

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAWS  
9 CONCERNING STATE CONTRACTS; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 TO AMEND THE ARKANSAS PROCUREMENT LAWS  
12 CONCERNING STATE CONTRACTS.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 19-11-223 is amended to read as follows:

20 19-11-223. Commodities, technical and general services, and  
21 professional and consultant services under state contract.

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

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

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

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

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

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

16           ~~(d) Except as authorized in this section, all state agencies which~~  
17 ~~require (b)(1) Unless an exemption is approved by the director under~~  
18 ~~subdivision (b)(2) of this section, a state agency that requires~~ commodities,  
19 technical and general services, and professional and consultant services that  
20 are under a mandatory state contract shall procure these commodities,  
21 technical and general services, and professional and consultant services  
22 exclusively under such the mandatory state contract.

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

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

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

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

36           ~~(d) The director shall:~~

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

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

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

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

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

14  
15           SECTION 2. DO NOT CODIFY. Rules.

16           (a) The State Procurement Director shall adopt rules to include any  
17 necessary conditions, reporting, or document retention standards related to  
18 the director's duty to promote mandatory state contract use under § 19-11-  
19 223.

20           (b)(1) When adopting the initial rules required under this section,  
21 the final rule shall be filed with the Secretary of State for adoption under  
22 § 25-15-204(f):

23                   (A) On or before January 1, 2020; or

24                   (B) If approval under § 10-3-309 has not occurred by  
25 January 1, 2020, as soon as practicable after approval under § 10-3-309.

26           (2) The director shall file the proposed rule with the  
27 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
28 2020, so that the Legislative Council may consider the rule for approval  
29 before January 1, 2020.

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1 State of Arkansas  
2 92nd General Assembly  
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# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
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## For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS PROCUREMENT LAWS CONCERNING  
9 COOPERATIVE PURCHASING; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 TO AMEND ARKANSAS PROCUREMENT LAWS  
12 CONCERNING COOPERATIVE PURCHASING.  
13

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

19 SECTION 1. Arkansas Code § 19-11-206(1), concerning the definitions  
20 relating to intergovernmental relations under the Arkansas Procurement Law,  
21 is amended to read as follows:

22 (1) ~~“Cooperative procurement” means procurement conducted by, or~~  
23 ~~on behalf of, more than one (1) public procurement unit or by a public~~  
24 ~~procurement unit with an external procurement activity~~ “Cooperative  
25 purchasing agreement” means an agreement that:

26 (A) A public procurement unit joins; and

27 (B) Was originally sourced outside of the state by an  
28 external procurement activity;  
29

30 SECTION 2. Arkansas Code § 19-11-249(a), concerning cooperative  
31 purchasing under the Arkansas Procurement Law, is amended to read as follows:

32 (a)(1) A public procurement unit may participate in, sponsor, conduct,  
33 or administer a cooperative purchasing agreement for the acquisition of  
34 commodities or services ~~with one (1) or more public procurement units or~~  
35 ~~external procurement activities~~ in accordance with an agreement entered into  
36 between the participants.

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

7           (B) The State Procurement Director shall consider the  
8 economic justification for using a cooperative purchasing agreement when  
9 granting or withholding approval for the cooperative purchasing agreement.

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

15  
16           SECTION 3. DO NOT CODIFY. Rules.

17           (a) The State Procurement Director shall adopt rules to create a  
18 review policy outlining how the economic justification required under § 19-  
19 11-249 may be demonstrated, including without limitation a comparison of:

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

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

24           (b)(1) When adopting the initial rules required under this section,  
25 the final rule shall be filed with the Secretary of State for adoption under  
26 § 25-15-204(f):

27           (A) On or before January 1, 2020; or

28           (B) If approval under § 10-3-309 has not occurred by  
29 January 1, 2020, as soon as practicable after approval under § 10-3-309.

30           (2) The director shall file the proposed rule with the  
31 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
32 2020, so that the Legislative Council may consider the rule for approval  
33 before January 1, 2020.

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1 State of Arkansas  
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## For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS PROCUREMENT LAWS CONCERNING  
9 THE DELEGATION AUTHORITY OF THE STATE PROCUREMENT  
10 DIRECTOR; AND FOR OTHER PURPOSES.  
11

## Subtitle

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13 TO AMEND ARKANSAS PROCUREMENT LAWS  
14 CONCERNING THE DELEGATION AUTHORITY OF  
15 THE STATE PROCUREMENT DIRECTOR.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 19-11-218 is amended to read as follows:  
22 19-11-218. Assistants and designees - Delegation orders.

23 Subject to the provisions of the Uniform Classification and  
24 Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

25 (1) Employ and supervise such assistants and other persons as  
26 may be necessary;

27 (2) Fix their compensation as provided by law; and

28 (3) (A) Delegate authority to such designees or to any a state  
29 agency as the director may deem appropriate by issuing a written delegation  
30 order, within the limitations of state law and the state procurement  
31 regulations.

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

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

36 (ii) Be publicly posted on the official website of

1 the Office of State Procurement;

2 (iii) Remain in effect under the original terms  
3 unless the terms of the delegation order are modified or rescinded in writing  
4 by the director;

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

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

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

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

15  
16 SECTION 2. DO NOT CODIFY. Rules.

17 (a) The State Procurement Director shall adopt rules to:

18 (1) Implement the requirements for delegation orders under § 19-  
19 11-218; and

20 (2) Outline the procurement training required under § 19-11-218.

21 (b)(1) When adopting the initial rules required under this section,  
22 the final rule shall be filed with the Secretary of State for adoption under  
23 § 25-15-204(f):

24 (A) On or before January 1, 2020; or

25 (B) If approval under § 10-3-309 has not occurred by  
26 January 1, 2020, as soon as practicable after approval under § 10-3-309.

27 (2) The director shall file the proposed rule with the  
28 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
29 2020, so that the Legislative Council may consider the rule for approval  
30 before January 1, 2020.

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5 By: Senator <NA>  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AUTHORIZE AND REGULATE SOLICITATION CONFERENCES UNDER  
10 THE ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT VENDOR  
11 TRAINING AND POLLING BE CONDUCTED UNDER THE ARKANSAS  
12 PROCUREMENT LAW; AND FOR OTHER PURPOSES.  
13  
14

## Subtitle

15 TO AUTHORIZE AND REGULATE SOLICITATION  
16 CONFERENCES UNDER THE ARKANSAS  
17 PROCUREMENT LAW; AND TO REQUIRE THAT  
18 VENDOR TRAINING AND POLLING BE CONDUCTED  
19 UNDER THE ARKANSAS PROCUREMENT LAW.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 19-11-229(d), concerning competitive sealed  
26 bidding, is amended to read as follows:

27 (d)~~(1)~~ Notice inviting bids shall ~~be~~;

28 (1) Be given not fewer than five (5) calendar days nor more than  
29 ~~thirty (30)~~ sixty (60) calendar days preceding the date for the opening of  
30 bids by publishing the notice at least one (1) time in at least one (1)  
31 newspaper having general circulation in the state or posting by electronic  
32 media, but in all instances, adequate notice shall be given~~;~~;

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

36 (3) State where invitations for ~~bid~~ bids may be obtained~~;~~;

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

3           (5) Include an announcement of the date and time of the  
4 solicitation conference if a solicitation conference is to be held before the  
5 opening of bids to provide information to prospective bidders.

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

9           19-11-273. Solicitation conferences.

10          (a)(1) A state agency may hold a solicitation conference before or  
11 after issuing an invitation for bids or a request for proposals.

12           (2) A solicitation conference may be held:

13           (A) In person; or

14           (B) Online or in another virtual format.

15          (b) Attendance by a vendor at a solicitation conference is not  
16 required for that vendor's bid or proposal to be accepted unless the  
17 attendance requirement is:

18           (1) Explicitly stated in the invitation for bids or request for  
19 proposals; and

20           (2) Approved by the State Procurement Director or the head of  
21 the procurement agency.

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

23           (1) Include the date and time of the solicitation conference in  
24 the notice required under § 19-11-229;

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

29           (3) Post the sign-in sheet or registration records online with  
30 the other documents related to the solicitation.

31          (d) A statement made at a solicitation conference does not change the  
32 invitation for bids or request for proposals unless a change is made by  
33 written amendment to the invitation for bids or request for proposals.

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

36           (1) Has a contract amount of at least:

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

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

7 (2) Is of strategic importance to the state.

8  
9 19-11-274. Vendor training and polling.

10 The Office of State Procurement shall:

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

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

15 (i) Be offered throughout the state; and

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

18 (2) Periodically poll vendors that have been successful in  
19 securing business with the state and vendors that have not been successful in  
20 securing business with the state to solicit procurement feedback and inform  
21 improvements to vendor training.

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1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
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# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING COMPETITIVE SEALED  
9 BIDDING AND COMPETITIVE SEALED PROPOSALS UNDER THE  
10 ARKANSAS PROCUREMENT LAW; TO AMEND THE LAW CONCERNING  
11 THE NEGOTIATION OF COMPETITIVE SEALED BIDS AND  
12 COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS  
13 PROCUREMENT LAW; AND FOR OTHER PURPOSES.  
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## Subtitle

16 TO AMEND THE LAW CONCERNING COMPETITIVE  
17 SEALED BIDDING, COMPETITIVE SEALED  
18 PROPOSALS, AND NEGOTIATIONS OF  
19 PROCUREMENTS UNDER THE ARKANSAS  
20 PROCUREMENT LAW.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code § 19-11-229(h)(2), concerning competitive  
27 sealed bidding under the Arkansas Procurement Law, is amended to add an  
28 additional subdivision read as follows:

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

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

34 (b) The training provided by the office shall  
35 be specific to Arkansas law.  
36

1 SECTION 2. Arkansas Code § 19-11-230(e)(2), concerning competitive  
2 sealed proposals under the Arkansas Procurement Law, is amended to add an  
3 additional subdivision to read as follows:

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

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

10 (a) Resubmit the offeror's original proposal  
11 with lower pricing in accordance with the specifications of the request for  
12 proposals; or

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

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

20  
21 SECTION 3. Arkansas Code § 19-11-230(f), concerning competitive sealed  
22 proposals under the Arkansas Procurement Law, is amended to read as follows:

23 (f)(1) ~~Award~~ After any requested best and final offers are submitted  
24 and evaluated, the award shall be made to the responsible offeror whose  
25 proposal is determined in writing to be the most advantageous to the state,  
26 taking into consideration price, the evaluation factors set forth in the  
27 request for proposals, and the results of any discussions conducted with  
28 responsible offerors.

29 (2) No other factors or criteria shall be used in the  
30 evaluation.

31 (3) The director or the agency procurement official may enter  
32 into negotiations with the lowest responsive and responsible offeror when the  
33 best interests of the state would be served, including without limitation  
34 when the state can obtain:

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

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

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5           SECTION 4. EFFECTIVE DATE. Section 1 of this act is effective on and  
6 after July 1, 20XX.

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1 State of Arkansas  
2 92nd General Assembly  
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# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW  
9 CONCERNING THE CONTENT, TERM, AND REVIEW OF CONTRACTS  
10 PROCURED BY THE STATE; TO PROVIDE CERTAIN COMPLIANCE  
11 REQUIREMENTS FOR PERSONS CONTRACTING WITH THE STATE;  
12 AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO AMEND THE ARKANSAS PROCUREMENT LAW  
16 CONCERNING THE CONTENT, TERM, AND REVIEW  
17 OF CONTRACTS PROCURED BY THE STATE; AND  
18 TO PROVIDE CERTAIN COMPLIANCE  
19 REQUIREMENTS FOR PERSONS CONTRACTING WITH  
20 THE STATE.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 19-11-219 is amended to read as follows:

27 19-11-219. Legal counsel ~~– Contract review~~.

28 (a) The Attorney General shall act as counsel for the State  
29 Procurement Director in preparation of necessary contracts and in all legal  
30 matters.

31 (b)(1) A contract that the director has designated as requiring review  
32 shall be reviewed by a person employed as an attorney with a state agency.

33 (2) The review required under this subsection shall occur before  
34 the contract is executed.  
35

36 SECTION 2. Arkansas Code § 19-11-238(c), concerning multiyear

1 contracts, is amended to read as follows:

2 (c)(1) Termination Due to Unavailability of Funds in Succeeding Years.  
 3 Original terms of such multiyear contracts shall ~~terminate on the last day of~~  
 4 ~~the current biennium, and any renewals by the state based upon continuing~~  
 5 ~~appropriation shall not exceed the next succeeding biennium~~ not exceed four  
 6 (4) years.

7 (2) When funds are not appropriated or otherwise made available  
 8 to support continuation of performance in a ~~subsequent year of a multi-year a~~  
 9 multiyear contract, the contract ~~for such subsequent year~~ shall be terminated  
 10 and the contractor may be reimbursed for the reasonable value of any  
 11 nonrecurring costs incurred but not amortized in the price of the commodities  
 12 or services delivered under the contract.

13 (3) The cost of termination under subdivision (c)(2) of this  
 14 section may be paid from:

15 ~~(1)~~ (A) Appropriations currently available for performance  
 16 of the contract;

17 ~~(2)~~ (B) Appropriations currently available for procurement  
 18 of similar commodities or services and not otherwise obligated; or

19 ~~(3)~~ (C) Appropriations made specifically for the payment  
 20 of such termination costs.

21  
 22 SECTION 3. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
 23 amended to add an additional section to read as follows:

24 19-11-273. Compliance.

25 (a) A contractor shall ensure, in cooperation with a state agency,  
 26 that the contract between the contractor and the state agency adheres to the  
 27 requirements of this chapter, including without limitation the inclusion of  
 28 any mandatory language and the submission of the contract for any required  
 29 review.

30 (b)(1) After any required review of a contract has been completed, the  
 31 signature of the contractor shall be placed on the final contract between the  
 32 contractor and the state agency.

33 (2) The signature required under this subsection serves as an  
 34 acknowledgement that the contractor is:

35 (A) Equally responsible with the state agency for adhering  
 36 to the requirements of this chapter related to the content and review of the

1 contract; and

2 (B) Subject to the relevant ethical provisions of § 19-11-  
 3 701 et seq.

4  
 5 SECTION 4. DO NOT CODIFY. Additional duties of State Procurement  
 6 Director – Rules.

7 (a) The State Procurement Director shall:

8 (1) Adopt rules to implement § 19-11-219(b), including without  
 9 limitation rules to:

10 (A) Designate contracts that require the review of a  
 11 person employed as an attorney with a state agency before execution of the  
 12 contract, which may include without limitation contracts:

13 (i) Over a certain dollar amount;

14 (ii) That modify the standard state terms and  
 15 conditions; and

16 (iii) Based on other stated criteria; and

17 (B) Identify the requirements for the attorneys who may  
 18 review contracts, including without limitation:

19 (i) An attorney employed with the Office of State  
 20 Procurement, an institution of higher education, or the Office of the  
 21 Attorney General; and

22 (ii) Any other attorney employed by the state and  
 23 licensed to practice law in Arkansas; and

24 (2) Measure and track the contract routing process to identify  
 25 stakeholders that may be contributing to the elongation of the review  
 26 process.

27 (b)(1) When adopting the initial rules required under this section,  
 28 the final rule shall be filed with the Secretary of State for adoption under  
 29 § 25-15-204(f):

30 (A) On or before January 1, 2020; or

31 (B) If approval under § 10-3-309 has not occurred by  
 32 January 1, 2020, as soon as practicable after approval under § 10-3-309.

33 (2) The director shall file the proposed rules with the  
 34 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
 35 2020, so that the Legislative Council may consider the rules for approval  
 36 before January 1, 2020.



1 State of Arkansas  
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SENATE BILL

5 By: Senator <NA>  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AMEND THE DEFINITIONS UNDER THE ARKANSAS PROCUREMENT  
10 LAW; TO AMEND THE REVIEW AND REPORTING REQUIREMENTS  
11 FOR SERVICE CONTRACTS PROCURED BY THE STATE; TO AMEND  
12 THE LAW CONCERNING VEHICLE LEASES BY STATE AGENCIES;  
13 AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
17 AMEND THE REVIEW AND REPORTING  
18 REQUIREMENTS FOR SERVICE CONTRACTS  
19 PROCURED BY THE STATE; AND TO AMEND THE  
20 LAW CONCERNING VEHICLE LEASES BY STATE  
21 AGENCIES.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 19-11-203(4), concerning the definitions to  
28 be used under the Arkansas Procurement Law, is amended to read as follows:

29 (4)(A) "Commodities" means all personal property, including, ~~but~~  
30 ~~not limited to, equipment, printing, stationery, supplies, and insurance, but~~  
31 ~~excluding leases~~ without limitation:

32 (i) Goods, as defined in § 4-2-105;

33 (ii) Leases, as defined in § 4-2A-103; and

34 (iii) Insurance.

35 (B) "Commodities" does not include:

36 (i) A lease on real property, ~~real property,~~ or a

1 permanent interest in real property, ~~exempt;~~  
 2 (ii) Exempt commodities and services, ~~and capital;~~  
 3 and  
 4 (iii) Capital improvements;

5  
 6 SECTION 2. Arkansas Code § 19-11-203(14)(AA), concerning the  
 7 definition of "exempt commodities and services" to be used under the Arkansas  
 8 Procurement Law, is amended to read as follows:

9 (AA) The following commodities and services relating to  
 10 proprietary software after the initial procurement:

- 11 (i) Technical support incidental to supporting the  
 12 continuous operation of proprietary software;
- 13 (ii) Renewals;
- 14 (iii) Additional copies; and
- 15 (iv) License upgrades;

16  
 17 SECTION 3. Arkansas Code § 19-11-203(27), concerning the definitions  
 18 to be used under the Arkansas Procurement Law, is amended to read as follows:

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

23 (B) "Services" includes without limitation:

- 24 (i) Consulting services;
- 25 (ii) Personal services;
- 26 (iii) Professional services;
- 27 (iv) Technical and general services; and
- 28 (v) The furnishing of labor, time, or effort by a  
 29 contractor for the generation, customization, configuration, or development  
 30 of software and other intangible property other than technical support  
 31 incidental to the procurement of proprietary software.

32 (C) "Services" ~~shall~~ does not include employment  
 33 agreements, collective bargaining agreements, exempt commodities and  
 34 services, or architectural or engineering contracts requiring approval of the  
 35 Building Authority Division of the Department of Finance and Administration  
 36 or higher education;

1  
2 SECTION 4. Arkansas Code § 19-11-265 is amended to read as follows:  
3 19-11-265. Submission of contracts required.

4 (a)(1) A Except as otherwise provided in this section, a contract  
5 requiring the service of one (1) or more individuals for regular full-time or  
6 part-time weekly work shall be presented to the Legislative Council or, if  
7 the General Assembly is in session, to the Joint Budget Committee, before the  
8 execution of the contract if the total initial contract amount or the total  
9 projected contract amount, including any amendments or possible extensions,  
10 is at least one hundred thousand dollars (\$100,000).

11 (2) The Legislative Council or the Joint Budget Committee shall  
12 provide the State Procurement Director with its review as to the propriety of  
13 the contract within thirty (30) days after receipt of the proposed contract.

14 (3) The contract shall not be submitted to the Legislative  
15 Council or to the Joint Budget Committee until the Office of State  
16 Procurement has reviewed the contract and provided the Legislative Council or  
17 the Joint Budget Committee with a recommendation regarding the legality of  
18 the contract.

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

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

25 (a) A change in the contract amount;

26 (b) An increase in the total projected  
27 contract amount;

28 (c) A change in any of the terms of the  
29 contract;

30 (d) A change in any performance-based  
31 standards stated in the contract;

32 (e) The imposition of financial consequences  
33 as the result of a failure to satisfy performance-based standards under § 19-  
34 11-267 during the year preceding the renewal or extension of the contract;  
35 and

36 (f) The submission of a vendor performance

1 report during the year preceding the renewal or extension of the contract.

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

5 (5) A contract that is submitted for review under this  
 6 subsection shall have a cover sheet that provides the following information:

7 (A) A description of the goods or services being procured  
 8 and their criticality to the state;

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

11 (C) A summary of the scoring from the procurement;

12 (D) The vendors that participated in the procurement;

13 (E) The outcome of any protests;

14 (F) For procurements using the competitive sealed proposal  
 15 method:

16 (i) The qualifications of the evaluators; and

17 (ii) Whether any private evaluators were engaged;

18 and

19 (G) Any other information required by the Legislative  
 20 Council or the Joint Budget Committee.

21 (b) The Legislative Council or the Joint Budget Committee may review  
 22 or exempt from review any contract or group of contracts contemplated by this  
 23 section.

24 (c)(1) In addition to the contracts presented to the Legislative  
 25 Council or to the Joint Budget Committee under subsection (a) of this  
 26 section, the director shall compile a monthly report of all executed  
 27 contracts requiring the service of one (1) or more individuals for regular  
 28 full-time or part-time weekly work if the total initial contract amount or  
 29 the total projected contract amount, including any amendments or possible  
 30 extensions, is at least twenty-five thousand dollars (\$25,000) and less than  
 31 one hundred thousand dollars (\$100,000).

32 (2) The monthly report required under this subsection shall  
 33 include without limitation:

34 (A) The name of the contractor;

35 (B) The state agency name;

36 (C) The contact information for the contractor or state



1 agency;

2 (D) The total initial cost of the contract, the cost of  
3 any commodities included in the contract, and the cost of the services;

4 (E) The type of commodities and services contracted;

5 (F) The quantity of commodities and services contracted;

6 (G) The procurement method;

7 (H) The total projected contract amount that includes any  
8 amendments and all available extensions;

9 (I) The identification of any contracts that may need to  
10 be reviewed under this section; and

11 ~~(I)~~ (J) Any other information requested by the Legislative  
12 Council or the Joint Budget Committee.

13 (3) The director shall remit the report required under this  
14 subsection each month to the Legislative Council or to the Joint Budget  
15 Committee as directed by the Legislative Council.

16 (4)(A) A primary member of the Review Subcommittee of the  
17 Legislative Council may identify a contract included in a report under this  
18 subsection that the primary member wants the Review Subcommittee of the  
19 Legislative Council to review.

20 (B) A primary member shall identify a reported contract  
21 for review under this subsection at least twenty-four (24) hours before the  
22 meeting at which the contract is to be reviewed.

23 (d) A contract that is procured by a state agency with a state agency  
24 procurement official is subject to the reporting and presentment requirements  
25 under this section.

26 (e) It is a violation of state procurement laws, Arkansas Code Title  
27 19, Chapter 11, for a state agency official to procure services in an  
28 incremental or split purchase arrangement to avoid the reporting or  
29 presentment requirements of this section.

30

31 SECTION 5. Arkansas Code § 19-11-1006 is amended to read as follows:  
32 19-11-1006. Submission of contracts required.

33 (a)(1) A Except as otherwise provided in this section, a professional  
34 services contract or consultant services contract shall be presented to the  
35 Legislative Council or, if the General Assembly is in session, to the Joint  
36 Budget Committee, before the execution of the professional services contract

1 or consultant services contract if the total initial amount or the total  
 2 projected amount, including any amendments or possible extensions, of the  
 3 professional services contract or consultant services contract is at least  
 4 fifty thousand dollars (\$50,000).

5 (2) The Legislative Council or the Joint Budget Committee shall  
 6 provide the State Procurement Director with its review as to the propriety of  
 7 the professional services contract or consultant services contract within  
 8 thirty (30) days after receipt of the proposed professional services contract  
 9 or consultant services contract.

10 (3) The professional services contract or consultant services  
 11 contract shall not be submitted to the Legislative Council or to the Joint  
 12 Budget Committee until the Department of Finance and Administration has  
 13 reviewed the professional services contract or consultant services contract  
 14 and provided the Legislative Council or the Joint Budget Committee with a  
 15 recommendation regarding the legality of the professional services contract  
 16 or consultant services contract.

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

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

23 (a) A change in the contract amount;

24 (b) An increase in the total projected  
 25 contract amount;

26 (c) A change in any of the terms of the  
 27 contract;

28 (d) A change in any performance-based  
 29 standards stated in the contract;

30 (e) The imposition of financial consequences  
 31 as the result of a failure to satisfy performance-based standards under § 19-  
 32 11-267 during the year preceding the renewal or extension of the contract;  
 33 and

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

36 (B) However, a state agency may elect to submit a contract

1 for review under this subsection if the state agency is uncertain whether the  
 2 contract has a material change.

3 (5) A contract that is submitted for review under this  
 4 subsection shall have a cover sheet that provides the following information:

5 (A) A description of the services being procured and their  
 6 criticality to the state;

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

9 (C) A summary of the scoring from the procurement;

10 (D) The vendors that participated in the procurement;

11 (E) The outcome of any protests;

12 (F) For procurements using the competitive sealed proposal  
 13 method:

14 (i) The qualifications of the evaluators; and

15 (ii) Whether any private evaluators were engaged;

16 and

17 (G) Any other information required by the Legislative  
 18 Council or the Joint Budget Committee.

19 (b) The Legislative Council or the Joint Budget Committee may review  
 20 or exempt from review any professional services contract or consultant  
 21 services contract or group of professional services contracts or consultant  
 22 services contracts contemplated by this subchapter.

23 (c)(1) Funds from grants and contracts to a state institution of  
 24 higher education may be used for the purpose of subcontracting with  
 25 institutions under the performance conditions of the grants or contracts.

26 (2) Subcontracts for research that are derived from grants and  
 27 contracts to a state institution of higher education require the prior  
 28 approval of the director and a review by the Legislative Council or by the  
 29 Joint Budget Committee.

30 (d)(1) In addition to the professional services contracts and  
 31 consultant services contracts presented to the Legislative Council or to the  
 32 Joint Budget Committee under subsection (a) of this section, the director  
 33 shall compile a monthly report of all executed professional services  
 34 contracts and consultant services contracts if the total initial amount or  
 35 the total projected amount, including any amendments or possible extensions,  
 36 of the professional services contract or consultant services contract is at

1 least ten thousand dollars (\$10,000) and less than fifty thousand dollars  
 2 (\$50,000).

3 (2) The monthly report required under this subsection shall  
 4 include without limitation:

5 (A) The name of the contractor;

6 (B) The state agency name;

7 (C) The contact information for the contractor or state  
 8 agency;

9 (D) The total initial cost of the professional services  
 10 contract or consultant services contract;

11 (E) The type of services contracted;

12 (F) The quantity of services contracted;

13 (G) The procurement method;

14 (H) The total projected amount of the professional  
 15 services contract or consultant services contract that includes any  
 16 amendments and all available extensions;

17 (I) The identification of any contracts that may need to  
 18 be reviewed under this section; and

19 ~~(I)~~ (J) Any other information requested by the Legislative  
 20 Council or the Joint Budget Committee.

21 (3) The director shall remit the report each month to the  
 22 Legislative Council or to the Joint Budget Committee as directed by the  
 23 Legislative Council.

24 (4)(A) A primary member of the Review Subcommittee of the  
 25 Legislative Council may identify a contract included in a report under this  
 26 subsection that the primary member wants the Review Subcommittee of the  
 27 Legislative Council to review.

28 (B) A primary member shall identify a reported contract  
 29 for review under this subsection at least twenty-four (24) hours before the  
 30 meeting at which the contract is to be reviewed.

31 (e) A contract that is procured by a state agency with a state agency  
 32 procurement official is subject to the reporting and presentment requirements  
 33 under this section.

34 (f) It is a violation of state procurement laws, Arkansas Code Title  
 35 19, Chapter 11, for a state agency official to procure services in an  
 36 incremental or split purchase arrangement to avoid the reporting or

1 presentment requirements of this section.

2  
3 SECTION 6. Arkansas Code § 22-8-102 is amended to read as follows:

4 22-8-102. Leasing and renting of vehicles by state agencies -  
5 Definitions.

6 (a) ~~For purposes of~~ As used in this section:

7 (1) "Lease" means obtaining the use of a motor vehicle from any  
8 source for a monetary fee, for a period of thirty-one (31) days or more; ~~and~~

9 (2) "Rental" means obtaining the use of a motor vehicle from any  
10 source for a monetary fee for a period of thirty (30) days or less; and

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

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

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

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

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

36 (c) If the director disapproves a proposed lease of a motor vehicle,

1 he or she shall stamp his or her disapproval on the request and return it to  
2 the state agency, and it shall be unlawful for the state agency to proceed to  
3 lease the motor vehicle.

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

8 (e) It is a violation of state procurement laws, Arkansas Code Title  
9 19, Chapter 11, for a state agency official to conduct multiple rentals of a  
10 motor vehicle to avoid the approval and review requirements of this section.

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1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE PROCUREMENT LAWS; TO AMEND THE  
9 LAWS CONCERNING VARIOUS PROCUREMENT METHODS; TO ALLOW  
10 FOR REQUESTS FOR INFORMATION; TO AMEND THE LAW  
11 CONCERNING THE PROCUREMENT OF PROFESSIONAL SERVICES;  
12 TO PROVIDE FOR THE TRAINING AND CERTIFICATION OF  
13 PROCUREMENT OFFICIALS; AND FOR OTHER PURPOSES.  
14  
15

## Subtitle

16 TO ALLOW FOR REQUESTS FOR INFORMATION; TO  
17 AMEND THE LAW CONCERNING THE PROCUREMENT  
18 OF PROFESSIONAL SERVICES; TO PROVIDE FOR  
19 THE TRAINING AND CERTIFICATION OF  
20 PROCUREMENT OFFICIALS.  
21  
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23

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

26 SECTION 1. Arkansas Code § 19-11-230(f), concerning competitive sealed  
27 proposals under the Arkansas Procurement Law, is amended to add an additional  
28 subdivision to read as follows:

29 (3) However, if it is determined that two (2) or more  
30 responsible offerors have tie scores after the evaluation of the proposals,  
31 the award shall be made to the responsible offeror that had one (1) of the  
32 tied scores and submitted the lowest price proposal.  
33

34 SECTION 2. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
35 amended to add additional sections to read as follows:

36 19-11-273. Requests for information.

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

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

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

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

14       (e) Information provided in response to a request for information  
15 under this section is exempt from the Freedom of Information Act of 1967, §  
16 25-19-101 et seq. until:

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

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

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

23  
24       19-11-274. Training and certification of procurement personnel.

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

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

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

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

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



1                   (a) Be designed to develop procurement competency;  
2 and

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

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

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

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

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

15                   (c)(1) Beginning July 1, 20XX, a state agency employee shall not  
16 conduct a procurement under this chapter unless the state agency employee is  
17 certified through the training and certification program required under this  
18 section.

19                   (2) To maintain certification under this section, a state agency  
20 employee shall complete a reasonable number of hours of continuing education,  
21 as provided for by rule by the director.

22  
23                   SECTION 3. Arkansas Code § 19-11-801(a) and (b), concerning the policy  
24 related to the procurement of professional services, is amended to read as  
25 follows:

26                   (a) It is the policy of the State of Arkansas that state agencies  
27 shall follow the procedures stated in this section, except that competitive  
28 bidding shall not be used for the procurement of ~~legal~~, architectural,  
29 engineering, construction management, and land surveying professional  
30 consultant services if:

31                   (1) State agencies not exempt from review and approval of the  
32 Building Authority Division of the Department of Finance and Administration  
33 shall follow procedures established by the division for the procurement of  
34 architectural, engineering, land surveying, and construction management  
35 services; and

36                   (2) Institutions of higher education exempt from review and

1 approval of the division shall follow procedures established by their  
 2 governing boards for the procurement of architectural, engineering, land  
 3 surveying, and construction management professional consultant services.

4 (b) It is the policy of the State of Arkansas and its political  
 5 subdivisions that political subdivisions shall follow the procedures stated  
 6 in this section, except that competitive bidding shall not be used for the  
 7 procurement of ~~legal~~, financial advisory, architectural, engineering,  
 8 construction management, and land surveying professional consultant services.

9  
 10 SECTION 4. Arkansas Code § 19-11-802, concerning requests for  
 11 statements of qualifications and performance data, is amended to add an  
 12 additional subsection to read as follows:

13 (e)(1)(A) A request for statements of qualifications and performance  
 14 data under this section may be used for certain procurements through a  
 15 request for qualifications.

16 (B) Absent a sole-source justification, a request for  
 17 qualifications is the recommended procurement method when contracting for  
 18 architectural, engineering, land surveying, and interior design services.

19 (C) A request for qualifications may be used as the  
 20 procurement method when contracting for services other than architectural,  
 21 engineering, construction management, land surveying, and interior design  
 22 services if the State Procurement Director approves its use and determines  
 23 that it is the most suitable method of procurement.

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

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

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

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

34  
 35 SECTION 5. DO NOT CODIFY. Additional duties of State Procurement  
 36 Director – Rules.

1       (a) The State Procurement Director shall provide for enhanced training  
2 on the drafting of specifications for procurements.

3       (b) The director shall adopt rules to:

4           (1)(A) Amend the rules relating to § 19-11-229 to allow for the  
5 clarification of bids under § 19-11-229 and proposals under § 19-11-230.

6                   (B) The rules shall provide that:

7                           (i) A written response by a bidder or offeror shall  
8 not add to or enhance the submitted bid or proposal or change the terms of  
9 the submitted bid;

10                           (ii) If the bidder or offeror fails or refuses to  
11 clarify any matter questioned about the bidder's or offeror's bid or proposal  
12 in writing by the deadline set by the director or agency procurement  
13 official, the bid or proposal shall be evaluated as if no clarification were  
14 given; and

15                           (iii) If the bidder or offeror clarifies the matter  
16 questioned in writing, the clarification shall be evaluated and become a part  
17 of any contract awarded on the basis of the bidder's or offeror's bid or  
18 proposal;

19           (2) Define "critical emergency" with respect to § 19-11-233 as  
20 an emergency in which human life or health is imminently endangered;

21           (3) In addition to the requirement to list the names of at least  
22 three (3) firms contacted, require that a quotation abstract for an emergency  
23 procurement under § 19-11-233 include the:

24                           (A) Time that each firm was contacted;

25                           (B) Quoted price obtained from each contacted firm; and

26                           (C) Method used for contacting each firm; and

27           (4) Amend existing rules relating to § 19-11-229 to:

28                           (A) Provide that time discounts may be considered in the  
29 evaluation of a bid only:

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

32                           (ii) Under the structured terms of the invitation  
33 for bids; and

34                           (B) Clarify that if a bidder offers a time discount as  
35 part of its bid without solicitation of time discounts by the state agency,  
36 the time discount shall not be considered.

1           (c)(1) When adopting the initial rules required under this section,  
2 the final rules shall be filed with the Secretary of State for adoption under  
3 § 25-15-204(f):

4                   (A) On or before January 1, 2020; or

5                   (B) If approval under § 10-3-309 has not occurred by  
6 January 1, 2020, as soon as practicable after approval under § 10-3-309.

7           (2) The director shall file the proposed rules with the  
8 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
9 2020, so that the Legislative Council may consider the rules for approval  
10 before January 1, 2020.

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1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AMEND THE LAW CONCERNING REQUESTS FOR PROPOSALS UNDER  
10 THE ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT COST BE  
11 WEIGHTED A CERTAIN AMOUNT IN EVALUATING RESPONSES TO  
12 A REQUEST FOR PROPOSALS; TO ALLOW FOR THE USE OF  
13 PRIVATE EVALUATORS IN EVALUATING RESPONSES TO A  
14 REQUEST FOR PROPOSALS; TO REQUIRE THAT RULES  
15 PROMULGATED BY THE STATE PROCUREMENT DIRECTOR BE  
16 SUBMITTED TO AND REVIEWED BY THE REVIEW SUBCOMMITTEE  
17 OF THE LEGISLATIVE COUNCIL; AND FOR OTHER PURPOSES.  
18  
19

## Subtitle

21 TO AMEND THE LAW CONCERNING REQUESTS FOR  
22 PROPOSALS; TO REQUIRE THAT COST BE  
23 WEIGHTED A CERTAIN AMOUNT IN EVALUATING  
24 RESPONSES TO A REQUEST FOR PROPOSALS; AND  
25 TO REQUIRE REVIEW OF PROCUREMENT RULES.  
26  
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
29

30 SECTION 1. Arkansas Code § 19-11-230(d), concerning competitive sealed  
31 proposals under the Arkansas Procurement Law, is amended to read as follows:

32 (d)(1) The request for proposals shall indicate the relative  
33 importance of price and other evaluation factors.

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

1 proposals.

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

7 (C) The use of a lower percentage under subdivision  
8 (d)(2)(B) of this section and the corresponding written determination by the  
9 director shall be reported to the Legislative Council or, if the General  
10 Assembly is in session, the Joint Budget Committee.

11  
12 SECTION 2. Arkansas Code § 19-11-225 is amended to read as follows:

13 19-11-225. ~~Regulations~~ Rules.

14 (a)(1) ~~Regulations~~ Rules shall be promulgated by the State Procurement  
15 Director in accordance with the applicable provisions of this subchapter and  
16 of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

21 (B) Reviewed and approved by the Legislative Council under  
22 § 10-3-309.

23 (b) ~~No regulation~~ A rule shall not change any commitment, right, or  
24 obligation of the state or of a contractor under a contract in existence on  
25 the effective date of the ~~regulation~~ rule.

26 (c)(1) ~~No clause which~~ A clause that is required by ~~regulation~~ rule to  
27 be included ~~shall be considered to be~~ is not incorporated by operation of law  
28 in any state contract without the consent of both parties to the contract to  
29 the incorporation.

30 (2) The parties to the contract may give such consent to  
31 incorporation by reference at any time after the contract has been entered  
32 into and without the necessity of consideration passing to either party.

33  
34 SECTION 3. DO NOT CODIFY. Rules – Additional duties of State  
35 Procurement Director.

36 (a) The State Procurement Director shall:

1           (1) Adopt rules to:

2                   (A)(i) Provide for the use of private evaluators, who  
3 shall be:

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

6                           (b) Qualified volunteers, unless the state  
7 does not have the necessary expertise to evaluate the proposals, in which  
8 case a paid private evaluator may be used; and

9                           (c) Eligible for travel reimbursement if the  
10 state agency decides to make travel reimbursement available.

11                           (ii) However, the use of private evaluators shall  
12 not be required;

13                   (B) Require the disclosure of the use of one (1) or more  
14 private evaluators in the file and in any information submitted to the  
15 Legislative Council or, if the General Assembly is in session, the Joint  
16 Budget Committee; and

17                   (C) Develop tools and templates to be used in evaluating  
18 proposals submitted in response to a request for proposals that optimize the  
19 number of material scored attributes and provide for a limited range of  
20 possible scores for each attribute; and

21                   (2) Encourage full discussion by the evaluators who are  
22 evaluating proposals submitted in response to a request for proposals.

23                   (b)(1) When adopting the initial rules required under this section,  
24 the final rules shall be filed with the Secretary of State for adoption under  
25 § 25-15-204(f):

26                           (A) On or before January 1, 2020; or

27                           (B) If approval under § 10-3-309 has not occurred by  
28 January 1, 2020, as soon as practicable after approval under § 10-3-309.

29                   (2) The director shall file the proposed rules with the  
30 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
31 2020, so that the Legislative Council may consider the rules for approval  
32 before January 1, 2020.





1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

DRAFT JLL/JLL  
SENATE BILL

5 By: Senator <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND PROCUREMENT LAWS CONCERNING VENDOR  
9 PERFORMANCE; TO REQUIRE AND REGULATE THE USE OF  
10 PERFORMANCE-BASED CONTRACTS; TO AMEND THE REQUIREMENT  
11 CONCERNING VENDOR PERFORMANCE REPORTS; TO ELIMINATE  
12 DUPLICATIVE PROVISIONS IN THE LAW; AND FOR OTHER  
13 PURPOSES.  
14

## Subtitle

15  
16 TO AMEND PROCUREMENT LAWS CONCERNING  
17 VENDOR PERFORMANCE; TO REQUIRE AND  
18 REGULATE THE USE OF PERFORMANCE-BASED  
19 CONTRACTS; AND TO AMEND THE REQUIREMENT  
20 CONCERNING VENDOR PERFORMANCE REPORTS.  
21  
22  
23

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

26 SECTION 1. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to  
27 read as follows:

28 19-11-267. Development and use of performance-based contracts –  
29 Findings.

30 (a) The General Assembly finds that:

31 (1) Performance-based contracts provide an effective and  
32 efficient method of monitoring and evaluating the overall quality of services  
33 provided; and

34 (2) The practice of including benchmark objectives that the  
35 provider must attain at specific intervals during the term of the contract is  
36 an essential requirement for measuring performance.

DRAFT

1           (b)(1) A state agency, board, commission, or institution of higher  
 2 education that enters into a contract under this ~~subchapter~~ chapter to  
 3 procure services that has a contract amount of at least one million dollars  
 4 (\$1,000,000) in a single contract year or a total projected contract amount,  
 5 including any amendments to or possible extensions of the contract, of at  
 6 least seven million dollars (\$7,000,000), shall use performance-based  
 7 standards in the contract that are specifically tailored to the services  
 8 being provided under the contract.

9           (2) The performance-based standards used under this subsection  
 10 shall include performance measures based on objective factors.

11           (3) A state agency, board, commission, or institution of higher  
 12 education is encouraged to use performance-based standards that are based on  
 13 objective factors in any other contract in which it would serve the best  
 14 interest of the state.

15           (c)~~(1)~~ A state agency, board, commission, or institution of higher  
 16 education that enters into a contract with performance-based standards:

17           (1)(A) Shall monitor the vendor's performance and adherence to  
 18 the performance-based standards in the contract.

19           (B) For state contracts, the Office of State Procurement  
 20 shall be the state agency that monitors each vendor's performance under this  
 21 subdivision (c)(1); and

22           (2) May impose financial consequences, as identified in the  
 23 contract, on a vendor that is party to a contract with performance-based  
 24 standards for failure to satisfy the performance-based standards, including  
 25 without limitation withholding payment or pursuing liquidated damages to the  
 26 extent allowed by law.

27           (d)(1) The State Procurement Director shall promulgate rules necessary  
 28 to implement and administer this section.

29           (2) Rules promulgated under this subsection are subject to  
 30 approval by the Legislative Council or, if the General Assembly is in  
 31 session, the Joint Budget Committee.

32  
 33           19-11-268. Vendor performance reporting.

34           (a)(1) A state agency shall report a vendor's performance under a  
 35 contract executed under this ~~subchapter~~ chapter ~~that has a total initial contract~~  
 36 ~~amount or total projected contract amount, including any amendments to or~~

1 ~~possible extensions of the contract, of at least twenty five thousand dollars~~  
 2 ~~(\$25,000) chapter if the vendor fails to satisfy the performance-based~~  
 3 ~~standards stated in the contract in a manner that represents a material~~  
 4 ~~deviation.~~

5 (2) A state agency shall use ~~the~~ a form prescribed by the State  
 6 Procurement Director and approved by the Legislative Council or, if the  
 7 General Assembly is in session, the Joint Budget Committee, to report a  
 8 vendor's performance under this section.

9 (b) The report required under this section shall be:

10 (1) ~~Completed and submitted:~~

11 ~~(A) At least one (1) time every three (3) months for the~~  
 12 ~~entire term of the contract; and~~

13 ~~(B) At the end of the contract;~~

14 ~~(2) Filed with the Office of State Procurement and maintained~~  
 15 ~~for a minimum of three (3) years from the termination of the relevant~~  
 16 ~~contract, including any extensions and amendments; and~~

17 ~~(3) (2) Signed by the director of the state agency or his or her~~  
 18 ~~designee; and~~

19 ~~(3) Filed monthly until the vendor has performed satisfactorily~~  
 20 ~~under the contract for a period of at least ninety (90) consecutive days.~~

21 ~~(c) A state agency may report a vendor's performance in the manner~~  
 22 ~~prescribed under this section for any contract that would not require~~  
 23 ~~reporting of a vendor's performance under this section if the state agency~~  
 24 ~~encounters an issue with the vendor's performance of a contract.~~

25 ~~(d) A state agency may use a vendor performance report submitted under~~  
 26 ~~this section to evaluate an offeror to the extent that the past performance~~  
 27 ~~of an offeror may be considered under the law and the rules adopted by the~~  
 28 ~~office.~~

29  
 30 SECTION 2. Arkansas Code § 19-11-1010 is repealed.

31 ~~19-11-1010. Development and use of performance based contracts—~~  
 32 ~~Findings.~~

33 ~~(a) Performance based contracts provide an effective, efficient method~~  
 34 ~~of monitoring and evaluating the overall quality of services provided.~~

35 ~~(b) The practice of including benchmark objectives that the provider~~  
 36 ~~must attain at specific intervals during the term of the contract is an~~

1 ~~essential requirement for measuring performance.~~

2 ~~(c) Under regulations promulgated by the State Procurement Director,~~  
3 ~~all state agencies, boards, commissions, and institutions of higher education~~  
4 ~~shall use performance based standards in professional and consultant service~~  
5 ~~contracts.~~

6  
7 SECTION 3. Arkansas Code § 19-11-1013 is repealed.

8 ~~19-11-1013. Vendor performance reporting.~~

9 ~~(a)(1) A state agency shall report a vendor's performance under a~~  
10 ~~contract issued under this subchapter that has a total initial contract~~  
11 ~~amount or total projected contract amount, including any amendments to or~~  
12 ~~possible extensions of the contract, of at least twenty-five thousand dollars~~  
13 ~~(\$25,000) for contracts.~~

14 ~~(2) A state agency shall use the form prescribed by the State~~  
15 ~~Procurement Director and approved by the Legislative Council or, if the~~  
16 ~~General Assembly is in session, the Joint Budget Committee, to report a~~  
17 ~~vendor's performance under this section.~~

18 ~~(b) The report required under this section shall be:~~

19 ~~(1) Completed and submitted:~~

20 ~~(A) At least one (1) time every three (3) months for the~~  
21 ~~entire term of the contract; and~~

22 ~~(B) At the end of the contract;~~

23 ~~(2) Filed with the Office of State Procurement and maintained~~  
24 ~~for a minimum of three (3) years from the termination of the relevant~~  
25 ~~contract, including any extensions and amendments; and~~

26 ~~(3) Signed by the director of the state agency or his or her~~  
27 ~~designee.~~

28  
29 SECTION 4. DO NOT CODIFY. Additional duties of State Procurement  
30 Director.

31 The State Procurement Director shall ensure that vendor performance  
32 reports are available to and searchable by state agencies.