

Summary of Major Changes in Procurement Code

Underlines indicate additions, strike-throughs indicate deletion. An asterisk indicates that the numbers have not yet been reconciled.

The Office of State Procurement is now in the Department of Transformation and Shared Services. See 19-11-215

1. The definition for “Commodities” found in 19-11-203 is amended as follows

(4)(A) “Commodities” means all personal property, including, but not limited to, equipment, printing, stationery, supplies, and insurance, but excluding leases without limitation:

- (i) Goods, as defined in § 4-2-105;
- (ii) Leases, as defined in § 4-2A-103; and
- (iii) Insurance.

(B) “Commodities does not include:

- (i) A lease on real property, real property, or a permanent interest in real property, exempt;
- (ii) Exempt commodities and services, and capital;

and

- (iii) Capital improvements;

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2. The definition for “Services” found in 19-11-203 is amended as follows:

(27)(A) “Services” means the furnishing of labor, time, or effort by a contractor, ~~not involving the delivery of a specific end product other than reports which are merely incidental to the required performance~~ that does not produce tangible commodities.

(B) “Services” includes without limitation:

- (i) Consulting services;
- (ii) Personal services;
- (iii) Professional services;
- (iv) Technical and general services; and
- (v) The furnishing of labor, time, or effort by a contractor for the

generation,

customization, configuration, or development of software and other intangible property other than technical support incidental to the procurement of proprietary software.

(C) “Services” ~~shall~~ does not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of the Arkansas Building Authority of the Department of Finance and Administration or Division of Higher Education ~~higher education;~~

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3. The powers and duties of the State Procurement Director found in 19-11-217 have been expanded to include the following mandates:

(9)* Shall create a roster of expiring contracts entered into by a state agency for which there is no new requisition.

(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.

(9)* Shall provide for enhanced training on the drafting of specifications for procurement; and

(10)* Shall maintain records of bids and proposals that are rejected by the office for failure to adhere to the mandatory requirements of a solicitation.

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4. The section on assistants and designees found in 19-11-218 has been increased to add the following requirements regarding written designation orders:

(B) A written delegation order issued under this section shall:

(i) Include an expiration date for the written delegation order;

(ii) Be publicly posted on the official website of the Office of State Procurement;

(iii) Remain in effect under the original terms unless the terms of the written delegation

order are modified or rescinded in writing by the director;

(iv) Not be issued for a term that exceeds two (2) years; and

(v) Be narrowly tailored if the written delegation order is based on the type of commodity or service being procured.

(C) The director shall maintain records of each written delegation order issued under this section.

(D) A person who is to be given authority under a written delegation order issued under this section shall complete training on state procurement laws, as provided for in this subchapter and in the rules adopted by the director, before the written delegation order is issued.

(b) The director shall adopt rules to:

(1) Implement the requirements for written delegation orders under this section; and

(2) Outline the procurement training required under this section.

Act 420 HB1179

5. The section on Legal Counsel found in 19-11-219 has added 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

Act 418 HB1162

6. 19-11-223. Commodities, technical and general services, and professional and consultant services under state contract has several changes regarding mandatory state contracts.

Mandatory state contract determination and submission:

(a)(1) In addition to establishing a state contract for those commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the State Procurement Director under § 19-11-222, the director may award a mandatory state contract for other commodities, technical and general services, and professional and consultant services ~~in those instances when substantial savings may be effected by quantity purchasing of commodities, technical and general services, or professional and consultant services in general use by several state agencies~~ when the director determines that combining the collective purchasing power of the state would be beneficial to the state.

(2) The director shall submit a mandatory state contract that is not for commodities or services within the exclusive jurisdiction of the director to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, for review.

~~(b)(1) State contracts shall be limited to those commodities on which, by virtue of custom or trade, substantial savings may be realized.~~

~~(2) In those instances in which substantial savings are not effected, the letting of state contracts for those commodities shall be discontinued.~~

~~(e)(1) Except for the procurement of commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the director, state agencies with agency procurement officials that can demonstrate a geographical or volume buying advantage need not participate in the state contract.~~

~~(2) However, if the commodities, technical and general services, or professional and consultant services obtained are procured at a substantially higher price during the same state contract period, that state agency must participate in the state contract upon expiration of the state agency's contract.~~

Mandatory state contract exemption:

~~(d) Except as authorized in this section, all state agencies which require~~ (b)(1) Unless an exemption is approved by the director under subdivision (b)(2) of this section, a state agency that requires commodities, technical and general services, and professional and consultant services that are under a

mandatory state contract shall procure these commodities, technical and general services, and professional and consultant services exclusively under such the mandatory state contract.

(2)(A) Except as provided in § 19-11-233, the director may approve an exemption from a mandatory state contract awarded under this section only if the state agency demonstrates that substantial savings will likely be effected by purchasing outside of the mandatory state contract.

(B)(i) Approval of an exemption from a mandatory state contract under this section shall be in writing.

(ii) Denial of a request for an exemption from a mandatory state contract under this section is not required to be in writing.

(ec) All contracts concerning commodities, technical and general services, and professional and consultant services shall disclose a projected total cost, including, ~~but not limited to,~~ without limitation expenditures that may be incurred under all available periods of extension if the extensions were executed.

Duties of the Director of OSP regarding mandatory state contracts:

(d) The director shall:

(1) Identify and prioritize opportunities for awarding mandatory state contracts under this section;

(2) Conduct mandatory state contract procurements under this section that would produce savings for the state;

(3) Attempt to invite the participation of the potentially affected state agencies in the development and evaluation of a mandatory state contract procurement;

(4) Post notice of his or her intent to procure a mandatory state contract on the official website of The Office of State Procurement; and

(5)(A) Promote the use of mandatory state contracts among county and city governments, including without limitation making information about the mandatory state contracts readily available and searchable.

(B) The director shall adopt rules to include any necessary conditions, reporting, or document retention standards related to the director's duty to promote mandatory state contract use under this subsection.

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7. According to 19-11-225, OSP Rules must be reviewed as follows:

(2) A rule promulgated by the director under this subchapter is not effective until the rule is:

(A) Submitted to and reviewed by the Review Subcommittee of the Legislative Council; and

(B) Reviewed and approved by the Legislative Council under § 10-3-309.

Act 419 HB1178

8. 19-11-229, Competitive Sealed Bidding, has several separate changes.

Notification:

(d)(4) Notice inviting bids shall ~~be~~:

(1) ~~Be~~ given not fewer than five (5) calendar days nor more than ~~thirty (30)~~ ninety (90) calendar days preceding the date for the opening of bids by publishing the notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances, adequate notice shall be given: ;

(2)(A) ~~The notice shall include~~ Include a general description of the commodities, technical and general services, or professional and consultant services to be procured; ~~and shall state~~

(3) State where invitations for bids may be obtained: ;

~~(B) The notice shall also state~~ (4) State the date, time, and place of bid opening; and

(5) State the time, date, and place of the solicitation conference if a solicitation conference is to be held before the opening of bids to provide information to prospective bidders.

Time Discount:

(3)(A) A time discount may be considered in the evaluation of a bid only:

(i) If the state agency specifically solicits pricing that requests a time discount; and

(ii) Under the structured terms of the invitation for bids.

(B) If a bidder offers a time discount as part of its bid without the solicitation of time discounts by the state agency, the state agency shall not consider the time discount.

Clarification of Bid:

(3)(A) The director or an agency procurement official may seek the clarification of a submitted bid.

(B) A written response by a bidder under this subsection shall only clarify the submitted bid and shall not add any substantive language to the submitted bid or change the terms of the submitted bid.

(C) If the bidder fails or refuses to clarify any matter questioned about the bidder's bid in writing by the deadline set by the director or agency procurement official, the bid may be rejected.

(D) If the bidder clarifies the matter questioned under this subsection in writing, the clarification shall be evaluated and become a part of any contract awarded on the basis of the bidder's bid.

Negotiations Training:

(C)(i) Negotiations under this subsection shall be conducted by a person who is trained and certified in negotiation and procurement processes.

(ii)(a) The Office of State Procurement shall provide for the training and certification required under this subsection.

(b) The training provided by the office shall be specific to Arkansas law.

Bid Rejection:

(2) Before the rejection of a bid by the director, the decision to reject the bid may be validated with the state agency for which the procurement is being conducted.

(3) A bid may be rejected for failure to adhere to mandatory requirements.

Act 419 HB1178

9. 19-11-230, Competitive sealed proposals, has several separate changes.

Weighting Cost:

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, cost shall be weighted at least thirty percent (30%) of the total evaluation score for a proposal submitted in response to the request for proposals.

(B)(i) The State Procurement Director may approve that cost be weighted at a lower percentage of the total evaluation score for a proposal submitted in response to a request for proposals if the director makes a written determination that the lower percentage is in the best interest of the state.

(ii) A state agency's failure to obtain the approval of the director under this subsection for a request for proposals with cost weighted at a lower percentage than required under subdivision (d)(2)(A) of this section is grounds for submitting a protest under § 19-11-244.

(C) The use of a lower percentage under subdivision (d)(2)(B) of this section and the corresponding written determination by the director shall be submitted to the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, for review before the request for proposals is issued.

Offeror's Prior Experience/ Past Performance:

(3) The state's prior experience with an offeror may be considered and scored as part of the offeror's proposal only:

(A) To the extent that the request for proposals requests that all offerors provide references; and

(B) If the offeror's past performance with the state occurred no more than three (3) years before the offeror submitted the proposal.

(4) A state agency shall not include prior experience with the state as a mandatory requirement for submitting a proposal under this section.

Best and Final Offer:

(C)(i) Before issuing the notice of award of a contract, the director or the agency procurement official may request a best and final offer from each responsible offeror that is reasonably susceptible of being awarded the contract.

(ii) In responding to a request for a best and final offer, an offeror may:

(a) Resubmit the offeror's original proposal with lower pricing or additional benefits, or both, in accordance with the specifications of the request for proposals; or

(b) Submit a written response that states that the offeror's original proposal, including without limitation the pricing, remains unchanged.

(iii) If a best and final offer is requested, the director or the agency procurement official shall evaluate each proposal submitted in response to the request for a best and final offer in determining the proposal that is the most advantageous to the state.

Clarification of submitted proposal:

(f)(1) The director or an agency procurement official may seek the clarification of a submitted proposal.

(2) A written response by an offeror under this subsection shall only clarify the submitted proposal and shall not add any substantive language to the submitted proposal or change the terms of the submitted proposal.

(3) If the offeror fails or refuses to clarify any matter questioned about the offeror's proposal in writing by the deadline set by the director or agency procurement official, the proposal may be rejected.

(4) If the offeror clarifies the matter questioned under this subsection in writing, the clarification shall be evaluated and become a part of any contract awarded on the basis of the offeror's proposal.

Tied Evaluation Scores:

(4) The director or the agency procurement official may enter into negotiations with the responsible offeror whose proposal is determined in writing to be the most advantageous to the state when the best interests of the state would be served, including without limitation when the state can obtain:

(A) A lower price without changes to the terms or specifications of the request for proposals; or

(B) An improvement to the terms or specifications, or both, of the request for proposals without increasing the price of the proposal.

Evaluator tools/ Private evaluators:

(h)(1) The Office of State Procurement shall:

(A) Encourage full discussion by the evaluators who are evaluating proposals submitted in response to a request for proposals under this section; and

(B) Develop tools and templates to be used in evaluating proposals submitted in response to a request for proposals under this section that optimize the number of material scored attributes and provide for a limited range of possible scores for each attribute.

(2)(A) A state agency may use one (1) or more private evaluators to evaluate proposals submitted in response to a request for proposals under this section.

(B) A private evaluator used under this subsection shall be:

(i) Held to the same requirements and prohibitions regarding conflicts of interest as state employees;

(ii) A qualified volunteer, unless the state does not have the necessary expertise to evaluate the proposals, in which case a paid private evaluator may be used; and

(iii) Eligible for travel reimbursement if the state agency decides to make travel reimbursement available.

(C) The use of a private evaluator is not required.

(D) If a state agency uses one (1) or more private evaluators, the use of a private evaluator shall be disclosed in the procurement file and in any information submitted to the Legislative Council 1 or, if the General Assembly is in session, the Joint Budget Committee.

Rejection of proposal:

(g) (i)(1) A competitive sealed proposal may be cancelled or any or all proposals may be rejected in writing by the ~~State Procurement Director~~ director or the agency procurement official.

(2) Before the rejection of a proposal by the director, the decision to reject the proposal may be validated with the evaluation committee that evaluated the proposal.

(3) A proposal may be rejected for failure to adhere to mandatory requirements.

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10. Additional requirements to obtain an emergency procurement under 19-11-233 are as follows:

(b)(1) A person or state agency that makes an emergency procurement under this section shall:
(A) Receive at least three (3) competitive bids unless the emergency is a critical emergency; and

(B) Complete a quotation abstract that includes the:

(i) Names of the firms contacted;

(ii) Time that each firm was contacted;

(iii) Quoted price obtained from each contacted firm; and

(iv) Method used for contacting each firm.

(2) As used in this subsection, "critical emergency" means an emergency in which human life or health is imminently endangered.

Act 419 HB1178

11. The length of an original term of a multiyear contract under 19-11-238 has changed:

(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.

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12. 19-11-244, Resolution of protested solicitations and awards, has several separate changes.

Time of protest:

(3) The protest shall be submitted in writing within fourteen (14) calendar days after the ~~aggrieved person knows or should have known of the facts giving rise to the grievance~~ award or notice of anticipation to award has been posted.

Grounds of Protest:

(4) A protest submitted by an aggrieved person under this section shall:

(A) Be limited to one (1) or more of the following grounds:

(i) The award of the contract exceeded the authority of the director or the procurement agency;

(ii) The procurement process violated a constitutional, statutory, or regulatory provision;

(iii) The director or the procurement agency failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules of the procurement materially affected the contract award;

(iv) The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; or

(v) The award of the contract resulted from a technical or mathematical error made during the evaluation process; and

(B) State facts that substantiate each ground on which the protest is based.

Execution of contract:

(f) In the event of a timely protest under subsection (a) of this section, the state shall not ~~proceed further with the solicitation or with the award of the contract until~~ execute a contract that is the result of the protested solicitation or award unless the director or the head of a the relevant procurement agency makes a written determination that the execution award of the contract without delay is necessary to protect substantial interests of the state.

Act 420 HB1179

Civil action of tortious interference:

(h) An actual or prospective bidder, offeror, or contractor who is aggrieved by a protest submitted under this section that was without merit or intended purely to delay the award of a contract may bring a private cause of action for tortious interference with a business expectancy against the person or entity that submitted the protest.

Act 420 HB1179

13. 19-11-249, Cooperative purchasing, is amended.

Economic justification:

~~(2) (A) A cooperative purchasing agreement under this section may include without limitation a joint or multiparty contract between public procurement units and an open ended state public procurement unit contract that is made available to local public procurement units. A cooperative purchasing agreement is limited to commodities and services for which the public procurement unit may realize savings or material economic value, or both.~~

(B)(i) For cooperative purchasing agreements entered into by a state agency, the State Procurement Director shall consider the economic justification for using a cooperative purchasing agreement when granting or withholding approval for the cooperative purchasing agreement.

(ii) The State Procurement Director shall adopt rules to create a review policy outlining how the economic justification required under this section may be demonstrated, including without limitation a comparison of:

(a) Current state contract pricing and the pricing under a cooperative purchasing agreement; or

(b) Information obtained from a request for information and pricing under a cooperative purchasing agreement.

Approval by Governor:

(C) The State Procurement Director and the Director of the Department of Finance and Administration shall submit any request for the Office of State Procurement or the Department of Finance and Administration, respectively, to participate in a cooperative purchasing agreement to the Governor for approval.

Reporting:

(b)(1)(A) The State Procurement Director shall present a ~~quarterly~~ an annual report of all purchases made under cooperative purchasing agreements by a state agency without an agency procurement official under this section to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee.

(B) A state agency that has an agency procurement official shall present an annual report of all purchases made under cooperative purchasing agreements under this section to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee.

(c) A contractor shall cooperate with the director in providing information necessary for the director to complete to report required under subsection (b) of this statute.

Act 421 HB1180

Act 417 HB1161

14. 19-11-260, Recycled paper products—Preferences, is repealed.

Act 417 HB1161

15. Submission of contracts required under 19-11-265 has several separate changes.

Review Threshold:

(a)(1) ~~A~~ Except for critical emergency procurements and as otherwise provided in this section, a contract requiring the services of one (1) or more ~~individuals for regular full-time or part-time weekly work~~ persons shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, ~~before the execution of the contract~~ if the annual contract amount is at least fifty thousand dollars (\$50,000) in any one (1) contract year or if the total initial contract amount or the total projected contract amount, including any amendments or possible extensions, is at least ~~one hundred thousand dollars (\$100,000)~~ three hundred fifty thousand dollars (\$350,000).

Renewal or extension:

(4)(A)(i) A contract that does not have a material change upon renewal or extension shall be included in the monthly report required under § 19-11-273 instead of being submitted to the Legislative Council or the Joint Budget Committee for review under this subsection.

(ii) As used in this subdivision (a)(4), "material change" includes without limitation:

- (a) An increase in the contract amount;
- (b) An increase in the total projected contract amount;
- (c) A change in any of the essential terms of the contract;
- (d) A change in any performance-based standards stated in the contract;
- (e) The imposition of financial consequences as the result of a failure to satisfy

performance-based standards under § 19-10 11-267 during the year preceding the renewal or extension of the contract; and

(f) The submission of a vendor performance report during the year preceding the renewal or extension of the contract.

(B) However, a state agency may elect to submit a contract for review under this subsection if the state agency is uncertain whether the contract has a material change.

Cover sheet:

(5) A contract that is submitted for review under this subsection and that has a total projected contract amount of at least three hundred fifty thousand dollars (\$350,000) shall have a cover sheet that provides the following information:

(A) A description of the services being procured;

(B) A description of the procurement process followed, including without limitation the method used for the procurement; and

(C) The outcome of any protests.

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HB1161

16. Development and use of performance-based contracts under 19-11-267 has been amended.

Threshold:

(b)(1) A state agency, board, commission, or institution of higher education that enters into a contract under this subchapter 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.

Monitoring vendor performance:

(c) (4) 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.

Act 418 HB1162

17. Vendor performance reporting under 19-11-268, has been amended.

Performance-based standards:

(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 in the contract in a manner that represents a material deviation.

VPR's required:

- (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; ~~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.

Act 418 HB1162

18. There are several statues that have not yet been reconciled with numbering that are currently listed as 19-11-273 through 19-11-276.

19. 19-11-273*, Reporting requirements, has been enacted as follows:

19-11-273. Reporting requirements.

(a) The State Procurement Director shall compile a monthly report of all executed contracts for services that have a total initial contract amount or a total projected contract amount, including any amendments or possible extensions, of at least twenty-five thousand dollars (\$25,000) but less than an annual contract amount of fifty thousand dollars (\$50,000) in any one (1) contract year or a total projected contract amount, including any amendments or possible extensions, of three hundred fifty thousand dollars (\$350,000).

(b) A contract that is procured by a state agency that has a state agency procurement official or procurement authority under a delegation order is subject to the reporting requirements under this section.

(c) The State Procurement Director shall adopt rules to:

(1) Prescribe a cover sheet for the report required under this section that sorts and identifies contracts within the report that may be candidates for review;

(2) Create instructions for completing the cover sheet prescribed under subdivision (c)(1) of this section; and

(3) Provide for the identification of any contracts included in the report that may need to be reviewed under § 19-11-265.

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

Act 417 HB1161

20. 19-11-274*, Tracking Requirements, has been enacted as follows:

19-11-274. Tracking requirements.

(a) The State Procurement Director, each agency procurement official, and any state agency with procurement authority under a delegation order shall track the following for the procurements they conduct and the contracts they execute:

(1) Each protest received and the resolution of the protest;

(2) The outcome of any negotiations under this chapter; and

(3) The anticipated procurement needs of the state agency based on the contracts that:

(A) Are set to expire during the next twelve (12) months; and

(B) Will require a new solicitation in the next twelve (12) months.

(b) Each agency procurement official and each state agency with procurement authority under a delegation order shall report the information obtained under subsection (a) of this section to the Office of State Procurement.

Act 417 HB1161

21. 19-11-273*, Compliance, has been enacted 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.

Act 418 HB1162

22. 19-11-273*, Solicitation conferences, has been enacted as follows:

19-11-273. Solicitation conferences.

(a)(1) A state agency may hold a solicitation conference before or after issuing an invitation for bids, a request for proposals, or a request for statements of qualifications and performance data under § 19-11-801 et seq.

(2) A solicitation conference may be held:

- (A) In person; or
- (B) Online or in another virtual format.

(b) Attendance by a vendor at a solicitation conference is not required for that vendor's bid, proposal, or statement of qualifications and performance data to be accepted unless the attendance 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 State Procurement Director or the head of the procurement agency.

(c) A state agency holding a solicitation conference shall:

(1) For an invitation for bids or a request for proposals, include the date and time of the solicitation conference in the notice required under § 19-11-229;

(2) Require vendors in attendance at a solicitation conference to sign in at the solicitation conference or provide a registration record for an online or other virtual solicitation conference, regardless of whether attendance is required under the solicitation; and

(3) Maintain the sign-in sheet or registration records with the other documents related to the solicitation.

(d) A statement made at a solicitation conference does not change the invitation for bids, request for proposals, or request for statements of qualifications and performance data unless a change is made by written amendment to the invitation for bids, request for proposals, or request for statements of qualifications and performance data.

(e) A state agency is encouraged to hold a solicitation conference for a procurement that:

(1) Has a contract amount of at least:

(A) Five million dollars (\$5,000,000) for a single contract year; or

(B) Thirty-five million dollars (\$35,000,000) for the total anticipated term of the contract, including any extensions, based on the previous contract for the same commodities or services or, if a previous contract is not available, a contract for similar commodities or services; or

(2) Is of strategic importance to the state.

Act 419 HB1178

23. 19-11-274*, Vendor training and polling, has been enacted as follows:

19-11-274. Vendor training and polling.

The Office of State Procurement shall:

(1)(A) Develop and deliver vendor training to inform interested vendors of how to do business with the state.

(B) The training required under subdivision (1)(A) of this section shall:

(i) Be offered throughout the state; and

(ii) Be delivered as training sessions in person and online or in another virtual format; and

(2) Periodically poll vendors that have been successful in securing business with the state and vendors that have not been successful in securing business with the state to solicit procurement feedback that can be used to improve vendor training.

Act 419 HB1178

24. 19-11-275*, Requests for Information, has been enacted as follows:

19-11-275. Requests for information.

(a) As used in this section, "request for information" means a procedure for formally requesting information, data, comments, or reactions from prospective bidders or offerors in contemplation of a possible competitive sealed bidding procurement under § 19-11-229 or a competitive sealed proposal procurement under § 19-11-230.

(b) The State Procurement Director, a head of a procurement agency, or a designee of the director or of a head of a procurement agency, may issue or authorize another person to issue a request for information.

(c) A request for information under this section shall be published in the same manner and location as an invitation for bids, a request for proposals, or a request for qualifications.

(d) A contract shall not be awarded directly from a request for information.

(e) Information provided in response to a request for information under this section is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until:

(1) The bids for a competitive sealed bidding procurement are opened publicly;

(2) The notice of anticipation to award is given for a competitive sealed proposal procurement; or

(3) A decision is made not to pursue a procurement based on the request for information.

Act 419 HB1178

25. 19-11-276*, Training and certification of procurement personnel, has been enacted as follows:

19-11-276. Training and certification of procurement personnel.

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

(b) As part of the training and certification program required under this section, the director:

(1) Shall conduct procurement education and training for state agency employees and other public employees;

(2)(A) Shall establish a tiered core curriculum that outlines the minimum procurement-related training courses a state agency employee is required to complete for certification.

(B) The tiered core curriculum required under subdivision (b)(2)(A) of this section shall:

(i) Be designed to develop procurement competency; and

(ii) Create a uniform training approach for state agency employees ranging from entry-level procurement personnel to agency procurement officials;

(3) May charge a reasonable fee for each participant to cover the cost of providing the training required under this section;

(4) May conduct, develop, and collaborate with established training programs, if any, for the purpose of providing certifications of proficiency to state agency employees who complete the training and certification program;

(5) May conduct research into existing and new procurement methods; and

(6) May establish and maintain a state procurement library.

(c)(1) Beginning July 1, 2021, a state agency employee shall not conduct a procurement under this chapter unless the state agency employee is certified 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, as provided for by rule by the director.

(d)(1) The director shall revoke the certification of a state agency employee who is certified under this section and who is determined to have knowingly violated state procurement laws, Arkansas Code Title 19, Chapter 11.

(2) The director shall adopt rules regarding the procedure for revoking a state agency employee's certification under this section.

Act 419 HB1178

26. 19-11-273*, Cancellation of contract on entry of final business closure, has been enacted as follows:

19-11-273. Cancellation of contract on entry of final business closure order.

(a) As used in this subchapter, "final business closure order" means a business closure order for which a contractor has either:

(1) Waived further administrative review under § 26-18-1001 et seq.; or

(2) Exhausted all remedies to appeal under § 26-18-1001 et seq.

(b) The Revenue Division of the Department of Finance and Administration shall provide to the Office of State Procurement all final business closure orders entered into against a contractor.

(c) Upon receipt of a final business closure order, the Office of State Procurement shall, as soon as reasonably practicable:

(1) Notify each state agency with which the contractor has a contract that the:

(A) Contractor is subject to a final business closure order; and

(B) Provision of any goods or services, or both, under a contract with the contractor that is subject to a final business closure order shall cease as soon as reasonably practicable; and

(2) Notify all state agencies that the contractor that is subject to a final business closure order shall not be awarded or maintain a contract with a state agency unless the Office of State Procurement provides notice under subsection (d) of this section.

(d) Upon receipt of information that a contractor has resolved a business closure, the Office of State Procurement shall notify all state agencies, as soon as reasonably practicable, that:

(1) Any unexpired contracts with the contractor may continue if the contract was not terminated, cancelled, suspended, or discontinued; and

(2) The contractor may be awarded or maintain a contract with a state agency.

Act 866 HB1931

27. 19-11-273*, Procurements for services in designated positions and designated financial and information technology positions, has been enacted as follows:

19-11-273. Procurements for services in designated positions and designated financial and information technology positions.

A contract for services with a person employed or entity employing persons in a designated position or designated financial or information technology position as defined in § 21-15-101 shall require compliance with the registry records check and criminal history records check laws under § 21-15-101 et seq.

Act 318 HB1277

28. Annual statements of qualifications and performance data — Restrictions on competitive bidding under 19-11-802 has been amended to include requests for qualifications:

(e)(1) A request for statements of qualifications and performance data under this section may be used for certain procurements through a request for qualifications other than legal, architectural, engineering, construction management, land surveying, and interior design services if the:

(A) State Procurement Director approves the use of a request for qualifications and determines that it is the most suitable method of procurement; and

(B) Approval of the director under subdivision (e)(1)(A) of this section is submitted to the Legislative Council for review.

(2) In determining whether a request for qualifications under this subsection is the most suitable method of procurement, the director shall consider, based on information submitted by the requesting state agency:

(A) Why the request for qualifications is the most suitable method of procurement;

(B) Why cost should not be considered in the procurement; and

(C) How the cost of the contract will be controlled if cost is not a factor in the procurement.

Act 419 HB1178

29. 19-11-1006, Submission of contracts required, has been repealed.

Act 417 HB1161

30. 19-11-1010, Development and use of performance-based contracts, has been repealed.

Act 418 HB1162

31. 19-11-1013, Vendor performance reporting, has been repealed.

Act 418 HB1162

32. 19-11-1015, Cancellation of contract on entry of final business closure, has been enacted as follows:

(a) As used in this subchapter, "final business closure order" means a business closure order for which a contractor has either:

- (1) Waived further administrative review under § 26-18-1001 et seq.; or
- (2) Exhausted all remedies to appeal under § 26-18-1001 et seq.

(b) The Revenue Division of the Department of Finance and Administration shall provide to the Office of State Procurement all final business closure orders entered into against a contractor.

(c) Upon receipt of a final business closure order, the Office of State Procurement shall, as soon as reasonably practicable:

(1) Notify each state agency with which the contractor has a contract that the:

(A) Contractor is subject to a final business closure order; and

(B) Provision of any goods or services, or both, under a contract with the

contractor that is subject to a final business closure order shall cease as soon as reasonably practicable; and

(2) Notify all state agencies that the contractor that is subject to a final business closure order shall not be awarded or maintain a contract with a state agency unless the Office of State Procurement provides notice under subsection (d) of this section.

(d) Upon receipt of information that a contractor has resolved a business closure, the Office of State Procurement shall notify all state agencies, as soon as reasonably practicable, that:

(1) Any unexpired contracts with the contractor may continue if the contract was not terminated, cancelled, suspended, or discontinued; and

(2) The contractor may be awarded or maintain a contract with a state agency.

Act 866

HB1931

33. The Guaranteed Energy Cost Savings Act, 19-11-1202, has added the following definitions:

(7) "Equipment warranty period" means the time following the execution of a guaranteed energy cost savings contract in which a material defect in an installed energy conservation measure is required to be replaced or corrected by the manufacturer or an energy service company; and

(8) "Useful life" means the rated service life of an individual energy conservation measure as defined by the:

(A) American Society of Heating, Refrigerating and Air-Conditioning Engineers;

(B) Illuminating Engineering Society; or

(C) Solar Energy Industries Association.

Act 507

HB1636

34. 19-11-1206, Guaranteed energy cost savings contract requirements, has been amended as follows:

(b) (1) ~~The maximum term for a guaranteed energy cost savings contract is twenty (20) years after the implementation of the energy cost savings measures. If a guaranteed energy cost savings contract includes energy cost savings measures that possess either an active equipment warranty period or a combined useful life in excess of twenty (20) years, a guaranteed energy cost savings contract may be extended to the length of the:~~

(A) Equipment warranty period; or

(B) Weighted useful life of the relevant energy cost savings measures.

(2) A guaranteed energy cost savings contract shall not exceed twenty (20) years without the approval of the Arkansas Energy Office of the Arkansas Department of Environmental Quality.

Act 507 HB1636

35. 19-11-1402, Legislative findings, has removed the following finding:

(4) ~~Other states have begun to explore the utilization of a construction manager general contractor method as a cost effective and efficient option for constructing transportation projects, including the State of California, which applies the construction manager general contractor method when it is anticipated that the use of the construction manager general contractor method will reduce transportation project costs or expedite transportation project completion in a manner that is not achievable through the design bid build method;~~

Act 1019 HB1693

36. 19-11-1404, Construction Manager-General Contractor Method of Procurement-Creation, has been amended as follows:

(b)(1) During the term of the program the commission may select a total of ~~three (3)~~ five (5) transportation projects on which to utilize the construction manager-general contractor method.

(2)(A) The sum of the construction cost estimates prepared as required under § 19-11-1407 of all ~~three (3)~~ five (5) construction manager-general contractor method transportation projects shall not exceed two hundred million dollars (\$200,000,000).

(B) ~~The construction cost estimate of the first construction manager general contractor method transportation project shall not exceed seventy million dollars (\$70,000,000).~~

(C) ~~The sum of the construction cost estimates of the 35 remaining two (2) Δ construction manager-general contractor method transportation projects project shall not exceed one hundred million dollars (\$100,000,000).~~

Act 1019 HB1693

37. 22-8-102 Leasing and renting of vehicles by state agencies has been amended.

State agency:

(3) “State agency” means the same as defined in § 19-11-203.

Review:

(b)(1) Before any state agency ~~shall~~ leases any motor vehicle or renews any existing lease for a motor vehicle, the state agency shall submit a written request to the State Procurement Director identifying the motor vehicles sought to be leased by the state agency and all facts and circumstances the director may request to enable him or her to determine the economics, need, and feasibility of leasing the motor vehicle.

(2) Upon receipt, the director shall review the request to lease the motor vehicle, and if he or she determines that the lease is in the best interest of the State of Arkansas and that the state agency has adequate funds to pay the lease, he or she may approve the request but only if ~~he or she has first received the approval of the proposed lease has been reviewed by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.~~

~~(3) After receiving the approval of If, after the Legislative Council or the Joint Budget Committee has reviewed the proposed lease of the motor vehicle, the director approves the proposed lease of the motor vehicle, the director shall stamp his or her approval on the request and return it to the state agency, which may then proceed to enter into the lease as proposed and approved by the director.~~

~~(4) In emergency situations, the director may approve a temporary lease of a motor vehicle, not to exceed thirty (30) days, but only if he or she has sought the advice of the Chair of the Legislative Council and scheduled the temporary lease of a motor vehicle for consideration at the next meeting of the Legislative Council.~~

Federal requirements:

(d) If federal assistance requirements or federal contract requirements conflict with this section, this section shall not prevent a state agency from complying with the terms and conditions of the federal assistance requirements or the federal contract requirements.

(e) It is a violation of state procurement laws, Arkansas Code Title 19, Chapter 11, for a state agency official to conduct multiple rentals of a motor vehicle to avoid the approval and review requirements of this section.

Act 417 HB1161

38. Open public meetings under 25-19-106 has been amended to include a recording requirement:

(d)(1) All officially scheduled, special, and called open public meetings shall be recorded in a manner that allows for the capture of sound including without limitation:

(A) A sound-only recording;

(B) A video recording with sound and picture; or

(C) A digital or analog broadcast capable of being recorded.

(2) A recording of an open public meeting shall be maintained by the public entity for a minimum of one (1) year from the date of the open public meeting.

(3) The recording shall be maintained in a format that may be reproduced upon a request under this chapter.

(4) Subdivisions (d)(1) and (2) of this section do not apply to:

(A) Executive sessions; or

(B) Volunteer fire departments.

(5) Cities of the second class and incorporated towns are exempt from subdivisions (d)(1) and (2) of this section until July 1, 2020.

Act 1028 HB1928

39. 25-36-204, Procurement requirements, has amended dates for controlling law:

(2) Follow the standards for software applications and operating systems provided by 36 C.F.R § 1194.21, as it existed on ~~January 1, 2013~~ January 1, 2019, subject to the provisions of 36 C.F.R. §§ 1194.1 -- 1194.4, as they existed on ~~January 1, 2013~~ January 1, 2019;

(3) Follow the standards for web-based intranet and Internet information and applications provided by 36 C.F.R § 1194.22, as it existed on ~~January 1, 2013~~ January 1, 2019, subject to the provisions of 36 C.F.R. §§ 1194.1 -- 1194.4, as they existed on ~~January 1, 2013~~ January 1, 2019; and

40. Regarding the Local Food, Farms and Jobs Act, 15-4-3803 amends the following definitions:

As used in this subchapter:

(1)(A) "Agency" means an entity that:

~~(i) Is funded in whole or in part by the state; and~~

~~(ii) Receives receives at least twenty-five thousand dollars (\$25,000) a year from the state for the purchase of food products and offers a food service program.~~

(B) "Agency" includes without limitation a:

(i) Institution of higher education;

(ii) Child care facility;

(iii) State park;

(iv) After-school program;

~~(v) Hospital;~~

~~(vi) State agency or other entity of the state; and~~

~~(vii) Contractor operating an on-campus cafeteria for any of the entities stated in subdivision (1)(B)(i)-(vi) of this section;~~

(vi) A designee under contract to provide a food service program for an agency; and

(vii) A designee under contract to provide wholesale local farm or food products for an agency;

(2)(A) "Distributor" means a person or entity involved in marketing and distributing local farm or food products to another entity, including without limitation to:

(i) A restaurant;

(ii) A healthcare facility;

(iii) An educational institution;

(iv) A hospitality business, including without 18 limitation a hotel or inn;

(v) A government entity; or

(vi) An agency;

(B) "Distributor" includes a person or entity that provides food products at wholesale to another company that provides or manages a food service program;

~~(2) (3) "Food product" means a substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value; and~~

~~(3) (4) "Local farm or food products" means food products that are grown in Arkansas or packaged and processed in Arkansas, or both.~~

(5)(A) "Food service program" means the preparation and consumption of food products at an on-site cafeteria.

(B) "Food service program" does not include catered events, franchises, or privately owned third party vendors that do not serve as the primary provider for the delivery of food products on behalf of an agency.

Act 796

HB1853

41. 15-4-3804, Procurement goal, removes preference language:

(2) For fiscal years beginning on and after July 1, 2018, each agency shall make it a goal to ensure that at least twenty percent (20%) of ~~the amount budgeted for~~ the agency's purchases of food products is spent on local farm or food products.

(b) ~~In awarding a contract for the purchase of food products, an agency shall give preference to a provider of local farm or food products when:~~

- ~~(1) The contract is to be awarded to the lowest bidder;~~
- ~~(2) A responsible and responsive bidder that is a provider of local farm or food products submits a bid that does not exceed the lowest bid by more than ten percent (10%); and~~
- ~~(3) The responsible and responsive bidder submitting the lowest bid is not a provider of local farm or food products.~~

Act 796 HB1853

42. 15-4-3805, Reporting requirements, changes Bureau of Legislative Research to Arkansas Agricultural Department:

(a) By October 1 of each year, an agency or agency designee shall submit a ~~compliance~~ report to the ~~Bureau of Legislative Research~~ Arkansas Agricultural Department stating:

- (1) The name of the agency and, if applicable, agency designee;
- (2) A policy statement signed by the executive head of the agency or agency designee expressing a commitment to complying with this subchapter;
- (3) The name of the person in the agency or agency designee who is responsible for developing and administering the ~~compliance~~ report required under this section;
- (4) The manner in which the agency intends to reach the procurement goals stated in this subchapter;
- (5) The dollar ~~value of the contracts the agency awarded to~~ amount the agency spent with providers of local farm or food products in the previous fiscal year; and
- (6) The percentage of the total dollar ~~value of contracts~~ amount the agency awarded for spent on purchases of food products that were awarded to with providers of local farm or food products.

(b) By December 31 of each year, the ~~bureau~~ department shall:

- (1) Prepare a report compiling the information received under subsection (a) of this section; and
- (2) Make the report required under this subsection available to the Governor and the cochairs of the Legislative Council or, if the General Assembly is in session, the cochairs of the Joint Budget Committee, the House Committee on Agriculture, Forestry, and Economic Development, and the Senate Committee on Agriculture, Forestry, and Economic Development.

Act 796 HB1853

43. 15-4-3806, Promotion, adds responsibilities to the Department of Agriculture program coordinator:

(F) Work with distributors to ensure that:

- (i) Local farm or food products are available for purchase and distribution to an agency;
- (ii) A list of local farm or food products is available for an agency; and
- (iii) A report is provided to the agency that lists the local farm or food products purchased and the dollar amount spent on the purchase of the local farm or food products.

Act 796 HB1853