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2 95th General Assembly
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4

As Engrossed: S4/2/25

A Bill

SENATE BILL 538

5 By: Senators Gilmore, Hickey, Irvin
6 By: Representative Wardlaw
7

For An Act To Be Entitled

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

Subtitle

14 TO AMEND THE ARKANSAS PROCUREMENT LAW.
15

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

18 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and
19 duties of State Procurement Director, is amended to add an additional
20 subdivision to read as follows:

21 (16) Within one hundred twenty (120) days after the effective
22 date of a new or revised statute or rule relating to procurement, shall
23 review the procurement materials of the office and revise the procurement
24 materials to maintain alignment between the procurement materials and the
25 relevant procurement statutes and rules.
26

27 SECTION 2. Arkansas Code § 19-11-229(f), concerning competitive sealed
28 bidding, is amended to add an additional subdivision to read as follows:

29 (4)(A) A state agency may determine that the cost of the bid is
30 unrealistic.

31 (B) As used in this subdivision (f)(4), "unrealistic"
32 means too low to reflect the ability of the bidder to meet the requirements
33 of the invitation for bids.

34 (C) The director shall promulgate rules concerning the
35 requirements for determining that a bid is unrealistic.
36



1 SECTION 3. Arkansas Code § 19-11-230(c), concerning competitive sealed
2 proposals, is amended to read as follows:

3 (c)(1) Public Except as provided in subdivision (c)(2) of this
4 section, public notice of the request for proposals shall be given in the
5 same manner as provided in § 19-11-229(d), which refers to public notice of
6 competitive sealed bidding.

7 (2)(A) A request for proposals under this section shall be
8 issued at least twenty (20) business days before the deadline for the
9 submission of proposals.

10 (B) If a request for proposals is reissued before the
11 anticipation to award, the state agency shall extend the original deadline
12 for the submission of proposals by at least ten (10) business days.

13
14 SECTION 4. Arkansas Code § 19-11-230(d)(4), concerning competitive
15 sealed proposals, is amended to read as follows:

16 (4) A state agency shall: ~~not~~

17 (A) Not include prior experience with the state as a
18 mandatory requirement for submitting a proposal under this section;

19 (B) Evaluate the cost of each proposal received from a
20 responsible offeror in response to a request for proposals under this section
21 in the state agency's initial evaluation of the proposals; and

22 (C) Not identify responsible offerors as being reasonably
23 susceptible of being awarded a contract under this section until the cost
24 proposal from each responsible offeror has been evaluated.

25
26 SECTION 5. Arkansas Code § 19-11-230(d), concerning competitive sealed
27 proposals, is amended to add an additional subdivision to read as follows:

28 (5)(A) A state agency may determine that the cost of the
29 proposal is unreasonable or unrealistic.

30 (B) As used in this subdivision (d)(5):

31 (i) "Unrealistic" means too low to reflect the
32 ability of the offeror to meet the requirements of the request for proposals;
33 and

34 (ii) "Unreasonable" means too high for the
35 requirements of the request for proposals.

36 (C) The director shall promulgate rules concerning the

1 requirements for determining that the cost of a proposal is unreasonable or
2 unrealistic.

3
4 SECTION 6. Arkansas Code § 19-11-230(e), concerning competitive sealed
5 proposals, is amended to add additional subdivisions to read as follows:

6 (4)(A) Negotiations under this section shall be conducted by a
7 person who is trained and certified in negotiation and procurement processes.

8 (B)(i) The office shall provide for the training and
9 certification required under subdivision (e)(4)(A) of this section.

10 (ii) The training provided by the office under this
11 subdivision (e)(4) shall be specific to Arkansas law.

12 (5) The director shall promulgate rules detailing the
13 requirements for negotiations under this section.

14
15 SECTION 7. Arkansas Code § 19-11-230, concerning competitive sealed
16 proposals, is amended to add an additional subsection to read as follows:

17 (j) A state agency using the method of procurement provided for under
18 this section shall adhere to the procurement rules, policies, and guidance
19 issued by the office concerning the scoring of the technical and cost
20 elements of submitted proposals.

21
22 SECTION 8. Arkansas Code § 19-11-244(a)(5)(B), concerning the
23 resolution of a protest by a person named in an anticipation to award a
24 contract, is amended to read as follows:

25 (B) A response to a protest submitted under subdivision
26 (a)(5)(A) of this section shall be submitted in writing within five (5)
27 calendar days of the date the person is given notice of the protest under
28 subdivision (a)(2)(B) of this section.

29
30 SECTION 9. Arkansas Code § 19-11-244(d), concerning the resolution of
31 protested solicitations and awards of contracts, is amended to read as
32 follows:

33 (d) A copy of the decision under subsection (c) of this section shall
34 be mailed or otherwise furnished within five (5) calendar days after it is
35 written to the protestor and any other party intervening.

36

1 SECTION 10. Arkansas Code § 19-11-244(f), concerning the resolution of
2 protested solicitations and awards of contracts, is amended to read as
3 follows:

4 (f) In the event of a timely protest under subsection (a) of this
5 section, ~~the~~

6 (1) The state shall not execute a contract that is the result of
7 the protested solicitation or award unless the director or the head of the
8 relevant procurement agency makes a written determination that the execution
9 of the contract without delay is necessary to protect substantial interests
10 of the state; and

11 (2) Contract negotiations with the anticipated awardee may
12 proceed.

13
14 SECTION 11. Arkansas Code § 19-11-245(b)(1), concerning debarment and
15 suspension under the Arkansas Procurement Law, is amended to read as follows:

16 (b)(1)(A)(i) After reasonable notice to the person involved ~~and~~
17 ~~reasonable opportunity for that person to have a hearing before a committee~~
18 ~~according to rules promulgated by the State Procurement Director,~~ the
19 ~~director~~ State Procurement Director or the head of a procurement agency shall
20 have authority to debar a person for cause from consideration for award of
21 contracts, provided that doing so is in the best interests of the state.

22 (ii) The debarment shall not be for a period of more
23 than three (3) years.

24 (B)(i) The same officer shall have authority to suspend a
25 person from consideration for award of contracts, provided that doing so is
26 in the best interests of the state and there is probable cause for debarment.

27 (ii) The suspension shall not be for a period
28 exceeding three (3) months.

29
30 SECTION 12. Arkansas Code § 19-11-245(e) and (f), concerning debarment
31 and suspension under the Arkansas Procurement Law, are amended to read as
32 follows:

33 (e) ~~Notice of Decision.~~ A copy of the decision under subsection (d) of
34 this section shall be mailed or otherwise furnished within five (5) calendar
35 days after it is written to the debarred or suspended person and any other
36 party intervening.

1 (f) ~~Finality of Decision.~~ A decision under subsection (d) of this
2 section *shall be final and conclusive and not an order as defined in the*
3 *Arkansas Administrative Procedure Act, § 25-15-201 et seq., but may be*
4 *appealed to the Secretary of the Department of Shared Administrative Services*
5 *in accordance with the rules promulgated by the director.*
6

7 SECTION 13. Arkansas Code § 19-11-247(a)-(c), concerning the remedies
8 for unlawful solicitation or award of a contract, are amended to read as
9 follows:

10 (a) The provisions of this section apply where it is determined upon
11 any review provided by law that ~~a solicitation or award~~ the creation,
12 solicitation, award, management, or modification of a contract is in
13 violation of law.

14 (b) If ~~prior to award~~ it is determined that a solicitation, ~~or~~
15 proposed award, or modification of a contract is in violation of law, then
16 the solicitation, ~~or~~ proposed award, or modification shall be:

- 17 (1) Cancelled; or
18 (2) Revised to comply with the law.

19 (c) If ~~after an award~~ it is determined that ~~a solicitation or award~~
20 the establishment, solicitation, award, management, or modification of a
21 contract is in violation of law, then in addition to or in lieu of other
22 remedies provided by law:

23 (1) If the ~~person awarded the contract~~ vendor has not acted
24 fraudulently or in bad faith:

25 (A) The contract may be ratified and affirmed if it is
26 determined that doing so is in the best interests of the state; or

27 (B) The contract may be terminated; and

28 (2) If the ~~person awarded the contract~~ vendor has acted
29 fraudulently or in bad faith:

30 (A) The contract may be declared null and void; or

31 (B) The person awarded the contract may be directed to
32 proceed with performance of the contract and pay such damages, if any, as may
33 be appropriate if such action shall be in the best interests of the state.
34

35 SECTION 14. Arkansas Code § 19-11-279, concerning requests for
36 information, is amended to add an additional subsection to read as follows:

1 (f) A response to a request for information under this section is not
2 required for a vendor's bid, proposal, or statement of qualifications and
3 performance data to be accepted unless the response requirement is:

4 (1) Explicitly stated in the invitation for bids, request for
5 proposals, or request for statements of qualifications and performance data;
6 and

7 (2) Approved by the director or the head of the procurement
8 agency.

9
10 SECTION 15. Arkansas Code § 19-11-280(a), concerning the training and
11 certification of procurement personnel, is amended to read as follows:

12 (a)(1) The State Procurement Director shall establish a an in-person
13 training and certification program to facilitate the training, continuing
14 education, and annual certification of state agency procurement personnel.

15 (2) The training and certification program required under
16 subdivision (a)(1) of this section may be offered through an in-person
17 training course or a live, virtual course.

18
19 SECTION 16. Arkansas Code § 19-11-280(c), concerning the training and
20 certification of procurement personnel, is amended to read as follows:

21 (c)(1) Beginning July 1, 2021, a A state agency employee shall not
22 conduct a procurement under this chapter unless the state agency employee is
23 certified annually through the training and certification program required
24 under this section.

25 (2) To maintain certification under this section, a state agency
26 employee shall complete a reasonable number of hours of continuing education
27 each year, as provided for by rule by the director.

28
29 SECTION 17. Arkansas Code § 19-11-280, concerning the training and
30 certification of procurement personnel, is amended to add an additional
31 subsection to read as follows:

32 (e)(1) The director shall report to the Review Subcommittee of the
33 Legislative Council concerning:

34 (A) The progress made in developing an implementing the
35 training and certification program required under this section; and

36 (B) The state agencies that have had employees complete

1 the training and certification program required under this section.

2 (2) The report required under section shall be presented:

3 (A) For the first year following the effective date of
4 this act, every ninety (90) days; and

5 (B) Annually each subsequent year.

6
7 SECTION 18. Arkansas Code Title 19, Chapter 11, Subchapter 2, is
8 amended to add an additional section to read as follows:

9 19-11-282. Notification to Office of State Procurement.

10 A state agency other than an institution of higher education shall
11 notify the Office of State Procurement that the state agency is going to
12 issue an invitation for bids or a request for proposals at least seven (7)
13 calendar days before issuing the solicitation.

14
15 SECTION 19. Arkansas Code § 19-11-802(c)(2), concerning annual
16 statements of qualifications and performance data and restrictions on
17 competitive bidding, is amended to read as follows:

18 (2) A political subdivision ~~shall~~ may elect to not use
19 competitive bidding for the procurement of other professional services with a
20 two-thirds ($\frac{2}{3}$) vote of its governing body.

21
22 SECTION 20. DO NOT CODIFY. Repromulgation of rules.

23 (a) Within one hundred twenty (120) days of the effective date of this
24 act, the State Procurement Director shall repromulgate all rules related to
25 the sections of the Arkansas Code amended by this act and the recommendations
26 adopted by the Executive Subcommittee of the Legislative Council upon the
27 conclusion of the procurement study conducted for the 2025 regular session to
28 ensure that the rules promulgated under the sections of the Arkansas Code
29 that are amended by this act are in line with the intent of the General
30 Assembly in enacting this act.

31 (b) The director shall submit a monthly report to the Review
32 Subcommittee of the Legislative Council concerning his or her progress during
33 the reporting period in complying with subsection (a) of this section.

34
35 /s/Gilmore