

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 448

5 By: Senator Hester
6 By: Representative Wardlaw
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO
10 PROMOTE EFFICIENCY IN STATE PROCUREMENT BY EXPANDING
11 THE ABILITY OF THE STATE TO NEGOTIATE CONTRACTS; TO
12 DEFINE "COLLUSION" UNDER ARKANSAS PROCUREMENT LAW; TO
13 REQUIRE REVIEW OF A CONTRACT BEFORE IT IS RATIFIED OR
14 AFFIRMED; AND FOR OTHER PURPOSES.
15

Subtitle

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17
18 TO EXPAND THE ABILITY OF THE STATE TO
19 NEGOTIATE CONTRACTS; TO DEFINE
20 "COLLUSION" UNDER ARKANSAS PROCUREMENT
21 LAW; AND TO REQUIRE REVIEW OF A CONTRACT
22 BEFORE IT IS RATIFIED OR AFFIRMED.
23

24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 19-11-229(h)(2), concerning competitive
28 sealed bidding, is amended to read as follows:

29 ~~(2)(A) In the event all bids exceed available funds as certified~~
30 ~~by the appropriate fiscal officer in situations in which time or economic~~
31 ~~considerations preclude resolicitation of work of a reduced scope, the~~ The
32 ~~director or the head of a procurement agency may negotiate an adjustment of~~
33 ~~the~~ a lower bid price, including changes in the bid requirements, with the
34 lowest responsive and responsible bidder, ~~in order to bring the bid within~~
35 ~~the amount of available funds if:~~

36 (i) All bids received from responsive and



1 responsible bidders exceed available funding as certified by the appropriate
 2 fiscal officer of the procurement agency; or

3 (ii) It appears that additional savings to the state
 4 may result from negotiation.

5 (B)(i)(a) If negotiations with the lowest responsive and
 6 responsible bidder conducted under subdivision (h)(2)(A) of this section fail
 7 to result in a lower bid price, the state may negotiate for a lower bid price
 8 with the next lowest responsive and responsible bidder.

9 (b) If negotiations with the next lowest
 10 responsive and responsible bidder under subdivision (h)(2)(B)(i)(a) of this
 11 section fail to result in a lower bid price, the state may negotiate for a
 12 lower bid price with the next lowest responsive and responsible bidder until
 13 an acceptable lower bid price is negotiated or the state determines that
 14 negotiations are no longer in the best interest of the state.

15 (ii) A bid price resulting from negotiations
 16 conducted under this section shall not be higher than:

17 (a) The bid price originally submitted by the
 18 lowest responsive and responsible bidder; or

19 (b) A price previously offered in negotiations
 20 by a responsive and responsible bidder.

21 (iii) Negotiations conducted under this section do
 22 not preclude the use of other methods of source selection or procurement
 23 authority provided under this subchapter.

24
 25 SECTION 2. Arkansas Code § 19-11-230(e), concerning competitive sealed
 26 proposals, is amended to read as follows:

27 (e)(1) As provided in the request for proposals and under ~~regulations~~
 28 rule, discussions may be conducted with responsible offerors who submit
 29 proposals determined to be reasonably susceptible of being selected for award
 30 for the purpose of ~~clarification~~;

31 (A) Clarifying solicitation requirements to assure full
 32 understanding of, and responsiveness to, the solicitation requirements; or

33 (B) Negotiating a contract that is more advantageous to
 34 the state.

35 (2)(A) Offerors If discussions conducted after the deadline for
 36 the receipt of proposals necessitate material revisions of proposals, each

1 offeror determined to be responsible and reasonably susceptible of being
 2 awarded a contract shall be accorded fair and equal treatment with respect to
 3 any provided an opportunity for discussion and revision of proposals, and
 4 such revisions may be permitted after submissions and prior to award to
 5 revise its proposal for the purpose of obtaining submitting a best and final
 6 offers offer.

7 (B) An offeror may be permitted to revise its original
 8 proposal as a result of discussions only after the original submission
 9 deadline and before award for the purpose of providing a best and final
 10 offer.

11 (3) In conducting discussions, ~~there shall be no disclosure of~~
 12 ~~any~~ information derived from ~~proposals~~ a proposal submitted by a competing
 13 ~~offerors~~ offeror shall not be disclosed until after a notice of anticipation
 14 to award is announced.

15
 16 SECTION 3. Arkansas Code § 19-11-240 is amended to read as follows:

17 19-11-240. Reporting of suspected collusion - Definition.

18 (a) As used in this section, "collusion" means cooperation in the
 19 restraint of free and open competition in a public procurement, including
 20 without limitation:

21 (1) Price fixing;

22 (2) Bid rigging;

23 (3) Customer or market allocation;

24 (4) Misrepresenting the independence of the relationship between
 25 colluding parties; and

26 (5) Exerting improper influence on public officials to obtain
 27 advantage in a public procurement, including without limitation:

28 (A) Offering bribes or kickbacks;

29 (B) Extortion; and

30 (C) Fraudulent misrepresentation.

31 ~~(b) Notification to the Attorney General.~~ When for any reason
 32 collusion is suspected among any bidders or offerors, a written notice of the
 33 relevant facts shall be transmitted to the Attorney General.

34 ~~(b) (c)(1) Retention of All Documents.~~ All documents involved in ~~any~~
 35 a procurement in which collusion is suspected shall be retained until the
 36 Attorney General gives notice that they may be destroyed.

1 (2) All retained documents shall be made available to the
2 Attorney General or a designee upon request and proper receipt ~~therefor~~ of
3 the request.

4 (d) Collusion is cause for:

5 (1) Debarment from consideration for award of a contract under §
6 19-11-245; and

7 (2) Suspension from consideration for award of a contract if
8 there is probable cause for suspecting collusion as determined by the
9 Attorney General or the State Procurement Director.

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11 SECTION 4. Arkansas Code § 19-11-247, concerning remedies for unlawful
12 solicitation or award, is amended to add an additional subsection to read as
13 follows:

14 (d) Before a contract is ratified and affirmed under subdivision
15 (c)(1)(A) of this section, a contract shall be presented to the Legislative
16 Council or, if the General Assembly is in session, to the Joint Budget
17 Committee, for review if the contract is required to be submitted for review
18 under § 19-11-1006.