

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/15/05 H3/24/05

A Bill

HOUSE BILL 2679

5 By: Representative Dangeau
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ARKANSAS PROCUREMENT LAW; AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO AMEND VARIOUS PROVISIONS OF
13 THE ARKANSAS PROCUREMENT LAW.
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 19-11-203 is amended to read as follows:
20 19-11-203. Definitions generally.

21 As used in this subchapter, unless the context otherwise requires:

22 (1)(A) "Agency procurement official" means any person authorized
23 by a state agency to enter into and administer contracts and make written
24 determinations and findings with respect thereto, in accordance with
25 procedures prescribed by this subchapter and the regulations promulgated
26 under it.

27 (B) The term also includes an authorized representative
28 acting within the limits of authority;

29 (2) "Business" means any corporation, partnership, individual,
30 sole proprietorship, joint-stock company, joint venture, or any other legal
31 entity;

32 (3)(A) "Capital improvement" means all lands, buildings,
33 structures, utilities, on-site and off-site improvements, and other
34 appurtenant improvements, existing or future, and all construction, repairs,
35 alterations, and renovations thereof which are undertaken, owned, operated,
36 or otherwise managed by a state agency.



1 (B) "Capital improvement" shall not include construction
2 and reconstruction of roads and bridges in the state highway system by the
3 State Highway Commission, nor shall the term "capital improvement" include
4 any building, facility, plant, structure, or other improvement constructed
5 by, or in behalf of, the Arkansas State Highway and Transportation Department
6 or the State Highway Commission;

7 (4) "Commodities" means all property, including, but not limited
8 to, equipment, printing, stationery, supplies, and insurance but excluding
9 leases on real property, real property or a permanent interest in real
10 property, exempt commodities and services, and capital improvements;

11 (5)(A) "Contract" means all types of state agreements,
12 regardless of what they may be called, for the purchase of commodities and
13 services and for the disposal of surplus commodities and services not
14 otherwise exempt.

15 (B)(i) It includes awards and notices of award, contracts
16 of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type, contracts
17 providing for the issuance of job or task orders, leases, letter contracts,
18 and purchase orders.

19 (ii) It also includes supplemental agreements with
20 respect to any of these items;

21 (6) "Contract modification" means any written alteration in
22 specifications, delivery point, rate of delivery, period of performance,
23 price, quantity, or other provisions of any contract accomplished by mutual
24 action of the parties to the contract;

25 (7) "Contractor" means any person having a contract with a state
26 agency;

27 (8) "Data" means recorded information, regardless of form or
28 characteristic;

29 (9) "Debarment" means the disqualification of a person to
30 receive invitations for bids or requests for proposals or the award of a
31 contract by the state for a specified period of time commensurate with the
32 seriousness of the offense or the failure or the inadequacy of performance;

33 (10) "Designee" means a duly authorized representative of a
34 person holding a superior position;

35 (11) "Electronic" means electrical, digital, magnetic, optical,
36 or any other similar technology;

1 (12) "Employee" means an individual drawing a salary from a
2 state agency, whether elected or not, and any nonsalaried individual
3 performing personal services for any agency;

4 (13) "Exempt agencies" means the constitutional departments of
5 the state, the elected constitutional offices of the state, the General
6 Assembly, including the Legislative Council and the Legislative Joint
7 Auditing Committee and supporting agencies and bureaus thereof, the Supreme
8 Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the
9 Administrative Office of the Courts;

10 (14) "Exempt commodities and services" means:

11 (A) Advertising in newspapers, periodicals, and related
12 publications, and on television, radio, billboards, and electronic media;

13 (B) Animals procured for medical research;

14 (C)(i) Commodities and services for use in research,
15 education, and treatment for the diagnosis, cure, and prevention of disease
16 may be procured, with administrative approval, through a group purchasing
17 entity serving other public health institutions when substantial savings are
18 available.

19 (ii) A report shall be filed annually with the
20 ~~division~~ Division of the Legislative Audit reflecting the justification of
21 and the estimated savings accruing due to the use of this exemption;

22 (D)(i) Commodities procured for resale in cafeterias,
23 commissaries, bookstores, gift shops, canteens, and other similar
24 establishments.

25 (ii) However, these commodities procured shall not
26 be sold or transferred to any agency with the intent of circumventing
27 applicable procurement procedures;

28 (E) Commodities procured from nonprofit workshops in
29 accordance with § 19-11-501 et seq.;

30 (F)(i) Contracts awarded by agencies for the construction
31 of buildings and facilities and for major repairs.

32 (ii) These contract exemptions shall not extend to
33 the procurement of any commodities not otherwise exempt, which are to be
34 furnished by the agency under any such contract;

35 (G) Contracts awarded by the Arkansas State Highway and
36 Transportation Department for the construction, reconstruction, and

1 maintenance of roads and bridges in the state highway system and for the
2 county, rural road aid, and city street aid programs;

3 (H) Contracts by institutions of higher learning for
4 personal and consulting services and contracts with students;

5 (I)(i) Farm products procured or sold by a state agency
6 having an agency procurement official.

7 (ii) The current trade customs with respect to the
8 procurement or sale of cotton, cotton seed, rice, and other farm products
9 shall be followed when it is necessary to do so in order to obtain the best
10 price for the commodities procured or sold;

11 (J) Fees, including medical fees and physician fees;

12 (K) Foster care maintenance services provided by foster
13 family homes approved by the Division of Children and Family Services for
14 children whose placement and care are the responsibility of the division;

15 (L) Freight and storage charges and demurrage;

16 (M) Licenses required prior to performance of services;

17 (N)(i) Livestock procured by an agency having an official
18 experienced in selection and procurement of livestock.

19 (ii) Such procurement will be reported to the State
20 Procurement Director, giving details of the purchase;

21 (O) Livestock procured for breeding, research, or
22 experimental purposes;

23 (P) Maintenance on office machines and technical
24 equipment;

25 (Q) Medical items specifically requested by a physician
26 for treatment or diagnosis of patients in his or her care including
27 prosthetic devices, surgical instruments, heart valves, pacemakers,
28 radioisotopes, and catheters;

29 (R) Membership in professional, trade, and other similar
30 associations;

31 (S) Perishable foodstuffs for immediate use or processing;

32 (T) Postage;

33 (U) Published books, manuals, maps, periodicals, films,
34 technical pamphlets, and copyrighted educational aids for use in libraries
35 and for other informational or instructional purposes in instances in which
36 other applicable law does not provide a restrictive means for the acquisition

1 of them;

2 (V) Services of visiting speakers, lecturers, and
3 performing artists;

4 (W) Taxes;

5 (X) Travel expense items such as room and board and
6 transportation charges;

7 (Y) Utility services or equipment which is defined,
8 recognized, and regulated by the Arkansas Public Service Commission as a
9 monopoly offering;

10 (Z) Works of art for museum and public display;

11 (AA) Capital improvements valued at less than twenty
12 thousand dollars (\$20,000), subject to minimum standards and criteria of the
13 Arkansas Building Authority; and

14 (BB) Services related to work force development, incumbent
15 work force training, or specialized business or industry training.

16 (15)(A)(i) "Grant" means the furnishing by the state of
17 assistance, whether financial or otherwise, to any person to support a
18 program authorized by law.

19 (ii) It does not include an award whose primary
20 purpose is to procure an end product, whether in the form of commodities or
21 services.

22 (B) A contract resulting from such an award is not a grant
23 but a procurement contract;

24 (16) "May" means the permissive;

25 (17) "Paper product" means any item manufactured from paper or
26 paperboard;

27 (18) "Person" means any business, individual, union, committee,
28 club, or other organization or group of individuals;

29 (19) "Political subdivisions" means counties, municipalities,
30 and school districts;

31 (20)(A) "Procurement" means the buying, purchasing, renting,
32 leasing, or otherwise obtaining of any commodities or services.

33 (B) It also includes all functions that pertain to the
34 obtaining of any public procurement, including description of requirements,
35 selection and solicitation of sources, preparation and award of contract,
36 disposal of commodities, and all phases of contract administration;

1 (21) "Procurement agency" means any state agency which is
2 authorized by this subchapter or implementing regulations, or by way of
3 delegation from the State Procurement Director to contract on its own behalf
4 rather than through the central contracting authority of the State
5 Procurement Director;

6 (22)(A) "Procurement agent" means any person authorized by a
7 state agency not having an agency procurement official to enter into and
8 administer contracts and make written determinations and findings with
9 respect thereto, in accordance with procedures prescribed by this subchapter.

10 (B) The term also includes an authorized representative
11 acting within the limits of authority;

12 (23)(A) "Public funds" means all state-appropriated and cash
13 funds of state agencies, as defined by applicable law or official ruling.
14 Public funds for purposes of this subchapter shall not include funds
15 administered by, or under the control of, agencies, except public funds.

16 (B) Without necessarily being limited thereto, it does not
17 include grants, donations, research contracts, and revenues derived from
18 self-supporting enterprises which are not operated as a primary function of
19 the agency, no part of which funds are deposited in the State Treasury;

20 (24) "Public notice" means the distribution or dissemination of
21 information to interested parties using methods that are reasonably
22 available. Such methods will often include publication in newspapers of
23 general circulation, electronic or paper mailing lists, and websites
24 designated by the State of Arkansas and maintained for that purpose;

25 (25)(A) "Purchase request" means that document written or
26 electronic whereby a using agency requests that a contract be obtained for a
27 specified need.

28 (B) It may include, but is not limited to, the technical
29 description of the requested item, delivery schedule, transportation,
30 criteria for evaluation of solicitees, suggested sources of supply, and
31 information supplied for the making of any written or electronic
32 determination and finding required by this subchapter;

33 (26) "Recycled paper" means paper which contains recycled fiber
34 in a proportion specified by the State Procurement Director;

35 (27)(A) "Services" means the furnishing of labor, time, or
36 effort by a contractor, not involving the delivery of a specific end product

1 other than reports which are merely incidental to the required performance.

2 (B) This term shall not include employment agreements,
3 collective bargaining agreements, exempt commodities and services, or
4 architectural or engineering contracts requiring approval of ~~Arkansas State~~
5 ~~Building Services~~ Arkansas Building Authority or ~~public institutions of~~
6 higher education;

7 (28) "Shall" means the imperative;

8 (29) "Signature" means a manual or an electronic or a digital
9 method executed or adopted by a party with the intent to be bound by or to
10 authenticate a record which is:

11 (A) Unique to the person using it;

12 (B) Capable of verification;

13 (C) Under the sole control of the person using it; and

14 (D) Linked to data in such a manner that if the data are
15 changed, the electronic signature is invalidated;

16 (30)(A) "State agency" means any agency, institution, authority,
17 ~~departments~~ department, board, commission, bureau, council, or other agency
18 of the state supported by appropriation of state or federal funds, except an
19 exempt agency pursuant to § 19-11-203(13).

20 (B) "State agency" includes an exempt agency when any
21 agency or exempt agency procures any item subject to Arkansas Constitution,
22 Amendment 54;

23 (31)(A) "State contract" means a contract for the procurement of
24 commodities or services in volume, awarded by the State Procurement Director.

25 (B) The contract may apply to all or part of the state;

26 (32) "State Procurement Director" means the person holding the
27 position created in § 19-11-216, as the head of the central procurement
28 office of the State of Arkansas;

29 (33) "Suspension" means the disqualification of a person to
30 receive invitations for bids, requests for proposals, or the award of a
31 contract by the state for a temporary period pending the completion of an
32 investigation and any legal proceedings that may ensue because a person is
33 suspected upon probable cause of engaging in criminal, fraudulent, or
34 seriously improper conduct or failure or inadequacy of performance, which may
35 lead to debarment;

36 (34)(A) "Technical and general services" means:

1 (1) Work accomplished by skilled individuals involving
2 time, labor, and a degree of expertise, in which performance is evaluated
3 based upon the quality of the work and the results produced;

4 (2) Work performed to meet a demand, including, but not
5 limited to, work of a recurring nature that does not necessarily require
6 special skills or extensive training; or

7 (3) The furnishing of labor, time, or effort by a
8 contractor or vendor, not involving the delivery of any specific end product
9 other than reports that are incidental to the required performance.

10 (B) Technical and general services shall not be construed to
11 include the procurement of professional services under § 19-11-801 et seq.;

12 ~~(34)~~(35) "Using agency" means any state agency which utilizes
13 any commodities or services purchased under this subchapter; and

14 ~~(35)~~(36) "Written" or "in writing" means the product of any
15 method of forming characters on paper, other materials, or viewable screens,
16 which can be read, retrieved, and reproduced, including information that is
17 electronically transmitted and stored.

18
19 SECTION 2. Arkansas Code § 19-11-220(a), concerning officials for
20 commodities and services, is amended to read as follows:

21 (a) In addition to any state agency authorized by regulation to have
22 an agency procurement official, each of the following state agencies may
23 elect to have such an official for commodities, technical and general
24 services, and professional and consultant services which are not within the
25 exclusive jurisdiction of the State Procurement Director, and which are not
26 under state contract:

27 (1) Arkansas State Highway and Transportation Department;

28 (2) Arkansas State University at Beebe;

29 (3) Arkansas State University at Jonesboro;

30 (4) Arkansas State University System;

31 (5) Arkansas Tech University;

32 (6) Henderson State University;

33 (7) Southern Arkansas University;

34 (8) University of Arkansas at Fayetteville;

35 (9) University of Arkansas Fund entities;

36 (10) University of Arkansas at Little Rock;

- 1 (11) *University of Arkansas at Monticello;*
- 2 (12) *University of Arkansas at Pine Bluff;*
- 3 (13) *University of Arkansas for Medical Sciences;*
- 4 (14) *University of Central Arkansas;*
- 5 (15) *Arkansas State University at Mountain Home;*
- 6 (16) *Arkansas State University at Newport;*
- 7 (17) *Black River Technical College;*
- 8 (18) *Cossatot Technical College;*
- 9 (19) *East Arkansas Community College;*
- 10 (20) *Garland County Community College;*
- 11 (21) *Mississippi County Community College;*
- 12 (22) *Mid-South Community College;*
- 13 (23) *North Arkansas College;*
- 14 (24) *Northwest Arkansas Community College;*
- 15 (25) *Ouachita Technical College;*
- 16 (26) *Ozarka Technical College;*
- 17 (27) *Phillips Community College of the University of Arkansas;*
- 18 (28) *Petit Jean College;*
- 19 (29) *Pulaski Technical College;*
- 20 (30) *Rich Mountain Community College;*
- 21 (31) *Southern Arkansas University Tech;*
- 22 (32) *Southeast Arkansas College;*
- 23 (33) *South Arkansas Community College;*
- 24 (34) *University of Arkansas Community College at Batesville;*
- 25 (35) *University of Arkansas Community College at Hope;*
- 26 (36) *Westark College; and*
- 27 (37) *Department of Higher Education.*

28
29 SECTION 3. *Arkansas Code § 19-11-221(a), concerning agency procurement*
30 *officials for the Department of Correction, is amended to read as follows:*

31 (a) *In addition to those agencies, institutions, and departments of*
32 *state government enumerated in § 19-11-220 which are authorized to elect to*
33 *have agency procurement officials for commodities, technical and general*
34 *services, and professional and consultant services which are not within the*
35 *exclusive jurisdiction of the State Procurement Director, which are not under*
36 *state contract, and which are not procured in accordance with § 19-11-230,*

1 the Department of Correction and the Department of Community Correction are
2 authorized to have such officials, for the sole purpose of procuring
3 perishable food items, who shall possess all powers, functions, and duties as
4 authorized for agency procurement officials under the provisions of this
5 subchapter with respect to perishable food items only.

6
7 SECTION 4. Arkansas Code § 19-11-222(a), concerning exclusive
8 jurisdiction over procurement, is amended to read as follows:

9 (a) The State Procurement Director shall have exclusive jurisdiction
10 over the procurement of the following ~~commodities and services~~:

- 11 (1) Items subject to Arkansas Constitution, Amendment 54;
- 12 (2) Wholesale gasoline, oil, and related products;
- 13 (3) Tires;
- 14 (4) Passenger motor vehicles and trucks, except highway
15 construction and highway maintenance equipment or any specialized type of
16 equipment used in highway construction, except as otherwise provided in this
17 subchapter;
- 18 (5) Paper products;
- 19 (6) New and used school buses for state agencies ~~and school~~
20 ~~districts~~;
- 21 (7) A purchasing card program and travel card program to include
22 implementation and administration; and
- 23 (8) An electronic commerce procurement solution to include
24 planning and administration, consistent with the established financial
25 systems of the state.

26
27 SECTION 5. Arkansas Code § 19-11-223 is amended to read as follows:
28 19-11-223. Commodities, technical and general services, and
29 professional and consultant services under state contract.

30 (a) In addition to establishing a state contract for those
31 commodities, technical and general services, and professional and consultant
32 services within the exclusive jurisdiction of the State Procurement Director
33 under § 19-11-222, the director may award a state contract for other
34 commodities, technical and general services, and professional and consultant
35 services in those instances where substantial savings may be effected by
36 quantity purchasing of commodities, technical and general services, or

1 professional and consultant services in general use by several state
2 agencies.

3 (b) State contracts shall be limited to those commodities on which, by
4 virtue of custom or trade, substantial savings may be realized. In those
5 instances where substantial savings are not effected, the letting of state
6 contracts for those commodities shall be discontinued.

7 (c) Except for the procurement of commodities, technical and general
8 services, and professional and consultant services within the exclusive
9 jurisdiction of the director, state agencies with agency procurement
10 officials which can demonstrate a geographical or volume buying advantage
11 need not participate in the state contract. However, if the commodities,
12 technical and general services, or professional and consultant services
13 obtained are procured at a substantially higher price during the same state
14 contract period, that agency must participate in the state contract upon
15 expiration of the agency's contract.

16 (d) All state agencies, except as authorized in this section, which
17 require commodities, technical and general services, and professional and
18 consultant services that are under state contract shall procure these
19 commodities, technical and general services, and professional and consultant
20 services exclusively under such contract.

21 (e) All contracts concerning commodities, technical and general
22 services, and professional and consultant services shall disclose a projected
23 total cost, including, but not limited to, expenditures that may be incurred
24 under all available periods of extension if the extensions were executed.

25

26 SECTION 6. Arkansas Code § 19-11-229 is amended to read as follows:

27 19-11-229. Competitive sealed bidding.

28 (a) ~~Definition.~~ "Competitive sealed bidding" means a method of
29 procurement which requires:

30 (1) Issuance of an invitation for bids with a purchase
31 description and all contractual terms and conditions applicable to the
32 procurement;

33 (2) Public, contemporaneous opening of bids at a predesignated
34 time and place;

35 (3) Unconditional acceptance of a bid without alteration or
36 correction, except as authorized in §§ 19-11-204 and 19-11-228 - 19-11-240;

1 (4) Award to the responsive and responsible bidder who has
2 submitted the lowest bid that meets the requirements and criteria set forth
3 in the invitation for bids; and

4 (5) Public notice.

5 (b) Contracts exceeding an estimated purchase price of twenty-five
6 thousand dollars (\$25,000) shall be awarded by competitive sealed bidding,
7 unless a determination is made in writing by the agency procurement official
8 or the State Procurement Director of the Office of State Procurement of the
9 Department of Finance and Administration that this method is not practicable
10 and advantageous and specifically states the reasons therefor. The director
11 may provide, by regulation, that it is not practicable to procure specified
12 types of commodities, technical and general services, or professional and
13 consultant services by competitive sealed bidding. Factors to be considered
14 in determining whether competitive sealed bidding is not practicable shall
15 include whether:

16 (1) Purchase descriptions are suitable for award on the basis of
17 the lowest evaluated bid price; and

18 (2) The available sources, the time and place of performance,
19 and other relevant circumstances are appropriate for the use of competitive
20 sealed bidding.

21 (c) Where it is considered impractical to initially prepare a purchase
22 description to support an award based on price, an invitation for bids may be
23 issued requesting the submission of unpriced technical proposals to be
24 followed by an invitation for bids limited to those bidders whose technical
25 proposals meet the requirements set forth in the first invitation.

26 (d) Notice inviting bids shall be given not fewer than five (5)
27 calendar days nor more than thirty (30) calendar days preceding the date for
28 the opening of bids by publishing such notice at least one (1) time in at
29 least one (1) newspaper having general circulation in the state or posting by
30 electronic media, but in all instances adequate notice shall be given. The
31 notice shall include a general description of the commodities, technical and
32 general services, or professional and consultant services to be procured and
33 shall state where invitations for bid may be obtained. The notice shall also
34 state the date, time, and place of bid opening.

35 (e) Bids shall be opened publicly in the presence of one (1) or more
36 witnesses at the time and place designated in the invitation for bids. Each

1 *bid, together with the name of the bidder, shall be recorded and open to*
2 *public inspection.*

3 *(f)(1)(A) Bids shall be evaluated based on the requirements set forth*
4 *in the invitation for bids.*

5 *(B) These requirements may include criteria to determine*
6 *acceptability such as:*

7 *(i) Inspection;*

8 *(ii) Testing;*

9 *(iii) Quality;*

10 *(iv) Workmanship;*

11 *(v) Delivery;*

12 *(vi) Past performance; and*

13 *(vii) Suitability for a particular purpose and*

14 *criteria affecting price such as life-cycle or total ownership costs.*

15 *(2)(A) The invitation for bids shall set forth the evaluation*
16 *criteria to be used.*

17 *(B) No criteria may be used in bid evaluation that were*
18 *not set forth in the invitation for bids.*

19 *(g) Correction of patent or provable errors in bids which do not*
20 *prejudice other bidders, or withdrawal of bids, may be allowed only to the*
21 *extent permitted under regulations promulgated by the director and upon*
22 *written approval of the Attorney General or a designee of such officer. No*
23 *award shall be made on the basis of a corrected bid, if the corrected bid*
24 *exceeds the next lowest bid of a responsible bidder.*

25 *(h) The contract shall be awarded with reasonable promptness by*
26 *written notice to the lowest responsible bidder whose bid meets the*
27 *requirements and criteria set forth in the invitation for bids. In the event*
28 *all bids exceed available funds as certified by the appropriate fiscal*
29 *officer, the director or the head of a procurement agency is authorized in*
30 *situations where time or economic considerations preclude resolicitation of*
31 *work of a reduced scope to negotiate an adjustment of the bid price,*
32 *including changes in the bid requirements, with the lowest responsive and*
33 *responsible bidder, in order to bring the bid within the amount of available*
34 *funds. All other bidders requesting to be notified of the award decision*
35 *shall be promptly notified of the decision.*

36 *(i) An invitation for bid may be cancelled, or any or all bids may be*

1 rejected in writing by the director or the agency procurement official.

2
3 SECTION 7. Arkansas Code § 19-11-234(a)(4), concerning competitive
4 bidding, is amended to read as follows:

5 (4) Only firms which sell the type of commodity or service to be
6 procured shall be contacted. The purchase procedures outlined in this section
7 shall not apply to commodities, technical and general services, and
8 professional and consultant services under state contract.

9
10 SECTION 8. Arkansas Code § 19-11-236(a), concerning the
11 prequalification of suppliers, is amended to read as follows:

12 (a) The State Purchasing Director may provide for prequalification of
13 suppliers as responsible prospective contractors for particular types of
14 commodities, technical and general services, and professional and consultant
15 services. Solicitation mailing lists of potential contractors shall include,
16 but shall not be limited to, such prequalified suppliers.

17
18 SECTION 9. Arkansas Code § 19-11-241(b), concerning specifications, is
19 amended to read as follows:

20 (b) The State Procurement Director shall promulgate regulations
21 governing the preparation, maintenance, and content of standard and
22 nonstandard specifications for commodities, technical and general services,
23 and professional and consultant services procured by the Office of State
24 Procurement.

25
26 SECTION 10. Arkansas Code § 19-11-244 is amended to read as follows:

27 19-11-244. Resolution of protested solicitations and awards.

28 (a) Any actual or prospective bidder, offer or, or contractor who is
29 aggrieved in connection with the solicitation or award of a contract may
30 protest to the State Procurement Director or the head of a procurement
31 agency. The protest shall be submitted in writing within fourteen (14)
32 calendar days after such aggrieved person knows or should have known of the
33 facts giving rise thereto.

34 (b) The director, the head of a procurement agency, or a designee of
35 either officer shall have the authority, prior to the commencement of an
36 action in court or any other action provided by law concerning the

1 controversy, to settle and resolve a protest of an aggrieved bidder, offer
2 or, or contractor, actual or prospective, concerning the solicitation or
3 award of a contract. This authority shall be exercised in accordance with
4 laws governing the Arkansas State Claims Commission and the regulations
5 promulgated by the director.

6 (c)(1) If the protest is not resolved by mutual agreement, and after
7 reasonable notice to the ~~person~~ protestor involved and reasonable opportunity
8 for ~~that person~~ the protestor to respond to the protest issues according to
9 the regulations promulgated by the director, the head of a procurement
10 agency, the director, or a designee of either officer shall promptly issue a
11 decision in writing.

12 (2) The decision shall state the reasons for the action taken.

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

16 (e) A decision under subsection (c) of this section shall be final and
17 conclusive.

18 (f) In the event of a timely protest under subsection (a) of this
19 section, the state shall not proceed further with the solicitation or with
20 the award of the contract until the director or the head of a procurement
21 agency makes a written determination that the award of the contract without
22 delay is necessary to protect substantial interests of the state.

23 ~~(g) Award of Costs to Protestants.~~ When the protest is sustained and
24 the successfully protesting bidder or offeror was denied the contract award,
25 the protesting bidder or offeror may be entitled to the reasonable costs
26 incurred in connection with the solicitation, including bid preparation
27 costs, through the commission.

28
29 SECTION 11. Arkansas Code § 19-11-246(c), concerning the resolution of
30 contract and breach of contract controversies, is amended to read as follows:

31 (c)(1) If such a claim or controversy is not resolved by mutual
32 agreement, and after reasonable notice to the ~~person involved~~ contractor and
33 reasonable opportunity for ~~that person~~ the contractor to ~~respond to~~ present
34 the claim or controversy in accordance with the regulations promulgated by
35 the director, the head of a procurement agency, the director, or the designee
36 of either officer shall promptly issue a decision in writing.

1 (2) *The decision shall state the reasons for the action taken.*

2
3 SECTION 12. *Arkansas Code § 19-11-251 is amended to read as follows:*
4 *19-11-251. Intergovernmental use of commodities or services.*

5 *Any public procurement unit may enter into an agreement, independent of*
6 *the requirements of §§ 19-11-204, 19-11-228 - 19-11-240, and 19-11-263 which*
7 *refer to source selection and contract formation, and §§ 19-11-205, 19-11-*
8 *242, and 19-11-243, which refer to commodity management, with any other*
9 *public procurement unit or external procurement activity for the*
10 *intergovernmental use of commodities, technical and general services, or*
11 *professional and consultant services under the terms agreed upon between the*
12 *parties and in accordance with the rules and regulations promulgated under*
13 *this subchapter.*

14
15 SECTION 13. *Arkansas Code § 19-11-252 is amended to read as follows:*
16 *19-11-252. Rules and regulations.*

17 *The State Procurement Director may promulgate reasonable rules and*
18 *regulations pertaining to the sale or acquisition of any commodities,*
19 *technical and general services, or professional and consultant services*
20 *belonging to or produced by another public procurement unit or external*
21 *procurement activity as authorized in §§ 19-11-206 and 19-11-249 - 19-11-258.*

22
23 SECTION 14. *Arkansas Code § 19-11-1002 is amended to read as follows:*
24 *19-11-1002. Purpose of contracts.*

25 *The principal purpose of a professional services contract or a*
26 *consultant services contract is the procurement of ~~the services of an~~*
27 *~~individual~~ by the state agency rather than the procurement of commodities.*

28
29 SECTION 15. *Arkansas Code § 19-11-1007 is amended to read as follows:*
30 *19-11-1007. Certification by agency head.*

31 *The head of every agency shall certify by his or her signature on each*
32 *contract entered into by that agency that:*

33 (1) *All information required by law and by regulations is*
34 *supplied;*

35 (2) *The proper contracting form is utilized;*

36 (3) *All information contained in the contract is true and*

1 correct to the best of his or her knowledge and belief;

2 (4) All general guidelines prescribed by the State Procurement
3 Director have been complied with;

4 (5) The services proposed to be provided under the contract are
5 necessary for operation of the state agency in fulfilling its legal
6 responsibilities and cannot be provided by any existing state agency;

7 (6) The contractor is fully qualified to perform the contract
8 and has no vested interest in the subject matter of the contract that would
9 constitute a conflict of interest and a bar to the contractor's providing
10 services of a professional and disinterested quality; ~~and~~

11 (7) The contract terms are reasonable and the benefits to be
12 derived are sufficient to warrant the expenditure of the funds called for in
13 ~~the contract-;~~

14 (8) Sufficient funds are available to pay the obligations when
15 they become due; and

16 (9) A projected total cost of the contract is provided to
17 include expenditures that may be incurred under all available periods of
18 extension if the extensions were executed.

19
20 SECTION 16. Arkansas Code § 19-11-1011(a), concerning contract review
21 by the Office of State Procurement, is amended to read as follows:

22 (a)(1) Every contract for professional consultant services covered by
23 this subchapter that is executed using the professional and consultant
24 service contract form approved by the Director of the Office of State
25 Procurement shall be filed with the Office of State Procurement of the
26 Department of Finance and Administration.

27 (2) The execution date of all contracts shall be defined as the
28 date upon which performance of the services to be rendered under the contract
29 is to begin and not the date upon which the agreement was made.

30
31 SECTION 17. Arkansas Code § 19-11-1012 is amended to read as follows:
32 19-11-1012. Standard contract forms.

33 (a) The State Procurement Director shall prescribe standard forms to
34 be utilized by all state agencies.

35 (b) The standard contract form shall include the following items, plus
36 such additional items as the director shall deem desirable for the purposes

1 of this subchapter:

2 (1) A section setting forth in reasonable detail the objectives
3 and scope of the contractual agreement and the methods to be used to
4 determine whether the objectives specified have been achieved;

5 (2) The rates of compensation, transportation, per diem,
6 subsistence, out-of-pocket allowances, and all other items of costs
7 contemplated to be paid the contractor by the agency;

8 (3) The method by which the rate of compensation and the total
9 payment shall be calculated;

10 (4) The maximum number of dollars which the agency may be
11 obligated to pay to the contractor under the terms of the contract, including
12 all expenses and other items of costs, and the source of funding to be
13 utilized;

14 (5) The term of the contract;

15 (6)(A) The names ~~and social security numbers~~ of all individuals
16 who will be supplying services to the agency or to third-party beneficiaries
17 under the terms of the contracts, so far as those names are known to the
18 contractor at the time of the execution of the contract.

19 (B) If the names of all individuals supplying services
20 under the contract are not available at the time of the execution of the
21 contract, the contract shall contain a provision requiring the contractor to
22 submit periodically the names ~~and social security numbers~~ of individuals
23 supplying services as soon as the identity of those individuals is known to
24 the contractor;

25 (7) Where the contractor is a business entity, the federal
26 identification number of the business entity shall be listed on the contract
27 form;

28 (8)(A) A certification shall be included, signed by the
29 contractor, as follows:

30 " _____ (name) _____ (title)

31 "I....., certify under penalty of
32 perjury that, to the best of my knowledge and belief, no regular full-time or
33 part-time employee of any state agency of the State of Arkansas will receive
34 any personal, direct, or indirect monetary benefits which would be in
35 violation of the law as a result of the execution of this contract."

36 (B) For the purpose of subdivision (b)(8)(A) of this

1 section, it shall be understood that where the contractor is a widely held
2 public corporation, the term "direct or indirect monetary benefit" shall not
3 apply to any regular corporate dividends paid to a stockholder of the
4 corporation who is also a state employee and who owns less than ten percent
5 (10%) of the total outstanding stock of the contracting corporation;

6 (9)(A) For any contract in which the total compensation
7 exclusive of reimbursable expenses to be paid by the agency does not exceed
8 twenty-five thousand dollars (\$25,000), a purchase order may be utilized in
9 lieu of the standard form or forms prescribed by the director.

10 (B)(i) However, should the agency enter into a subsequent
11 contract with the same individual or organization during the same fiscal
12 year, regardless of the nature of the contract, then the details of the
13 original contract which utilized a purchase order form and of all subsequent
14 contracts, regardless of amount or type, shall be promptly reported to the
15 director.

16 (ii) This reporting shall be done to allow him or
17 her to determine whether the agency is utilizing a series of contracts to
18 avoid the use of the standard form and to avoid the application of
19 appropriate regulations;

20 (10) Standard contract forms in use by licensed practitioners
21 such as architects and engineers may be used to supplement the standard
22 contract forms; and

23 (11) All professional consultant services contracts shall
24 contain the following clause:

25
26 "In the event the State of Arkansas fails to appropriate funds or make
27 moneys available for any biennial period covered by the term of this contract
28 for the services to be provided by the contractor, this contract shall be
29 terminated on the last day of the last biennial period for which funds were
30 appropriated or moneys made available for such purposes.

31
32 This provision shall not be construed to abridge any other right of
33 termination the agency may have."

34 (c) For the purpose of reporting methods of finance, agencies shall
35 disclose the total estimated project cost in addition to any other reporting
36 requirements of the Legislative Council or the Joint Budget Committee.

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/s/ Dangeau