

# **Summary and Index of Consolidated Bill Drafts**

Arkansas Legislative Council – Review Subcommittee

Procurement Study

November 26, 2018



## **Introduction**

In September 2017, the Review Subcommittee (the Subcommittee) of the Arkansas Legislative Council (ALC) selected Ikaso Consulting, LLC (Ikaso) to perform a review of the State’s procurement laws and practices. This selection was made as a result of a competitive process pursuant to RFP Number BLR-170003. On April 16, 2018 Ikaso submitted a report with recommendations for procurement reforms.

Over five (5) subsequent hearings the Subcommittee reviewed and discussed fourteen (14) draft bills, each of which sought to implement recommendations from the Ikaso report. In these hearings a member of the Subcommittee, via motion, assumed stewardship of each of the fourteen (14) bills and subsequently incorporated edits reflective of the Subcommittee’s comments and wishes. Those edited bills were again reviewed by the Subcommittee on October 4<sup>th</sup>, 2018.

The fourteen (14) bills have since been consolidated into six (6) bills. For the six (6) bills, this report tracks each proposed reform. This report indexes, by proposed reform: (i) the reform’s location in the present post-consolidation bill; (ii) the “old” draft bill (from among the fourteen (14)) which contained the reform as of the October 4<sup>th</sup> review; and (iii) the location of the proposed reform in the Ikaso report (if applicable).

## Bill: JLL063

This bill makes adjustments and expansions to competitive procurement instruments and evaluations while ensuring more deference is given to cost. The bill also creates a training program through OSP to ensure Statewide compliance with procurement improvement efforts. Specifically, the bill:

Summary of Reform	Location in JLL063	Old Bill	Location in Ikaso Report
Expands the maximum posting period for Invitation to Bids from 30 to 60 days	pg. 3 lines 4-9	JLL005	n/a
Creates an option for the State to hold solicitation conferences as part of a specific procurement to provide a forum to explain the procurement process and the specific solicitation to potential vendors – encourages the conference’s use for procurements which anticipate high dollar contracts	pg. 3 lines 16-18 pg. 8 lines 34-36 pg. 9 lines 1-32	JLL005	Rec. III-1 pg. 26
Standardizes requirement to train State personnel conducting any contract negotiation	pg. 4 lines 14-20	JLL006	Rec. IX-3 pg. 62
Provides the State the opportunity to solicit a Best and Final Offer during the evaluation of an RFP	pg. 5 lines 33-36 pg. 6 lines 1-12	JLL006	Rec. IX-1 pg. 62
Creates vendor training and polling obligation on OSP	pg. 9 lines 34-36 pg. 10 lines 1-10	JLL005	Rec. III-3 pg. 26
Requires lowest cost to serve as a tie-breaker for equally scored RFPs	pg. 7 lines 1-4	JLL009	n/a
Expands negotiation options for contracts resulting from RFPs	pg. 7 lines 5-14	JLL006	Rec. IX-2 pg. 62
Creates the instrument Request for Information – a published, structured method to gather information that does not lead to an award or contract	pg. 10 lines 12-34	JLL009	Rec. VI-4 pg. 41

Requires OSP approval to use an RFQ outside of certain enumerated services	pg. 12 lines 28-36 pg. 13 lines 1-20	JLL009	Rec. VI-6 pg. 41
Removes legal services from the types of services required to be procured via RFQ	pg. 12 lines 10 and 25	JLL009	n/a
Empowers OSP to enhance training offerings and create a procurement training and certification program for State personnel	pg. 2 lines 9-10 pg. 10 line 36 pg. 11 lines 1-36 pg. 12 lines 1-3	JLL009	Rec. IV-3 pg. 31 Rec. VI-5 pg. 41 Rec. VIII-4 pg. 59 Rec. IX-2 pg. 62
Requires OSP to encourage full evaluation discussion	pg. 7 lines 16-18	JLL011	Rec. VIII-5 pg. 59
Requires OSP to develop tools and templates for proposal evaluations, optimizing the number scored attributes and range of scores	pg. 7 lines 19-22	JLL011	Rec. VIII-4 pg. 59
Requires OSP to develop rules regarding reasons and methods of rejecting bids and proposals, including requiring the verification of disqualified bids or proposals with agencies or evaluation teams, respectively	pg. 2 lines 11-13 pg. 4 lines 22-31 pg. 8 lines 4-11	JLL010	Rec. VII-1 pg. 49
Requires OSP to develop rules allowing the consideration of the State's previous experience with a vendor in an RFP if the RFP solicits references (in which case the State shall serve as a reference)	pg. 5 lines 19-28	JLL010	Rec. VII-2 pg. 50
Sets minimum cost weighting of RFP score at 30% (with exception process)	pg. 5 lines 1-18	JLL011	Rec. VIII-3 pg. 59
Requires OSP to develop rules regarding private sector evaluators	pg. 7 lines 23-36 pg. 8 lines 1-3	JLL011	Rec. VIII-2 pg. 59

Requires rules developed by OSP to be submitted and reviewed by the Subcommittee and reviewed and approved by the ALC	pg. 2 lines 17-36	JLL011	n/a
Allow for time discounts, if explicitly contemplated and requested in a solicitation for competitive sealed bidding	pg. 3 lines 20-30	JLL009	Rec. VI-7 pg. 41
Defines when and how to seek clarifications of submitted bids and proposals	pg. 3 lines 32-36 pg. 4 lines 1-9 pg. 6 lines 17-28	JLL009	Rec. VI-1 pg. 41

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

# A Bill

DRAFT JLL/JLL  
HOUSE BILL

5 By: Representative <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AMEND THE LAWS CONCERNING VARIOUS PROCUREMENT  
10 METHODS; TO ALLOW FOR REQUESTS FOR INFORMATION; TO  
11 AMEND THE LAW CONCERNING THE PROCUREMENT OF  
12 PROFESSIONAL SERVICES; TO PROVIDE FOR THE TRAINING  
13 AND CERTIFICATION OF PROCUREMENT OFFICIALS; TO  
14 REQUIRE THAT COST BE WEIGHTED A CERTAIN AMOUNT IN  
15 EVALUATING RESPONSES TO A REQUEST FOR PROPOSALS; TO  
16 ALLOW FOR THE USE OF PRIVATE EVALUATORS IN EVALUATING  
17 RESPONSES TO A REQUEST FOR PROPOSALS; TO REQUIRE THAT  
18 RULES PROMULGATED BY THE STATE PROCUREMENT DIRECTOR  
19 BE SUBMITTED TO AND REVIEWED BY THE REVIEW  
20 SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL; TO AUTHORIZE  
21 AND REGULATE SOLICITATION CONFERENCES UNDER THE  
22 ARKANSAS PROCUREMENT LAW; TO REQUIRE THAT VENDOR  
23 TRAINING AND POLLING BE CONDUCTED UNDER THE ARKANSAS  
24 PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE  
25 NEGOTIATION OF COMPETITIVE SEALED BIDS AND  
26 COMPETITIVE SEALED PROPOSALS UNDER THE ARKANSAS  
27 PROCUREMENT LAW; TO AMEND THE LAW CONCERNING THE  
28 REJECTION OF A BID OR PROPOSAL UNDER THE ARKANSAS  
29 PROCUREMENT LAW; AND FOR OTHER PURPOSES.

## Subtitle

30  
31  
32 TO AMEND THE LAWS CONCERNING VARIOUS  
33 PROCUREMENT METHODS; TO PROVIDE FOR THE  
34 TRAINING AND CERTIFICATION OF PROCUREMENT  
35 OFFICIALS; AND TO REQUIRE ADDITIONAL  
36

1 LEGISLATIVE REVIEW OF PROCUREMENT RULES.

2  
3  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

5  
6 SECTION 1. Arkansas Code § 19-11-217(c), concerning the powers and  
7 duties of the State Procurement Director, is amended to add additional  
8 subdivisions to read as follows:

9 (9) Shall provide for enhanced training on the drafting of  
10 specifications for procurements; and

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

14  
15 SECTION 2. Arkansas Code § 19-11-225 is amended to read as follows:  
16 19-11-225. Regulations Rules.

17 (a) ~~(1) Regulations shall be promulgated by the~~ The State Procurement  
18 Director shall adopt rules in accordance with the applicable provisions of  
19 this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201  
20 et seq.

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

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

25 (B) Reviewed and approved by the Legislative Council under  
26 § 10-3-309.

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

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

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



1  
2 SECTION 3. Arkansas Code § 19-11-229(d), concerning competitive sealed  
3 bidding, is amended to read as follows:

4 (d)~~(1)~~ Notice inviting bids shall ~~be~~:

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

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

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

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

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

19  
20 SECTION 4. Arkansas Code § 19-11-229(f), concerning competitive sealed  
21 bidding, is amended to add an additional subdivision to read as follows:

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

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

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

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

31  
32 SECTION 5. Arkansas Code § 19-11-229(g), concerning competitive sealed  
33 bidding, is amended to add an additional subdivision to read as follows:

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

36 (B) A written response by a bidder under this subsection

1 shall not add to or enhance the submitted bid or change the terms of the  
2 submitted bid.

3 (C) If the bidder fails or refuses to clarify any matter  
4 questioned about the bidder's bid in writing by the deadline set by the  
5 director or agency procurement official, the bid shall be evaluated as if no  
6 clarification were given.

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

10  
11 SECTION 6. Effective July 1, 20XX, Arkansas Code § 19-11-229(h)(2),  
12 concerning competitive sealed bidding under the Arkansas Procurement Law, is  
13 amended to add an additional subdivision read as follows:

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

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

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

21  
22 SECTION 7. Arkansas Code § 19-11-229(i), concerning competitive sealed  
23 bidding, is amended to read as follows:

24 (i)(1) An invitation for bid bids may be cancelled or any or all bids  
25 may be rejected in writing by the director or the agency procurement  
26 official.

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

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

32  
33 SECTION 8. Arkansas Code § 19-11-230(d), concerning competitive sealed  
34 proposals under the Arkansas Procurement Law, is amended to read as follows:

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

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

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

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

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

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

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

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

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

29  
30           SECTION 9. Arkansas Code § 19-11-230(e)(2), concerning competitive  
31 sealed proposals under the Arkansas Procurement Law, is amended to add an  
32 additional subdivision to read as follows:

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

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

3                    (a) Resubmit the offeror’s original proposal  
 4 with lower pricing in accordance with the specifications of the request for  
 5 proposals; or

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

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

13  
 14            SECTION 10. Arkansas Code § 19-11-230(f) and (g), concerning  
 15 competitive sealed proposals under the Arkansas Procurement Law, are amended  
 16 to read as follows:

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

19                    (2) A written response by an offeror under this subsection shall  
 20 not add to or enhance the submitted proposal or change the terms of the  
 21 submitted proposal.

22                    (3) If the offeror fails or refuses to clarify any matter  
 23 questioned about the offeror’s proposal in writing by the deadline set by the  
 24 director or agency procurement official, the proposal shall be evaluated as  
 25 if no clarification were given.

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

29            (g)(1) ~~Award~~ After any requested best and final offers are submitted  
 30 and evaluated, the award shall be made to the responsible offeror whose  
 31 proposal is determined in writing to be the most advantageous to the state,  
 32 taking into consideration price, the evaluation factors set forth in the  
 33 request for proposals, and the results of any discussions conducted with  
 34 responsible offerors.

35                    (2) No other factors or criteria shall be used in the  
 36 evaluation.

1           (3) If it is determined that two (2) or more responsible  
2 offerors have tied scores after the evaluation of the proposals, the award  
3 shall be made to the responsible offeror that had one (1) of the tied scores  
4 and submitted the lowest price proposal.

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

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

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

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

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

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

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

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

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

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

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

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

36           (D) If a state agency uses one (1) or more private

1 evaluators, the use of a private evaluator shall be disclosed in the  
 2 procurement file and in any information submitted to the Legislative Council  
 3 or, if the General Assembly is in session, the Joint Budget Committee.

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

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

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

12  
 13 SECTION 11. Arkansas Code § 19-11-233 is amended to read as follows:  
 14 19-11-233. Emergency procurements.

15 (a) The State Procurement Director, the head of a procurement agency,  
 16 or a designee of either officer may make or authorize others to make  
 17 emergency procurements as defined in § 19-11-204(4) and in accordance with  
 18 regulations rules promulgated by the director.

19 (b)(1) A person or state agency that makes an emergency procurement  
 20 under this section shall:

21 (A) Receive at least three (3) competitive bids unless the  
 22 emergency is a critical emergency; and

23 (B) Complete a quotation abstract that includes the:

24 (i) Names of the firms contacted;

25 (ii) Time that each firm was contacted;

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

28 (iv) Method used for contacting each firm.

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

31  
 32 SECTION 12. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
 33 amended to add additional sections to read as follows:

34 19-11-273. Solicitation conferences.

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

1           (2) A solicitation conference may be held:

2                   (A) In person; or

3                   (B) Online or in another virtual format.

4           (b) Attendance by a vendor at a solicitation conference is not  
 5 required for that vendor’s bid or proposal to be accepted unless the  
 6 attendance requirement is:

7                   (1) Explicitly stated in the invitation for bids or request for  
 8 proposals; and

9                   (2) Approved by the State Procurement Director or the head of  
 10 the procurement agency.

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

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

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

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

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

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

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

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

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

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

33  
 34           19-11-274. Vendor training and polling.

35           The Office of State Procurement shall:

36                   (1)(A) Develop and deliver vendor training to inform interested

1 vendors of how to do business with the state.

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

4 (i) Be offered throughout the state; and

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

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

11  
12 19-11-275. Requests for information.

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

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

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

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

26 (e) Information provided in response to a request for information  
27 under this section is exempt from the Freedom of Information Act of 1967, §  
28 25-19-101 et seq., until:

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

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

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

35  
36 19-11-276. Training and certification of procurement personnel.



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

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

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

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

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

13                    (i) Be designed to develop procurement competency;  
14 and

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

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

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

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

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

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

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

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

1 11.

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

4  
5 SECTION 13. Arkansas Code § 19-11-801(a) and (b), concerning the  
6 policy related to the procurement of professional services, are amended to  
7 read as follows:

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

13 (1) State agencies not exempt from review and approval of the  
14 Building Authority Division of the Department of Finance and Administration  
15 shall follow procedures established by the division for the procurement of  
16 architectural, engineering, land surveying, and construction management  
17 services; and

18 (2) Institutions of higher education exempt from review and  
19 approval of the division shall follow procedures established by their  
20 governing boards for the procurement of architectural, engineering, land  
21 surveying, and construction management professional consultant services.

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

27  
28 SECTION 14. Arkansas Code § 19-11-802, concerning requests for  
29 statements of qualifications and performance data, is amended to add an  
30 additional subsection to read as follows:

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

34 (B) Absent a sole-source justification, a request for  
35 qualifications is the recommended procurement method when contracting for  
36 architectural, engineering, construction management, land surveying, and

1 interior design services.

2 (C) A request for qualifications may be used as the  
 3 procurement method when contracting for services other than architectural,  
 4 engineering, construction management, land surveying, and interior design  
 5 services if the:

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

9 (ii) Approval of the director under subdivision  
 10 (e)(1)(C)(i) of this section is submitted to the Legislative Council for  
 11 review.

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

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

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

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

22  
 23 SECTION 15. DO NOT CODIFY. Rules.

24 (a) When adopting the initial rules required under this act, the State  
 25 Procurement Director shall file the final rules with the Secretary of State  
 26 for adoption under § 25-15-204(f):

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

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

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



## Bill: JLL064

This bill revises the information that comes before the Legislative Council and Review Subcommittee, including a modification and standardization of what contracts come for review. Specifically, the bill:

Summary of Reform	Location in JLL064	Old Bill	Location in Ikaso Report
Sets a standard review threshold for all service contracts (over \$50K), eliminating a distinction for different types of service contracts	pg. 4 line 20	JLL008	Rec. XII-1 pg. 85
Removes from review contract extensions of previously reviewed contracts where there is no material modification	pg. 4-5 lines 29-14	JLL008	Rec. XII-1 pg. 85
Corrects definitions of Commodities and Services to mitigate risk of contract classification for the improper purpose of avoiding review	pg. 3 lines 1-10 pg. 3-4 lines 29-1	JLL008	Rec. V-2 pg. 35
Requires each contract sent to review to contain a coversheet or relevant information	pg. 5 lines 15-30	JLL008	Rec. XII-2 pg. 86
Standardizes the service contracts sent to the Legislative Council in a roster (report), makes that report due before contract is executed so that members of the Review Subcommittee can “call” report contracts to be reviewed - Standardizes the contracts on this report as those valued over \$10K and up to \$50K. Requires a cover sheet for the report pre-identifying certain contracts as potential review candidates based on pre-established, objective criteria	pg. 6-7 lines 35-33	JLL008	Rec. XII-3 pg. 87
Fixes constitutional issue with vehicle lease review program (formerly approval program) Creates exception for certain leases which are federally required, designates the stacking of short-term rentals to avoid a lease a violation of Title 19, Chapter 11	pg. 10-11 lines 13-20	JLL008	n/a
Repeals obsolete recycled paper report	pg. 3-4 lines 20-9	JLL0014	Rec. XIV-3 pg. 99

Puts a duty on vendors to furnish required information for cooperative purchasing reports	pg. 3 lines 16-18	JLL014	Rec. XIV-2 pg. 99
Track and report on protests and their resolution	pg. 7-8 lines 36-4	JLL014	Rec. XIV-4 pg. 99
Track and report on negotiations and their outcomes	pg. 8 line 5	JLL014	Rec. XIV-5 pg. 99
Track and report on contract life cycle information	pg. 8 lines 6-11	JLL014	Rec. XIV-6 Pg. 99

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

# A Bill

DRAFT JLL/JLL  
HOUSE BILL

5 By: Representative <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW AND THE  
9 LAWS CONCERNING PROFESSIONAL AND CONSULTANT SERVICES  
10 CONTRACTS; TO AMEND THE LAWS CONCERNING STATE AGENCY  
11 PROCUREMENTS; TO AMEND THE DEFINITIONS UNDER THE  
12 ARKANSAS PROCUREMENT LAW; TO AMEND THE REVIEW AND  
13 REPORTING REQUIREMENTS FOR SERVICE CONTRACTS PROCURED  
14 BY THE STATE; TO AMEND THE LAW CONCERNING VEHICLE  
15 LEASES BY STATE AGENCIES; TO AMEND AND PROVIDE FOR  
16 THE TRACKING AND REPORTING OF CONTRACTS PROCURED BY  
17 STATE AGENCIES; TO REPEAL AS OBSOLETE THE REPORTING  
18 REQUIREMENT FOR RECYCLED PAPER PRODUCTS; AND FOR  
19 OTHER PURPOSES.  
20

## Subtitle

21  
22 TO AMEND THE REVIEW AND REPORTING  
23 REQUIREMENTS FOR SERVICE CONTRACTS; TO  
24 AMEND THE LAW CONCERNING VEHICLE LEASES  
25 BY STATE AGENCIES; AND TO PROVIDE FOR THE  
26 TRACKING AND REPORTING OF CONTRACTS  
27 PROCURED BY STATE AGENCIES.  
28  
29  
30

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
32

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

35 (4)(A) “Commodities” means all personal property, including, ~~but~~  
36 ~~not limited to, equipment, printing, stationery, supplies, and insurance, but~~

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1 ~~excluding leases~~ without limitation:

2 (i) Goods, as defined in § 4-2-105;

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

4 (iii) Insurance.

5 (B) "Commodities" does not include:

6 (i) A lease on real property, ~~real property,~~ or a  
 7 permanent interest in real property, ~~exempt;~~

8 (ii) Exempt commodities and services, ~~and capital;~~

9 and

10 (iii) Capital improvements;

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

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

17 (i) Technical support incidental to supporting the  
 18 continuous operation of proprietary software;

19 (ii) Renewals;

20 (iii) Additional copies; and

21 (iv) License upgrades;

22  
 23 SECTION 3. Arkansas Code § 19-11-203(27), concerning the definitions  
 24 to be used under the Arkansas Procurement Law, is amended to read as follows:

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

29 (B) "Services" includes without limitation:

30 (i) Consulting services;

31 (ii) Personal services;

32 (iii) Professional services;

33 (iv) Technical and general services; and

34 (v) The furnishing of labor, time, or effort by a  
 35 contractor for the generation, customization, configuration, or development  
 36 of software and other intangible property other than technical support



1 incidental to the procurement of proprietary software.

2 (C) "Services" ~~shall~~ does not include employment  
 3 agreements, collective bargaining agreements, exempt commodities and  
 4 services, or architectural or engineering contracts requiring approval of the  
 5 Building Authority Division of the Department of Finance and Administration  
 6 or higher education;

7  
 8 SECTION 4. Arkansas Code § 19-11-217(c), concerning the powers and  
 9 duties of the State Procurement Director, is amended to add an additional  
 10 subdivision to read as follows:

11 (9) Shall create a roster of expiring contracts for which there  
 12 is no new requisition.

13  
 14 SECTION 5. Arkansas Code § 19-11-249, concerning cooperative  
 15 purchasing, is amended to add an additional subsection to read as follows:

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

19  
 20 SECTION 6. Arkansas Code § 19-11-260 is repealed.

21 ~~19-11-260. Recycled paper products—Preference.~~

22 ~~(a) The State Procurement Director shall issue a recycled paper~~  
 23 ~~content specification for each type of paper product.~~

24 ~~(b)(1) The goal of state agencies for the percentage of paper products~~  
 25 ~~to be purchased that utilize recycled paper shall be:~~

26 ~~(A) Ten percent (10%) in fiscal year 1991;~~

27 ~~(B) Twenty five percent (25%) in fiscal year 1992;~~

28 ~~(C) Forty five percent (45%) in fiscal year 1993; and~~

29 ~~(D) Sixty percent (60%) by calendar year 2000.~~

30 ~~(2)(A) The Office of State Procurement shall prepare a~~  
 31 ~~semiannual report of the state's progress in meeting the goals for the~~  
 32 ~~purchase of paper products with recycled content.~~

33 ~~(B) The report shall be made to the Governor.~~

34 ~~(c)(1) Whenever a bid is required, a preference for recycled paper~~  
 35 ~~products shall be exercised if the use of the products is technically~~  
 36 ~~feasible and price is competitive.~~

1           ~~(2)(A) For the purpose of procurement of recycled paper~~  
 2 ~~products, “competitive” means the bid price does not exceed the lowest~~  
 3 ~~qualified bid of a vendor offering paper products manufactured or produced~~  
 4 ~~from virgin material by ten percent (10%).~~

5           ~~(B) An additional one percent (1%) preference shall be~~  
 6 ~~allowed for products containing the largest amount of postconsumer materials~~  
 7 ~~recovered within the State of Arkansas.~~

8           ~~(3) A bidder receiving a preference under this section shall not~~  
 9 ~~be entitled to an additional preference under § 19-11-259.~~

10  
 11           SECTION 7. Arkansas Code § 19-11-265 is amended to read as follows:  
 12           19-11-265. Submission of contracts required.

13           (a)(1) A Except as otherwise provided in this section, a contract  
 14 requiring the ~~service~~ services of one (1) or more individuals for regular  
 15 full-time or part-time weekly work shall be presented to the Legislative  
 16 Council or, if the General Assembly is in session, to the Joint Budget  
 17 Committee, before the execution of the contract if the total initial contract  
 18 amount or the total projected contract amount, including any amendments or  
 19 possible extensions, is at least ~~one hundred thousand dollars (\$100,000)~~  
 20 fifty thousand dollars (\$50,000).

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

24           (3) The contract shall not be submitted to the Legislative  
 25 Council or to the Joint Budget Committee until the Office of State  
 26 Procurement has reviewed the contract and provided the Legislative Council or  
 27 the Joint Budget Committee with a recommendation regarding the legality of  
 28 the contract.

29           (4)(A)(i) A contract that does not have a material change upon  
 30 renewal or extension shall be included in the monthly report required under §  
 31 19-11-273 instead of being submitted to the Legislative Council or the Joint  
 32 Budget Committee for review under this subsection.

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

35                           (a) A change in the contract amount;

36                           (b) An increase in the total projected

1 contract amount;

2 (c) A change in any of the terms of the  
 3 contract;

4 (d) A change in any performance-based  
 5 standards stated in the contract;

6 (e) The imposition of financial consequences  
 7 as the result of a failure to satisfy performance-based standards under § 19-  
 8 11-267 during the year preceding the renewal or extension of the contract;  
 9 and

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

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

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

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

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

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

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

23 (E) The outcome of any protests;

24 (F) For procurements using the competitive sealed proposal  
 25 method:

26 (i) The qualifications of the evaluators; and

27 (ii) Whether any private evaluators were engaged;

28 and

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

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

34 ~~(c)(1) In addition to the contracts presented to the Legislative~~  
 35 ~~Council or to the Joint Budget Committee under subsection (a) of this~~  
 36 ~~section, the director shall compile a monthly report of all executed~~

1 ~~contracts requiring the service of one (1) or more individuals for regular~~  
 2 ~~full time or part time weekly work if the total initial contract amount or~~  
 3 ~~the total projected contract amount, including any amendments or possible~~  
 4 ~~extensions, is at least twenty five thousand dollars (\$25,000) and less than~~  
 5 ~~one hundred thousand dollars (\$100,000).~~

6 ~~(2) The monthly report required under this subsection shall~~  
 7 ~~include without limitation:~~

8 ~~(A) The name of the contractor;~~

9 ~~(B) The state agency name;~~

10 ~~(C) The contact information for the contractor or state~~  
 11 ~~agency;~~

12 ~~(D) The total initial cost of the contract, the cost of~~  
 13 ~~any commodities included in the contract, and the cost of the services;~~

14 ~~(E) The type of commodities and services contracted;~~

15 ~~(F) The quantity of commodities and services contracted;~~

16 ~~(G) The procurement method;~~

17 ~~(H) The total projected contract amount that includes any~~  
 18 ~~amendments and all available extensions; and~~

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

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

24 ~~(d)~~ (c) A contract that is procured by a state agency with that has a  
 25 state agency procurement official or procurement authority under a delegation  
 26 order is subject to the ~~reporting and~~ presentment requirements under this  
 27 section.

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

32  
 33 SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
 34 amended to add additional sections to read as follows:

35 19-11-273. Reporting requirements.

36 (a)(1) The State Procurement Director shall compile a monthly report

1 of all contracts for services that have a total initial contract amount or a  
2 total projected contract amount, including any amendments or possible  
3 extensions, of at least ten thousand dollars (\$10,000) but less than fifty  
4 thousand dollars (\$50,000).

5 (2) A contract that is required to be reported under subdivision  
6 (a)(1) of this section shall be reported before the execution of the  
7 contract.

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

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

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

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

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

19 (d)(1) A primary member of the Legislative Council or the Review  
20 Subcommittee of the Legislative Council or, if the General Assembly is in  
21 session, the Joint Budget Committee or the PEER Review Subcommittee of the  
22 Joint Budget Committee, may identify a contract included in a report under  
23 this section that the primary member wants the Legislative Council or the  
24 Review Subcommittee of the Legislative Council or, if the General Assembly is  
25 in session, the Joint Budget Committee or the PEER Review Subcommittee of the  
26 Joint Budget Committee, to review.

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

30 (e) It is a violation of state procurement laws, Arkansas Code Title  
31 19, Chapter 11, for a state agency official to procure services in an  
32 incremental or split purchase arrangement to avoid the reporting requirements  
33 of this section.

34  
35 19-11-274. Tracking requirements.

36 (a) The State Procurement Director, each agency procurement official,

1 and any state agency with procurement authority under a delegation order  
 2 shall track the following for the procurements they conduct and the contracts  
 3 they execute:

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

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

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

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

9 and

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

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

16  
 17 SECTION 9. Arkansas Code § 19-11-1006 is repealed as duplicative.

18 ~~19-11-1006. Submission of contracts required.~~

19 ~~(a)(1) A professional services contract or consultant services~~  
 20 ~~contract shall be presented to the Legislative Council or, if the General~~  
 21 ~~Assembly is in session, to the Joint Budget Committee, before the execution~~  
 22 ~~of the professional services contract or consultant services contract if the~~  
 23 ~~total initial amount or the total projected amount, including any amendments~~  
 24 ~~or possible extensions, of the professional services contract or consultant~~  
 25 ~~services contract is at least fifty thousand dollars (\$50,000).~~

26 ~~(2) The Legislative Council or the Joint Budget Committee shall~~  
 27 ~~provide the State Procurement Director with its review as to the propriety of~~  
 28 ~~the professional services contract or consultant services contract within~~  
 29 ~~thirty (30) days after receipt of the proposed professional services contract~~  
 30 ~~or consultant services contract.~~

31 ~~(3) The professional services contract or consultant services~~  
 32 ~~contract shall not be submitted to the Legislative Council or to the Joint~~  
 33 ~~Budget Committee until the Department of Finance and Administration has~~  
 34 ~~reviewed the professional services contract or consultant services contract~~  
 35 ~~and provided the Legislative Council or the Joint Budget Committee with a~~  
 36 ~~recommendation regarding the legality of the professional services contract~~

1 ~~or consultant services contract.~~

2 ~~(b) The Legislative Council or the Joint Budget Committee may review~~  
 3 ~~or exempt from review any professional services contract or consultant~~  
 4 ~~services contract or group of professional services contracts or consultant~~  
 5 ~~services contracts contemplated by this subchapter.~~

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

9 ~~(2) Subcontracts for research that are derived from grants and~~  
 10 ~~contracts to a state institution of higher education require the prior~~  
 11 ~~approval of the director and a review by the Legislative Council or by the~~  
 12 ~~Joint Budget Committee.~~

13 ~~(d)(1) In addition to the professional services contracts and~~  
 14 ~~consultant services contracts presented to the Legislative Council or to the~~  
 15 ~~Joint Budget Committee under subsection (a) of this section, the director~~  
 16 ~~shall compile a monthly report of all executed professional services~~  
 17 ~~contracts and consultant services contracts if the total initial amount or~~  
 18 ~~the total projected amount, including any amendments or possible extensions,~~  
 19 ~~of the professional services contract or consultant services contract is at~~  
 20 ~~least ten thousand dollars (\$10,000) and less than fifty thousand dollars~~  
 21 ~~(\$50,000).~~

22 ~~(2) The monthly report required under this subsection shall~~  
 23 ~~include without limitation:~~

24 ~~(A) The name of the contractor;~~

25 ~~(B) The state agency name;~~

26 ~~(C) The contact information for the contractor or state~~  
 27 ~~agency;~~

28 ~~(D) The total initial cost of the professional services~~  
 29 ~~contract or consultant services contract;~~

30 ~~(E) The type of services contracted;~~

31 ~~(F) The quantity of services contracted;~~

32 ~~(G) The procurement method;~~

33 ~~(H) The total projected amount of the professional~~  
 34 ~~services contract or consultant services contract that includes any~~  
 35 ~~amendments and all available extensions; and~~

36 ~~(I) Any other information requested by the Legislative~~

1 ~~Council or the Joint Budget Committee.~~

2 ~~(3) The director shall remit the report each month to the~~  
 3 ~~Legislative Council or to the Joint Budget Committee as directed by the~~  
 4 ~~Legislative Council.~~

5 ~~(e) A contract that is procured by a state agency with a state agency~~  
 6 ~~procurement official is subject to the reporting and presentment requirements~~  
 7 ~~under this section.~~

8 ~~(f) It is a violation of state procurement laws, Arkansas Code Title~~  
 9 ~~19, Chapter 11, for a state agency official to procure services in an~~  
 10 ~~incremental or split purchase arrangement to avoid the reporting or~~  
 11 ~~presentment requirements of this section.~~

12  
 13 SECTION 10. Arkansas Code § 22-8-102 is amended to read as follows:

14 22-8-102. Leasing and renting of vehicles by state agencies -  
 15 Definitions.

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

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

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

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

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

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

35 (3) ~~After receiving the approval of~~ If, after the Legislative  
 36 Council or the Joint Budget Committee has reviewed the proposed lease of the



1 motor vehicle, the director approves the proposed lease of the motor vehicle,  
2 the director shall stamp his or her approval on the request and return it to  
3 the state agency, which may ~~then~~ proceed to enter into the lease as proposed  
4 and approved by the director.

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

10 (c) If the director disapproves a proposed lease of a motor vehicle,  
11 he or she shall stamp his or her disapproval on the request and return it to  
12 the state agency, and it shall be unlawful for the state agency to proceed to  
13 lease the motor vehicle.

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

18 (e) It is a violation of state procurement laws, Arkansas Code Title  
19 19, Chapter 11, for a state agency official to conduct multiple rentals of a  
20 motor vehicle to avoid the approval and review requirements of this section.  
21

22 SECTION 11. DO NOT CODIFY. Rules.

23 (a) When adopting the initial rules required under this act, the State  
24 Procurement Director shall file the final rules with the Secretary of State  
25 for adoption under § 25-15-204(f):

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

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

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

## Bill: JLL065

This bill optimizes the contract development process, including contract clauses. It also creates a contract management and vendor performance reporting framework driven by contract clauses. Specifically, the bill:

Summary of Reform	Location in JLL065	Old Bill	Location in Ikaso Report
Expands the maximum allowable initial contract term to four years (the total allowable length remains unchanged)	pg. 2 lines 24-36 Pg. 3 lines 1-8	JLL007	Rec. XI-4 pg. 76
Tasks OSP with creating a program whereby certain contracts are reviewed by attorneys of the State	pg. 2 lines 1-22	JLL007	Rec. XI-2 pg. 76
Makes vendors responsible that, if it signs a contract with the State, that the contract includes any mandatory clauses and was reviewed by the Legislative Council if required	pg. 5 lines 14-31	JLL007	Rec. XI-1 pg. 75
Requires large contracts (over \$1M a year, or \$7M total) to contain objective and specifically tailored performance metrics. Contracts may also include financial consequences for failing to adhere to these metrics	pg. 3 lines 21-36 Pg. 4 lines 1-10	JLL013	Rec. XIII-1 pg. 94
Requires the State to monitor vendor performance in adherence with these metrics and report upon vendors who fail these metrics (replacing the previous vendor performance reporting system)	pg. 4 lines 17-36 pg. 5 lines 1-12 pg. 5 lines 33-36 pg. 6 lines 1-30	JLL013	Rec. XIII-2 pg. 94
Requires OSP to measure and track the contract routing process	pg. 1 lines 32-34	JLL007	Rec. XI-3 pg. 76

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

# A Bill

DRAFT JLL/JLL  
HOUSE BILL

5 By: Representative <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AMEND THE LAW CONCERNING THE CONTENT, TERM, AND  
10 REVIEW OF CONTRACTS PROCURED BY THE STATE; TO PROVIDE  
11 CERTAIN COMPLIANCE REQUIREMENTS FOR PERSONS  
12 CONTRACTING WITH THE STATE; TO REQUIRE AND REGULATE  
13 THE USE OF PERFORMANCE-BASED CONTRACTS; TO AMEND THE  
14 REQUIREMENT CONCERNING VENDOR PERFORMANCE REPORTS; TO  
15 ELIMINATE DUPLICATIVE PROVISIONS IN THE LAW; AND FOR  
16 OTHER PURPOSES.

## Subtitle

17  
18  
19 TO AMEND THE LAW CONCERNING THE CONTENT,  
20 TERM, AND REVIEW OF CONTRACTS PROCURED BY  
21 THE STATE; TO REQUIRE THE USE OF  
22 PERFORMANCE-BASED CONTRACTS; AND TO AMEND  
23 VENDOR PERFORMANCE REPORT REQUIREMENTS.  
24

25  
26  
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

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

32 (9) Shall measure and track the contract routing process to  
33 identify stakeholders that may be contributing to the elongation of the  
34 contract review process.  
35

36 SECTION 2. Arkansas Code § 19-11-219 is amended to read as follows:

DRAFT

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

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

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

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

(c) The director shall adopt rules to implement this section, including without limitation rules to:

(1) Designate contracts that require review under this section, which may include without limitation contracts that:

(A) Exceed a certain dollar amount;

(B) Modify the standard state terms and conditions; and

(C) Are based on other stated criteria; and

(2) Identify the requirements for the attorneys who may review contracts under this section, including without limitation:

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

(B) Any other attorney employed by the state and licensed to practice law in Arkansas.

SECTION 3. Arkansas Code § 19-11-238(c), concerning multiyear contracts, is amended to read as follows:

(c) Termination Due to Unavailability of Funds in Succeeding Years.

(1) Original terms of such multiyear contracts shall terminate on the last day of the current biennium, and any renewals by the state based upon continuing appropriation shall not exceed the next succeeding biennium not exceed four (4) years.

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

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

3           ~~(1)~~ (A) Appropriations currently available for performance  
 4 of the contract;

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

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

9  
 10           SECTION 4. Arkansas Code §§ 19-11-267 and 19-11-268 are amended to  
 11 read as follows:

12           19-11-267. Development and use of performance-based contracts –  
 13 Findings.

14           (a) The General Assembly finds that:

15                   (1) Performance-based contracts provide an effective and  
 16 efficient method of monitoring and evaluating the overall quality of services  
 17 provided; and

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

21           (b)~~(1)~~ A state agency, board, commission, or institution of higher  
 22 education that enters into a contract under this ~~subchapter~~ chapter to  
 23 procure services that has a contract amount of at least one million dollars  
 24 (\$1,000,000) in a single contract year or a total projected contract amount,  
 25 including any amendments to or possible extensions of the contract, of at  
 26 least seven million dollars (\$7,000,000) shall use performance-based  
 27 standards in the contract that are specifically tailored to the services  
 28 being provided under the contract.

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

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

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

1           (1)(A) Shall monitor the vendor’s performance and adherence to  
 2 the performance-based standards in the contract.

3           (B) For state contracts, the Office of State Procurement  
 4 shall be the state agency that monitors each vendor’s performance under this  
 5 subdivision (c)(1); and

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

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

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

16  
 17          19-11-268. Vendor performance reporting.

18          (a)(1) A state agency shall report a vendor’s performance under a  
 19 contract executed under this ~~subchapter that has a total initial contract~~  
 20 ~~amount or total projected contract amount, including any amendments to or~~  
 21 ~~possible extensions of the contract, of at least twenty five thousand dollars~~  
 22 ~~(\$25,000)~~ chapter if the vendor fails to satisfy the performance-based  
 23 standards stated in the contract in a manner that represents a material  
 24 deviation.

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

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

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

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

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

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

1           ~~(3)~~ (2) Signed by the director of the state agency or his or her  
 2   designee; and

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

5           (c) A state agency may report a vendor's performance in the manner  
 6   prescribed under this section for any contract that would not require  
 7   reporting of a vendor's performance under this section if the state agency  
 8   encounters an issue with the vendor's performance of a contract.

9           (d) A state agency may use a vendor performance report submitted under  
 10   this section to evaluate an offeror to the extent that the past performance  
 11   of an offeror may be considered under the law and the rules adopted by the  
 12   office.

13  
 14           SECTION 5. Arkansas Code Title 19, Chapter 11, Subchapter 2, is  
 15   amended to add an additional section to read as follows:

16           19-11-273. Compliance.

17           (a) A contractor shall ensure, in cooperation with a state agency,  
 18   that the contract between the contractor and the state agency adheres to the  
 19   requirements of this chapter, including without limitation the inclusion of  
 20   any mandatory language and the submission of the contract for any required  
 21   review.

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

25           (2) The signature required under subdivision (b)(1) of this  
 26   section serves as an acknowledgement that the contractor is:

27                   (A) Equally responsible with the state agency for adhering  
 28   to the requirements of this chapter related to the content and review of the  
 29   contract; and

30                   (B) Subject to the relevant ethical provisions of § 19-11-  
 31   701 et seq.

32  
 33           SECTION 6. Arkansas Code § 19-11-1010 is repealed as duplicative.  
 34   ~~19-11-1010. Development and use of performance based contracts—~~  
 35   ~~Findings.~~

36           ~~(a) Performance based contracts provide an effective, efficient method~~

1 ~~of monitoring and evaluating the overall quality of services provided.~~

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

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

9  
 10 SECTION 7. Arkansas Code § 19-11-1013 is repealed as duplicative.

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

12 ~~(a)(1) A state agency shall report a vendor's performance under a~~  
 13 ~~contract issued under this subchapter that has a total initial contract~~  
 14 ~~amount or total projected contract amount, including any amendments to or~~  
 15 ~~possible extensions of the contract, of at least twenty-five thousand dollars~~  
 16 ~~(\$25,000) for contracts.~~

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

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

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

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

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

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

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

31  
 32 SECTION 8. DO NOT CODIFY. Rules.

33 (a) When adopting the initial rules required under this act, the State  
 34 Procurement Director shall file the final rules with the Secretary of State  
 35 for adoption under § 25-15-204(f):

36 (1) On or before January 1, 2020; or



1           (2) If approval under § 10-3-309 has not occurred by January 1,  
2 2020, as soon as practicable after approval under § 10-3-309.

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

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## Bill: JLL066

This bill clarifies the bounds of discretionary authority to conduct procurement. This bill also optimizes the protest process. Specifically, this bill:

Summary of Reform	Location in JLL066	Old Bill	Location in Ikaso Report
Adds structure to OSP's current power to delegate procurement authority to other State agencies. Specifically, these delegation orders now must be for finite time periods, be publicly posted, be recorded, and be linked to procurement certification at the agency	pg. 2 lines 1-24	JLL003	Rec. IV-1 Rec. IV-2 Rec. IV-3  pg. 30-31
Clarifies who at the State may respond to a vendor's protest when authority has been delegated	pg. 3 lines 6-23	JLL004	Rec. X-6 pg. 69
Makes an aggrieved vendor's award protests due fourteen days after award posting	pg. 3 lines 1-3	JLL004	Rec. X-1 pg. 69
Sets allowable grounds for award protests (e.g. scoring error, improper conduct)	pg. 3-4 lines 24-7	JLL004	Rec. X-2 pg. 69
Allows winning vendors harmed by an improper protest from a losing vendor to sue the protesting vendor for tortious interference with business expectancy	pg. 4 lines 24-27	JLL004	n/a

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

# A Bill

DRAFT JLL/JLL  
HOUSE BILL

5 By: Representative <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AMEND ARKANSAS PROCUREMENT LAWS CONCERNING THE  
10 DELEGATION AUTHORITY OF THE STATE PROCUREMENT  
11 DIRECTOR; TO AMEND THE LAW CONCERNING PROTESTS OF  
12 SOLICITATIONS AND AWARDS UNDER THE ARKANSAS  
13 PROCUREMENT LAW; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO AMEND THE DELEGATION AUTHORITY OF THE  
17 STATE PROCUREMENT DIRECTOR; AND TO AMEND  
18 THE LAW CONCERNING PROTESTS OF  
19 SOLICITATIONS AND AWARDS UNDER THE  
20 ARKANSAS PROCUREMENT LAW.  
21  
22  
23

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

26 SECTION 1. Arkansas Code § 19-11-218 is amended to read as follows:

27 19-11-218. Assistants and designees - Written delegation orders.

28 (a) Subject to the provisions of the Uniform Classification and  
29 Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

30 (1) Employ and supervise such assistants and other persons as  
31 may be necessary;

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

33 (3) (A) Delegate authority to ~~such~~ designees or to ~~any~~ a state  
34 agency ~~as the director may deem appropriate~~ by issuing a written delegation  
35 order, within the limitations of state law and the state procurement  
36 regulations.

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

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

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

7 (iii) Remain in effect under the original terms  
 8 unless the terms of the written delegation order are modified or rescinded in  
 9 writing by the director;

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

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

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

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

20 (b) The director shall adopt rules to:

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

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

25  
 26 SECTION 2. Arkansas Code § 19-11-244(a), concerning the resolution of  
 27 protested solicitations and awards under the Arkansas Procurement Law, is  
 28 amended to read as follows:

29 (a)(1) ~~Any~~ An actual or prospective bidder, offeror, or contractor who  
 30 is aggrieved in connection with the solicitation of a contract may protest by  
 31 presenting a written notice at least seventy-two (72) hours before the filing  
 32 deadline for the solicitation response ~~to the State Procurement Director or~~  
 33 ~~the head of a procurement agency.~~

34 (2) ~~Any~~ An actual bidder, offeror, or contractor who is  
 35 aggrieved in connection with the award of a contract may protest ~~to the~~

36 ~~(A) Director; or~~

1                   ~~(B) Head of a procurement agency by submitting a~~  
 2 written protest within fourteen (14) calendar days after the award or the  
 3 notice of anticipation to award has been posted.

4                   ~~(3)(A) The protest shall be submitted in writing within fourteen~~  
 5 ~~(14) calendar days after the aggrieved person knows or should have known of~~  
 6 ~~the facts giving rise to the grievance. A protest submitted under this~~  
 7 section shall be submitted to the:

8                   (i) State Procurement Director, if the Office of  
 9 State Procurement issued the solicitation; or

10                   (ii) Head of the relevant procurement agency, if a  
 11 procurement agency issued the solicitation.

12                   (B)(i) The head of the relevant procurement agency may  
 13 request that the director resolve a protest submitted under subdivision  
 14 (a)(3)(A)(ii) of this section.

15                   (ii) An actual bidder, offeror, or contractor that  
 16 submits a protest under this subsection shall not submit a protest to the  
 17 director if a procurement agency issued the relevant solicitation.

18                   (C) A protest resolved by the head of the relevant  
 19 procurement agency under this section:

20                   (i) Has the same effect and finality as a protest  
 21 resolved by the director; and

22                   (ii) Is not subject to an appeal made to the  
 23 director.

24                   (4) A protest submitted under this section shall:

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

27                   (i) The award of the contract was arbitrary,  
 28 capricious, or an abuse of discretion;

29                   (ii) The award of the contract exceeded the  
 30 authority of the director or the procurement agency;

31                   (iii) The procurement process violated a  
 32 constitutional, statutory, or regulatory provision;

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

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

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

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

8  
 9           SECTION 3. Arkansas Code § 19-11-244(f), concerning the resolution of  
 10 protested solicitations and awards under the Arkansas Procurement Law, is  
 11 amended to read as follows:

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

19  
 20           SECTION 4. Arkansas Code § 19-11-244, concerning the resolution of  
 21 protested solicitations and awards under the Arkansas Procurement Law, is  
 22 amended to add an additional subsection to read as follows:

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

28  
 29           SECTION 5. DO NOT CODIFY. Rules.

30           (a) When adopting the initial rules required under this act, the State  
 31 Procurement Director shall file the final rules with the Secretary of State  
 32 for adoption under § 25-15-204(f):

33                   (1) On or before January 1, 2020; or

34                   (2) If approval under § 10-3-309 has not occurred by January 1,  
 35 2020, as soon as practicable after approval under § 10-3-309.

36           (b) The director shall file the proposed rules with the Legislative

1 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so  
2 that the Legislative Council may consider the rules for approval before  
3 January 1, 2020.

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## Bill: JLL067

This bill improves the way the State leverages its volume to obtain better deals. It also seeks to ensure that cooperative purchasing (leveraging procurements conducted outside of the State) are in the State's best interests. Specifically, this bill:

Summary of Reform	Location in JLL067	Old Bill	Location in Ikaso Report
Empowers OSP to make participation in Statewide contracts mandatory for State agencies (with an exception application process) and charges the OSP director with finding new Statewide contract opportunities	pg. 2 lines 1-36 pg. 3 lines 1-33	JLL001	Rec. I-2 pg. 14
Clarifies that cooperative contracts may be those where the initial procurement occurred outside of the State	pg. 1 lines 23-33	JLL002	Rec. II-1 pg. 21
Requires would-be cooperative using agencies to demonstrate, to OSP, that use of the cooperative results in savings, material economic value or both (not just adherence to a substantially similar procurement process with the cooperative's original procurement)	pg. 4 lines 1-22	JLL002	Rec. II-2 Rec. II-3 pg. 21
Requires OSP submit a cooperative purchasing agreement for OSP use to the Governor for approval	pg. 4 lines 23-27	JLL002	Rec. II-4 pg. 21
Creates a cooperative reporting obligations	pg. 4 lines 28-36 pg. 5 lines 1-12	JLL002	n/a



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

# A Bill

DRAFT JLL/JLL  
HOUSE BILL

5 By: Representative <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
9 AMEND THE LAW CONCERNING STATE CONTRACTS; TO AMEND  
10 THE LAW CONCERNING COOPERATIVE PURCHASING; AND FOR  
11 OTHER PURPOSES.  
12  
13

## Subtitle

14 TO AMEND THE ARKANSAS PROCUREMENT LAW; TO  
15 AMEND THE LAW CONCERNING STATE CONTRACTS;  
16 AND TO AMEND THE LAW CONCERNING  
17 COOPERATIVE PURCHASING.  
18  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

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

26 (1) ~~“Cooperative procurement” means procurement conducted by, or~~  
27 ~~on behalf of, more than one (1) public procurement unit or by a public~~  
28 ~~procurement unit with an external procurement activity~~ “Cooperative  
29 purchasing agreement” means an agreement that:

30 (A) Two (2) or more public procurement units enter into  
31 together for the procurement of commodities or services; or

32 (B) A public procurement unit joins that was originally  
33 sourced outside of the state by an external procurement activity;  
34

35 SECTION 2. Arkansas Code § 19-11-223 is amended to read as follows:

36 19-11-223. Commodities, technical and general services, and

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1 professional and consultant services under state contract.

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

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

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

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

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

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

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

1 technical and general services, and professional and consultant services  
 2 exclusively under ~~such~~ the mandatory state contract.

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

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

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

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

16 (d) The director shall:

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

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

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

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

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

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

34  
 35 SECTION 3. Arkansas Code § 19-11-249 is amended to read as follows:  
 36 19-11-249. Cooperative purchasing.

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

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

12 (B)(i) The State Procurement Director shall consider the  
13 economic justification for using a cooperative purchasing agreement when  
14 granting or withholding approval for the cooperative purchasing agreement.

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

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

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

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

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

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

1 (2) The ~~report~~ reports required under this subsection shall be  
2 in the format required by the Legislative Council and shall include the  
3 following:

- 4 (A) The name of the contractor;
- 5 (B) The name of the procuring agency;
- 6 (C) The contact information for the contractor and  
7 procuring agency;
- 8 (D) The total cost of the contract, including all  
9 available extensions;
- 10 (E) A description of the goods or services procured; and
- 11 (F) Any other information requested by the Legislative  
12 Council or the Joint Budget Committee.

13  
14 SECTION 4. DO NOT CODIFY. Rules.

15 (a) When adopting the initial rules required under this act, the State  
16 Procurement Director shall file the final rules with the Secretary of State  
17 for adoption under § 25-15-204(f):

18 (1) On or before January 1, 2020; or

19 (2) If approval under § 10-3-309 has not occurred by January 1,  
20 2020, as soon as practicable after approval under § 10-3-309.

21 (b) The director shall file the proposed rules with the Legislative  
22 Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so  
23 that the Legislative Council may consider the rules for approval before  
24 January 1, 2020.

## Bill: JLL068

This bill proposes minor changes to the Division of Building Authority's practices. Specifically, this bill:

Summary of Reform	Location in JLL068	Old Bill	Location in Ikaso Report
Empowers DBA to conduct state-wide "on-call" contracts for professionals to be available in case of urgent need	pg. 1 lines 23-25	JLL012	Rec. XV-2 pg. 101
Tasks DF&A to develop a program to preclude bidders who have existing contracts with the State that have "material issues" from bidding on new work until those issues are resolved	pg. 1 lines 30-34	JLL012	Rec. XV-4 pg. 101
Requires DBA, if it is setting a minimum experience threshold in a solicitation, to include that threshold in the solicitation	pg. 2 lines 8-11	JLL012	n/a

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

# A Bill

DRAFT JLL/JLL  
HOUSE BILL

5 By: Representative <NA>  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE PROCUREMENT OF  
9 DESIGN SERVICES CONTRACTS; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 TO AMEND THE LAW CONCERNING THE  
12 PROCUREMENT OF DESIGN SERVICES CONTRACTS.  
13  
14  
15  
16

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

19 SECTION 1. Arkansas Code § 22-2-108(7)(A), concerning the powers and  
20 duties of the Building Authority Division of the Department of Finance and  
21 Administration, is amended to read as follows:

22 (7)(A) To execute contracts necessary to accomplish the purposes  
23 of this chapter, including without limitation a statewide contract for design  
24 services to expedite the procurement of design services by a state agency in  
25 an emergency.  
26

27 SECTION 2. Arkansas Code Title 22, Chapter 9, Subchapter 1, is amended  
28 to add an additional section to read as follows:

29 22-9-105. Poor contractual performance – Additional bids prohibited.

30 (a) A firm that has an existing state contract with a state agency  
31 shall not bid on any additional state contracts with a state agency if the  
32 firm's existing state contract with a state agency has one (1) or more  
33 material issues, including without limitation a material delay in the  
34 commencement or completion of a project or a breach of contract.

35 (b) As used in this section, "state agency" means the same as defined  
36 in § 22-2-102.

DRAFT

1       (c) The Director of the Department of Finance and Administration shall  
2 adopt rules to provide guidance on what is considered to be a material issue  
3 under subsection (a) of this section.

4  
5       SECTION 3. Arkansas Code § 22-9-203, concerning the award of contracts  
6 for public improvements, is amended to add an additional subdivision to read  
7 as follows:

8       (1) To the extent that the division includes minimum experience as  
9 part of the evaluation of a bidder's responsiveness, the standard being  
10 applied to the bidder's experience shall be stated in the invitation for  
11 bids.