

## **Subchapter 2**

### **Arkansas Procurement Law**

#### **19-11-201. Title.**

This subchapter shall be referred to as the “Arkansas Procurement Law”.

**History.** Acts 1979, No. 482, § 1; A.S.A. 1947, § 14-233; Acts 2001, No. 1237, § 1.

#### **19-11-202. Purposes and policies.**

The underlying purposes and policies of this subchapter are to:

- (1) Simplify, clarify, and modernize the law governing procurement by this state;
- (2) Permit the continued development of procurement policies and practices;
- (3) Provide for increased public confidence in the procedures followed in public procurement;
- (4) Ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;
- (5) Provide increased economy in state procurement activities by fostering effective competition;
- and
- (6) Provide safeguards for the maintenance of a procurement system of quality and integrity.

**History.** Acts 1979, No. 482, § 3; A.S.A. 1947, § 14-233.2.

#### **19-11-203. Definitions generally.**

As used in this subchapter:

- (1) (A) “Agency procurement official” means any person authorized by a state agency to enter into and administer contracts and make written determinations and findings with respect to contracts, in accordance with procedures prescribed by this subchapter and the rules promulgated under it.  
(B) “Agency procurement official” also includes an authorized representative acting within the limits of authority;
- (2) “Business” means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity;
- (3) (A) “Capital improvement” means all lands, buildings, structures, utilities, on-site and off-site improvements, and other appurtenant improvements, existing or future, and all construction, repairs, alterations, and renovations thereof which are undertaken, owned, operated, or otherwise managed by a state agency.  
(B) “Capital improvement” shall not include construction and reconstruction of roads and bridges in the state highway system by the State Highway Commission, nor shall “capital improvement” include any building, facility, plant, structure, or other improvement constructed by, or in behalf of, the Arkansas Department of Transportation or the State Highway Commission;

- (4) (A) "Commodities" means all personal property, including without limitation:
  - (i) Goods, as defined in § 4-2-105;
  - (ii) Leases, as defined in § 4-2A-103; and
  - (iii) Insurance.(B) "Commodities does not include:
  - (i) A lease on real property or a permanent interest in real property;
  - (ii) Exempt commodities and services; and
  - (iii) Capital improvements;
- (5) (A) "Contract" means all types of state agreements, regardless of what they may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.  
(B) (i) "Contract" includes awards and notices of award, contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.  
(ii) "Contract" also includes supplemental agreements with respect to any of these items.  
(iii) "Contract" does not include a partial equity ownership agreement as defined under § 19-11-1301 et seq.;
- (6) "Contract modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract;
- (7) "Contractor" means any person having a contract with a state agency;
- (8) "Data" means recorded information, regardless of form or characteristic;
- (9) "Debarment" means the disqualification of a person to receive invitations for bids or requests for proposals or the award of a contract by the state for a specified period of time commensurate with the seriousness of the offense or the failure or the inadequacy of performance;
- (10) "Designee" means a duly authorized representative of a person holding a superior position;
- (11) "Electronic" means electrical, digital, magnetic, optical, or any other similar technology;
- (12) "Employee" means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any agency;
- (13) "Exempt agencies" means the constitutional departments of the state, the elected constitutional offices of the state, the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the Arkansas Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts;
- (14) "Exempt commodities and services" means:
  - (A) Advertising in newspapers, periodicals, and related publications and on television, radio, billboards, and electronic media;
  - (B) Animals procured for medical research;
  - (C) (i) Commodities and services for use in research, education, and treatment for the diagnosis, cure, and prevention of disease, which may be procured with administrative approval through a group purchasing entity serving other public health institutions when substantial savings are available.  
(ii) A report shall be filed annually with the Division of Legislative Audit reflecting the justification of and the estimated savings accruing due to the use of this exemption;

- (D) (i) Commodities procured for resale in cafeterias, commissaries, bookstores, gift shops, canteens, and other similar establishments.  
(ii) However, these commodities procured shall not be sold or transferred to any agency with the intent of circumventing applicable procurement procedures;
- (E) (i) Contracts awarded by agencies for the construction of buildings and facilities and for major repairs.  
(ii) These contract exemptions shall not extend to the procurement of any commodities not otherwise exempt that are to be furnished by the agency under any such contract;
- (F) Contracts awarded by the Arkansas State Highway and Transportation Department for the construction, reconstruction, and maintenance of roads and bridges in the state highway system and for the county, rural road aid, and city street aid programs;
- (G) (i) Farm products procured or sold by a state agency having an agency procurement official.  
(ii) The current trade customs with respect to the procurement or sale of cotton, cotton seed, rice, and other farm products shall be followed when it is necessary to obtain the best price for the commodities procured or sold;
- (H) Fees, including medical fees and physician fees;
- (I) Foster care maintenance services provided by foster family homes or a community provider that is licensed as a family style residential home or that provides a family home setting approved by the Division of Children and Family Services of the Department of Human Services for children whose placement and care are the responsibility of the Division of Children and Family Services of the Department of Human Services;
- (J) Freight and storage charges and demurrage;
- (K) Licenses required prior to performance of services;
- (L) (i) Livestock procured by an agency having an official experienced in selection and procurement of livestock.  
(ii) Such procurement will be reported to the State Procurement Director, giving details of the purchase;
- (M) Livestock procured for breeding, research, or experimental purposes;
- (N) Maintenance on office machines and technical equipment;
- (O) Medical items specifically requested by a physician for treatment or diagnosis of patients in his or her care, including prosthetic devices, surgical instruments, heart valves, pacemakers, radioisotopes, and catheters;
- (P) Membership in professional, trade, and other similar associations;
- (Q) Perishable foodstuffs for immediate use or processing;
- (R) Postage;
- (S) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of these materials;
- (T) Services of visiting speakers, lecturers, and performing artists;
- (U) Taxes;
- (V) Travel expense items such as room and board and transportation charges;
- (W) Utility services or equipment that is defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering;

- (X) Works of art for museum and public display;
  - (Y) Capital improvements valued at less than the amount stated in § 22-9-203, subject to minimum standards and criteria of the Building Authority Division;
  - (Z) Services related to work force development, incumbent work force training, or specialized business or industry training;
  - (AA) The following commodities and services relating to proprietary software after the initial procurement:
    - (i) Technical support incidental to supporting the continuous operation of proprietary software;
    - (ii) Renewals;
    - (iii) Additional copies; and
    - (iv) License upgrades;
  - (BB) Commodities and raw materials purchased by Arkansas Correctional Industries intended for use in goods for resale;
  - (CC) Commodities purchased by the Department of Correction for crop production, including without limitation fertilizers, seed, seedlings, and agricultural-related chemicals; and
  - (DD) Repair services for hidden or unknown damages to machinery already purchased;
  - (EE) Commodities and services purchased by an academic medical center using revenue derived from and used for patient care and hospital enterprises.
- (15) (A) (i) “Grant” means the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law.
- (ii) “Grant” does not include an award whose primary purpose is to procure an end product, whether in the form of commodities or services.
- (B) A contract resulting from such an award is not a grant but a procurement contract;
- (16) “May” means the permissive;
- (17) “Paper product” means any item manufactured from paper or paperboard;
- (18) “Person” means any business, individual, union, committee, club, or other organization or group of individuals;
- (19) “Political subdivisions” means counties, municipalities, and school districts;
- (20) (A) “Procurement” means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services.
- (B) “Procurement” also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, disposal of commodities, and all phases of contract administration;
- (21) “Procurement agency” means any state agency that is authorized by this subchapter, by implementing rules, or by way of delegation from the State Procurement Director to contract on its own behalf rather than through the central contracting authority of the State Procurement Director;
- (22) (A) “Procurement agent” means any person authorized by a state agency not having an agency procurement official to enter into and administer contracts and make written determinations and findings with respect to contracts, in accordance with procedures prescribed by this subchapter.
- (B) “Procurement agent” also includes an authorized representative acting within the limits of authority;

- (23) (A) “Public funds” means all state-appropriated and cash funds of state agencies, as defined by applicable law or official ruling.
- (B) Without necessarily being limited thereto, “public funds” does not include:
- (i) Grants, donations, research contracts, and revenues derived from self-supporting enterprises that are not operated as a primary function of the agency, no part of which funds are deposited into the State Treasury; and
  - (ii) Revenue derived from patient care and self-supporting hospital enterprises of an academic medical center;
- (24) “Public notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and websites designated by the State of Arkansas and maintained for that purpose;
- (25) (A) “Purchase request” means that document, written or electronic, in which a using agency requests that a contract be obtained for a specified need.
- (B) “Purchase request” may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written or electronic determination and finding required by this subchapter;
- (26) “Recycled paper” means paper which contains recycled fiber in a proportion specified by the State Procurement Director;
- (27) (A) “Services” means the furnishing of labor, time, or effort by a contractor that does not produce tangible commodities.
- (B) “Services” includes without limitation:
- (i) Consulting services;
  - (ii) Personal services;
  - (iii) Professional services;
  - (iv) Technical and general services; and
  - (v) The furnishing of labor, time, or effort by a contractor for the generation, customization, configuration, or development of software and other intangible property other than technical support incidental to the procurement of proprietary software.
- (C) “Services” does not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of the Building Authority Division or Division of Higher Education;
- (28) “Shall” means the imperative;
- (29) “Signature” means a manual, an electronic, or a digital method executed or adopted by a party with the intent to be bound by or to authenticate a record which is:
- (A) Unique to the person using it;
  - (B) Capable of verification;
  - (C) Under the sole control of the person using it; and
  - (D) Linked to data in such a manner that if the data are changed, the electronic signature is invalidated;
- (30) (A) “State agency” means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency pursuant to subdivision (13) of this section.

- (B) “State agency” includes an exempt agency when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54;
- (31) (A) “State contract” means a contract for the procurement of commodities or services in volume, awarded by the State Procurement Director.
- (B) The contract may apply to all or part of the state;
- (32) “State Procurement Director” means the person holding the position created in § 19-11-216, as the head of the Office of State Procurement;
- (33) “Suspension” means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the state for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance, which may lead to debarment;
- (34) (A) “Technical and general services” means:
- (i) Work accomplished by skilled individuals involving time, labor, and a degree of expertise, in which performance is evaluated based upon the quality of the work and the results produced;
  - (ii) Work performed to meet a demand, including, but not limited to, work of a recurring nature that does not necessarily require special skills or extensive training; or
  - (iii) The furnishing of labor, time, or effort by a contractor or vendor, not involving the delivery of any specific end product other than reports that are incidental to the required performance.
- (B) “Technical and general services” shall not be construed to include the procurement of professional services under § 19-11-801 et seq.;
- (35) “Using agency” means any state agency which utilizes any commodities or services purchased under this subchapter; and
- (36) “Written” or “in writing” means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

**History.** Acts 1979, No. 482, § 12; 1981, No. 600, §§ 1-5; A.S.A. 1947, § 14-240; Acts 1987, No. 983, § 1; 1991, No. 128, § 1; 1991, No. 749, § 2; 1991, No. 1018, § 1; 1999, No. 1398, § 27; 2001, No. 961, § 7; 2001 No. 1237, § 2; 2001 No. 1568, § 1; 2003, No. 487, § 1; 2003, No. 1315, §§ 4-7; 2005, No. 1680, § 1; 2007, No. 478, § 2; 2009, No. 251, § 28; 2009, No. 605, § 20; 2009, No. 606, § 20; 2009, No. 1211, § 1; 2011, No. 794, § 1; 2013, No. 453, § 1; 2015, No. 218, § 21; 2015, No. 557, § 3; 2017, No. 609, §§ 1, 2; 2019, No. 417, §§ 1-3; 2019, No. 315, §§ 1751, 1752, 2019, No. 658, § 3; 2019, No. 910, §§ 6102, 6103.

#### R1:19-11-203. Definitions of terms used in this Act.

##### EXEMPT COMMODITIES AND SERVICES MEANS:

- (a) Under subsection (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.
- (b) Under subsection (14)(G)(i) – Farm products includes unprocessed feed for livestock.
- (c) Under subsection (14)(K) – “License” does not mean software license.
- (d) Under subsection (14)(M) – Livestock breeding to include ova and semen.

(e) Under subsection (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.

(f) Under subsection (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.

(g) Retail gasoline credit card purchases are exempt by regulation, regardless of the amount.

(h) Renewals of termite protection contracts with the contractor who performed the initial treatment of the facility are exempt. Not exempt are termite protection contracts which include the initial treatment.

(i) Under subsection (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. 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.

#### R2:19-11-203. Capital Improvements.

Under subsection (14)(Y), capital improvements valued at less than the bid requirement threshold stated in Ark. Code Ann. § 22-9-202(b)(2)(C) subject to Department of Finance and Administration Building Authority Division minimum standards and criteria are exempt from the requirements of the Procurement Law.

#### R3:19-11-203. Proprietary Software.

Software exemption under subsection (14)(AA) does not apply to the initial purchase of proprietary software. Nor does the exemption apply to the purchase of software that is part of any mandatory software contract. Exempt software purchases shall include the purchase of additional proprietary software licenses, copies, license renewals, software upgrades, and proprietary software support for proprietary software after the initial purchase.

#### R4:19-11-203. Signatures defined.

The definition of “signed” for the purposes of submitting a solicitation response can be found in the Uniform Commercial Code, Ark. Code Ann. § 4-1-201(39) (General Definitions), which “...includes any symbol executed or adopted by a party with present intention to authenticate a writing.” Allowance should therefore be made for any mark or writing, whether printed or cursive, which that person uses as his signature. Electronic signatures shall also be permitted, unless otherwise prohibited by law, pursuant to Ark. Code Ann. § 25-32-107.

#### R5:19-11-203. 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.

R6:19-11-203. Hidden Damages.

(a) Under subsection (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. By way of example and not limitation, if an agency takes a piece of machinery to a vendor to repair one or more problems, and in the course of such work the vendor notices one 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.

R7:19-11-203. Academic Medical Center.

EXEMPT COMMODITIES AND SERVICES MEANS:

Under subsection (14)(EE) and subsection 23(B)(ii), “Academic medical center” consists of a public medical school and its primary teaching hospitals and clinical programs.