



MEMORANDUM

TO: City of Tontitown, Arkansas

FROM: R. Justin Eichmann, City Attorney

DATE: April 3, 2023

RE: Procurement of Professional Services

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Ark. Code Ann. §§ 19-11-801 through 805 control the selection of professional services, including legal, financial advisory, architectural, engineering, construction of management and land surveying services. The selection of engineering and planning services have to be conducted through the process set forth in these statutes. Below are listed the relevant points from these statutes:

- Competitive bidding may not be used for the selection of professional services. This is set out clearly in two separate statutes.
  - “It is the policy of the State of Arkansas and its political subdivision that political subdivisions shall follow the procedures stated in this section, except that competitive bidding shall not be used for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consultant services.” Ark. Code Ann. §§ 19-11-801(b).
  - “The political subdivision shall not use competitive biddings for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consulting services. Ark. Code Ann. §§ 19-11-802(c).
  - Ark. Code. Ann. § 14-558-303 is the statute that requires bidding for the purchase of goods and services necessary for the operation of the municipality.
- Political subdivisions initiate the selection of professional services by encouraging firms to submit statements of qualification.
  - “In the procurement of professional services, a state agency or political subdivision which utilizes these services may encourage firms engaged in the lawful practice of these professions to submit annual statements of qualifications and performance

data to the political subdivision or may request such information as needed for a particular public project.” See Ark. Code. Ann. § 19-11-802(a).

- In most cities, this is done by the city administration contacting firms or professional through email, mail or phone calls, posting of a “Request for Qualifications” on the city website, or publication of a Request for Qualifications in the newspaper or trade magazines. The city administration receives and files these statements of qualifications (called “SOQs”) for use in the selection of qualified professional services.
- The interested firms or professionals who submit SOQs are evaluated on 4 particular criteria that are set out in Ark. Code. Ann. § 19-11-803.
  - “In evaluating the qualifications of each firm, the state agency or political subdivision shall consider:
    - 1) The specialized experience and technical competence of the firm with respect to the type of professional services required;
    - (2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
    - (3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and
    - (4) The firm's proximity to and familiarity with the area in which the project is located.”
  - In most cities, this is done by a review committee that is composed of city administration staff or officials who are familiar with the services that are being sought. The city is able to set up this review process as it sees fit. I suggest creating or using a scoring rubric that includes the 4 criteria set forth in Ark. Code. Ann. § 19-11-803.
- The city then will select three (3) qualified firms, and from that list the best-qualified firm that is capable of performing the desired work and negotiate a project with the firm selected. See Ark. Code. Ann § 19-11-804.
- If the city is unable to negotiate a satisfactory contract with the firm selected, the negotiations are terminated and the city can negotiate with the next qualified firm selected. See Ark. Code. Ann § 19-11-805.
- If the city is unable to negotiate a satisfactory contract with any of the selected qualified firms, the city may reevaluate the services that are sought and start the process over again. See Ark. Code. Ann § 19-11-805.
- If the city is able to negotiate a satisfactory contract with a qualified firm, the City Council will then consider a resolution to approve the contract.