



DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES OFFICE OF STATE PROCUREMENT

OSP Policy Small Procurements | Practicable Competition | Split-Purchasing

When a purchase is relatively small, it is neither efficient nor cost-effective to expend a lot of time or money on the procurement process itself — especially where competitive prices can easily be found through an internet search. Arkansas Procurement Law gives agencies the discretion to purchase commodities and services that do not exceed the amount set in Arkansas Code Annotated § 19-11-204(13)(A)(i), which is currently \$20,000, without the need of formally soliciting bids or posting notice.¹ These are commonly called “small procurements.”

Although formal posting of notice or solicitation of bids or proposals is not required for small procurements,² that does not excuse agencies from using competition or comparing competing prices.³ On the contrary, Arkansas Procurement Law still requires competition to be used “to the maximum extent practicable.”⁴ In keeping with this mandate, when making a small procurement an agency may want to consider using electronic marketplace sites, such as Walmart.com, Jet.com, or Amazon Business, to quickly search through a broad range of commodities from competing product suppliers to find the best value. Such e-marketplace websites can streamline purchasing, make bargain hunting easy by price-ranking from lowest to highest, help deliver savings to the State, and make procurement card (“p-card”) spending information more available and transparent. It is important to note that small procurement is only appropriate where the purchase price of the commodity or service falls within the small procurement range. Arkansas Procurement Law prohibits artificially dividing or splitting a single purchase that exceeds the small procurement threshold into multiple separate purchases that fall beneath the small procurement threshold to avoid competitive bidding, competitive sealed bidding, competitive sealed proposals, or other appropriate procurement method.⁵ This is sometimes called “split-purchasing.”

Whether a series of procurements constitute split-purchasing in violation of Arkansas Procurement Law will depend on the intent of the procurement official, which may be inferred from facts and circumstances surrounding the purchases. If a procurement official makes separate purchases of the same commodity or service over time but can justify the purchases as reasonably being made separately in good faith and in the ordinary course based on attendant facts and circumstances (and not merely as a means of avoiding formal competitive solicitation), then the purchases are not prohibited.

To illustrate, imagine an agency that needs four widgets. Based on her market research, the agency’s hypothetical procurement official determines that purchasing four widgets will likely cost around \$40,000.00. The agency has the budget to purchase all four widgets contemporaneously. In the ordinary course, the agency would purchase all four of the widgets that it needs. Because the anticipated purchase price exceeds the threshold for small procurement purchasing, it would violate Arkansas Procurement Law for the procurement official to avoid a single contemporaneous procurement of four widgets and split it into two separate \$20,000.00 purchases of two widgets to avoid competitive bidding. However, if the

¹ See Arkansas Code Annotated § 19-11-231(a).

² See Arkansas Code Annotated § 19-11-204(13)(A)(ii) (“Small procurements may be procured without seeking competitive bids or competitive sealed bids.”).

³ See Arkansas Code Annotated § 19-11-204(13)(A)(iii) (“However, competition should be used to the maximum extent practicable.”).

⁴ *Id.*

⁵ See Arkansas Code Annotated § 19-11-231(b) (“However, procurement requirements shall not be artificially divided so as to constitute a small procurement”); Arkansas Code Annotated § 19-11-234(d) (“Repeated small quantity procurements to circumvent the competitive bid limits or failure to obtain competitive bids without justification shall constitute a violation of these procedures and shall result in withdrawal of the state agency’s competitive bid privileges.”).

agency had two widgets that needed to be replaced and the procurement official issued a purchase order for two widgets under her small procurement authority, and subsequently learned later that month that the agency needed to procure two more widgets due to unforeseen circumstances, there would be a clear justification for purchasing the widgets separately through another small procurement. The key thing is that there has to be a good-faith justification, other than trying to avoid a procurement threshold, that explains why separate purchases are made of commodities or services that ordinarily would be handled by a single procurement.

When we are talking about procuring services, in distinction to purchasing a commodity, there is the possibility to purchase some types of services in units of time. (Services can also be procured in relation to the performance of an identifiable task and compensated based on successful completion rather than on a strictly temporal or time and materials basis.)

If an agency is going to purchase services in units of time and the purchase price for the units of time to be procured (i.e. - the units of time under contract) is equal to or less than the small procurement price, then it is a small procurement. If the purchase price for the units of time the vendor is obligated to perform under the contract is greater than the small procurement price, then competitive procurement methods should be employed (unless the situation calls for sole source, special, or emergency procurement).

For example, if an agency seeks to procure a single year worth of monthly lawn service and been quoted at \$18,000 for that single year (\$1,500/month), that would be considered a small procurement. However, if an agency plans to procure four years of that lawn service under a contract, and the purchase price for that many years of a service commitment exceeds the small procurement threshold (as it does in our example because $\$18,000 \times 4 = \$72,000$), then the purchase price for that multiple year commitment would not qualify the procurement as a small procurement. (Side Note: Arkansas contract law requires any service that cannot be performed in one year to be documented in writing to be enforceable. See Ark. Code Ann. 4-59-101(a)(6)). Consequently, another procurement method will have to be used.

In sum, Arkansas Procurement Law encourages agencies to use competition to the maximum extent practicable, even when making small procurements. Consider whether an e-marketplace can be an efficient and effective way of handling some of your agency's small procurements. Multiple small procurements are permitted where there is a sound justification other than avoiding formal competitive procurement. However, it is unlawful to break up a purchase into smaller ones to avoid formal procurement. Only use small procurement authority where warranted by the estimated cost of meeting your agency's known procurement needs at the time of purchase. When in doubt, bid it out!