



STATE OF ARKANSAS
**Department of Finance
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OSP Policies

Special Procurements

It is the policy of the State of Arkansas to promote increased economy in state procurement by fostering fair and open competition. State agencies should strive for an open and competitive procurement process to help satisfy the public that the procurement process is fair and not influenced by political or other improper considerations.

Despite this State's strong policy of favoring competitive procurement where practicable, unusual or unique situations may exist that can make the application of all requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest. In such instances, state agencies may effectuate a special procurement ("Special Procurement") pursuant to Ark. Code Ann. § 19-11-263.

Special procurements are not the same as Sole Source procurements. The Sole Source procurement method is only to be used in those limited instances where it is determined that there is only one source for a required or designated commodity or service. Strict observance of this safeguard will help maximize the use of full and fair competition.

This memorandum outlines state policy regarding the use of Special Procurement.

- As a procedural safeguard, only the State Procurement Director or the head of a procurement agency (as defined by Ark. Code Ann. § 19-11-203(21)) may initiate a Special Procurement.
- To initiate a Special Procurement, the State Procurement Director (if OSP is effectuating the procurement) or the head of a procurement agency (if the agency is effectuating the procurement), must first make a written determination that an unusual or unique situation exists that makes applying the requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest. To promote accountability, this determination will be signed by the officer making the determination.
- OSP recommends that the written determination explain the basis for the special procurement. This explanation needs to identify:
 - (a) the unusual or unique situation that justifies special procurement;
 - (b) why, under the situation presented, competitive procurement is contrary to the public interest;

- (c) how long the unusual or unique situation that justifies special procurement as an alternative to competitive procurement is expected to last;
- (d) the duration of the contract and, if it exceeds the anticipated duration of the unusual or unique situation used to justify special procurement, what rationale justifies making the duration of the contract exceed the anticipated duration of the unusual or unique situation used to justify special procurement; and
- (e) the particular contractor selected and the reasons for the selection.

Special Procurements used to avoid a shortage of a vital commodity or a service until such time as a competitive procurement process can be finalized must be limited to documented additional time needed to competitively procure the commodity or service.

- The written determination must be kept in the agency's contract file and submitted to OSP for review and monthly reporting to the Legislative Council.
- Where a contract is of a type and/or amount that requires it to be submitted for review prior to execution, it is still subject to such review prior to execution. Special Procurement is merely a procurement method and does not excuse non-compliance with any other applicable laws subjecting particular types of contracts to prior review.