

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Transformation and Shared Services

Agency or Division Name Office of State Procurement

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Anthony Black

Contact E-mail Anthony.Black@Arkansas.gov

Contact Phone 501-682-1011

Name of Rule R7 19-11-217 Direct Contract Negotiation

Newspaper Name Arkansas Democrat Gazette

Date of Publishing 01.28.2024

Final Date for Public Comment 02.27.2024

Location and Time of Public Meeting Ouachita Bid Room 501 Woodlane St 02.26.2024

R7: 19-11-217 Direct Negotiation of Contracts With Retailers

The discretion granted to the State Procurement Director under Arkansas Code Annotated § 19-11-217(c)(15) can only be exercised to negotiate non-mandatory 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 the retailer's catalog list price, documentation of the Manufacturer's Suggested Retail Price, or a standing price that the retailer currently offers to public procurement units through a contract with the U.S. General Services Administration or a cooperative purchasing agreement.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Transformation and Shared Services

BOARD/COMMISSION _____

PERSON COMPLETING THIS STATEMENT Edward Armstrong

TELEPHONE NO. (501) 324-9312 **EMAIL** edward.armstrong@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE R7 19-11-217 Direct Contract Negotiation

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation? N/A

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Leslie Fisk

Director Edward Armstrong

Proposed Rule Clarifying the Extent of Authority of the Procurement Director

October 25, 2023

PURPOSE

The Arkansas Department of Transformation and Shared Services Office of State Procurement is seeking Governor Sanders review of a proposed Rule Clarifying the Extent of Authority of the Procurement Director.

BACKGROUND

Arkansas Code Ann. § 19-11-225 authorizes the State Procurement Director to adopt rules in accordance with Arkansas Procurement Law and the Arkansas Administrative Procedure Act.

Arkansas Code Ann. § 19-11-217 addresses the powers and duties of the State Procurement Director and authorizes the State Procurement Director to enter into nonmandatory State contracts in certain circumstances.

KEY POINTS

The proposed rule:

- Clarifies the extent of authority that the State Procurement Director has under Act 556
- Presents examples of what is permissible under Act 556

DISCUSSION

Act 556 of 2023 is an innovation in Arkansas Procurement Law. This rule will help clarify the extent of its reach. We want to make it clear that the state will have the authority to enter into contracts with suppliers who are commonly recognized as retailers as well as those who have contracts that are listed on the federal GSA contract schedule and/or who have contracts with other states or other public procurement units.

RECOMMENDATION

We recommend that the proposed Rule Clarifying the Extent of Authority of the Procurement Director be approved as proposed by the Department.

Arkansas Democrat Gazette

Account #: STTSS3

Company: TRANS. & SHARED SERVICES

501 Woodlane, Ste. 201

Little Rock, AR 72201

Ad number #: 369953

PO #:

Matter of: hearing (Sunday version)

AFFIDAVIT • STATE OF ARKANSAS

I, Charles A. McNeice Jr., do solemnly swear that I am the Business Manager of the **Arkansas Democrat-Gazette**, a daily newspaper printed and published in PULASKI county, State of ARKANSAS; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of :

hearing (Sunday version)

Pending in the court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County, that said newspaper had been regularly printed and published in said county, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

And that there is due or has been paid the **Arkansas Democrat-Gazette** for publication the sum of \$76.93.
(Includes \$0.00 Affidavit Charge).

*ADG Arkansas Democrat-Gazette 01/28/24; ADG.com 01/28/24; NWA Democrat Gazette 01/28/24;
NWA nwaonline.com 01/28/24*

Charles A. McNeice Jr.

Business Manager

State of ARKANSAS, County of PULASKI, Subscribed and
sworn to before me on this 29th day of January, 2024

Deanna Griffin

NOTARY PUBLIC

OFFICIAL SEAL - #12347408
DEANNA GRIFFIN
NOTARY PUBLIC-ARKANSAS
PULASKI COUNTY
MY COMMISSION EXPIRES: 03-30-26

Notice of Rulemaking
Pursuant to Arkansas Code
Annotated § 25-15-201 et seq.,
notice is hereby given that the
Arkansas Department of Trans-
formation and Shared Services,
Office of State Procurement, is
considering a new rule, A7 19-
11-217 Direct Contract Negoti-
ation, to clarify the extent of the
State Procurement Director's
authority under Act 556 of 2023
by providing an administrative
interpretation of some of its
terms and by including some
examples of what is permissible
under it. Copies of the proposed
rule may also be obtained from
the Department of Transforma-
tion and Shared Services, 501
Woodlane Street, Suite 101-N,
Little Rock, AR 72201, or by ac-
cessing the Department's web-
site at
<https://www.transform.ar.gov/secretarys-office/legal/rules-hearings/>. A public hearing will
be held February 26, 2024, at
1:00 pm in the Ouachita Bid
Room, 501 Woodlane Street,
Ground Floor, Little Rock, AR
72201. Written comments
should be mailed to TSS, Attn:
Public Comments at P.O. Box
3522, Little Rock, AR 72203.
Comments may also be e-
mailed to [TSS.RulesCom-
ments@arkansas.gov](mailto:TSS.RulesComments@arkansas.gov).
369953f

Arkansas Democrat Gazette

Account #: STTSS3

Company: TRANS. & SHARED SERVICES

501 Woodlane, Ste. 201

Little Rock, AR 72201

Ad number #: 369955

PO #:

Matter of: hearing (Mon/Tues version)

AFFIDAVIT • STATE OF ARKANSAS

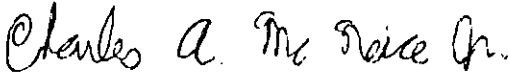
I, Charles A. McNeice Jr., do solemnly swear that I am the Business Manager of the **Arkansas Democrat-Gazette**, a daily newspaper printed and published in PULASKI county, State of ARKANSAS; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of :

hearing (Mon/Tues version)

Pending in the court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County, that said newspaper had been regularly printed and published in said county, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

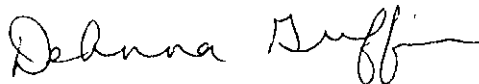
And that there is due or has been paid the **Arkansas Democrat-Gazette** for publication the sum of \$103.68.
(Includes \$0.00 Affidavit Charge).

ADG Arkansas Democrat-Gazette 01/29/24, 01/30/24; ADG.com 01/29/24, 01/30/24



Business Manager

State of ARKANSAS, County of PULASKI, Subscribed and
sworn to before me on this 30th day of January, 2024



NOTARY PUBLIC

OFFICIAL SEAL - #12347408
DEANNA GRIFFIN
NOTARY PUBLIC-ARKANSAS
PULASKI COUNTY
MY COMMISSION EXPIRES: 03-30-26

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Arkansas Department of Transformation and Shared Services, Office of State Procurement, is considering a new rule, R7 19-11-217 Direct Contract Negotiation, to clarify the extent of the State Procurement Director's authority under Act 556 of 2023 by providing an administrative interpretation of some of its terms and by including some examples of what is permissible under it. Copies of the proposed rule may also be obtained from the Department of Transformation and Shared Services, 501 Woodlane Street, Suite 101-N, Little Rock, AR 72201, or by accessing the Department's website at <https://www.transformation.ar.gov/secretarys-office/legal/rules-hearings/>. A public hearing will be held February 26, 2024, at 1:00 pm in the Ouachita Bid Room, 501 Woodlane Street, Ground Floor, Little Rock, AR 72201. Written comments should be mailed to TSS, Attn: Public Comments at P.O. Box 3522, Little Rock, AR 72203. Comments may also be e-mailed to TSS.RulesComments@arkansas.gov.

369955z