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## OSP Policies

### **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 Ark. Code Ann. § 19-61-501, which is currently \$20,000, without the need of formally soliciting bids or posting notice.<sup>1</sup> These are commonly called “small procurements.”

Although formal posting of notice or solicitation of bids or proposals is not required for small procurements,<sup>2</sup> that does not excuse agencies from using competition or comparing competing prices.<sup>3</sup> On the contrary, Arkansas Procurement Law still requires competition to be used “to the maximum extent practicable.”<sup>4</sup> In keeping with this mandate, it is the policy of the Office of State Procurement (“OSP”) to encourage agencies to consider using electronic marketplace sites, such as Jet.com or Amazon Business, to search through a broad range of commodities from competing vendors to find the best value when making small commodity procurements. Such e-marketplace websites can streamline purchasing, make bargain hunting easy, help deliver savings to the State, and make procurement card (“p-card”) spending information more available and transparent.<sup>5</sup>

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<sup>1</sup> See Ark. Code Ann. § 19-61-503.

<sup>2</sup> See Ark. Code Ann. § 19-61-501. (“Small procurements may be procured without seeking competitive bids or competitive sealed bids.”).

<sup>3</sup> See Ark. Code Ann. § 19-61-501. (“However, competition should be used to the maximum extent practicable.”).

<sup>4</sup> *Id.*

<sup>5</sup> OSP currently has an Amazon Business account that agencies can register to use in order to avoid any set up or annual membership fee and qualify for free delivery on many purchases. Any State p-card holder registered under the State account can take advantage of the wide selection and competitive pricing in the Amazon Business marketplace. Agencies who register under the State account will have immediate access to:

- Business Prime Shipping - complimentary free 2-day shipping on eligible Prime items with no order minimum
- Business Pricing and Quantity Discounts on millions of items
- Organizational control and oversight over small procurements – agency administrators can set spending limits and approval workflows to manage spending and track purchases with line item detail of every purchase tied to individual p-card holders for full accountability
- A specialized business-only Customer Service team

In order for your institution to be registered on the State’s Amazon Business account, OSP will need to know who at your institution will be designated as the primary point of contact for setting up organizational structure and user enrollment. This person, working with OSP staff, will determine the administrative configuration of the account for your institution.

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 in order to avoid competitive bidding, competitive sealed bidding, competitive sealed proposals, or other appropriate procurement method.<sup>6</sup> 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 in order to avoid competitive bidding. However, if the 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.

In sum, 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 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.

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<sup>6</sup>See Ark. Code Ann. § 19-61-503. (“However, procurement requirements shall not be artificially divided so as to constitute a small procurement . . . .”); Ark. Code Ann. § 19-6-504. 1 (“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.”).