 (F) The quantity of ~~the commodity or~~ commodities and
 18 services contracted; ~~and~~

19 (G) The procurement method;

20 (H) The total projected contract amount that includes any
 21 amendments and all available extensions; and

22 (I) Any other information requested by the Legislative
 23 Council or the Joint Budget Committee.

24 (3) The director shall remit the report required under this
 25 subsection each month to the Legislative Council or to the Joint Budget
 26 Committee as directed by the Legislative Council.

27 ~~(4) The Legislative Council or the Joint Budget Committee may~~
 28 ~~review or may exempt from review any commodities contract or group of~~
 29 ~~commodities contracts under this subsection.~~

30 (d) A contract that is procured by a state agency with a state agency
 31 procurement official is subject to the reporting and presentment requirements
 32 under this section.

33 (e) It is a violation of state procurement laws, Arkansas Code Title
 34 19, Chapter 11, for a state agency official to procure services in an
 35 incremental or split purchase arrangement to avoid the reporting or
 36 presentment requirements of this section.

1
2 SECTION 6. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
3 amended to add additional sections to read as follows:

4 19-11-267. Development and use of performance-based contracts.

5 (a) The General Assembly finds that:

6 (1) Performance-based contracts provide an effective and
7 efficient method of monitoring and evaluating the overall quality of services
8 provided; and

9 (2) The practice of including benchmark objectives that the
10 provider must attain at specific intervals during the term of the contract is
11 an essential requirement for measuring performance.

12 (b) A state agency, board, commission, or institution of higher
13 education that enters into a contract under this subchapter to procure
14 services shall use performance-based standards in the contract.

15 (c)(1) The State Procurement Director shall promulgate rules necessary
16 to implement and administer this section.

17 (2) Rules promulgated under this subsection are subject to
18 approval by the Legislative Council or, if the General Assembly is in
19 session, the Joint Budget Committee.

20
21 19-11-268. Vendor performance reporting.

22 (a)(1) A state agency shall report a vendor's performance under a
23 contract executed under this subchapter that has a total initial contract
24 amount or total projected contract amount, including any amendments to or
25 possible extensions of the contract, of at least twenty-five thousand dollars
26 (\$25,000).

27 (2) A state agency shall use the form prescribed by the State
28 Procurement Director and approved by the Legislative Council or, if the
29 General Assembly is in session, the Joint Budget Committee, to report a
30 vendor's performance under this section.

31 (b) The report required under this section shall be:

32 (1) Completed and submitted:

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

35 (B) At the end of the contract;

36 (2) Filed with the Office of State Procurement and maintained

1 for a minimum of three (3) years from the termination of the relevant
2 contract, including any extensions and amendments; and

3 (3) Signed by the director of the state agency or his or her
4 designee.

5
6 19-11-269. Review of information technology plans.

7 The Office of State Procurement shall ensure that all required
8 information has been submitted to the Office of Intergovernmental Services of
9 the Department of Finance and Administration for review of proper planning
10 and technical requirements before the execution of:

11 (1) A contract issued under this subchapter that procures
12 information technology products or services with a total projected contract
13 amount, including any amendments to or possible extensions of the contract,
14 of at least one hundred thousand dollars (\$100,000); or

15 (2) A purchase of information technology products or services
16 made under a cooperative purchase agreement under § 19-11-249.

17
18 19-11-270. Penalty for intentional violation.

19 A person who purposely violates state procurement laws, Arkansas Code
20 Title 19, Chapter 11, upon conviction is guilty of a Class D felony.

21
22 19-11-271. Compliance reporting.

23 (a) Each report required under this subchapter shall be copied to the
24 Director of the Department of Finance and Administration, who shall review
25 each report for compliance with the fiscal responsibility and management laws
26 of the state under the State Fiscal Management Responsibility Act, § 19-1-601
27 et seq.

28 (b) If the director determines that a state agency, agency procurement
29 official, or state official or employee may be in violation of the fiscal
30 responsibility and management laws of the state under the State Fiscal
31 Management Responsibility Act, § 19-1-601 et seq., the director shall notify
32 the chief executive officer of the relevant state agency.

33
34 SECTION 7. Arkansas Code § 19-11-1006 is amended to read as follows:
35 19-11-1006. Submission of contracts required.

36 ~~(a)(1) All contracts for professional services or consultant services,~~

1 ~~except for those which are specifically exempt from review, requiring the~~
2 ~~services of an individual for regular full time or part time weekly work~~
3 ~~where the total contract amount exceeds fifty thousand dollars (\$50,000) must~~
4 ~~be presented to the Legislative Council, or to the Joint Budget Committee if~~
5 ~~the General Assembly is in session, before the execution date of the~~
6 ~~contract. A professional services contract or consultant services contract~~
7 ~~shall be presented to the Legislative Council or, if the General Assembly is~~
8 ~~in session, to the Joint Budget Committee, before the execution of the~~
9 ~~professional services contract or consultant services contract if the total~~
10 ~~initial amount or the total projected amount, including any amendments or~~
11 ~~possible extensions, of the professional services contract or consultant~~
12 ~~services contract is at least fifty thousand dollars (\$50,000).~~

13 (2) The Legislative Council or the Joint Budget Committee shall
14 provide the State Procurement Director with ~~their~~ its review as to the
15 propriety of the professional services contract or consultant services
16 contract within thirty (30) days after receipt of the proposed professional
17 services contract or consultant services contract.

18 (3) The professional services contract or consultant services
19 contract shall not be submitted to the Legislative Council or to the Joint
20 Budget Committee until the Department of Finance and Administration has
21 reviewed the professional services contract or consultant services contract
22 and provided the Legislative Council or the Joint Budget Committee with a
23 recommendation regarding the legality of the professional services contract
24 or consultant services contract.

25 (b) The Legislative Council or the Joint Budget Committee may review
26 or exempt from review any professional services contract or consultant
27 services contract or group of professional services contracts or consultant
28 services contracts contemplated by this subchapter.

29 (c)(1) Funds from grants and contracts to ~~any~~ a state institution of
30 higher education may be used for the purpose of subcontracting with
31 institutions under the performance conditions of the grants or contracts.

32 (2) Subcontracts for research that are derived from grants and
33 contracts to ~~any~~ a state institution of higher education require the prior
34 approval of the director and a review by the Legislative Council or by the
35 Joint Budget Committee.

36 (d)(1) In addition to the professional services contracts and

1 consultant services contracts presented to the Legislative Council or to the
 2 Joint Budget Committee under subsection (a) of this section, the director
 3 shall compile a monthly report of all executed professional services
 4 contracts and consultant services contracts if the total initial amount or
 5 the total projected amount, including any amendments or possible extensions,
 6 of the professional services contract or consultant services contract is at
 7 least ten thousand dollars (\$10,000) and less than fifty thousand dollars
 8 (\$50,000).

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

11 (A) The name of the contractor;

12 (B) The state agency name;

13 (C) The contact information for the contractor or state
 14 agency;

15 (D) The total initial cost of the professional services
 16 contract or consultant services contract;

17 (E) The type of services contracted;

18 (F) The quantity of services contracted;

19 (G) The procurement method;

20 (H) The total projected amount of the professional
 21 services contract or consultant services contract that includes any
 22 amendments and all available extensions; and

23 (I) Any other information requested by the Legislative
 24 Council or the Joint Budget Committee.

25 (3) The director shall remit the report each month to the
 26 Legislative Council or to the Joint Budget Committee as directed by the
 27 Legislative Council.

28 (e) A contract that is procured by a state agency with a state agency
 29 procurement official is subject to the reporting and presentment requirements
 30 under this section.

31 (f) It is a violation of state procurement laws, Arkansas Code Title
 32 19, Chapter 11, for a state agency official to procure services in an
 33 incremental or split purchase arrangement to avoid the reporting or
 34 presentment requirements of this section.

35
 36 SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 10, is

1 amended to add additional sections to read as follows:

2 19-11-1013. Vendor performance reporting.

3 (a)(1) A state agency shall report a vendor's performance under a
4 contract issued under this subchapter that has a total initial contract
5 amount or total projected contract amount, including any amendments to or
6 possible extensions of the contract, of at least twenty-five thousand dollars
7 (\$25,000) for contracts.

8 (2) A state agency shall use the form prescribed by the State
9 Procurement Director and approved by the Legislative Council or, if the
10 General Assembly is in session, the Joint Budget Committee, to report a
11 vendor's performance under this section.

12 (b) The report required under this section shall be:

13 (1) Completed and submitted:

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

16 (B) At the end of the contract;

17 (2) Filed with the Office of State Procurement and maintained
18 for a minimum of three (3) years from the termination of the relevant
19 contract, including any extensions and amendments; and

20 (3) Signed by the director of the state agency or his or her
21 designee.

22
23 19-11-1014. Compliance reporting.

24 (a) Each report required under this subchapter shall be copied to the
25 Director of the Department of Finance and Administration, who shall review
26 each report for compliance with the fiscal responsibility and management laws
27 of the state under the State Fiscal Management Responsibility Act, § 19-1-601
28 et seq.

29 (b) If the director determines that a state agency, agency procurement
30 official, or state official or employee may be in violation of the fiscal
31 responsibility and management laws of the state under the State Fiscal
32 Management Responsibility Act, § 19-1-601 et seq., the director shall notify
33 the chief executive officer of the relevant state agency.

34
35 SECTION 9. EFFECTIVE DATE. Sections 1 through 8 of this act are
36 effective on and after August 1, 2015.