

Proposed Rulemaking

Title

Promulgated by:
Department of Shared Administrative Services
Office of State Procurement

Title 19. Public Finance

Chapter I. Office of State Procurement, Department of Shared Administrative Services

Subchapter A. Generally

Part 1. Procurement Rules

Subpart 1. General Provisions

19 CAR § 1-101. Collection and maintenance of vendor EEO policies.

(a) Equal opportunity (E.O.) policies are required from vendors who submit responses to state agencies or the Office of State Procurement for procurements other than small procurements ~~of professional and consultant services where the dollar value is greater than twenty five thousand dollars (\$25,000).~~

(b)(1) The office will maintain a file of vendor equal opportunity policies.

(2) State agencies ~~that~~ which issue solicitations will be responsible for confirming that vendors have a current E.O. policy on file with the state either through:

- (A) Requesting that it be supplied with the solicitation response;
- (B) Maintaining an agency file of vendor supplied E.O. policies; or
- (C) Accessing and checking the files maintained by the office.

~~(3) A contract may not be awarded prior to determining that a copy of the vendor's current E.O. policy is on file with the state.~~

(c) Vendors will be responsible for supplying the state with updated versions of their respective E.O. policies as they are implemented.

19 CAR § 1-102. Ethical standards.

In accordance with Arkansas Code § 19-~~64-205~~ ~~11-708~~(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than twenty thousand dollars (\$20,000):

"It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

**19 CAR § 1-103. Employment of illegal immigrants—Prohibition—
Certification by contractor.**

(a)(1) Prior to the award or renewal of a services contract, the contractor must certify that the contractor does not, and agrees that for the aggregate term of the contract will not, employ or contract with any illegal immigrant.

(2) The instructions for certification will be provided in the contract solicitation.

(b)(1) If the contractor violates the above certification or is found not to be in compliance during the term of the contract, the state shall require the contractor to remedy the violation within sixty (60) days of discovery of that violation.

(2) Failure to remedy the violation within the sixty-day period will result in termination for breach of contract, and the contractor shall be liable to the state for the state's actual damages.

(c)(1) If the contractor uses a subcontractor at the time of the above certification, the subcontractor shall certify that the subcontractor does not employ or contract with an illegal immigrant.

(2) The subcontractor's certification must be submitted within thirty (30) days after award of the contract, and the contractor is required to maintain the certification on file for the remainder of the term of the contract.

(d)(1) In the event that the contractor learns that the subcontractor's certification is in violation of the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., and terminates the contract with the subcontractor, the termination of the subcontract for a violation of this section will not be considered a breach of the contractor's contract with the state.

(2) However, any subcontractor subsequently hired by the contractor shall be required to provide like certification.

19 CAR § 1-104. Definitions of terms used in the Arkansas Procurement Law.

(a)(1) "Commodities" is a broad term that encompasses all personal property, except for those categories of personal property expressly exempted under Arkansas Procurement Law, Arkansas Code § 19-~~61-101~~ ~~11-201~~ et seq.

(2) The following are specifically included as "commodities" under Arkansas Procurement Law:

(A) Goods, as defined in the Arkansas Uniform Commercial Code at Arkansas Code § 4-2-105;

(B) Leases of goods, as defined in the Arkansas Uniform Commercial Code at Arkansas Code § 4-2A-103; and

(C) Insurance.

(3)(A) Arkansas Code § 19-~~61-103~~ ~~11-203~~ (4)(B) expressly excludes real property, leases of real property, other permanent interests in real property, capital improvements, and excluded commodities and services from being considered "commodities" for purposes of Arkansas Procurement Law.

(B) Certain types of commodities that would otherwise fall within the definition of personal property are expressly exempted from the application of Arkansas Procurement Law at Arkansas Code § 19-~~161-1031~~ ~~203~~ (14).

(C) State agencies not authorized to procure commodities through Arkansas Procurement Law may be authorized to do so under other applicable law.

(D) Exemption from Arkansas Procurement Law does not automatically exempt any state agency or officer from other laws governing the expenditure of public funds or the ethical restrictions at Arkansas Code § 19-~~64-10111-701~~ et seq.

(b) "Consulting services" means services of providing professional counsel and expert advice.

(c)(1) "Employment agreement" means an agreement between a state agency, as employer, and its employee in which the terms and conditions of the employee's employment are stated.

(2) An independent contractor who, in the course of his, her, or its independent occupation or profession, provides services to a state agency pursuant to a contract is not an employee simply by virtue of having a contract with a state agency.

(d)(1) "Personal services" means services unique to the specific individual and personality providing them, as opposed to services that are fungible and could be provided by any person based on a set of skills or knowledge.

(2) Personal services of visiting speakers, lecturers, and performing artists may be procured without any competitive procurement because they are expressly exempted from Arkansas Procurement Law.

(3) Any personal services provided by a contract employee under an employment agreement, as defined below, are excluded by definition from being considered services.

(e)(1)(A) "Professional services" means services furnished by or under the supervision of a professional who has been specially trained to provide such services.

(B) A "professional" is a person who belongs to a learned profession or occupation that requires a high level of training, specialized knowledge, proficiency, and often a professional license.

(2)(A) "Professional services" include medical, legal, financial advisory, architectural, engineering, construction management, and land surveying services.

(B) Under state law, legal, financial advisory, architectural, engineering, construction management, and land surveying services in which the total contract value is over seventy five thousand dollars (\$75,000) must be procured by means of a request for qualifications.

(C) Absent authority from the State Procurement Director, the request for qualifications shall not be used by state agencies to procure any other professional services unless the director determines by rule or in writing that the request for qualifications process is warranted and the director's approval is submitted to the Legislative Council for review.

(D)(i) **Note.** Contracts to pay physician fees and medical fees are exempt from Arkansas Procurement Law under Arkansas Code § 19-~~61-10311-~~~~203~~(14)(H).

(ii) Although contracts to pay for such fees are exempt from Arkansas Procurement Law, to the extent reasonably practicable, reasonable care should be taken to ensure that professional competence is considered with respect to such services.

(iii) Consequently, the State Procurement Director recognizes a request for qualifications as a suitable method for procuring such services where reasonably possible without the need of advance approval from the director in light of the exemption provided in Arkansas Code § 19-~~61-10311-~~~~203~~(14)(H).

(f)(1)(A) "Services" is defined at Arkansas Code § 19-~~61-10311-~~~~203~~(27)(A).

(B) It refers to the labor, time, or effort that a contractor furnishes under a contract as performance for separate consideration and not labor, time, or effort included in or incident to the production or sale of a commodity or commodities.

(2) Labor, time, or effort are included in the production or sale of a commodity if expended within either the production or sale of the commodity and are not set apart for separate consideration outside of the purchase price of the commodity.

(3)(A) Labor, time, or effort are incident to the production or sale of a commodity if they accompany the production or sale of the commodity as a minor consideration, even if a separate but relatively small fee is paid to the contractor for it.

(B) For example, where the purchase of a computer includes delivery and installation for a relatively small fee, the labor, time, and effort involved in the delivery and installation of the computer are incident to the sale of the commodity.

(4) After the state's procurement and acceptance of a commodity as conforming to the contract, subsequent labor, time, or effort furnished by a contractor with respect to the commodity are considered services for purposes of Arkansas Procurement Law if:

(A) They are not incident to the original procurement of the commodity;
and

(B) There is a separate consideration paid for those services.

(5) Labor, time, or effort that a contractor furnishes for the customization, generation, configuration, or development of software, beyond that which is incident to the procurement, installation, maintenance, and routine technical support of the software, are considered services for purposes of Arkansas Code § 19-~~61-11611-265~~.

(6) Based on the exclusionary definition in Arkansas Code § 19-~~61-10311-203~~(27)(C), the following types of contracts are excluded from being considered a contract requiring services within the meaning of Arkansas Code § 19-~~61-11611-265~~:

(A) Employment agreements;

(B) Collective bargaining agreements;

(C) Architectural or engineering contracts requiring approval of the Division of Building Authority or the Division of Higher Education; and

(D) Other commodities and services exempted by law.

(g)(1) "Technical and general services" is defined at Arkansas Code § 19-~~61-10311-203~~(34)(A).

(2) It is a term that generally encompasses the broad range of services that are not professional services.

19 CAR § 1-105. Definitions of exempt commodities and services used in the Arkansas Procurement Law.

(a)(1) Certain types of services that would otherwise fall within the definition of services are expressly exempted from the application of Arkansas Procurement Law, Arkansas Code 19-~~61-10111-201~~ et seq., at Arkansas Code § 19-~~61-10311-203~~(14).

(2) State agencies not authorized to procure services through Arkansas Procurement Law may be authorized to do so under other applicable law.

(3) Exemption from Arkansas Procurement Law does not automatically exempt any state agency or officer from other laws governing the expenditure of public funds or the ethical restrictions at Arkansas Code § 19-~~64-10111-701~~ et seq.

(b) "Exempt commodities and services" means:

(1) Under Arkansas Code § 19-~~61-10311-203~~(14)(D)(i), "commodities procured for resale" does not include items used to support the sale of goods or services such as reusable items or items used in preparing, serving, dispensing, or packaging, except for vendor packaging included with the item purchased;

(2) Under Arkansas Code § 19-~~61-10311-203~~(14)(G)(i), "farm products" includes unprocessed feed for livestock;

(3) Under Arkansas Code § 19-~~61-10311-203~~(14)(K), "license" does not mean software license;

(4) Under Arkansas Code § 19-~~61-10311-203~~(14)(M), livestock breeding to include ova and semen;

(5) Under Arkansas Code § 19-~~61-10311-203~~(14)(N), "technical equipment" for maintenance purposes shall include, but not be limited to, medical, dental, laboratory, and health aid equipment, climate control equipment, water treatment services, elevators, musical instruments, communications equipment, data processing equipment, and specialized research equipment; Maintenance excludes repairs that are not covered by an existing maintenance agreement;

(6) Under Arkansas Code § 19-~~61-10311-203~~(14)(Q), "perishable foodstuffs" means the raw material of food before or after processing, such being liable to spoil or decay in a short duration of time, such as (but not limited to) produce, eggs, or milk;

(7) Retail gasoline credit card purchases are exempt by rule, regardless of the amount;

(8)(A) Renewals of termite protection contracts with the contractor who performed the initial treatment of the facility are exempt.

(B) Not exempt are termite protection contracts which include the initial treatment;

(9)(A) Under Arkansas Code § 19-~~61-103~~~~11-203~~(14)(H), fees that are uniform and fixed in advance by an authoritative body, such as fees for membership in professional associations, court filing fees, witness fees, workshop fees for professional conferences or training, medical fees, and physician fees, are exempt from Arkansas Procurement Law.

(B) Fees that are payment for professional services for which there is generally free market competition and which may reasonably be subject to negotiation, are not exempt from Arkansas Procurement Law; and

(10) Under Arkansas Code § 19-~~61-103~~~~11-203~~(14)(EE) and (23)(B)(ii), “academic medical center” consists of a public medical school and its primary teaching hospitals and clinical programs.

19 CAR § 1-106. Signatures defined.

(a) The definition of “signed” for the purposes of submitting a solicitation response can be found in the Uniform Commercial Code, Arkansas Code § 4-1-201(37) (general definitions), which “...includes any symbol executed or adopted by a party with present intention to authenticate a writing.”

(b) Allowance should therefore be made for any mark or writing, whether printed or cursive, which that person uses as his or her signature.

(c) Electronic signatures shall also be permitted, unless otherwise prohibited by law, pursuant to Arkansas Code § 25-32-107.

19 CAR § 1-107. Tax-supported institutions defined.

“Tax-supported institutions” means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.

19 CAR § 1-108. Hidden damages.

(a)(1) Under Arkansas Code § 19-~~61-10311-203~~(14)(DD), “hidden or unknown damages” refers to damages to machinery needing repair that were not visible or readily apparent to, or were otherwise not within the knowledge of, agency personnel at the time the piece of machinery was being serviced by a vendor.

(2) By way of example and not limitation, if an agency takes a piece of machinery to a vendor to repair one (1) or more problems, and in the course of such work the vendor notices one (1) or more additional problems that need repair, the agency may, but is not required to, authorize that vendor to undertake such additional repairs without having to solicit competitive bids.

(b) “Machinery” means mechanical devices or combinations of mechanical powers and devices purchased or constructed and used to perform some function and to produce a certain effect or result.

(c) This exemption does not apply to damages that are visible, readily apparent, or are or could be within the knowledge of agency personnel with the exercise of reasonable inspection or investigation.

19 CAR § 1-109. Capital improvements.

Under Arkansas Code § 19-~~61-10311-203~~(14)(Y), capital improvements valued at less than the amount stated in Arkansas Code § 22-9-203 subject to Department of Shared Administrative Services Building Authority Division minimum standards and criteria are exempt from the requirements of the Arkansas Procurement Law, Arkansas Code § 19-~~61-10111-201~~.

19 CAR § 1-110. Proprietary software.

(a)(1) Software exemption under Arkansas Code § 19-~~61-10311-203~~(14)(AA) does not apply to the initial purchase of proprietary software or the development of additional functionality.

(2) Nor does the exemption apply to the purchase of software that is part of any mandatory software contract.

(b) Exempt software purchases shall include the purchase of additional proprietary software licenses, copies, license renewals, software upgrades, and proprietary software support, and hosting in a cloud environment for proprietary software after the initial purchase.

19 CAR § 1-111. Life cycle cost.

(a) **Life cycle cost.** Life cycle or total ownership costs may include but are not limited to, costs of operation, maintenance, repair, disposal, and/or acquisition.

(b) **Application.**

(1) Life cycle cost formulas may be used for procurements.

(2) Certain specified commodities must be procured using life cycle cost formulas provided by the Office of State Procurement.

(3) For those specified commodities, the State Procurement Director shall provide formulas to be used in the evaluation of bids by the director, the agency procurement officials, or the procurement agents.

19 CAR § 1-112. Determination.

(a) Written procurement determinations. Written determinations and findings shall be signed by the employees making said determinations and findings.

(b) Contract files must be retained for five (5) years after all contract renewals, if any, have expired.

19 CAR § 1-113. Submission of contracts for services.

(a) Contracts requiring "services", as defined in the Arkansas Procurement Law, Arkansas Code § 19-~~61-101~~~~11-201~~ et seq., and this part, are to be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, before the execution of the contract if the contract amount is fifty thousand dollars (\$50,000) or more in any one (1) year of the contract's term, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars (\$350,000) or more unless they are contracts for critical

emergency procurements or are otherwise exempted from the submission requirements of Arkansas Code § 19-~~61-11611-265~~.

(b)(1) Labor, time, or effort included in or incident to a contractor's production or sale of a commodity or commodities are not considered "services" for purposes of determining whether a contract is a "contract requiring services" within the meaning of Arkansas Code § 19-~~61-11611-265~~.

(2) Consequently, a contract for the procurement of a commodity or commodities is not a "contract requiring services" for purposes of Arkansas Code § 19-11-265 if it only calls for labor, time, or effort included in or incident to the procurement of the commodity or commodities.

(c)(1) Where a tangible commodity exists and is identifiable at the time of the commodity's procurement, any labor, time, or effort expended in its production are not considered "services" if no separate consideration is paid beyond the purchase price of the commodity for the labor, time, and effort expended in producing the commodity.

(2) Even where a present purchase order is for a tangible commodity yet to be produced, the future labor, time, or effort to be expended in the production of the commodity will not be considered "services" if:

(A) The only consideration to be paid is the purchase price of the commodity after its receipt, and incidentals, such as taxes, delivery fees, etc.; and

(B) No separate consideration is paid for the labor, time, or effort expended in the production of the commodity.

(3) However, where a contract requires a contractor to furnish labor, time, or effort to produce a commodity not yet in existence, such as a computer program, and the contract calls for consideration to be paid to the contractor based on the labor, time, or effort furnished in the production of the commodity rather than based on the finished commodity, such labor, time, or effort are considered "services".

(d) If a contract will require procurement of a combination of commodities and services, as those terms are defined in the Arkansas Procurement Law and this part, then it should be submitted for review under Arkansas Code § 19-11-265 if the services component of the contract is fifty thousand dollars (\$50,000) or more in any one (1)

contract year, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars (\$350,000) or more.

19 CAR § 1-114. Material changes to contracts for services.

(a)(1) A contract that has previously been presented for review does not need to be presented for legislative review again upon its renewal or extension unless it introduces a material change.

(2) There are two (2) classes of material changes that trigger a duty to resubmit a contract for review at either renewal of a contract or extension of a contract term:

(A) An amendment that is a material change in contractual terms, includes without limitation:

- (i) An increase in the contract amount;
- (ii) An increase in the total projected contract amount;
- (iii) A change in any of the essential terms of the contract; or
- (iv) A change in any performance-based standards stated in the

contract; and

(B) A material deviation by a contractor from the performance promised during the period preceding renewal or extension, such as a:

(i) Default requiring the imposition of financial consequences as the result of the contractor's failure to satisfy performance-based standards under Arkansas Code § 19-~~61-51711-267~~ during the year preceding the renewal or extension of the contract; or

(ii) Vendor performance resulting in a vendor performance report during the year preceding the renewal or extension of the contract.

(3) Both of these are material changes that trigger the duty to resubmit a contract for review prior to a renewal or an extension.

(4)(A) For purposes of Arkansas Code § 19-~~61-11611-265~~, renewal refers to re-establishing an existing contract for another term, whereas extension is extending the term of an existing contract that would otherwise expire.

(B) Although technically distinguishable, they are functionally similar.

(b) Definitions.

(1) "Essential terms of a contract," also called "fundamental terms", means provisions that must be included for an enforceable contract to exist between the parties under any applicable statute of frauds.

(2) "Initial contract amount" means the amount agreed to for the initial term of a contract.

(3) "Total projected contract amount" means the total amount that the state is projected to expend under the contract over the entire life of the contract, which can be no more than seven (7) years under Arkansas Code § 19-~~61-51211-238~~.

19 CAR § 1-115. Technical and general services contracts on file in the Office of State Procurement.

All agencies will be required to maintain copies in accordance with current document retention laws, Arkansas Code § 19-~~61-11111-214~~, of all purchase orders issued for the procurement of technical and general services.

19 CAR § 1-116. Reporting of technical and general services contracts.

(a)(1) Technical and general services contracts with a total projected contract amount, including any amendments and possible extensions, of twenty-five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000) shall be reported to the Legislative Council or the Joint Budget Committee monthly.

(2) Agencies must report contracts using the appropriate method as determined by the Office of State Procurement.

(b)(1) Maintenance contracts are not considered services of one (1) or more individuals for regular full-time or part-time weekly work, and do not require reporting to the Legislative Council or the Joint Budget Committee.

(2) Maintenance contracts are narrowly defined as providing help or assistance needed to support the continuous operation of procured commodities according to the

commodities' original functionality and specifications, including but not limited to software maintenance contracts.

(3) Agencies should not apply maintenance contracts so broadly as to frustrate the legislative intent of statutes requiring reporting of certain consulting services or professional service contracts.

(c) Under subdivision (b)(1) of this section, "regular" is defined by giving the word its ordinary and usually accepted meaning in common language, which in the context of subdivision (b)(1) of this section shall be constituted, conducted, scheduled, or done in conformity with established or prescribed usages, rules, or discipline.

19 CAR § 1-117. Reporting of technical and general services contracts.

(a)(1) Technical and general services contracts with a total projected contract amount, including any amendments and possible extensions, of twenty-five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000) shall be reported to the Legislative Council or the Joint Budget Committee monthly.

(2b) Agencies ~~must~~shall report contracts using the appropriate method as determined by the Office of State Procurement.

(b)(1) Maintenance contracts are not considered services of one (1) or more individuals for regular full-time or part-time weekly work, and do not require reporting to the Legislative Council or the Joint Budget Committee.

(2) Maintenance contracts are narrowly defined as providing help or assistance needed to support the continuous operation of procured commodities according to the commodities' original functionality and specifications, including but not limited to software maintenance contracts.

(3) Agencies should not apply maintenance contracts so broadly as to frustrate the legislative intent of statutes requiring reporting of certain consulting services or professional service contracts.

(c) Under subdivision (b)(1) of this section, "regular" is defined by giving the word its ordinary and usually accepted meaning in common language, which in the context of

subdivision (b)(1) of this section shall be constituted, conducted, scheduled, or done in conformity with established or prescribed usages, rules, or discipline.

19 CAR § 1-118. Technical and general services contracts on file in the Office of State Procurement.

All agencies will be required to maintain copies in accordance with current document retention laws, Arkansas Code § 19-~~61-1111-214~~, of all purchase orders issued for the procurement of technical and general services.

19 CAR § 1-119. Request for information — Conditions of use.

(a) A request for information (RFI) solicitation may be issued by an agency for the purposes of information gathering and planning while contemplating a possible competitive sealed bid procurement or competitive sealed proposal procurement.

(b) An RFI is not, and should not be construed as, a commitment by the agency to issue a solicitation in the future.

(c) Agencies should not seek, and vendors should not provide, proposals or bids.

(d) A response to an RFI should be treated by the agency as informational only and should not be considered a proposal or bid, nor should any contract be awarded directly from an RFI.

19 CAR § 1-120. Request for information — Pricing information.

A request for information (RFI) solicitation may request general pricing models, but specific pricing should be expressly prohibited in the RFI, and if provided unsolicited, should not be considered.

19 CAR § 1-121. Requesting an advisory opinion or waiver.

(a)(1) Requests for advisory opinions or requests for waivers must be submitted in writing to the Secretary of the Department of Shared Administrative Services and should clearly and concisely state whether the request is for an advisory opinion under

Arkansas Code § 19-~~64-402~~~~11-715~~(b), a waiver under Arkansas Code § 19-~~64-403~~~~11-715~~(c), or both.

(2) To expedite handling of requests, if delivered by mail, the envelope containing a request should be clearly labeled as a request for an advisory opinion or a request for a waiver, as the case may be.

(3) Requests delivered by electronic means should be identified as a request for an advisory opinion or a request for a waiver, as the case may be, in the subject line and marked as important.

(b) Requests for advisory opinions or requests for waivers shall include as a minimum the following:

(1) The name and address of the requester or the requester's attorney;

(2) Appropriate identification of the proposed contract by reference to its contract number or solicitation number, if a number has been assigned;

(3)(A) Sufficient information and relevant background facts so that it is not necessary to infer any aspect of the situation on which the request is based, including but not limited to:

(i) The nature of the disclosed potential conflict of interest, including the relevant persons, relationships, financial interests, and direct or indirect participation in the procurement of the contract;

(ii) Information regarding the relevant state employee, including the:

(a) Employing state agency;

(b) Employee's dates of hire and termination;

(c) Employee's job scope and duties; and

(d) Employee's potential conflict of interest;

(iii) Information regarding the proposed contract, including the:

(a) Contracting state agency;

(b) Contract value;

(c) Work to be done under the contract; and

(d) Procurement method; and

(iv) Information regarding the contractor relevant to the contract and potential conflict of interest, including ownership interests and positions of control.

(B) Failure to provide such supporting information may result in the request being denied; and

(4) The using agency shall act to coordinate the individuals, requests, and documents involved and ensure sufficient information and relevant background facts are submitted.

(c) Requests for a waiver must additionally articulate why the interests of the state so require a waiver and granting of permission to proceed with the proposed transaction, or that the ethical conflict is insubstantial or remote.

19 CAR § 1-122. Authority of director.

(a) For the purposes of this section, “the director” shall refer to the State Procurement Director.

(b)(1) All state agencies shall submit a written request to the director specifying all needed requirements for a lease of a vehicle.

(2) The Office of State Procurement will issue the solicitation based upon the criteria set forth by the agency to determine the lowest responsible and responsive bidder.

(3) The office will award the contract for the lease after review by the Legislative Council, or Joint Budget Committee when the General Assembly is in session.

Subpart 2. Office of State Procurement — State Procurement Director

19 CAR § 1-201. Authority of the State Procurement Director — Quality assurance, inspection, and testing.

(a)(1) The State Procurement Director shall procure or supervise the procurement of all commodities and services for each state agency not having an agency procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract.

(2) However, in every instance the using agency or college or university receiving commodities or services under the contract shall be responsible for ensuring that commodities and services conform to the necessary specifications, terms, and conditions of the contract.

(3)(A) Unless otherwise agreed, and subject to other applicable law, where commodities are tendered or delivered or identified to the contract for sale, the using agency has a right, before payment or acceptance, to inspect them at any reasonable place and time and in any reasonable manner.

(B) When the seller is required or authorized to send the commodities directly to the using agency, the inspection may be after their arrival.

(4) Using agencies are to provide assessments of the vendor's performance of services as required under Arkansas Code § 19-~~61-40611-268~~.

(b) Examination of commodities and services may, where and when necessary, include laboratory testing and/or simulation studies.

**19 CAR § 1-202. Authority of the State Procurement Director—
Reporting.**

The State Procurement Director has the authority to collect information from any designee, department, agency, and procurement official to facilitate the preparation of statistical and financial reports on state government procurement activity and monitoring of compliance with Arkansas Procurement Law, Arkansas Code § 19-~~61-10111-201~~ et seq.

19 CAR § 1-203. Authority of the State Procurement Director — Vendors.

(a)(1) **Vendor fee.** Vendors shall ~~apply make application~~ on the Office of State Procurement web site ~~at www.arkansas.gov/dfa/procurement~~ to have their name placed on the State Master Vendor List for the commodities and services they wish to supply or provide.

(2) An annual fee may be required.

(b) **State Master Vendor List.** Inclusion of the name of a business on the vendor's list does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(c) **Vendors not on vendor lists.** Hard copies of invitations to bid requested in response to public notice or other notification of a particular procurement will be provided to the requestor at a charge consistent with the current costs of reproduction and distribution.

~~(d) **Recommended vendors.** Vendors listed as recommended vendors on agency purchase requests will be furnished invitations to bid, however, if the contract is awarded to a recommended vendor, that vendor must register on the State Master Vendor List prior to contract award and pay the fee.~~

19 CAR § 1-204. Vendors list.

(a) **Vendors list.** The Office of State Procurement and each agency procurement official will maintain a vendors list.

(b) Application.

(1) A vendor must ~~apply as determined by the Office of State Procurement make application on the office web site at www.arkansas.gov/dfa/procurement to to~~ have its name placed on the vendors lists for the commodities and services it wishes to supply or provide.

(2) The business must provide complete information requested in the application before it will be considered for placement on a vendors list.

(c) Determination.

(1) The procurement agencies may refuse to list any prospective bidder not making proper application.

(2) The prospective bidder has the burden of showing that it meets the qualifications for inclusion on the vendors list on which it seeks to be listed.

(3) The prospective bidder will be promptly advised if its application is disapproved and the reasons for disapproval will be stated.

(d) **Reapplication.** Any prospective bidder whose application is disapproved may reapply following the date of disapproval.

(e) **Removal.**

(1) Any bidder who requests in writing to be removed from the vendors list will be removed.

(2) Bidders who have been suspended and/or debarred will be removed from the vendors list.

(f) Vendors seeking to contract with colleges and universities need to contact those institutions.

(g) **Note.** A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

19 CAR § 1-205. State certification.

The State Procurement Director may create a statewide procurement training and certification program to advance state agency procurement personnel's knowledge.

19 CAR § 1-206. Roster of expiring contracts.

(a) The roster referenced in Arkansas Code § 19-~~61-20311-217~~(c)(9) is a record of active and expiring contracts that may be an electronic record that can be printed or used to populate a list of expiring contracts for which no renewal or new procurement has been initiated by request or requisition.

(b)(1) State agencies have the lead role in identifying any commodities and services that they need in order to perform their respective duties.

(2) Consequently, they are in the best position to monitor and manage their contracts for commodities and services.

(3) As an essential component of managing their contracts, state agencies shall maintain a roster of their active and expiring contracts to submit to the Office of State Procurement.

(4) If a state agency wishes to renew or replace a contract expiring in twelve (12) months or less, it should plan to renew or solicit a replacement with ample time to

allow for a new contract to be procured and to avoid a disruption in service due to the expiration of its active contracts.

(5) State agencies that plan to procure commodities or services through a request for proposals should submit a purchase requisition no later than nine (9) calendar months before the estimated start date of the contract it anticipates awarding as a result of the request for proposals.

19 CAR § 1-207. Direct negotiation of contracts with retailers.

The discretion granted to the State Procurement Director under Arkansas Code § 19-~~61-203~~~~11-217~~(c)(15) can only be exercised to negotiate nonmandatory contracts with retailers who sell commodities and/or services directly to ultimate consumers for a standard retail price that can easily be determined by reference to reliable and publicly available sources, such as:

- (1) The retailer's catalog list price;
- (2) Documentation of the manufacturer's suggested retail price; or
- (3) A standing price that the retailer currently offers to public procurement units through a contract with the United States General Services Administration or a cooperative purchasing agreement.

19 CAR § 1-208. Appointment of assistants and other employees — Delegation of authority by the State Procurement Director.

(a) Delegation.

(1) The delegation to state agencies of the authority for the procurement of commodities and services may be made by the State Procurement Director with the approval of the Secretary of the Department of Shared Administrative Services.

(2) The delegation may be for a specific commodity or service or for all commodities and services for a specific period of time not exceeding two (2) years.

(3) Such delegation shall be made by a written order signed by the director or by rules promulgated by the director setting forth with particularity the kind or type of

procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority.

(4) Delegation orders are nontransferable.

(b) Limitations.

(1) All delegations of procurement authority shall remain in force according to the original terms thereof unless modified or until rescinded by the director in writing, or until the expiration date provided by law, whichever comes first.

(2) The term of delegation authority is counted from, and includes the date of, the effective date stated in the written delegation order.

(c) Small procurements and competitive biddings. All state agencies not having an agency procurement official and seeking authority to make small procurements and engage in competitive bidding as provided in Arkansas Code §§ 19-~~61-50311-231~~ and 19-~~61-50411-234~~ shall designate at least one (1) procurement agent to make small purchases and engage in competitive bidding by submitting a letter signed by the administrative head of the state agency to the director requesting such designation of each employee identified as a procurement agent.

(d) A person who is requesting authority under a written delegation order issued under this section shall complete training as required.

(e)(1) Delegation orders may be suspended or rescinded by the director.

(2) Suspended delegation orders may be reinstated, modified, or rescinded in writing by the director.

19 CAR § 1-209. Attorney review of designated contracts.

(a)(1) A contract for services or commodities that, by its terms, requires or may require a state agency to expend an amount of public funds equal to or greater than seventy five thousand dollars (\$75,000) in either a calendar or fiscal year shall, prior to execution, be reviewed by any attorney employed by the state and licensed to practice law in Arkansas.

(2) The class of attorneys that can satisfy the requirement should be interpreted broadly so as to maximize the number of attorneys that can help state agencies satisfy it.

(3) This class of attorneys includes, without limitation, licensed attorneys employed by:

(A) The Office of State Procurement;

(B) The ~~Office office~~ of the Attorney General; and

(C) Any state agency or institution of higher education.

(b) Where the standard terms and conditions that have already been approved by the Office of State Procurement are not used, or they are used but substantively amended, the reviewing attorney shall certify, in writing (electronic or paper), identifying the responsible attorney, that he or she has reviewed the contract and found no term, condition, or provision that requires the state to:

(1) Subject itself to the law of any other state or to appear in any venue outside of the state other than as may be required by federal law;

(2) Indemnify a non-state party or hold a non-state party harmless;

(3) Keep records or information confidential, unless it is consistent with the Arkansas Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., or other applicable supervening law; or

(4) Be financially obligated to make payments for commodities or services before they have been received.

19 CAR § 1-210. Commodities and services under state contract.

(a) **Request for exclusion.** State agencies having agency procurement officials may request exemption from a proposed state contract by submitting to the State Procurement Director a written justification for such exemption.

(b) **Determination by director.** Approval of exemption from a state contract shall be made in writing by the director, but a denial of a request for an exemption from a state contract may be made in any manner reasonably likely to communicate the denial to the requestor.

19 CAR § 1-211. Mandatory state contracts.

(a)(1) Unless an exemption is approved by the State Procurement Director in writing, a state agency that requires commodities or services that are under a mandatory state contract shall procure these commodities and services exclusively under the mandatory state contract.

(2) Except in the case of emergency procurements, as defined in Arkansas Code § 19-~~61-501~~~~11-204~~(4) and as provided in Arkansas Code § 19-~~61-508~~~~11-233~~, the director may only approve an exemption from a mandatory state contract awarded under this section if the state agency demonstrates that substantial savings will likely be effected by purchasing outside of the mandatory state contract.

(b) "Substantial savings" are the lesser of:

(1) Savings of five percent (5%) or more when compared against purchasing from the mandatory state contract; or

(2) Ten thousand dollars (\$10,000) or more when compared against purchasing from the mandatory state contract.

Subpart 3. State Agencies — Agency Procurement Officials

19 CAR § 1-301. Procurement agencies.

(a) **Designation.** Each state agency authorized by Arkansas Code § 19-~~61-301~~~~11-220~~ to elect to have an agency procurement official shall submit a letter signed by the administrative head of the state agency to the State Procurement Director designating an employee who shall be the agency procurement official.

(b) **Internal procedures.**

(1) The internal procurement procedures must ensure adequate management and control of the agency procurement functions pursuant to law and rules.

(2) Each agency shall ensure that a current copy of its internal procurement procedures and rules is kept on file.

(3) The internal procurement procedures established may include, but are not limited to:

(A) A method of recording and filing each transaction as follows:

- (i) Legal notice where applicable;
- (ii) The original invitation for bids, purchase order, internal purchase request, printing order, or other applicable document;
- (iii) A list of all bidders invited to participate;
- (iv) The original of all bids received;
- (v) An abstract of bids received; and
- (vi) A copy of all correspondence, memos, or other documents related to the award and administration of each transaction, including administrative determinations or justifications when applicable; and

(B) A file containing ~~each vendor's application and~~ reports regarding the vendor's performance.

(c) **Limitations.** Upon request of the Secretary of the Department of Shared Administrative Services, or his or her designee, the agency procurement official shall make available for audit and inspection records of any ~~and all~~ transactions pertaining to the procurement of commodities and services.

(d) **General.** A state agency having an agency procurement official may request the Office of State Procurement to procure specific commodities and services which the agency procurement official ~~may is authorized to~~ procure or to procure all commodities and services which the agency procurement official ~~may is authorized to~~ procure for a specific period of time.

19 CAR § 1-302. Interest, carrying charges, and termination fees — Limitations.

(a) Contracts may be entered into which contemplate the payment of interest or carrying charges only in the following conditions:

(1) When the interest or carrying charge is required because the term of the contract is extended over a period of time; and

(2) When a provision for termination of the contract is included in the contract, as provided in Arkansas Code § 19-~~61-512~~~~11-238~~(c) and the rules promulgated pursuant thereto.

(b) Contracts may be entered into which contain a provision for the payment of the following charges on delinquent accounts: interest charges, carrying charges, late payment charges, or any other charge which may be construed as a penalty, but only if incurred sixty (60) days after the due date.

(c) Service charges may be paid on credit card procurements.

19 CAR § 1-303. Solicitation conferences.

A solicitation conference may be held by an agency to provide the following information, without limitation, to prospective bidders:

(1) Names and contact information of state personnel who will serve as points of contact to bidders during the solicitation process;

(2) Times, dates, locations, and other relevant information pertaining to the procurement calendar and process;

(3) A description of the services or commodities sought, as well as the agency's objectives;

(4) A review of the specifications and pricing model being sought; and

(5) To take questions from attendees.

19 CAR § 1-304. Mandatory solicitation conferences.

(a) Agencies may make attendance at a solicitation conference mandatory by obtaining approval from the State Procurement Director or the head of the procurement agency.

(b) In seeking such approval, the agency shall:

(1)(A) Issue a request letter, addressed to the director or the head of the procurement agency;

(B) Email is sufficient to constitute a request.

(C) Whether delivered by email or mail, the communication should be clearly marked or labeled "Request for a Mandatory Solicitation Conference";

(2) The written request should clearly articulate the factors and reasoning for why the solicitation conference should be made mandatory, as well as a citation to the mandatory language for a solicitation conference in the invitation for bids, request for proposals, or request for statements of qualifications and performance data; and

(3) A copy of the draft invitation for bids, request for proposals, or request for statements of qualifications and performance data should be attached with the written request.

19 CAR § 1-305. Limitations of solicitation conferences.

Nothing discussed during a solicitation conference will augment or change the specifications or terms and conditions of a solicitation, nor shall anything discussed during a solicitation conference be deemed to be binding or incorporated into the specifications or terms and conditions of a solicitation, unless it is subsequently reduced to writing and included in the solicitation.

Subpart 4. Vendors — Contractors — Bidders

19 CAR § 1-401. Nonresponsibility.

(a)(1) Determination of responsibility is made prior to the award of a contract.

(2) A nonresponsible bidder or offeror is an individual group or entity ~~one~~ (1) who has been determined through evaluation of bid/offer to lack the capability, integrity, and/or reliability to fully perform the contract.

(b) Determination of responsibility may include, but not be limited to, one (1) or any combination of the following:

(1) The ability, capacity, and skill to perform the contract or provide the service;

(2) The responsibility and experience of the business;

(3) The quality of performance on previous contracts or services;

(4) The previous and existing compliance by the business with laws relating to the contract or services; and

(5) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.

19 CAR § 1-402. Bonds.

(a) **General.** Bidders shall submit bid bonds, ~~or~~ performance bonds, or similar assurances when required by the terms and conditions of the invitation for bids, solicitation or request for proposals, as obligee with surety satisfactory to the procurement agency, in a sum not to exceed one hundred percent (100%) of the contract price.

(b) **Award.** A bid shall not be awarded to any bidder who fails or refuses to provide a bond when required by the invitation for bids.

(c) **Default.** A contractor may be declared in default of his or her contract with the state, and his or her bond forfeited, when it is determined by the procurement official that the contractor is in breach of the terms and conditions of the contract.

19 CAR § 1-403. Submission of contracts with members of the General Assembly.

(a) All contracts or amendments to contracts with a member of the General Assembly, his or her spouse, or with any business in which such a person or his or her spouse is an officer, a director, or a stockholder owning more than ten percent (10%) of the stock in the business must be presented to the Legislative Council or the Joint Budget Committee, if the General Assembly is in session.

(b) Such contracts or amendments to contracts must be submitted to the Office of State Procurement in accordance with all applicable policies and guidelines as prescribed on the office website.

~~19 CAR § 1-404. Reporting of vendor performance.~~

~~—(a) Contracts with a total projected contract amount, including any amendments and possible extensions, of twenty five thousand dollars (\$25,000) or more shall require the submission of a vendor performance report at least one (1) time every three (3) months for the entire term of the contract and at the end of the contract.~~

~~—(b) Reports shall be due to the Office of State Procurement.~~

~~—(c) This shall not restrict agencies from submitting an unsatisfactory vendor performance report at any time during the contract period.~~

~~—(d) Agencies shall submit vendor performance reports using the appropriate method as prescribed by the office.~~

19 CAR § 1-405. Experience requirement.

Prior to the release of a bid solicitation, if the agency justifies in writing that the combined experience of the key personnel would be insufficient to adequately satisfy the requirements of the bid solicitation, the agency must include in the bid solicitation a statement indicating that only the experience of the bidder or offeror shall be considered.

Subpart 5. Source Selection and Contract Formation

19 CAR § 1-501. Initial term.

(a) A contract may be entered into for up to a maximum period of a total of seven (7) years.

(b) It may be advantageous for agencies to have a contract expire annually unless renewed; however, they may opt to make the initial term of a contract extend for up to four (4) years before the first renewal.

(c) The aggregate number of years under a nonexempt contract remains seven (7) regardless of the length of the initial term of the contract.

19 CAR § 1-502. Prohibition from public entities contracting with companies that boycott Israel.

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(a) The contractor must certify that the contractor is not currently engaged in, and agrees that for the aggregate term of the contract will not engage in, a boycott of Israel.

The instructions for certification on contracts over seventy-five thousand dollars (\$75,000) will be provided in the contract solicitation. The instructions for certification on contracts under seventy-five thousand dollars (\$75,000) will be provided on the Office of State Procurement website.

(b)(1) If the contractor violates the above certification or is found to not be in compliance during the term of the contract, the state may require the contractor to remedy the violation within sixty (60) days of discovery of that violation.

(2) Failure to remedy the violation within the sixty-day period may result in termination for breach of contract, and the contractor may be liable to the state for the state's actual damages.

(c)(1) This subpart applies to written contracts only and is to be applied prospectively.

(2) Any written contract entered into prior to August 1, 2017 does not require certification.

(d) Vendors are not required to submit a certificate for commodity purchases made with a p-card as they do not require a written contract.

(e) Certification is required upon the execution of a ~~at the time a~~ written contract, ~~is entered into, renewals or extensions of contracts do not require certification.~~

(f) Renewals or extensions of contracts do not require recertification.

(g) This subpart does not apply to:

(1) A company that fails to meet the requirements under Acts 2017, No. 710 subdivision (a)(1) of this section but offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business; or

(2) Contracts with a total potential value of less than one thousand dollars (\$1,000).

19 CAR § 1-503. Issuance of restrictive specifications generally.

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A specification may be drafted which describes a product which is proprietary to one (1) manufacturer only where there is a requirement for specifying a particular design or make of product due to factors of compatibility, standardization, or maintainability.

**19 CAR § 1-504. Issuance of qualified products list specifications —
Qualified products list.**

(a) **Restrictions on use.** A specification for commodities may include a qualified products list only when the State Procurement Director has approved in writing the written determination of the agency procurement official or Office of State Procurement that the:

(1) Interests of the state require assurance before award that the desired commodity is satisfactory; and

(2) Cost or the time required to test before award would be excessive.

(b) **Notice of intent to adopt a qualified products list.**

(1) Whenever it is determined to include a qualified products list in any specification or to adopt such a list, prompt notice of the intent shall be given to all reasonably known makers and suppliers of the affected commodity.

(2) Such notice shall describe all requirements for achieving qualification.

(c) **Written records of evaluation.**

(1) Detailed written records shall be made of the evaluation of any ~~and all~~ commodities offered for inclusion on any qualified products list.

(2) Except for records which contain trade secrets or other proprietary information, those records shall be made available for inspection by any member of the public upon request.

19 CAR § 1-505. Multiple award contracts.

No multiple award contracts can be awarded unless the invitation for bids or request for proposals included notification of the right to make multiple awards.

19 CAR § 1-506. Special procurement reporting.

(a) Agencies are required to report special procurements to the Office of State Procurement.

(b) The reports shall include a copy of the written determination of the basis for the procurement and for the selection of a particular contract, and a copy of the contract.

~~(c) The reports will be reviewed and collated and a consolidated report for the state will be forwarded to the Legislative Council as required.~~

19 CAR § 1-507. Use of performance-based standards in contracts.

(a) The purpose of performance-based standards is to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.

(b) It is recommended that all services contracts include performance standards.

(c) All services contracts that have a contract amount of at least one million dollars (\$1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars (\$7,000,000) shall include performance standards.

(d)(1) Performance standards, as a general rule, are highly recommended as an element of any service contract and may be:

(A) Standardized for use with similar service contracts; or

(B) Specifically developed for unique requirements.

(2) However, performance-based standards are mandatory and must be specifically tailored to the services being provided under any services contract whenever a state agency, board, commission, or institution of higher education that enters into a contract to procure services that has a contract amount of at least one million dollars (\$1,000,000) in a single contract year or a total projected contract amount, including any amendments to or possible extensions of the contract, of at least seven million dollars (\$7,000,000).

(e) Performance standards should measure, at prescribed points throughout the term of the contract, the quality, quantity, and timeliness of work being performed.

(f) Performance standards may be refined by the agency and the provider as a part of the contract negotiations.

(g) A provider's inability to meet established performance standards may be sufficient cause for declaring default and may also result in cancellation of the contract.

19 CAR § 1-508. Proprietary or sole source procurements — Generally.

(a)(1) **General.** Sole source procurements of commodities and ~~technical~~ services are those procurements which, by virtue of the performance specification, are available from a single source.

(2) Brand name preferences or merely aesthetic design specifications are not sufficient justification for sole source awards.

(3) Such procurements may include but are not limited to:

(A) Requirements of performance compatibility with existing commodities or services; or

(B) Repairs involving hidden damage.

(b) **Approval.** Request for approval shall be made in writing and shall include in the justification:

(1) A copy of the purchase order or requisition;

(2) Why the service is needed;

(3) The methods used to determine that a lack of responsible/responsive competition exists for the service;

(4) How it was determined that the provider possesses exclusive capabilities;

(5) Why the service is unique;

(6) Whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(7) What the agency would do if the provider/service were no longer available;

(8) Any program considerations which make the use of a sole source critical to the successful completion of the agency's task; and

(9) The Contract and Grant Disclosure and Certification Form required by Governor's Executive Order 98-04, if applicable.

(c) Procurements under this section must be approved in advance by the head of a state agency having an agency procurement official or the State Procurement Director for all other state agencies, or a designee of either officer above the level of agency procurement official.

(d) **Sole source procurements of professional and consultant services.**

(1) The procurement from a single source, as it relates to professional and consultant service contracts, should only be used when all other methods of contracting are clearly not applicable.

(2) The agency chief fiscal officer or equivalent or director, division director, or deputy director of an agency, college, or university may authorize the use of sole source purchases.

(e)(1) **Sole source justification.** Sole source professional and consultant service contracts, except for those exempt by law, must be accompanied by written justification and be approved by the Director of the Office of State Procurement.

(2) The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the state.

(3) The justification must fully address:

(A) Why the service is needed;

(B) The methods used to determine that a lack of responsible/responsive competition exists for the service;

(C) How it was determined that the provider possesses exclusive capabilities;

(D) Why the service is unique;

(E) Whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(F) What the agency would do if the provider/service were no longer available; and

(G) Any program considerations which make the use of a sole source critical to the successful completion of the agency's task.

(f) **Sole source by law.**

(1) Definitions. As used in this section: "Sole source by law" means the procurement of commodities or services that result from a mandate issued by the court systems, state law, or federal law.

(2) ~~The Any sole source by law procurement of professional and consultant services from a specific provider that results from a mandate issued by the court systems or state or federal law~~ must be accompanied by the related court order, state law, or federal law.

19 CAR § 1-509. Request for qualifications procurement method generally.

(a)(1) The request for qualifications (RFQ) procurement method is used, with prior written approval from the State Procurement Director, when price competition is irrelevant and/or the qualifications or specialized expertise of the vendor is the most important factor in selection.

(2) For example, an RFQ would likely be appropriate in instances where an agency is compiling a list of qualified vendors and will be offering the same contract rates to all qualified vendors, because price competition is irrelevant in such a situation.

(3) An agency should give public notice of an RFQ opportunity, but may also send notice directly to those vendors the agency considers to be best-qualified and capable of performing the scope of work or services required.

(b)(1) Notification of RFQs, for which the Office of State Procurement is responsible, in amounts greater than seventy-five thousand dollars (\$75,000) will be made on the office website.

(2) The agency makes its initial selection based upon the respondent's qualifications.

(3) Only after the most qualified respondent is identified does cost become a factor in determining the award.

(4) Discussion may be conducted with qualified vendors who, based upon qualifications submitted, are determined to reasonably be susceptible of being selected for the purpose of clarification to ensure full understanding of, and responsiveness to the solicitation requirements, and to obtain best and final offers.

(5) If the state agency or political subdivision is unable to negotiate a satisfactory contract with the vendor selected, negotiations with that vendor shall be terminated and the agency may proceed to negotiate with one (1) or more of the other qualified vendors.

19 CAR § 1-510. Competitive sealed bidding — Definition.

Invitations for bids for which the Office of State Procurement is responsible will be posted ~~at the location designated by the Office of State Procurement. on the office website, www.arkansas.gov/dfa/procurement, in adequate time to allow response.~~

19 CAR § 1-511. Conditions for use.

(a) **Lease.**

(1) All contracts for the lease of a commodity which exceed a cost of seventy-five thousand dollars (\$75,000) during the initial period of the contract shall be awarded on the basis of competitive sealed bids.

(2) All contracts for the lease of a commodity that do not exceed seventy-five thousand dollars (\$75,000) during the initial period of the contract but contain an option to purchase a commodity costing more than seventy-five thousand dollars (\$75,000) will be awarded on the basis of competitive sealed bids.

(3) No lease duration including renewals can extend beyond a seven-year period.

(4) The term "lease" includes rent.

(b) **Purchase of commodities subject to the Arkansas Constitution, Amendment 54.** Commodities subject to the Arkansas Constitution, Amendment 54 (printing, stationery, and supplies) may be purchased only by the State Procurement Director or his or her designee.

19 CAR § 1-512. Commodities and services.

Commodities and services which are not practicable to procure by competitive sealed bidding:

(1) Postage meter leases;

(2) Motor vehicle rentals;

(A) Motor vehicle rentals, for thirty (30) days or less, may be procured by use of competitive bid procedures.

(B) All motor vehicle leases over thirty (30) days must be approved by the State Procurement Director under the provisions of Arkansas Code § 22-8-102; and

(3) Agricultural equipment leases.

(A) Agricultural equipment leases for one hundred eighty (180) days or less may be procured by use of competitive bid procedures.

19 CAR § 1-513. Leases.

Lease of commodities on state contract. No contract greater than ninety (90) days for the lease of commodities on state contract shall be approved unless the State Procurement Director determines in writing that it is in the best interest of the state and states the reasons therefore.

19 CAR § 1-514. Bid submission.

(a)(1) Bidders shall submit bids at the place and on or before the date and time set in the invitation for bids.

(2) Bids received after the date and time designated for bid opening are late bids and shall not be considered.

(b)(1) All bids and any modifications to bids previously filed, received prior to the date and time fixed for opening bids, shall be kept secure and unopened.

(2) If a bid is submitted and the invitation for bids number is not clearly marked to indicate the date and time of bid opening, the State Procurement Director or

agency procurement official may make a reasonable attempt to determine which bid the sealed submission corresponds to.

(c) Retrieval of a bid for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the business.

19 CAR § 1-515. Solicitation conferences.

(a) A solicitation conference may be held by the State Procurement Director or agency procurement official or a designee to provide information to prospective bidders.

(b) Nothing discussed during a solicitation conference will change the specifications or terms and conditions of a competitive sealed bid, nor shall anything discussed during a solicitation conference be deemed to be binding or incorporated into the specifications or terms and conditions of a competitive sealed bid unless it is subsequently reduced to writing and included in the competitive sealed bid.

19 CAR § 1-516. Bid opening.

(a) When practical, the names of the bidders and amounts of their bids may be read aloud.

(b) Except where it may be deemed impractical, due to the nature or complexity of an invitation for bids, an abstract of bids which contains the amount of each bid and the name of the bidder shall be prepared for each invitation for bids.

(c) An abstract of bids shall be retained in the bid file and shall be available for public inspection.

19 CAR § 1-517. Bid evaluation.

(a)(1) Those criteria that will affect the bid price and be considered in evaluation for award shall be stated in the bid and objectively measured, such as transportation costs and total or life cycle cost.

(2) Judgmental evaluation of commodities and services may be used in determining whether the commodity or service offered by a bidder meets the

specification requirements of the procurement, or the bidder is qualified to provide the service.

(b) The following matters will be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities:

(1) Time discounts cannot be considered in the evaluation of a bid pursuant to Arkansas Code § 19-~~61-50511-229~~(f)(3) unless the solicitation specifically requests a time discount;

(2)(A) Quantity discounts should be included in the price of the item.

(B) When not included in the item price, the discount will be considered only if the procurement agency, or the agency for whose benefit the procurement has been undertaken, deems it to be in the state's best interest.

(C) The unit price shown on the contract will be the net price, less the discount, unless otherwise indicated in the bid;

(3) An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the state's best interest;

(4) Only signed, sealed bids delivered prior to the date and time of bid opening will be accepted; and

(5) Past performance.

(A)(i) The past performance of a bidder on a state contract may be used by the procurement agency to determine whether the bidder is "responsible".

(ii) Past performance must be supported by written documentation not greater than three (3) years old.

(iii) Documentation may be a formal vendor performance report, an informal memo (signed and dated), or any other appropriate authenticated notation of performance to the vendor file.

(iv) Reports, memos, and files may be in electronic form.

(v) Past performance may be positive or negative.

(B)(i) Past performance on contracts from other Arkansas state agencies may also be used for evaluation.

(ii) Supporting documentation should be provided.

(C) Past performance evaluation should not take the place of suspension or debarment procedures.

(c) **Tie bids.**

(1) **Definitions.** As used in this section:

(A) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(B) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie bid between two (2) or more offers that meet the specifications as required and where one (1) of the offerors is an Arkansas company, then the award will be made to that Arkansas company.

(4) In the event of a tie bid between two (2) or more offers that meet the specifications as required:

(A) ~~And where~~ Where at least two (2) of the offerors are Arkansas companies, then an award will be determined by drawing of lots ~~(flip of a coin)~~ between those Arkansas companies; or

(B) If all of the offerors are out-of-state companies, then an award will be determined by drawing of lots ~~(flip of a coin)~~ among all the bidders.

(5)(A) The drawing of lots ~~coin flip~~ will be done in the presence of at least one (1) witness by the person responsible for awarding the contract.

(B) All witnesses must be employees of the State of Arkansas.

(C) A documentation of the drawing of lots ~~coin flip~~ must be:

(i) Included on the tabulation or bid history sheet; and

(ii) Signed by the person responsible for awarding the contract and all witnesses.

19 CAR § 1-518. Rejection.

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Grounds for rejection of bids include but are not limited to:

(1) Failure of a bid to conform to the mandatory requirements of an invitation for bids;

(2) Any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;

(3) Any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(4) A bid imposing conditions which would modify the stated terms and conditions of the invitation for bids;

(5) Any bid determined by the procurement official in writing to be unreasonable or unrealistic as to price;

(A) An unreasonable price is one determined in writing to be too high relative to bid requirements.

(B) An unrealistic price is one determined in writing to be too low to indicate the respondent's ability to successfully meet scope requirements.

(C) Prices should be assessed for reasonableness and realism, in accordance with Office of State Procurement policy, when bids are submitted. Additional review and analysis of cost reasonableness and realism may be conducted throughout the procurement process to affirm grounds for rejection. Clarifications may be issued to bidders to supplement review and analysis, to certify cost or pricing data, or, in the case of unreasonable pricing, to lower proposed cost.

(6) Bids received from bidders determined to be nonresponsible bidders;

(7) Failure to furnish a bid guarantee when required by an invitation for bids;

and

(8) Any or all bids when the procurement official makes a written determination that it is in the best interest of the state.

19 CAR § 1-519. Correction or withdrawal.

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(a) **Correction or withdrawal of bids.**

(1) The State Procurement Director or agency procurement official may waive technicalities (small details) or minor irregularities (something irregular in form or nature) in bids which do not affect the material substance of the bids when it is in the state's best interest to do so.

(2) Amendments to bids shall be allowed if the amendments:

- (A) Are in writing and signed;
- (B) Are received prior to the date and time of bid opening; and
- (C) Clearly indicate the date and time of bid opening and bid number.

(3)(A) If there is a suspected bid mistake, the director or agency procurement official may request confirmation of a bid and shall request the confirmation to be made in writing.

(B) The bid of any bidder who fails or refuses to clarify in writing within a reasonable time any matter contained in his or her bid may be rejected.

(C) The written clarification shall become a part of the contract awarded on the basis of that bid. If a mistake is confirmed, the bidder may be permitted to withdraw that portion of the bid. Any correction of the price extension or of the price addition by the Office of State Procurement or state agency having an agency procurement official shall not be considered the correction of a bid.

~~(4)(A) Bid prices shall be based on the unit prices and any correction of the price extension or of the price addition by the Office of State Procurement or state agency having an agency procurement official shall not be considered the correction of a bid.~~

~~—————(B) Actual Bid prices (including as may be corrected following a suspected mistake under 19 CAR § 1-519(a)(3)) shall not be increased after the date and hour of bid opening.~~

~~(B€) A bid price may be decreased only after a determination has been made that the bid is low.~~

(5) An otherwise low bidder may be permitted the opportunity to furnish other information requested in the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6)(A) When a mistake in a bid is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the bid, and that due to such mistake the bid submitted was not the bid intended, the bidder may be permitted to withdraw his or her bid.

(B) Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract and the contractor will sustain a financial loss (a reduction or diminution in profit margin shall not be deemed a financial loss under this subsection) if required to perform the contract, the contract may be rescinded.

(b) **Correction.** Any negotiated adjustments, as defined in Arkansas Code § 19-~~61-505~~~~11-229~~(h), will not be considered the correction of a bid.

~~19 CAR § 1-520. Award — Negotiation.~~

~~(a) Award.~~

~~(1) After a reasonable bid evaluation period, the bid shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids.~~

~~(2) All bids may be rejected if, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the procurement official that no satisfactory bid has been received.~~

~~(b) Negotiation.~~

~~(1) In the event that negotiation is necessary, a bidder may be determined to be nonresponsive if the bidder and agency are unable to reach a mutually agreeable negotiated adjustment.~~

~~(2) If negotiations fail or the agency is unable to reach a negotiated adjustment with the apparent low bidder, the next lowest bidder can be contacted for the purposes of entering into negotiations.~~

~~—(c) “Trained and certified in negotiation and procurement process” means the person will have received certified training from or authorized by the Office of State Procurement.~~

19 CAR § 1-521. Cancellation of invitations for bids.

(a) When an invitation for bids is cancelled, notice of cancellation of Office of State Procurement bids will be posted at the location designated by the Office of State Procurement. ~~on the office website www.arkansas.gov/dfa/procurement.~~

(b) The bids may be returned if the bid is properly identified.

19 CAR § 1-522. Negotiations – Award of Competitive Sealed Bids.

(a)(1) Negotiation. Negotiation of competitive sealed bids should be used only in those cases where the best interests of the state are served, such as where the lowest bid submitted by a responsive and responsible bidder:

(A) Exceeds the available funding to pay for the commodity or service, as certified by the appropriate fiscal officer of the procurement agency; or

(B) Can be shown to be above the fair market price available on the open market to a reasonably prudent buyer.

(2) Procurement officials who conduct negotiations ~~must should~~ be trained and certified in negotiation and Arkansas Procurement Law, Arkansas Code § 19-~~61-10111-201~~ et seq.

~~—(A) “Trained and certified in negotiation and procurement process” means the person will have received certified training from or authorized by the Office of State Procurement.~~

~~(b)(1) Prior to negotiation, a written justification supporting negotiations must be included in the bid folder.~~

~~—(2) The justification must include, as applicable:~~

~~—(A) Bid tabulation with indication of lowest responsive and responsible bidder;~~

~~—————(B) Certification of funds budgeted for the procurement by the agency chief fiscal officer in instances where all bids received from responsive and responsible bidders exceed the available funding; and~~

~~—————(C) Reason or reasons precluding re-solicitation, including but not limited to time constraints and economic impact to the agency.~~

(3e)(A1) After it is determined that negotiation is in the best interests of the state and permissible under Arkansas Code § 19-~~61-50511-229~~(h)(2)(A), appropriate representatives will proceed with negotiations and award recommendation.

(B2) Appropriate representatives may include purchasing staff and representatives from the original requesting unit.

(4d) The agency should investigate the factors affecting the price offered by the apparent low bidder to include but not be limited to:

(A1) Cost;

(B2) Delivery requirements;

(C3) Warranty;

(D4) Location of supplier;

(E5) Volatile nature of goods or services requested; and

(F6) Current economic condition of the market.

(5e) The agency may ~~must~~ develop a plan to include at least:

(1) The acceptable range of price, the desired "best" price, and the highest acceptable price;

(2) What adjustment may be made to delivery requirements that may affect price;

(3) Acceptable adjustments in quantity;

(4) A prioritized list of acceptable adjustments in specifications that may result in price reduction; and

(5) Timetable for completion of negotiation.

(6f) Negotiation plans shall not be revealed to bidder or bidders nor made available for public review until after the anticipated award is made public in order to avoid revealing information that if disclosed would give advantage to competitors or bidders.

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(7g) An acceptable negotiated contract must be signed and in writing listing agreed upon terms, conditions, specifications, quantities, and pricing.

(8h) If a negotiated contract cannot be developed, the bidder may be declared nonresponsive and, time permitting, the negotiation process may be repeated with the next low bidder.

(9i) If negotiations do not result in an acceptable contract, the director or head of a procurement agency may authorize that a new solicitation be issued or elect to procure by special procurement (Arkansas Code § 19-~~61-510~~~~11-263~~).

(b) Award

(1) After a reasonable bid evaluation period, the bid shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids.

(2) All bids may be rejected if, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the procurement official that no satisfactory bid has been received.

19 CAR § 1-523. Competitive sealed proposals — Generally.

Request for proposals for which the Office of State Procurement is responsible will be posted on the office website in adequate time to allow response.

19 CAR § 1-524. Conditions of use — 30% weighted cost waiver.

(a) **Conditions of use.** To determine the necessity of using competitive sealed proposals, contracts exceeding an estimated purchase price of seventy-five thousand dollars (\$75,000) require formal justification via a determination in writing that competitive sealed bidding is not practicable or advantageous. Purchase price is the final, agreed-upon cost for a specific item or service, encompassing all relevant charges of a purchase or in a contract. In determining purchase price for procurement method thresholds, "purchase price" means the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments,

extensions and renewals of the contract. Purchase price, therefore, is not limited to the cost for the initial term; it is determined by the total value of the contract over a contract's term as well as any modifications, renewals, or extensions of the contract.

(1) The key element in determining the necessity for utilization of the competitive sealed proposal method is the type of evaluation required.

(2) Where evaluation involves the relative abilities of offerors to perform, including the degree of technical or professional experience, and price is not the only consideration, use of competitive sealed proposals is appropriate.

(3) Further, where the types of supplies or services may require the use of comparative, judgmental evaluation, competitive sealed proposals are the appropriate procurement method.

(b) **Thirty percent (30%) weighted cost waiver.** In seeking a written determination by the State Procurement Director that it is in the best interest of the state for cost to be weighted at less than thirty percent (30%) of the total evaluation score, the requesting agency shall:

(1)(A) Issue a written request addressed to the director.

(B) The written request may be delivered by email or mail, and in either case, should be clearly marked or labeled "Request for Weighted Cost Deviation";

(2)(A) The written request should clearly articulate the factors for why it is in the best interest of the state for cost to be weighted at a lower percentage than thirty percent (30%), and what percentage the requesting agency seeks.

(B) The factors articulated should be specific to the request for proposal under consideration; and

(3) If the director issues a written determination approving of the lower percentage, the written determination shall be submitted for review by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

19 CAR § 1-525. Proposal submission.

(a)(1) Offerors shall submit proposals at the place and on or before the date and time set in the request for proposals.

(2) Proposals received after the date and time designated for the proposal opening are considered late and shall not be considered.

(b)(1) All proposals and any modifications to the proposals previously filed, received prior to the date and time fixed for opening the proposals, shall be kept secure and unopened.

(2) If a proposal is submitted and the request for proposals number is not clearly marked to indicate the date and time of the proposal opening the State Procurement Director or agency procurement official may make a reasonable attempt to determine which solicitation the sealed submission corresponds to.

(c) Retrieval of a proposal for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the offeror who submitted the proposal.

19 CAR § 1-526. Request for proposals opening.

(a) The names of the offerors may be read aloud.

(b) An abstract of proposals listing the names of offerors shall be prepared by the entity responsible for the RFP and shall be retained in the request for proposals file and shall be available for public inspection.

19 CAR § 1-527. Evaluation — Responsibility of offeror — Tie Scoresbids — Private evaluators.

(a) Evaluation.

(1) The evaluation shall be based on the evaluation factors set forth in the request for proposals.

(2) All members of evaluation committees shall participate in evaluation committee training sponsored either by the Office of State Procurement or the college or university agency procurement official.

(3) Evaluations will be conducted in accordance with office policy.

(4) A written recommendation shall be made and submitted by the evaluation committee and submitted by the chairperson to the State Procurement Director or

agency procurement official stating the basis on which the recommendation for award was found to be most advantageous to the state.

(5) Only the original proposal, a properly clarified proposal, or a proposal submitted as a best and final offer may be considered for evaluation.

(b) Responsibility of offeror.

(1)(A) Past performance of an offeror may be used by the procurement agency to determine whether the offeror is “responsible”.

(B) No points for past performance may be used in the evaluation scoring ~~criteria~~ unless:

(i) Past performance with the state is a non-mandatory evaluation criteria; and

(ii) The same amount of points allocated for past performance with the state are also made available in the evaluation scoring criteria in such a way as to not prejudice offerors without past performance history with the state.

(C)(i) Past performance must be supported by written documentation and shall have not occurred more than three (3) years before the proposal was submitted.

(ii) Documentation may be:

(a) A formal vendor performance report;

(b) An informal memo, signed and dated; or

(c) Any other appropriate authenticated notation of performance to the vendor file.

(iii) Reports, memos, and files may be in electronic form.

(D)(i) Past performance may be positive or negative.

(ii)*(a)* Past performance on contracts from other Arkansas state agencies may also be used for evaluation.

(b) Supporting documentation should be provided.

(iii) Past performance evaluation should not take the place of suspension or debarment procedures.

(2) The awarding of points for references may be used as evaluation scoring criteria if set forth in the solicitation.

(c) **Tie Scoresbids.**

(1) **Definitions.** As used in this section:

(A) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(B) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the evaluation of proposals lowest prices offered results in a tie scorebid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie scorebid between two (2) or more offers that meet the specifications as required and where one (1) of the offerors is an Arkansas company, then the award shall be made to that Arkansas company.

(4) In the event of a tie scorebid between two (2) or more offers that meet the specifications as required:

(A) And where at least two (2) of the offerors are Arkansas companies, then an award will be determined by the lowest cost proposal lot (flip of a coin) between those Arkansas companies; or

(B) If all of the offerors are out-of-state companies, then an award will be determined by the lowest cost proposal lot (flip of a coin) among all the offerors.

~~(5)(A) The coin flip will be done in the presence of at least one (1) witness by the person responsible for awarding the contract.~~

~~—————(B) All witnesses must be employees of the State of Arkansas.~~

~~—————(C) A documentation of the coin flip must be:~~

~~—————(i) Included on the tabulation or bid history sheet; and~~

~~—————(ii) Signed by the person responsible for awarding the contract and all witnesses.~~

(d) **Private evaluators.**

(1) An agency may use qualified evaluators from nonstate governmental entities or the private sector.

(2) There is no limit on the number of private evaluators that may be used on an evaluation committee, but they must abide by all ethical standards and legal requirements a state employee or former state employee would have to meet in order to serve as an evaluator.

19 CAR § 1-528. Rejection of proposals.

Grounds for rejection of proposals include but shall not be limited to:

(1) Failure of a proposal to conform to the essential requirements of a request for proposals;

(2) A proposal imposing conditions which would modify the stated terms and conditions of the request for proposal;

(3) Any proposal determined by the procurement official in writing to be unreasonable or unrealistic as to price;

(A) An unreasonable price is one determined in writing to be too high relative to solicitation requirements.

(B) An unrealistic price is one that is determined in writing to be too low, indicating the respondent's inability to successfully meet the full scope of the solicitation requirements.

(C) Prices should be assessed for reasonableness and realism, in accordance with Office of State Procurement policy, when proposals are submitted. Additional review and analysis of cost reasonableness and realism may be conducted throughout the procurement process to affirm grounds for rejection. Clarifications may be issued to respondents to supplement review and analysis, to certify cost or pricing data, or, in the case of unreasonable pricing, to lower proposed cost.

(4) Failure to furnish a bond when required by a request for proposals;

(5) The offeror's record of poor past performance or irresponsibility; and

(6) Any or all proposals when the procurement official makes a written determination that it is in the best interest of the state and documents the reason or reasons supporting the determination.

19 CAR § 1-529. Correction or withdrawal of proposals.

(a)(1) There is a strong public interest in favor of conserving public funds in awarding public contracts, and little, if any, public benefit in disqualifying proposals for technical deficiencies in form or minor irregularities where the offeror does not derive any unfair competitive advantage therefrom.

(2) The State Procurement Director or agency procurement official may waive technicalities in proposals or minor irregularities in a procurement which do not affect the material substance of the request for proposals when it is in the state's best interest to do so.

(b) Amendments to proposals shall be allowed if the amendments:

- (1) Are in writing and signed;
- (2) Are received prior to the date and time of the proposal opening; and
- (3) Clearly indicate the date and time of proposal opening and request for proposals number.

(c)(1) If there is a suspected proposal mistake or the director or agency procurement official chooses to seek a clarification on a matter that is evaluated in the proposal, the director or agency procurement official may request a clarification of a proposal.

(2)(A) The response by the offeror must be made in writing.

(B) Clarifications made verbally, in demonstration presentations, or communicated in any other matter shall not be considered a clarifying response by the offeror, and should be reduced to a written clarification by the offeror to be considered.

(3) The response of any offeror who fails or refuses to clarify in writing within a reasonable time any matter contained in his or her proposal may be rejected.

(4) Any written clarification submitted shall become a part of the contract awarded on the basis of that proposal.

(d) Proposal prices shall not be increased after the date and hour of the proposal opening.

(e) When a mistake in a proposal is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the proposal, and

that due to such mistake the proposal submitted was not the proposal intended, the bidder may be permitted to withdraw his or her proposal.

19 CAR § 1-530. Discussions.

(a) Discussions generally.

(1) During a request for proposals procurement, the Arkansas Procurement Law, Arkansas Code § 19-~~61-10111-201~~ et seq., allows for discussions with responsible offerors whose proposals have been determined to be reasonably susceptible to being selected for award.

(2) Discussions may be used to clarify a proposal or the terms of a request for proposals, and for the purpose of negotiation.

(3) Preaward discussions with any offeror or offerors should be conducted in a manner that:

(A) Supports public confidence in the procedures followed in public procurement;

(B) Ensures fairness in proposal improvement; and

(C) Fosters effective competition.

(4) To safeguard against discussions being used to provide an offeror an unfair competitive advantage,†

~~(A) A request for proposals shall outline how discussions will be held, if at all; and~~

~~(B) There there~~ shall be no disclosure to any offeror of any information derived from any proposal by any competing offeror during discussions.

(b) Clarification.

(1)(A) While conducting discussions, a procurement agency may identify areas of a proposal that require further clarification.

~~(B) This includes, without limitation, areas where it appears that there may have been ambiguity, miscommunication, or misunderstanding as to the state's evaluation factors, specifications, or requirements. Clarification is appropriate for areas of a proposal where there may have been ambiguity, miscommunication, or~~

misunderstanding regarding the state’s evaluation factors, specifications, or requirements. Any clarification must only address specific elements of the submitted proposal. It must not add substantive language, modify the original terms of the proposal, or change the requirements stated in the request for proposals (RFP).

(2) The state may seek clarification of a proposal or proposals through written questions, demonstrations, or during negotiations, but shall document any such discussion for the procurement file.

(3) Any oral clarification made by an offeror during discussions shall be reduced to writing and adopted by the offeror as a binding statement before it may be considered in evaluating whether the offeror’s proposal is responsive or the most advantageous to the state.

(4) Note that a clarification sought by the state may be unique to an individual offeror based on unique aspects of the offeror’s proposal.

(c) **Reasonably susceptible of being awarded a contract – the competitive range.**

(1) Given the number of proposals and the broad range of competitiveness of responses, it may not be practicable to engage in negotiations with each offeror.

(2)(A) If the procurement agency receives multiple proposals, it may shorten the list of offerors to negotiate with to a “competitive range.”

(B) The competitive range consists of the responsible offerors reasonably susceptible of being awarded the contract.

(C) The competitive range shall be based on criteria set forth in the request for proposals, including cost. The criteria for selecting the competitive range included in the request for proposals should be established based on evaluation scores.

(d) **Negotiation.**

(1)(A) Negotiation is a discretionary type of discussion permitted under Arkansas Code Annotated § 19-~~61-50611-230~~ that can be used to seek a proposal or proposals more advantageous to the state than the proposal or proposals initially submitted in response to the solicitation.

(B) During a solicitation, the state may only have preaward discussions with an offeror as provided in the request for proposals and as permitted under procurement rules. Procurement officials who conduct negotiations must be trained and certified in negotiation and Arkansas Procurement Law.

~~(2) Because negotiation is a type of discussion, a procurement agency interested in the possibility of negotiation in connection with the solicitation of proposals shall include provisions in its request for proposals outlining how negotiation, if any, may be conducted.~~

(23) Because negotiation is optional and at the discretion of the state, there is no minimum number of negotiation rounds and no maximum number of negotiation rounds that may be conducted ~~other than any that may have been set forth in the request for proposals.~~

~~(34) If and as permitted by the request for proposals, negotiations~~ Negotiations may be conducted with a group of responsible offerors identified based on an established competitive range (those reasonably susceptible of being awarded a contract based on the evaluation factors set forth in the request for proposals), or just with the highest ranked responsible offeror reasonably susceptible of being awarded a contract.

~~(5)(A) If a request for proposals only allows for serial negotiation with the highest ranked offeror, then the procurement agency may only abandon negotiation with the highest ranked offeror if it determines, in writing and for identified cause, that the offeror is not responsible or is otherwise not reasonably susceptible of being awarded a contract.~~

~~—————(B) The procurement agency may proceed to additional rounds of negotiation with another offeror or offerors if not prohibited by the request for proposals.~~

~~—————(C) The procurement agency shall apply the same standard of responsibility and evaluation factors fairly to any subsequent offeror or offerors.~~

(46)(A) Negotiation may be limited to cost only.

(B) All cost only negotiations shall be documented for the procurement file.

(C) During cost only negotiation rounds, responsible offerors are not obligated to meet or beat target prices but will not be allowed to increase prices submitted on the initial price sheet.

~~(d) Reasonably susceptible of being awarded a contract — The competitive range.~~

~~—————(1) Given the number of proposals and the broad range of competitiveness of responses, it may not be practicable to engage in negotiations with each and every offeror.~~

~~—————(2)(A) If the procurement agency receives multiple proposals, it may shorten the list of offerors to negotiate with to a competitive range of responsible offerors reasonably susceptible of being awarded a contract.~~

~~—————(B) That is the range of responsible offerors that fall within the competitive range.~~

~~—————(3)(A) The competitive range shall be determined based on criteria set forth in the request for proposals.~~

~~—————(B) For example, and not by limitation, a request for proposals may provide that only the three (3) highest ranked vendors are eligible for negotiation.~~

~~—————(4) The criteria for selecting the competitive range included in the request for proposals may be established on any rational basis, including, without limitation, one (1) or more of the following:~~

~~—————(A) Price;~~

~~—————(B) Cost of ownership;~~

~~—————(C) Responses that appear to provide the best value based on evaluation criteria in the solicitation;~~

~~—————(D) Responses most likely to provide greater value after negotiations based on the same criteria; or~~

~~—————(E) Evaluation scores.~~

(e) Minimum score.

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(1) The agency procurement official, in conjunction with the requesting agency as appropriate, may establish a minimum score in the request for proposals that an offeror must achieve before the offeror will be considered in the competitive range and thus eligible for additional negotiation.

(2) However, to foster competition, any such minimum score shall not be set unreasonably high.

(3) In the interest of protecting competition, the State Procurement Director may waive the minimum score if:

(A) It eliminates all but one (1) responsible offeror or otherwise unreasonably narrows the competitive range; and

(B) He or she determines it to be in the best interest of the state.

(f) Negotiation with single offeror versus multiparty negotiation.

(1) When deciding whether to ~~structure a request for proposals that limits negotiations to just~~ the highest evaluated responsible offeror only instead of engaging in multiparty negotiations, the procurement agency should consider the following:

~~(1)~~(A) The expected dollar value of the award and length of contract.

(B) Increased dollar value and a lengthy duration weigh in favor of greater competition;

(2)(A) The complexity of the acquisition and the variety and complexity of offered solutions, in terms of impact on the likely breadth and depth of the discussions.

(B) Increased complexity may signal that more time for negotiation is needed, which may weigh in favor of limiting negotiations to the competitive range of highest ranked vendors if there was not enough lead time to allow for lengthy negotiations;

(3) The resources available to conduct discussions versus the expected variable administrative costs of discussions;

(4) The impact on lead-time for award versus the need for timely delivery;

(5) The extent to which discussions with additional offerors would likely provide diminishing returns;

(6) The disparity in pricing between the lowest priced offeror and the other offerors; ~~and~~

~~(7) The disparity in pricing between the highest rated offeror and the other offerors.~~

(g) Best and final offer (BAFO) negotiation.

(1) Best and final offer (BAFO) negotiation is an optional step to help obtain an offer that is more advantageous for the state, such as enhanced value or the most cost-effective pricing available.

(2) The BAFO process may be useful when:

(A) No single response addresses all the specifications;

(B) The cost submitted by all offerors is too high, e.g., exceeds the state's estimate of expected costs, budget, etc.; or

(C) The scores of two (2) or more offerors are very close after the initial evaluation; ~~or~~

~~(D) All offerors submitted responses that are unclear or deficient in one (1) or more areas.~~

(3) The following rules shall apply to BAFO negotiations:

(A) The procurement agency shall determine if the BAFO process will be conducted and, if so, shall determine which responsible offerors are within the competitive range according to the terms of the request for proposals for receipt of the state's BAFO request;

(B) The procurement agency may only restrict the BAFO negotiations to a single offeror or engage in a multiparty BAFO negotiation as provided in the request for proposals and consistent with Arkansas Procurement Law, ~~Arkansas Code § 19-11-201 et seq., including this part~~ including these rules;

(C)(i) BAFO negotiation shall only be conducted with responsible offerors.

(ii) Any offeror determined to be nonresponsible shall be excluded.

(iii) Any offeror whose proposal is rejected as nonresponsive or is outside of the competitive range defined in the request for proposals shall be excluded

from participation in a BAFO negotiation unless circumstances change which result in their falling within the competitive range;

(D) The content of the BAFO request may come from questions proposed by the procurement official or the evaluation committee;

(E) A procurement agency may request that an offeror readdress important aspects of the proposal, including without limitation:

- (i) Implementation schedule;
- (ii) Level of support;
- (iii) Amount of resources proposed;
- (iv) Terms and conditions; ~~or~~
- (v) Cost; or

(vi) Clarifications to requirements of the RFP.

(F) The procurement officer shall dispatch the BAFO request stating the elements to be covered and defining the date, time, and place the BAFO must be returned;

(i) If clarifications to requirements in this manner necessitate material revisions to proposals, all offerors determined to be responsible and reasonably susceptible of being granted the solicitation's award must be provided an opportunity to revise their proposals for the purpose of submitting a best and final offer.

(G) All communication to and from offerors regarding the BAFO request shall be coordinated by the procurement officer;

(H)(i) All responses to the BAFO request must be submitted timely to the procurement officer in order to be considered.

(ii) BAFOs submitted after the deadline shall not be considered, unless the procurement officer or director determines that:

(a) The submission was timely, but that delivery was prevented by a force majeure;

(b) The delay in delivery is not substantial and does not prejudice the state; or

(c) That waiver of the deadline is in the best interest of the state;

~~(1) Only the original proposal or one (1) properly clarified, revised through negotiation, or submitted as a best and final offer may be considered for evaluation;~~

and

~~(1)~~ A BAFO request to multiple offerors shall not identify either the current rank of any of the offerors or any identifiable information derived from a proposal.

(4) All BAFO requests shall contain the following:

(A)(i) Specific information on what is being requested.

(ii) Offerors may be asked to provide additional clarification to specific sections of their response and to rework their proposal content or cost proposal;

(B) Submission requirements with time lines;

(C) Specifics on how the offer or offers will be evaluated and outline the process that will be used to determine the successful offeror, as applicable;

(D) Language stating the procurement officer or the evaluation committee will evaluate and score the BAFO offer or offers after considering the new content of the BAFO proposal or proposals; and

(E) Notice to offerors that they are not required to submit a BAFO proposal and may submit a written response stating that their response remains as originally submitted.

(5)(A) All scoring worksheets, e.g., original evaluation scores, best and final scores, etc., shall be retained for inclusion in the procurement file.

(B) Scores for the BAFO responses shall be entered into a new score sheet/summary worksheet by the procurement officer.

(h) **Target price BAFO.**

(1) A target price BAFO request is a BAFO request that is limited to allowing responsible offerors an opportunity to improve upon their responses by offering more competitive pricing.

(2) Proposers are not obligated to meet or beat target prices, but shall not be allowed to increase overall prices in a target price BAFO negotiation.

(3) All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in the proposal improvement and does not reveal individual offeror pricing.

(4) The state's target price may be reached by considering factors such as:

- (A) The current/last contract price paid for the service;
- (B) Benchmarks;
- (C) Industry standards;
- (D) Budgets;
- (E) Raw materials that influence the pricing of the product; or
- (F) Market trends.

(5) If the state opts to engage in target price BAFO negotiation, then after the initial responses have been received the procurement officer shall:

(A) Determine the lowest proposed cost for each line item, as applicable;

(B) Compare the lowest proposed cost for each line item against current/past contract price and other benchmarks;

(C) Use market analysis to set a target price for each line item in a spreadsheet;

(D) Evaluate the reasonableness of the target price for each line item and for the total target price overall;

(E) Send a request for revised pricing and a target price spreadsheet to offerors deemed responsible and responsive;

(F) Receive target cost proposals;

(G) Determine if target price negotiation resulted in improved cost proposals; and

(H) If the receipt of target price proposals did not result in one (1) or more cost proposals at or below the state's target price, the procurement officer shall evaluate whether an additional round of target price negotiation will result in one (1) or more cost proposals at or below the state's target price.

19 CAR § 1-531. Cancellation of the request for proposals.

(a) A notice of cancellation of an Office of State Procurement request for proposals shall be posted on the office website.

(b) The proposals may be returned if properly identified.

19 CAR § 1-532. Competitive bidding – Conditions for use.

(a) **Purchase of commodities subject to the Arkansas Constitution, Amendment 54.** The commodities subject to Arkansas Constitution, Amendment 54 are printing, stationery, and supplies (see also Arkansas Code § 19-~~61-20611-222~~(b)).

(b) **Supplies.** All state agencies may purchase certain supplies subject to Arkansas Constitution, Amendment 54 under the following condition: if the cost of the commodity is seventy-five thousand dollars (\$75,000) or less, the state agency must obtain, wherever possible, at least three (3) written competitive bids.

(c) **Printing and stationery.** The State Procurement Director or his or her designee shall purchase all printing and stationery subject to Arkansas Constitution, Amendment 54 under the following condition: if the cost of the commodity is seventy-five thousand dollars (\$75,000) or less, the State Procurement Director or his or her designee must obtain, wherever possible at least three (3) written competitive bids.

19 CAR § 1-533. Leases.

(a) **Lease of commodities on state contract.** No contract greater than ninety (90) days for the lease of commodities on state contract will be approved unless the State Procurement Director determines in writing that it is in the best interest of the state and states the reason therefore.

(b)(1) All contracts for the lease of a commodity that exceed a cost of twenty thousand dollars (\$20,000) but are less than seventy-five thousand dollars (\$75,000) during the initial period of the contract will be awarded on the basis of competitive bidding.

(2) A purchase option and/or lease renewal is allowed as long as the accumulated expenditure does not exceed seventy-five thousand dollars (\$75,000).

19 CAR § 1-534. Cancellation.

(a) Bids may be cancelled by the State Procurement Director, agency procurement official, or procurement agent prior to contract award.

(b) Notice of cancellation shall be given to all bidders who have submitted bids. ~~(posted on the Office of State Procurement website <http://www.arkansas.gov/dfa/procurement>).~~

19 CAR § 1-535. Rejection.

Grounds for rejection of bids include but shall not be limited to:

(1) Failure of a bid to conform to the essential requirements of an invitation for bids;

(2) Any bid which does not conform to the specifications contained or referenced in any ~~invitation for~~ bids unless the items offered as alternatives meet the requirements specified in the invitation;

(3) Any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(4) A bid imposing conditions which would modify the terms and conditions of the invitation for bids;

(5) Any bid determined by the procurement official in writing to be unreasonable or unrealistic as to price;

(A) An unreasonable price is one determined in writing to be too high relative to bid requirements.

(B) An unrealistic price is one that is determined in writing to be too low to indicate the respondent's ability to successfully meet bid requirements.

(C) Prices should be assessed for reasonableness and realism, in accordance with Office of State Procurement policy, when bids are submitted.

Additional review and analysis of cost reasonableness and realism may be conducted throughout the procurement process to affirm grounds for rejection.

(6) Bids received from bidders determined to be nonresponsible bidders;

(7) Failure to furnish a bid guarantee when required by an invitation for bids;

and

(8) Any or all bids when the procurement official determines it to be in the best interest of the state.

19 CAR § 1-536. Tie bids.

(a) **Definitions.** As used in this section:

(1) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(2) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(b) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(c) In the event of a tie bid between two (2) or more offers that meet the specifications as required and where one (1) of the offerors is an Arkansas company, then the award shall be made to that Arkansas company.

(d)(1) In the event of a tie bid between two (2) or more offers that meet the specifications as required:

(A) And where at least two (2) of the offerors are Arkansas companies, then an award will be determined by drawing of lots ~~(flip of a coin)~~ between those Arkansas companies; or

(B) If all of the offerors are out-of-state companies, then an award will be determined by drawing of lots ~~(flip of a coin)~~ among all the bidders.

(2)(A) The drawing of lots ~~coin flip~~ will be done in the presence of at least one (1) witness by the person responsible for awarding the contract.

(B) All witnesses must be employees of the State of Arkansas.

(C) A documentation of the drawing of lots ~~coin flip~~ must be:

- (i) Included on the tabulation or bid history sheet; and
- (ii) Signed by the person responsible for awarding the contract and all witnesses.

19 CAR § 1-537. Emergency procurements — Generally.

(a) Approval.

(1) All noncritical emergency procurements must be approved in advance by the State Procurement Director, the head of a procurement agency, or a designee of either officer.

(2) Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date.

(3) Requests for approval must be made in writing and include a:

- (A) Copy of the purchase order;
- (B) Copy of the quotation abstract Competitive Bid Tabulation Form; and
- (C) Written explanation of the emergency.

(b) Tie bids.

(1) **Definitions.** As used in this section:

(A) "Arkansas company" means a domestic corporation, limited liability company, partnership, or not-for-profit organization as defined by Arkansas law; and

(B) "Out-of-state company" means all foreign entities as defined by Arkansas law.

(2) In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications.

(3) In the event of a tie bid between two (2) or more offers that meet the specifications as required and where one (1) of the offerors is an Arkansas company, then the award will be made to that Arkansas company.

(4) In the event of a tie bid between two (2) or more offers that meet the specifications as required:

(A) Where at least two (2) of the offerors are Arkansas companies, then an award will be determined by drawing of lots (~~flip of a coin~~) between those Arkansas companies; or

(B) If all of the offerors are out-of-state companies, then an award will be determined by drawing of lots (~~flip of a coin~~) among all the bidders.

(5)(A) The drawing of lots ~~coin flip~~ will be done in the presence of at least one (1) witness by the person responsible for awarding the contract.

(B) All witnesses must be employees of the State of Arkansas.

(C) A documentation of the drawing of lots ~~coin flip~~ must be included on the tabulation or bid history sheet and be signed by the person responsible for awarding the contract and all witnesses.

(c) **Legislative review.** Except in the case of a “critical emergency” procurement, as that term is defined in Arkansas Code § 19-~~61-50811-233~~(b)(2), all services contracts must be presented for legislative review as required under Arkansas Code § 19-~~61-11611-265~~. Departments must report critical emergency procurement to the Arkansas Legislative Council or the Joint Budget Committee for legislative review at the earliest practicable date.

19 CAR § 1-538. Small procurements – Conditions for use.

(a)(1) **Lease.** All state agencies may lease commodities with the exclusion of vehicles (see Arkansas Code § 22-8-102) where the cost does not exceed twenty thousand dollars (\$20,000) during the initial period of the contract without seeking competitive bids, provided the lease does not contain an option to purchase.

(2) Such leases may not be renewed beyond accumulated expenditures of twenty thousand dollars (\$20,000).

(b) **Purchase of commodities subject to Arkansas Constitution, Amendment 54.** Purchase of commodities subject to Arkansas Constitution, Amendment 54 must be procured in accordance with competitive bidding and competitive sealed bidding procedures (see Arkansas Code § 19-11-222(b) for definitions of printing, stationery, and supplies).

~~(c) Certified minority business enterprise or certified women-owned business enterprise.~~

~~(1) A procurement that does not exceed two (2) times the amount stated in Arkansas Code § 19-11-204(13) may be procured without seeking competitive bids or competitive sealed bids if the procurement is with a:~~

~~(A) Certified minority business enterprise; or~~

~~(B) Certified women-owned business enterprise.~~

~~(2) The certification process is administered by the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission.~~

Subpart 6. Commodity Management

19 CAR § 1-601. Definitions concerning commodity management.

(a) "Tax supported institutions" means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.

(b) "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

19 CAR § 1-602. Definitions of terms used in Arkansas Code § 19-11-242.

(a) "Not-for-profit organization" means a private corporation under the Arkansas Nonprofit Corporation Act, Arkansas Code § 4-28-201 et seq., that is an exempt organization as described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that:

(1) Has a benevolent, philanthropic, patriotic, or charitable purpose; and

(2) Performs a function that would be performed at the public expense if it were not performed by the organization.

(b)(1) "Lease" means a transfer of the right to possession and use of surplus commodities, for a specified term length not to exceed a seven-year period, for a

monetary fee or other consideration, while retaining ownership and title in the surplus commodities.

(2) Monetary fees or other consideration may not be nominal.

(c) "Donation", as used in 19 CAR § 1-606(h), means a transfer of ownership and title in surplus commodities for no monetary fees or consideration.

19 CAR § 1-603. Marketing and redistribution surplus computer sales procedures.

(a) **Sales made within the agency.** The agency will:

(1)(A) Create a customer receipt for the sales price and calculate sales tax.

(B) Included on the receipt will be:

(i) The type of equipment, model number, serial number, and property tag number;

(ii) Who the equipment was sold to; and

(iii) The amount;

(2) Record the receipt in the cash journal as a customer payment;

(3) Request a funds transfer through the Department of Finance and Administration Office of Accounting from the receipting agency's fund to the:

(A) Marketing and Redistribution Section's cost center 383333, Fund MPH0000 – fifteen percent (15%) of the sales price; and

(B) Division of Environmental Quality's cost 451346, Fund MER0100 – twenty-five percent (25%) of the sales price; and

(4) The sales tax will be paid when the Department of Finance and Administration Office of Accounting does their (owning agency's) monthly billing for sales and use tax.

(b) **Sales made through the Marketing and Redistribution Section on behalf of the agency.** The Marketing and Redistribution Section will:

(1) Create a customer receipt to record the sales price and sales tax;

(2) Record the receipt as a customer payment in the cash journal;

(3) Request funds transfer through the Department of Finance and Administration Office of Accounting from Marketing and Redistribution fund MPH0000 to agency fund and cost center – fifty percent (50%) of the sales price Division of Environmental Quality cost center 451346, Fund MER0100 – twenty-five (25%) of the sales price; and

(4) The sales tax due will be included in the Department of Finance and Administration monthly report of sales and use tax

19 CAR § 1-604. Surplus computer sale reporting.

(a)(1) Each agency shall be responsible for providing to the Marketing and Redistribution Section, by the tenth of the month following the sale, a list of all items sold.

(2) Include the type of equipment, model number, serial number, and property tag number, to whom the equipment was sold and the amount.

(b) If the sale is conducted by the Marketing and Redistribution Section outside the agency, the agency will receive fifty percent (50%) of the proceeds, twenty-five percent (25%) of the proceeds will be retained by the Marketing and Redistribution Section, and twenty-five percent (25%) of the proceeds will go to the Computer and Electronic Recycling Fund at the Division of Environmental Quality.

**19 CAR § 1-605. Agency commodity management procedures –
Disposition of commodities other than computers and electronic equipment.**

(a) Resale.

(1) The Marketing and Redistribution Section will make available to agencies, tax- supported entities, or not-for-profit organizations as defined in Arkansas Code § 22-1-101 commodities in serviceable condition and/or commodities of potential use by agencies, tax-supported entities, or not-for-profit organizations for a twenty-day period prior to making them available to the general public.

(2) During the twenty-day hold period, commodities may only be sold to agencies, tax-supported entities, or not-for-profit organizations by the Marketing and Redistribution Section.

(3) At the sole discretion of the State Procurement Director or the director's designee at the Marketing and Redistribution Section, commodities which the director or the director's designee at the Marketing and Redistribution Section reasonably believe to be valued at one hundred dollars (\$100) or less per individual item, or commodities that historically have not sold to agencies, tax-supported entities, or not-for-profit organizations, or items that are unserviceable may be offered for sale to the general public without the requirement of the twenty-day hold period.

(4) The director or the director's designee at the Marketing and Redistribution Section may waive the twenty-day requirement when he or she determines that such waiver is in the state's best interest.

(b) Intrastate agency sale.

(1) Commodities that are no longer needed by an agency may be sold to another agency by completing and submitting an Intrastate Agency Sale Form, which can be found on the Marketing and Redistribution Section website under forms, to the Marketing and Redistribution Section.

(2) This form must be completed and forwarded electronically from the selling agency to the purchasing agency, then to the Marketing and Redistribution Section, where it is forwarded to the Department of Finance and Administration Office of Accounting for completion and transfer of funds.

(c) **Disposal.** When commodities have no scrap or resale value, a certificate of property disposal form must be submitted to the Marketing and Redistribution Section, which will then return to the requestor within ten (10) working days, a certificate of property disposal authorization, indicating the proper handling procedure for the commodities.

(d) Cannibalization.

(1) "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

(2)(A) The disassembly of an item for use of its component parts for repair or maintenance of a similar item will only be authorized if such action has greater potential value and benefit than disposal or trade-in of the item in its existing form.

(B) Authorization for cannibalization will be approved by the Marketing and Redistribution Section prior to any disassembly or removal of components parts.

(C) If authorized, the item will be removed from the agency's property listing by the requesting agency.

(D) Any residual material remaining after cannibalization must be processed through the Marketing and Redistribution Section.

(E) Requests for authorization for cannibalization will be expedited.

(F) If properly marked, authorization should be returned to the agency with ten (10) working days.

(G) It is understood that there may be no residual material remaining after cannibalization, but if any, residual material must be processed through the Marketing and Redistribution Section.

(3)(A) Motor vehicles eligible to be registered for highway use (cars and trucks), whether registered or not, may be cannibalized after obtaining authorization from the Marketing and Redistribution Section.

(B) These vehicles will not be removed from the property listing until the carcass of the vehicle has been disposed of by the Marketing and Redistribution Section.

(C) In no event should more than ninety days (90) elapse between the authorization of cannibalization and processing of the carcass by the Marketing and Redistribution Section.

(D) These procedures do not exempt an agency from compliance with any other requirements relating to the disposal or acquisition of motor vehicles.

(e) Handling of surplus equipment.

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(1) Agencies with surplus items must contact the Marketing and Redistribution Section to schedule a delivery or pick-up date.

(2)(A) A Surplus Disposal Form must be transmitted by the agency showing the agency name, address, phone number, contact person, and listing of all items with serial and property numbers, if available.

(B) The Surplus Disposal Form will be processed by the Marketing and Redistribution Section when the surplus items are delivered or picked up.

19 CAR § 1-606. Auction and onsite sales — Disposition of commodities.

(a) General requirements.

(1) Commodities that are not subject to or have completed the twenty-day hold period, pursuant to 19 CAR § 1-605(a), may be offered for sale.

(2)(A) Furniture or equipment may be loaned or rented to a state agency with the approval of the owning agency.

(B) The rental fee or fees less applicable handling fee or fees will be remitted to the owning agency.

(b) Notice required.

(1) Public notice of commodities sold by competitive sealed bid should be given at least five (5) days prior to the date established for the sale.

(2) The notice will include publication in any electronic or printed medium.

(c) Public auction.

(1)(A) Public auction whether electronic or traditional may be used when deemed in the best interest of the state.

(B) Auction costs will be paid from proceeds.

(C) In a traditional auction, if proceeds do not cover the costs, the agency requesting the auction will be responsible for any expenses not covered from the proceeds.

(D) Any cost associated with an electronic auction will be covered by proceeds from the sale.

(2) Procedures.

(A)(i) In a traditional auction a licensed auctioneer will be used.

(ii) The solicitation to bidders must stipulate, at a minimum:

(a) All terms and conditions of any sale;

(b) That the purchaser must remove all items purchased within a stated time; and

(c) That the state retains the right to reject any and all bids.

(B) In an electronic auction, the purchaser must pick up or otherwise cause the items purchased to be removed within a stated time.

(d) **Competitive sealed bidding.**

(1) Competitive sealed bidding will be used when:

(A) The value of the item cannot be determined based on market value or past history of same or similar items sold; or

(B) It is determined by the Marketing and Redistribution Section that it is in the best interest of the state.

(2) **Procedures.** When surplus commodities are to be sold by competitive sealed bidding, the procedures followed must be in accordance with Arkansas Code §§ 19-11-204, 19-11-228, and 19-11-229, and the rules promulgated hereunder except the award will be made to the highest bidder with the state retaining the right to accept or reject any or all bids when in the best interest of the state.

(e) **Onsite sales.**

(1) **Definition.** "Onsite sales" includes the process of:

(A) Internet auctioning; and

(B) Sale of commodities to the general public from the Marketing and Redistribution Section, a satellite location, and/or other agency locations when approved by the Marketing and Redistribution Section.

(2) Onsite sales will be used for surplus items not purchased by other state agencies or tax supported entities.

(3) **Procedure.** The selling price will be established by the Marketing and Redistribution Section based upon:

(A) Demand;

- (B) Condition of commodities;
- (C) Past experience gained from auction or competitive sealed bid sales;

and

(D) Prevailing retail prices for same or similar commodities in the local market.

(f) **Negotiated sale.**

(1) Negotiated sale may be used if no acceptable bids were received during the bid process and an offer is made "after the fact" for the item.

(2) Offers will only be accepted from bidders that participated in the sealed bid offering the item.

(g) **Trade-in.** Surplus commodities may be traded in when the Marketing and Redistribution Manager or Assistant Marketing and Redistribution Manager determines that the trade-in value is expected to exceed the value estimated to be obtained through the sale of the commodity less administrative expenses incurred during a sale.

(h) **Lease or donation.**

(1) Surplus commodities may be leased or donated to tax supported entities or nonprofit organizations when:

- (A) Requested in writing by the owning agency; and
- (B) Approved by the State Procurement Director.

(2)(A) Written requests must be submitted to the manager identifying the equipment by name, serial number, property number, the benefit to the public in cases of proposed donations, and lease terms in cases of proposed property leasing.

(B) The manager will estimate the property value and forward the request to the director for his or her approval/disapproval.

(3) The director will respond in written communication to the requesting agency on a case-by-case basis.

(4) The requesting agency must maintain a copy of the original written request and the written approval/disapproval from the director for audit purposes.

(5) Copies of the request and approval/disapproval will also be maintained at the section.

(i)(1) The Arkansas Department of Transportation may dispose of commodities without the assistance of the Office of State Procurement, but it must comply with the procedures outlined herein for said disposition.

(2) Nothing herein is intended to prohibit the use of the office for the disposition of those commodities, and the department may request the office make the disposition.

(j) Excess commodities in remote locations and/or property too heavy or expensive to transport to the Marketing and Redistribution Section.

(1) Excess commodities that are in remote locations and/or commodities where the cost to transport to the Marketing and Redistribution Section would be prohibitive should be reported by written communication to the Marketing and Redistribution Section with a complete description and details of the condition of the equipment.

(2) The Marketing and Redistribution Section will make one (1) of the following recommendations:

(A)(i) The commodity should be redistributed for state use and the Marketing and Redistribution Section will notify agencies and/or tax- supported entities that could utilize the commodity.

(ii) When the property is sold, the receiving agency will be responsible for the removal of the item or items with the expense of moving being taken into consideration when price is determined; or

(B)(i) The Marketing and Redistribution Section will prepare an invitation for bids or authorize the agency to prepare an invitation for bids with inspection being held at the agency location.

(ii) A certificate of property disposal will be transmitted to the owning agency designated as follows:

(a) The property identified is authorized for cannibalization by the manager who hereby authorizes the agency to perform the cannibalization;

(b) The property identified is authorized for destruction by the manager who hereby authorizes the agency to perform the destruction;

(c)(1) Property that has a material content of lead, copper, brass, iron, etc. will be disposed of by sale to a local scrap dealer or dealers at local prices.

(2) Payment or payments received are to be sent and made payable to the section with a copy of the Certificate of Property Disposal authorizing the sale; and

(d)(1) Property with resale value that is not feasible for transport to the Marketing and Redistribution Section may be disposed of by obtaining quote bids "as is, where is".

(2) Owning agencies should attempt to obtain (3) bids.

(3) A copy of the bid quotes, a copy of the Certificate of Property Disposal authorizing the sale, and the proceeds are to be sent and made payable to the Marketing and Redistribution Section.

(k) Specialized commodities may be offered for trade-in with the trade-in price offered being forwarded in a written transmission to the Marketing and Redistribution Section for determination of price acceptability.

(l) If none of the above procedures are applicable, the director will make an individual determination.

19 CAR § 1-607. Allocation of proceeds from sale or disposal of surplus commodities.

(a) Using agency.

(1) The allocation of proceeds from the sale, lease, or disposal of surplus commodities, and proceeds from an insurance policy for loss of property because of fire, storm, or other causes, less appropriate fees, will be made and deposited to the using agency which had possession of the commodity.

(2) Such allocations and deposits will be made at the sooner of when the using agency's account balance has reached at least fifty dollars (\$50.00) or the end of each fiscal year.

(b) Fee schedule.

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(1) The Office of State Procurement will develop a fee schedule to defray the costs of the commodity management program.

(2) The fee schedule will set forth various charges for services rendered.

Subpart 7. Conflict Resolution — Debarment

19 CAR § 1-701. Definitions.

(a) "Aggrieved in connection with the award of a contract" means the condition of being an actual bidder, offeror, or contractor who has been denied the award of a contract as the result of the improper or unlawful award of the contract.

(b) "Aggrieved in connection with a solicitation" means the condition of being an actual or prospective bidder, offeror, or contractor who:

(1) Is interested in submitting a bid, offer, or qualifications, ~~as applicable~~, in response to a solicitation; ~~and, but who~~

(2) Is-is denied a fair ~~the~~ opportunity to compete ~~fairly~~ for the award of a contract ~~due to because of~~ improper or unlawful solicitation terms or conduct, including challenges to the solicitation's rules or process.

(c) "Anticipation to award a contract" means the state's identification of the person or persons it anticipates contracting with as the result of a solicitation.

(d)(1) "Award of a contract" means the state's process for formally accepting a responsive bid, proposal, or qualifications as the basis for a contract with the state.

(2) Award of a contract is generally preceded by notice of the state's anticipation to award a contract.

(e)(1) "Constructive knowledge", as used in this part, means knowledge or information that a protestor would have by a given date if the protestor had exercised reasonable care or diligence, regardless of whether the protestor actually had the knowledge or information.

(2) It includes knowledge of:

(A) Applicable provisions of Arkansas Procurement Law, Arkansas Code § 19-~~61-1011-201~~ et seq., and other applicable law and administrative rules;

(B) Solicitation instructions, criteria, deadlines, and requirements contained in solicitation documents or otherwise available to persons interested in the solicitation or provided in a mandatory presolicitation meeting;

(C) Available public records kept in connection with a solicitation or award of a contract;

(D) Communications or actions regarding the solicitation to any person whose knowledge is imputed to the protestor under the law of agency, fiduciaries, partnership, ~~respondeat~~ ~~respondant~~-superior, or otherwise;

(E) Facts not subject to reasonable dispute that are generally known or ascertained by resort to readily available sources whose accuracy cannot reasonably be questioned; and

(F) Any other applicable information discoverable by the exercise of reasonable care or diligence, such as a request for information.

(f) "Grounds" of the protest are as defined in Arkansas Code § 19-~~61-70111-244~~(a)(4).

(g)(1) "Interested party", when used in relation to a protest in connection with a solicitation, means any actual or prospective bidder, offeror, or contractor actually or prospectively participating in a solicitation.

(2) When used in relation to a protest in connection with the award of a contract, it means a bidder, offeror, or contractor who actually submitted a bid or offer or who holds a contract to provide the commodities or services solicited.

(h) "Protest" means a written objection from a person setting forth facts showing that the person is an interested party who has been aggrieved in connection with the:

(1) Solicitation of a contract; or

(2) Award of a contract.

(i) "Solicitation" means an instance of soliciting bids, proposals, or qualifications for a contract for commodities or services, and includes "competitive bidding," "competitive sealed bidding," "competitive sealed proposals," and "request for qualifications," as those terms are defined in the Arkansas Procurement Law.

(j)(1) "Submitted" means a protest that conforms to the formal requirements as defined in this part, that has been received by the State Procurement Director or the head of the relevant procurement agency.

(2)(A) It is not sufficient for a protestor to merely claim a protest was submitted.

(B) Evidence of actual receipt of the protest must be obtained, whether return receipt, confirmation email by the director or the head of the relevant procurement agency, or other adequate evidence of receipt.

19 CAR § 1-702. Protest requirements.

(a) **Substantive requirements.** A protest must set forth facts showing that the protestor:

- (1) Is an interested party;
- (2) Has been aggrieved:
 - (A) In connection with a solicitation; or
 - (B) In connection with the award of a contract; and
- (3) Has grounds.

(b) **Formal requirements.**

(1) A protest must be submitted in writing to the State Procurement Director ~~and to or the~~ head of the relevant procurement ~~head of the relevant procurement~~ agency who issued the solicitation.

(2) To expedite handling of protests, if delivered by mail, the envelope containing a protest should be clearly labeled "Protest".

(3) Protests delivered by email should be identified as a protest in the subject line and marked as important.

(4) The Protestor must provide notice of the protest to the person or entity named in the anticipation to award by sending a copy of the protest by electronic mail and regular mail.

(5) A protest shall include as a minimum the following:

- (A) The name and address of the protestor or the protestor's attorney;

(B) Appropriate identification of the solicitation by reference to its number, if a number has been assigned; and

(C) Unless good cause is shown for its absence, a copy of any documents or supporting evidence upon which the protest is based, attached to or enclosed with the protest as an exhibit.

(65) Where such documents or supporting evidence substantiating any claims made in a protest are believed or known to exist, but are not available with reasonable diligence to include as an exhibit within the time for submitting a protest, the anticipated documents must be described in the protest so as to explain how they are expected to support the protest and when the protestor reasonably anticipates they will be available, if ever.

(76) Failure to provide such supporting exhibits without good cause or within a reasonable time may result in the protest not being sustained.

(c) Time periods for submission.

(1) There are two (2) types of protests permitted under Arkansas Code § 19-~~61-701~~~~11-244~~:

(A) A protest in connection with the solicitation of a contract; and

(B) A protest in connection with the award of a contract.

(2) To be timely, a protest must be submitted in writing to the State Procurement Director or the head of the procurement agency conducting the procurement:

(A) At least seventy-two (72) hours before the deadline for submitting a response to the solicitation, if it is a protest in connection with the solicitation of a contract; or

(B) Within fourteen (14) calendar days after the award or notice of anticipation to award has been posted, whichever occurs first, if it is a protest in connection with the award of the contract.

19 CAR § 1-703. Burden of supporting a protest and supplying requested information.

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(a) A party submitting a protest has the burden of stating facts showing that the protestor has grounds in connection with a solicitation or in connection with the award of a contract.

(b) The State Procurement Director or the head of a procurement agency determining a protest may, but has no duty to, request a protestor or other interested party to submit documentation or information relevant to the protest.

(c) Failure of any person to comply expeditiously with a request for documents or information by the director or the head of a procurement agency determining a protest may result in the protest being determined without consideration of the requested information.

(d) Delivery of requested documents or information after three (3) business days from the request is generally not considered expeditious, but the director or the head of a procurement agency may allow additional time for good cause.

19 CAR § 1-704. Stay of procurements during protest.

(a) When a solicitation protest has been timely submitted, no award shall be issued until after a protest determination has been issued by the State Procurement Director or relevant procurement agency head, unless the State Procurement Director determines that the issuance of the award is necessary to protect substantial interests of the State of Arkansas.

(b) When an award protest has been timely submitted, no execution of the contract shall be made until the protest has been settled or determined by the State Procurement Director or relevant procurement agency head, unless the State Procurement Director ~~director or relevant procurement agency head~~ makes a written determination, after consulting with the head of the using agency or the head of the procurement agency, that the execution of the contract without delay is necessary to protect substantial interests of the ~~State~~state. During an active protest, contract negotiations may proceed with the awarded offeror.

19 CAR § 1-705. Making information on protests available.

In the interest of transparency, a person who is an interested party in a solicitation should be given the same access to solicitation documents that are public records, as defined in Arkansas Code § 25-19-103(7), as a citizen of the State of Arkansas is entitled to under the Arkansas Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

19 CAR § 1-706. Decision by the State Procurement Director or the head of a procurement agency.

(a) Time for decisions.

(1) A decision on a protest shall be made by the State Procurement Director or the head of a procurement agency with reasonable promptness after receiving all relevant and requested information, or upon determining that information requested by the director or the head of a procurement agency will not be made readily available.

(2) If a protest is sustained, the available remedies include, but are not limited to, those set forth in Arkansas Code §§ 19-~~61-70111-244~~(g) and 19-~~61-70411-247~~.

(b) Remedies for successful protestor.

(1) When a protest is sustained and the successfully protesting bidder or offeror was denied the contract award, the protesting bidder or offeror may submit a claim for the reasonable costs incurred in connection with the solicitation, including bid preparation costs, through the Arkansas State Claims Commission.

(2) The commission retains exclusive jurisdiction and regulates the procedures by which such claims are submitted and determined for submitting and determining all such claims.

19 CAR § 1-707. Suspension.

(a) Any agency suspension action must be done in consultation with the Office of State Procurement.

(b) Prior to any suspension, the contractor will be provided ~~afforded~~ an opportunity to discuss with the State Procurement Director or head of a procurement agency the

circumstances which led to the possible suspension and to potentially reach a settlement.

(c) In the event a ~~person~~ bidder or contractor is suspended, a written determination shall be:

(1) Made by the director or head of a procurement agency concerning the facts of any allegation or claim that a bidder has done any action in 19 CAR § 1-~~233709~~(b); and

(2) Sent to the bidder or contractor at the address shown in the procurement agency's records.

19 CAR § 1-708. Debarment.

(a) -Any agency debarment action must be done in consultation with the Office of State Procurement.

(b) Prior to any debarment hearing, the ~~bidder or suspended~~ contractor will be ~~provided~~afforded an opportunity to discuss with the State Procurement Director or head of a procurement agency the circumstances which led to the suspension and to potentially reach a settlement.

(c) In the event a ~~person~~ bidder or contractor is debarred, a written determination shall be made by the State Procurement Director or head of a procurement agency concerning the facts of any allegation or claim that the bidder or contractor has violated an action in 19 CAR § 1-709. The written determination shall be sent to the bidder or contractor at the address shown in the procurement agency's records.

19 CAR § 1-709. Authority to debar or suspend.

(a) **General.** Any bidder or contractor to the State of Arkansas who, ~~except for good cause shown,~~ has engaged in any of the conduct listed in subsection (b) of this section may be suspended or debarred from consideration for award of contracts.

(b) **Causes for debarment or suspension.** The causes for debarment or suspension include, but are not limited to, the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(3) Conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the State Procurement Director or the head of a procurement agency to be so serious as to justify debarment action:

(A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor will not be considered to be a basis for debarment;

(5) Continuous failure to post bid or performance bonds, or to provide an alternate bid or a performance guarantee in the form acceptable to the procurement agency in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;

(6) Substitution of commodities without the prior written approval of the contracting authority;

(7) Failure to replace inferior or defective commodities within a reasonable time after notification by the procurement agency or the agency to which such commodity has been delivered;

(8) Refusal to accept a contract awarded pursuant to the terms and conditions of the contractor's bid;

(9) Falsifying invoices, or making false representations to any state agency or state official, or untrue statements about any payment under a contract or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(10) Collusion or collaboration with another bidder or other bidders in the submission of a bid or bids for the purpose of lessening or reducing competition;

(11) Falsifying information in the submission of an application for listing on a state vendor's list;

(12)(A) Repeated failure of a vendor or any of its owners to pay all outstanding tax liabilities to the State of Arkansas.

(B) "Repeated failure" shall include, but not be limited to:

(i) The existence of seven (7) or more certificates of indebtedness, liens, or other evidence of tax indebtedness that are in the public record during any biennial period;

(ii) The suspension or revocation of a state excise tax permit or any other state permit for nonpayment of taxes; or

(iii) The existence of three (3) or more writs of garnishment issued for nonpayment of taxes during any biennial period.

(C) This section does not apply to:

(i) Tax debts that are the subject of an administrative or judicial proceeding contesting the validity of such debt until such proceedings are concluded and such tax debts are adjudicated to be valid; or

(ii) Any outstanding individual tax liability of a nonowner employee of a vendor or that of noncontrolling, individual shareholders in a Subchapter C corporation; or

(13) Any other cause the director or head of a procurement agency determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by any other governmental entity for any cause, or violation of the ethical standards set forth in Arkansas Code § 19-~~64-20511-708~~.

(c) ~~Debarment~~**Debarment.**

(1) Prior to any action for debarment, the Office of State Procurement or agency procurement official must notify the bidder of the opportunity for a hearing at least fourteen (14) days prior to said hearing.

(2) Such notification must state the facts of any allegation or claim.

(3) The director or the head of a procurement agency must consult with the Attorney General or his or her designee prior to debarring a person for cause from consideration for award of contracts.

(d) Debarment hearing.

(1) The director or head of a procurement agency shall form a committee composed of three (3) qualified individuals from government and private industry to hear the debarment proceedings.

(2) The Attorney General or his or her designee representing the director or the head of a procurement agency will have the right to present evidence and elicit testimony from witnesses and cross-examine opposing witnesses before the committee.

(3)(A) The contractor may be heard in person or by counsel, may cross-examine witnesses and may offer witnesses, documentary evidence, and/or evidentiary depositions in defense of the debarment charges.

(B) The committee will subpoena witnesses for the contractor upon timely request.

(C) Should the contractor fail to appear, the committee shall proceed to hear the state's evidence and make its recommendations to the director or head of a procurement agency.

(4) After hearing the evidence, the committee will make recommendations to the director or head of the procurement agency.

(5) The director or head of a procurement agency will receive the recommendation and review the record of the hearing and make a decision regarding the debarment.

(e) **Decision.** The written decision concerning debarment will be sent to the contractor within ~~fourteen (14)~~ **five (5)** days and must state the reasons for the action taken and inform the debarred person involved of his or her rights to judicial review.

(f) **Other remedies.** The procedures in this section do not preclude the taking of other action by the state, based on the same facts, as may be otherwise available, either at law or in equity.

(g) **Distribution of decisions.** All agency procurement officials must send a copy of any determination of debarment to the office and the office must post the results of any debarment on the office website.

19 CAR § 1-710. Authority to resolve contract and breach of contract controversies.

(a)(1) **General.** Any contract which is determined in writing by the State Procurement Director, or the procurement official, or a designee of either officer, to be terminable due to a breach of any of the terms and conditions of the contract, mistake, misrepresentation, or other cause, may be terminated as a result of such cause.

(2) Declaration of default and/or contract termination may ~~only~~ be determined ~~by the procurement official who awarded the contract and~~ only after the contractor has been afforded the opportunity to discuss with the director or agency procurement official circumstances giving rise to the potential cause for termination and potential cures.

(b) **Default.** A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:

(1) Failure to perform the contract according to its terms, conditions, and specifications; or

(2) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.

(c) **Contractor's liability.** The contractor and/or his or her surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the state for any ~~and all~~ loss or damage as provided in the contract between the state and the contractor as a result of the contractor's default, provided, however, that a contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.

Subpart 8. Intergovernmental Relations

19 CAR § 1-801. Cooperative purchasing.

(a) When an agency that is subject to the Arkansas Procurement Law, Arkansas Code § 19-~~61-10111-201~~ et seq., seeks to participate in a cooperative purchasing agreement that is administered by a public procurement unit or external procurement activity that is not subject to the Arkansas Procurement Law, it will first need to submit the cooperative purchasing agreement to the State Procurement Director for a determination as required by Arkansas Code § 19-~~61-80911-256~~(b) and this part.

(b) In seeking the determination from the director, the agency must include a verifiable economic justification as to why using the cooperative purchasing agreement is more cost effective or likely to realize savings than conducting a solicitation. A verifiable economic justification includes a comparison of current state contract pricing and the pricing under a cooperative purchasing agreement, or a comparison of information obtained from a request for information and pricing under a cooperative purchasing agreement, or a comparison of current contract pricing for a nearby comparable state and the pricing under a cooperative purchasing agreement if there is not current state contract pricing. The justification should include a comparison of a sufficient proportion of the spend to extrapolate an expected overall savings.

(c) If a determination has already been made with respect to a cooperative purchasing agreement, any other public procurement unit may rely on that determination.

19 CAR § 1-802. Reporting of cooperative contract purchases.

(a) Cooperative contract purchases of state agencies without an agency procurement official must be presented to the Legislative Council or Joint Budget Committee by the Office of State Procurement annually.

(b) Agencies shall submit purchases using the appropriate method as determined by the office ~~by October 1, within ninety (90) days after the conclusion of the relevant fiscal year.~~

19 CAR § 1-803. Sale, acquisition, or use of commodities by a public procurement unit —Department of Corrections Industry Program.

(a)(1) The Department of Corrections ~~may is authorized to~~ enter into contracts, purchase orders, compacts, or agreements with the appropriate officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods, and products produced by and belonging to their respective institutions.

(2) The buying and selling of these materials will be for the purpose of producing finished products through a correctional industries program.

(b)(1) The department shall be governed by Arkansas Code § 12-30-101 et seq., the Prison-Made Goods Act of 1967, Arkansas Code § 12-30-201 et seq., and other appropriate laws when utilizing the provisions of this part.

(2) The procurement official/agent for the department ~~may is authorized to~~ enter into contracts, orders, compacts, or agreements pursuant to this part.

(c)(1) Copies of all such contracts, orders, compacts, or agreements entered into under the provisions of this part shall be filed with the Office of State Procurement and a complete set of books and records shall be kept by the department with respect to all transactions, deliveries, and obligations under each contract, compact, or agreement.

(2) Copies of these books and records shall be filed monthly with the office.

(d) All records and reports required pursuant to this part shall be:

(1) Available to public inspection during normal business hours; and

(2) Retained for a period of three (3) years after completion of the contract, compact, or agreement.

19 CAR § 1-804. Intergovernmental agreements.

Intergovernmental agreements should include at a minimum:

(1) Scope of work to be accomplished;

- (2) Amount of compensation, if any;
- (3) Delineation of responsibilities and duties of each entity;
- (4) Term of agreement; and
- (5) Authorized signatures from each entity.

~~**19 CAR § 1-805. Procedures for approval of information technology products or services.**~~

~~—(a)(1) Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any bid solicitation, sole source, exempt by law purchase, intergovernmental agreement, or cooperative contract purchase for information technology products or services where the total projected contract amount, including any amendments or possible extensions, is one hundred thousand dollars (\$100,000) or more.~~

~~—(2) In addition, any bid solicitation, sole source, exempt by law purchase, intergovernmental agreement, or cooperative contract purchase that includes information technology products or services as part of the purchase, where that part is anticipated to have a total projected contract amount, including any amendments or possible extensions, of one hundred thousand dollars (\$100,000) or more must be submitted to STP for approval.~~

~~—(b)(1) STP will provide approval through the state's financial management system.~~

~~—(2)(A) STP shall have ten (10) business days from receipt of the documents to complete the necessary reviews.~~

~~—(B) If the STP review is not completed within the time frame allowed, the agency and STP must mutually agree to an extension of the review process.~~

Subpart 9. Professional Services — Professional and Consultant Services Contracts

19 CAR § 1-901. Building Authority Division criteria.

(a) The guidelines and procedures established by the Building Authority Division shall be used by all agencies, except those exempt from division review, in selecting architects, land surveyors, and engineers for state construction projects.

(b) Refer to the Architectural Section of the Building Authority Division Minimum Standards and Criteria, Professional Services Selection Procedures for State Agencies.

19 CAR § 1-902. Procedures for approval of architects, interior designers, and engineers and land surveyor contracts.

(a)(1) With the exception of those agencies exempt from Building Authority Division review, all contracts for architectural, interior design, and engineering and land surveyor services must be first reviewed by the division for its recommendation and approval as to the propriety and legality of the contract.

(2) Agencies shall submit contracts requiring division review in accordance with the time guidelines as prescribed on the Office of State Procurement website.

(3) After receiving the recommendation and approval of the division, the office shall review and prepare such contracts for their ultimate submission to the Legislative Council or the Joint Budget Committee.

(b)(1) In the event the division refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of the division.

(2) The Legislative Council may then:

(A) Request the division to review their previous decision;

(B) Abide by the decision of the division; or

(C) Request the agency to make changes in the contract.

(c) ~~In no event shall the~~ The division shall not have the final authority to deny a contract solely on the basis of its propriety.

19 CAR § 1-903. Request for qualifications (RFQ) procurement method used in the establishment of professional and consultant service contracts.

(a) **Request for qualifications (RFQ).**

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(1) The request for qualifications is, in the absence of sole-source justification, the procurement method recommended when contracting for architectural, engineering, land surveying, legal, and interior design services.

(2) It may also be used, with prior approval from the Office of State Procurement and review by the Legislative Council or the Joint Budget Committee, as the selection method for other PCS contracts when it is determined to be the most suitable method of contracting.

(b)(1) The RFQ is sent to those vendors registered with the office for the scope of work or services required, or vendors recommended to the office as best suited to perform the work specified.

(2) Notification to the public must be in accordance with the provisions of Arkansas Code § 19-~~61-50511-229~~(d).

(3) The agency makes its initial selection based upon the respondent's qualifications.

(4) Only after the most qualified respondent is identified does cost become a factor in determining the award.

(5) Discussions may be conducted with responsible offerors who, based upon qualifications submitted, are determined to be reasonably susceptible of being selected for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.

19 CAR § 1-904. Procedures for approval of architects, interior designers, engineers, and land surveyor contracts.

(a)(1) With the exception of those agencies exempt from Building Authority Division review, all contracts for architectural, interior design, and engineering and land surveyor services must be first reviewed by the division for its recommendation and approval as to the propriety and legality of the contract.

(2) Agencies shall submit contracts requiring division review in accordance with the time guidelines as prescribed on the Office of State Procurement website.

(3) After receiving the recommendation and approval of the division, the office shall review and prepare such contracts for their ultimate submission to the Legislative Council or the Joint Budget Committee.

(b)(1) In the event the division refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of the division.

(2) The Legislative Council may then request the division to:

(A) Review their previous decision;

(B) Abide by the decision of the division; or

(C) Request the agency to make changes in the contract.

(c) In no event shall the division have the final authority to deny a contract solely on the basis of its propriety.

~~**19 CAR § 1-905. Procedures for approval of information technology products or services.**~~

~~—(a)(1) Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any invitation for bid (IFB), request for proposals (RFP), or request for qualifications (RFQ) for information technology products or services where the anticipated cost is one hundred thousand dollars (\$100,000) or more.~~

~~—(2) In addition, any IFB, RFP, or RFQ that includes information technology products or services as part of the IFB, RFP, or RFQ, where that part may be one hundred thousand dollars (\$100,000) or more, must be submitted to STP for approval.~~

~~—(3) Documentation regarding sole source and emergency procurements that include information technology products or services of one hundred thousand dollars (\$100,000) or more must also be submitted to STP for approval.~~

~~—(b)(1) If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to processing the procurement.~~

~~—(2) STP shall have ten (10) business days from receipt of the documents to complete the necessary review.~~

~~(3) If the STP review is not completed within the timeframe allowed, the agency and STP must mutually agree to an extension of the review process.~~

~~(4) In the event a state agency and STP are unable to resolve a dispute, the matter shall jointly be referred to the Secretary of the Department of Shared Administrative Services for resolution.~~

19 CAR § 1-906. Professional and consultant service contracts on file at a state agency.

Professional and consultant service contracts on file with a state agency shall be available for public inspection to the extent permitted by Arkansas state freedom of information laws.

19 CAR § 1-907. Professional and consultant service contracts on file in the Office of State Procurement.

All agencies will be required to maintain copies in accordance with current document retention laws, Arkansas Code § 19-~~61-1111-214~~, of all purchase orders issued for the procurement of professional and consultant services.

19 CAR § 1-908. Compensation.

(a) Each professional and consultant service contract shall clearly state the compensation and indicate if various levels of expertise are to be supplied by the contractor.

(b) A rate for each level and the number of personnel within each level should be listed.

(c) All calculations should be extended and totaled.

(d) A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to.

(e) All items should be listed along with respective rates.

(f) Rates should be totaled by item column, and a total compensation provided that is inclusive of reimbursable expenses.

19 CAR § 1-909. Contract dates.

(a) For each professional and consultant service contract form submitted, the agency is required to enter the beginning and ending date of the contract.

(b) The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was signed.

(c) This date should be arrived at with emphasis placed on the following:

(1)(A) Any contract or amendment to a contract that requires review by the Legislative Council or Joint Budget Committee must be submitted to the Office of State Procurement in accordance with the time guidelines as prescribed on the office website.

(B) The beginning date of the contract must not precede the date of the Legislative Council meeting in which such contract is to be reviewed.

(C) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with their review as to the propriety of the contract within thirty (30) days of said submission to the Legislative Council or Joint Budget Committee; and

(2) All professional and consultant service contracts with fifty thousand dollars (\$50,000) or more in any one (1) year of the contract's term, or if the total projected contract amount, including any amendments or possible extensions, is three hundred fifty thousand dollars (\$350,000) or more unless they are contracts for critical emergency procurements or are otherwise exempted from the submission requirements of Arkansas Code § 19-~~61-116~~~~11-265~~, must be filed with the office for review by the Legislative Council or Joint Budget Committee.

19 CAR § 1-910. Required information.

(a) Information should be provided on each professional and consultant service contract form listing the name and relationship of those persons who will be supplying services to the state agency insofar as they are known at the time the contract is signed.

(b) If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known.

(c) Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (subcontractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed.

19 CAR § 1-911. Professional and consultant service contract form.

Each contract should be completed and include the following information:

(1)(A) Agency assigned contract number or outline agreement and amendment number.

(B) For those contracts for which payment will be made wholly or in part against a method of financing, enter the assigned method of financing on the contract form;

(2)(A) Date the agreement was signed by the agency and the contractor, the outline agreement or contract number, and the vendor number.

(B) Also enter the agency's code (or business area) and title, division, if applicable, and the contractor's federal ID number, name, and address;

(3) Funding source:

(A) State;

(B) Federal;

(C) Cash;

(D) Trust; or

(E) Other (specify);

(4) Any resources to be provided by the agency to the contractor as part of the agreement;

(5) Name of the agency representative who will represent the agency in coordinating the work of the contractor; and

(6)(A) Disclose all information as required under the terms of any existing executive order.

(B) The contractor shall also require the subcontractor to disclose the same information.

(C) Any existing contract and grant disclosure and certification form shall be used for this purpose.

Subpart 10. Purchases of Disabled Work Center Products and Services

19 CAR § 1-1001. Work Center-Made Products Program rules.

(a) For the purposes of the Work Center-Made Products Program, the fair market price of commodities offered in a competitive environment shall be at least twenty percent (20%) more than the cost of materials.

(b) In the case of services, those services must be performed by disabled individuals directly under the control of work center representatives.

19 CAR § 1-1002. Work center certification.

(a) Before commodities and services may be procured from work centers, the work center will be required to maintain evidence of certification from:

(1) The United States Department of Labor as a sheltered workshop and a license from the Division of Developmental Disabilities Services; or

(2) Arkansas Rehabilitation Services.

(b) Before commodities or services may be procured from a work center for the blind, such work center will be required to maintain evidence of certification from the Division of State Services for the Blind.

19 CAR § 1-1003. Work center product and service schedules.

(a) Work centers must provide a schedule of their commodities, services, and prices to Office of State Procurement.

~~(b) Schedules will be posted on the office website,
www.arkansas.gov/dfa/procurement.~~

~~(b)~~ Ordering offices will contract directly with work centers.

19 CAR § 1-1004. Work center applications for bidding.

(a) All work centers that wish to participate in the Work Center-Made Products Program will be required to register as a vendor with the Office of State Procurement.

(b) The office may check with Arkansas Rehabilitation Services, the Division of Developmental Disabilities Services, and the United States Department of Labor to verify certification or certifications.

19 CAR § 1-1005. Purchase procedure.

In the case of small order procurement, competitive bidding, and competitive sealed bidding and proposals, the agency shall procure commodities and services from the work centers when contract terms and specifications are equal and the price is not more than ten percent (10%) above the lowest competitive price obtained from a non-work center.

19 CAR § 1-1006. Reporting.

(a) Agencies must document purchases of work-center-made products as well as purchases of non-work center made commodities and services when work centers are competing but were unsuccessful in obtaining the contract.

(b) Semiannual reports including the circumstances and documentation of purchase exceptions shall be submitted to the Office of State Procurement. ~~(see~~
~~www.state.ar.us/purchasing/index.html).~~

Subpart 11. Local Food, Farms, and Jobs Act

19 CAR § 1-1101. Definitions.

(a) "Local farm or food products" includes Arkansas agricultural products that have met the requirements of the Arkansas Grown Branding Program administered through the Department of Agriculture.

(b)(1) "Packaged and processed" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment or a food processing plant.

(2) "Packaged and processed" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer or recipient.

(c) "On campus cafeteria" does not include a franchise as defined by Arkansas Code § 4-72-202.

19 CAR § 1-1102. Procurement goal — Preference — Method of procurement for purchase of food products.

(a)(1) An agency should utilize an appropriate method of procurement as prescribed in the Arkansas Procurement Law, Arkansas Code § 19-~~61-10111-201~~ et seq., for the purchase of food products.

(2) This may be a competitive sealed bid if price alone is being considered as the determinative factor or a request for proposals if other factors, such as a history of health code violations, are being considered.

(3) A cooperative purchasing agreement may also be an appropriate mechanism for procuring local farm or food products as a means of reducing the administrative cost of food procurement.

(b) In the event an agency utilizes a procurement method wherein a contract is to be awarded to the lowest responsive bidder, such as competitive sealed bidding, the lowest bid should be accepted only if the bid does not exceed the lowest bid from a provider of local food or farm products by more than ten percent (10%) and if the bidder submitting the lowest bid is not a provider of local farm or food products.

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/345/19CARpt1.Appendix.pdf>