

STATE OF ARKANSAS

**PROCUREMENT LAW
AND
RULES**



SEPTEMBER 2007

OFFICE OF STATE PROCUREMENT
DEPARTMENT OF FINANCE AND ADMINISTRATION
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INTRODUCTION

This document is a composite of the Arkansas Procurement Law, Procurement Rules and extracts from other laws which have a direct impact on state procurement. It is provided as a working reference for state agency procurement personnel and vendors.

The reference index enables quick access to the appropriate subject being researched. It also identifies the section of the law and/or rule that applies. (use "CTRL F" as a search tool)

The numbering system used is keyed to the numbering of the Arkansas Code of 1987 Annotated. The title, chapter, subchapter and section of the code references are contained within the number. Thus, in the designation "19-11-201," the "19" means the provision is in Title 19, the "11" indicates chapter 11 and the "2" in 201 means subchapter 2, with the "01" indicating the first section of the subchapter.

The rules are identified by the letter "R" and the rule number prior to the code reference. For example, in the rule designation "R1:19-11-224," the "R1:" indicates it is the first rule. The "19-11-224" is the code (law) to which the rule relates. Rules are inserted immediately following the appropriate section of the law.

The appendices contain information relating to procurement not included in the body of this document. Only items of interest to all agencies have been included.

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COMPOSITE OF ARKANSAS PROCUREMENT LAW AND RULES

Title 19 Public Finance Chapter 11 Purchasing and Contracts Subchapter 1 — General Provisions

19-11-101. Responsibility of disbursing officer — Maintenance of files by Office of State Procurement.

(a) The disbursing officer of each agency, board, commission, department, or institution shall be responsible for reviewing all invoices prepared by commercial printers or suppliers holding commercial contracts to make certain that the charges to the agency, board, commission, department, or institution are proper under the terms of the contract.

(b) The Office of State Procurement of the Department of Finance and Administration shall maintain complete files that shall be open to public inspection on all commercial term and one-time contracts.

The files shall contain:

- (1) A copy of the contract;
- (2) A list of all printing or duplicating done or commodities ordered, as well as the name of the invoiced agency; and
- (3) A copy of all correspondence regarding the contract or jobs performed thereunder.

History. Acts 1993, No. 1224, § 5; 2007, No. 478, § 1.

19-11-102. Use of soybean ink in state printing.

Notwithstanding any law, rule, or regulation to the contrary, all printing which is chargeable to or which is paid for with funds appropriated wholly or in part by the state, or any state department, division, bureau, board, commission, or agency, shall be printed in soybean ink; provided, however, that the soybean ink is comparable in price to other inks, and that it is equally suitable for use.

History. Acts 1991, No. 630, § 1.

19-11-103. Penalty for violation of law.

Any person who is found by a court of law to have knowingly violated any state law in conjunction with the performance or acquisition of a contract with the state shall be ineligible to contract with the state for a period of three (3) years.

History. Acts 1997, No. 1155, § 1.

19-11-104. Equal Opportunity Policy.

(a) The purpose of this section is to require any entity or person bidding on a state contract, responding to a request for proposals regarding a state contract, responding to a request for qualifications regarding a state contract, or negotiating a contract with the state for professional or consulting services to submit to the Office of State Procurement of the Department of Finance and Administration the most current equal opportunity policy of the entity or person.

(b) The office and a state agency shall require a copy of the most current equal opportunity policy of an entity or person to be filed with the office or state agency for public inspection as a condition precedent to:

(1) Accepting a letter of intent, bid, proposal, or statement of qualification with regard to a state contract from the entity or person; or

(2) Entering negotiations with the entity or person for a professional or consulting services contract with the state.

History. Acts 2005, No. 2157, § 1.

R1:19-11-104 Collection and Maintenance of Vendor EEO Policies

Equal Opportunity Policies are required from vendors who submit responses to state agencies or the Office of State Procurement for procurements of Professional and Consultant Services where the dollar value is greater than \$25,000.

The Office of State Procurement will maintain a file of vendor Equal Opportunity Policies. State agencies which issue solicitations will be responsible for confirming that vendors have a current E.O. Policy on file with the State either through requesting that it be supplied with the solicitation response; maintaining an agency file of vendor supplied E.O. Policies or by accessing and checking the files maintained by the Office of State Procurement. A contract may not be awarded prior to determining that a copy of the vendor's current E.O. Policy is on file with the State.

Vendors will be responsible for supplying the State with updated versions of their respective E.O. Policies as they are implemented.

19-11-105. Illegal immigrants — Prohibition — Public contracts for services.

(a) As used in this section:

(1) “Contractor” means a person having a public contract with a state agency for professional services, technical and general services, or any category of construction in which the total dollar value of the contract is twenty-five thousand dollars (\$25,000) or greater;

(2) “Exempt agency” 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;

(3) “Illegal immigrants” means any person not a citizen of the United States who has:

(A) Entered the United States in violation of the federal Immigration and Naturalization Act or regulations issued under the act;

(B) Legally entered but without the right to be employed in the United States; or

(C) Legally entered subject to a time limit but has remained illegally after expiration of the time limit;

(4) “Professional services contract” means a contract between a state agency and a contractor in which:

(A) The relationship between the contractor and the state agency is that of an independent contractor rather than that of an employee;

(B) The services to be rendered consist of the personal services of an individual that are professional in nature;

(C) The state agency does not have direct managerial control over the day-to-day activities of the individual providing the services;

(D) The contract specifies the results expected from the rendering of the services rather than detailing the manner in which the services shall be rendered; and

(E) Services rendered under a professional services contract are rendered to the state agency itself or to a third-party beneficiary;

(5) “Public contract for services” means any type of agreement between a state agency and a contractor for the procurement of services and all categories of construction with a state agency in which the total dollar value of that contract is twenty-five thousand dollars (\$25,000) or greater;

(6) (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 under subdivision (a)(7)(B) 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;

(7) (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 without limitation 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.

(b) No state agency may enter into or renew a public contract for services with a contractor who knows that the contractor or a subcontractor employs or contracts with an illegal immigrant to perform work under the contract.

(c) Before executing a public contract, each prospective contractor shall certify in a manner that does not violate federal law in existence on January 1, 2007, that the contractor at the time of the certification does not employ or contract with an illegal immigrant.

(d) (1) If a contractor violates this section, the state shall require the contractor to remedy the violation within sixty (60) days.

(2) (A) If the contractor does not remedy the violation within the sixty (60) days specified under subdivision (d)(1) of this section, the state shall terminate the contract for breach of the contract.

(B) If the contract is terminated under subdivision (d)(2)(A) of this section, the contractor shall be liable to the state for actual damages.

(e) (1) (A) If a contractor uses a subcontractor at the time of certification, the subcontractor shall certify in a manner that does not violate federal law in existence on January 1, 2007, that the subcontractor at that time of certification does not employ or contract with an illegal immigrant.

(B) A subcontractor shall submit the certification required under subdivision (e)(1)(A) of this section within thirty (30) days after the execution of the subcontract.

(2) The contractor shall maintain on file the certification of the subcontractor throughout the duration of the term of the contract.

(3) If the contractor learns that a subcontractor is in violation of this section, the contractor may terminate the contract with the subcontractor, and the termination of the contract for a violation of this section shall not be considered a breach of the contract by the contractor and subcontractor.

History. Acts 2007, No. 157, § 1.

R1:19-11-105 Employment of illegal immigrants - prohibition – certification by contractor

(a) The contractor must certify on line at www.arkansas.gov/dfa/procurement prior to award of a contract, that the contractor does not employ or contract with any illegal immigrant.

(b) If the contractor violates the above certification or is found to not be in compliance during the term of the contract, the state shall require the contractor to remedy the violation within 60 days of discovery of that violation. Failure to remedy the violation within the 60 day period will result in termination for breach of contract, and the contractor shall be liable to the State for the State's actual damages.

(c) If the contractor uses a subcontractor at the time of the above certification, the subcontractor shall certify that the subcontractor does not employ or contract with an illegal immigrant. The subcontractor's certification must be submitted within 30 days after award of the contract, and the contractor is required to maintain the certification on file for the remainder of the term of the contract.

(d) In the event that the contractor learns that the subcontractor's certification is in violation of the Act, and terminates the contract with the subcontractor, the termination of the subcontract for a violation of this section will not be considered a breach of the contractor's contract with the state. However, any subcontractor subsequently hired by the contractor shall be required to provide like certification.

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 regulations 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 State Highway and Transportation Department or the State Highway Commission;
- (4) “Commodities” means all property, including, but not limited to, equipment, printing, stationery, supplies, and insurance, but excluding leases on real property, real property, or a permanent interest in real property, exempt commodities and services, and 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;

(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 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 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) Commodities procured from nonprofit workshops in accordance with § 19-11-501 et seq. [repealed];

(F) (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;

(G) 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;

(H) (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 do so in order to

obtain the best price for the commodities procured or sold;

(I) Fees, including medical fees and physician fees;

(J) Foster care maintenance services provided by foster family homes 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;

(K) Freight and storage charges and demurrage;

(L) Licenses required prior to performance of services;

(M) (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;

(N) Livestock procured for breeding, research, or experimental purposes;

(O) Maintenance on office machines and technical equipment;

(P) 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;

(Q) Membership in professional, trade, and other similar associations;

(R) Perishable foodstuffs for immediate use or processing;

(S) Postage;

(T) 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 them;

(U) Services of visiting speakers, lecturers, and performing artists;

(V) Taxes;

(W) Travel expense items such as room and board and transportation charges;

(X) Utility services or equipment which is defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering;

(Y) Works of art for museum and public display;

(Z) Capital improvements valued at less than twenty thousand dollars (\$20,000), subject to minimum standards and criteria of the Arkansas Building Authority; and

(AA) Services related to work force development, incumbent work force training, or specialized business or industry training;

(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 regulations, 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. Public funds as used in this subchapter shall not include funds administered by, or under the control of, agencies, except public funds.

(B) Without necessarily being limited thereto, “public funds” does not include grants, donations, research contracts, and revenues derived from self-supporting enterprises which are not operated as a primary function of the agency, no part of which funds are deposited in the State Treasury;

(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, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

(B) “Services” shall not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of the Arkansas Building Authority or 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 of the State of Arkansas;

(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.

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

Exempt commodities and services means:

(a) (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) (14) (I) (i) Farm products includes unprocessed feed for livestock.

(c) (14) (M) “License” does not mean software license.

(d) (14) (O) Livestock breeding to include ova and semen.

(e) (14) (P) 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) (14) (S) Perishable foodstuffs shall be limited to produce.

(g) (14) Retail gasoline credit card purchases are exempt by regulation, regardless of the amount.

(h) (14) 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.

R2:19-11-203. Capital Improvements

(14) (AA) Capital improvements valued at less than twenty thousand dollars (\$20,000) subject to ABA minimum standards and criteria are exempt from the requirements of the Procurement Law.

19-11-204. Definitions concerning source selection and contract formation.

As used in this subchapter:

- (1) “Competitive bidding” means the same as defined in § 19-11-234(a);
- (2) “Competitive sealed bidding” means the same as defined in § 19-11-229(a);
- (3) “Competitive sealed proposals, means the same as defined in § 19-11-230(a);
- (4) “Emergency procurement” means the acquisition of commodities or services, which if not immediately initiated, will endanger human life or health, state property, or the functional capability of a state agency;
- (5) “Established catalogue price” means the price included in a catalogue, price list, schedule, or other form that:
 - (A) Is regularly maintained by a manufacturer or contractor;
 - (B) Is either published or otherwise available for inspection by customers; and
 - (C) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the commodities or services involved;
- (6) “Invitation for bids” means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in § 19-11-229, which refers to competitive sealed bidding;
- (7) “Multiple award contracts” means a method of procurement whereby an indefinite quantity contract is awarded to more than one (1) supplier for furnishing a like item or category of items.
- (8) “Purchase description” means specifications or any other document or electronic media describing the commodities or services to be procured;
- (9) “Request for proposals” means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in § 19-11-230, which refers to competitive sealed proposals, § 19-11-231, which refers to small procurements § 19-11-232, which refers to proprietary or sole source procurements, § 19-11-233, which refers to emergency procurements, or § 19-11-234, which refers to competitive bidding;
- (10) (A) “Request for qualifications” means a solicitation document requiring submittal of qualifications or specialized expertise in response to the scope of work or services required and does not require pricing.
 - (B) Other than as provided in § 19-11-801 et seq., the request for qualifications process may only be used when, under rules promulgated by the State Procurement Director, the director determines in writing that the request for qualifications process is warranted.
- (11) “Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance;
- (12) “Responsive bidder” means a person who has submitted a bid under § 19-11-229, which refers to competitive sealed bidding, which conforms in all material respects to the invitation for bids,

including the specifications set forth in the invitation; and

(13) (A) (i) “Small procurements” means any procurement not exceeding a purchase price of five thousand dollars (\$5,000). Small purchases may be procured without seeking competitive bids or competitive sealed bids.

(ii) However, competition should be used to the maximum extent practicable.

(B) Items under state contract are excluded.

History. Acts 1979, No. 482, § 27; 1981, No. 600, § 11; A.S.A. 1947, § 14-252; Acts 1987, No. 540, § 1; 1995, No. 317, § 1; 1995, No. 340, § 1; 1995, No. 428, § 1; 1995, No. 507, § 1; 2001, No. 1237, § 3; 2007, No. 478, § 3.

R1:19-11-204 Requests for Qualification Procurement Method

The request for qualifications procurement method is used, with prior written approval from the Director of the Office of State Procurement, when the qualifications or specialized expertise of the vendor is the most important factor in selection. The RFQ is sent to those vendors whose work resume' indicates that they are best suited to perform the scope of work or services required. Notification of RFQ's, for which the OSP is responsible, in amounts greater than \$25,000, will be made on the OSP website. www.arkansas.gov/dfa/procurement. The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussion may be conducted with qualified vendors who, based upon qualifications submitted, are determined to reasonably be susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements, and to obtain best and final offers.

R2:19-11-204 Ethical standards

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

R3:19-11-204 Procedures for approval of information technology products or services obtained by requests for qualification

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State

Technology Planning (STP) any Invitation for Bid, (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is \$100,000.00 or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be \$100,000.00 or more, must be submitted to STP for approval.

If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to release for bid. STP shall have 10 business days from receipt of the bid documents to complete the necessary reviews. If the STP review is not completed within the timeframe allowed, the agency and STP must mutually agree to an extension of the review process.

19-11-205. Definitions concerning commodity management.

As used in this subchapter:

(1) "Commodities" means, for purposes of this section, §§ 19-11-242 and 19-11-243, commodities owned by the state. See § 19-11-203, which refers to commodities;

(2) "Excess commodities" means any commodity, other than expendable commodities, having a remaining useful life but which the using agency in possession of the commodity has determined is no longer required by such agency;

(3) "Expendable commodities" means all tangible commodities other than nonexpendable commodities;

(4) "Nonexpendable commodities" means all tangible commodities having an original acquisition cost of more than two thousand five hundred dollars (\$2,500) per unit and a useful life of more than one (1) year; and

(5) "Surplus commodities" means any commodities, other than expendable commodities, no longer having any use to the state. This definition includes obsolete commodities, scrap materials, and nonexpendable commodities that have completed their useful life cycle.

History. Acts 1979, No. 482, § 54; A.S.A. 1947, § 14-275; Acts 2003, No. 487, § 2.

R1:19-11-205. Definitions concerning commodity management.

(a) "Tax supported institutions" means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.

(b) "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

19-11-206. Definitions concerning intergovernmental relations.

As used in this subchapter:

- (1) “Cooperative procurement” means procurement conducted by, or on behalf of, more than one (1) public procurement unit or by a public procurement unit with an external procurement activity;
- (2) (A) “External procurement activity” means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit.
- (B) An agency of the federal government is an external procurement activity;
- (3) “Local public procurement unit” means:
- (A) Any county, city, town, state agency, and any other subdivision of the state or public agency thereof;
- (B) Any fire protection district;
- (C) Any regional water distribution district;
- (D) Any rural development authority;
- (E) Any public authority;
- (F) Any public educational, health, or other institution;
- (G) Any nonprofit corporation during the time that it contracts with the Department of Human Services to provide services to the developmentally disabled or for transportation services, so long as the contract exceeds seventy-five thousand dollars (\$75,000) per year;
- (H) Any nonprofit corporation providing fire protection services to a rural area or providing drinking water to the public in a rural area; and
- (I) To the extent not prohibited by law, any other entity that expends public funds for the acquisition or leasing of commodities and services;
- (4) “Public procurement unit” means either a local public procurement unit or a state public procurement unit; and
- (5) “State public procurement unit” means the Office of State Procurement and any other procurement agency of this state.

History. Acts 1979, No. 482, § 64; A.S.A. 1947, § 14-281; Acts 1989, No. 57, § 1; 1997, No. 872, § 1; 1999, No. 41, § 1; 2001, No. 1237, § 4; 2007, No. 478, § 4.

19-11-207. Applicability.

- (a) This subchapter shall apply to every expenditure of public funds by this state, acting through a state agency as defined in § 19-11-203, under any contract. This subchapter shall not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in §§ 19-11-206 and 19-11-249 — 19-11-258. It shall also apply to the disposal of state commodities. This subchapter shall not apply to contracts between agencies, except as provided in §§ 19-11-206 and 19-11-249 — 19-11-258.
- (b) The provisions of this subchapter shall not preclude the acceptance of gifts and donations in the manner authorized by law.

History. Acts 1979, No. 482, § 9; A.S.A. 1947, § 14-237.2.

19-11-208. Exemptions.

Commodities and services need not be procured through the Office of State Procurement, if procured by the out-of-state offices of state agencies for that out-of-state office's use but shall, nevertheless, be procured subject to the requirements of this subchapter and the state procurement regulations.

History. Acts 1979, No. 482, § 18; 1981, No. 600, § 6; A.S.A. 1947, § 14-246; Acts 2001, No. 1237, § 5.

19-11-209. Construction.

This subchapter shall be construed and applied to promote its underlying purposes and policies.

History. Acts 1979, No. 482, § 2; A.S.A. 1947, § 14-233.1.

19-11-210. Operation of other laws.

Unless displaced by the particular provisions of this subchapter, the principles of law and equity, including the Uniform Commercial Code, § 4-1-101 et seq., of this state, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement its provisions.

History. Acts 1979, No. 482, § 5; A.S.A. 1947, § 14-235.

19-11-211. Obligation of good faith.

Every contract or duty within this subchapter imposes an obligation of good faith in its performance or enforcement. “Good faith” means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

History. Acts 1979, No. 482, § 6; A.S.A. 1947, § 14-236.

19-11-212. Existing contracts.

The administration of contracts in existence on July 1, 1979, shall be the responsibility of the appropriate officials described in this subchapter.

History. Acts 1979, No. 482, § 8; A.S.A. 1947, § 14-237.1.

19-11-213. Federal assistance requirements.

In the event federal assistance requirements conflict with the provisions of this subchapter or regulations promulgated under it, nothing in this subchapter or its regulations shall prevent any state agency or political subdivision from complying with the terms and conditions of the federal assistance requirements.

History. Acts 1979, No. 482, § 10; A.S.A. 1947, § 14-238.

19-11-214. Determinations and findings.

Written determinations and findings required by this subchapter shall be retained in an official contract file by the Office of State Procurement or by the state agency administering the contract for a period of five (5) years.

History. Acts 1979, No. 482, § 11; A.S.A. 1947, § 14-239; Acts 2001, No. 1237, § 6.

R1:19-11-214. Determination.

(a) Written procurement determinations. Written determinations and findings shall be signed by the employees making said determinations and findings.

(b) Contract files must be retained for five (5) years after all contract renewals (if any) have expired.

19-11-215. Office of State Procurement.

(a) There is created within the Department of Finance and Administration an Office of State Procurement to be administered by the State Procurement Director.

(b) (1) The office shall be subject to the supervision and management of the Director of the Department of Finance and Administration.

(2) The rules and regulations authorized in this subchapter shall be approved by the Director of the Department of Finance and Administration prior to the filing of the rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1979, No. 482, § 13; A.S.A. 1947, § 14-241; Acts 2001, No. 1237, § 7.

19-11-216. State Procurement Director.

(a) (1) The executive head of the Office of State Procurement is designated as the administrator of the Office of State Procurement, and as such, he or she shall be known and designated as the State Procurement Director.

(2) The administrator shall be appointed by the Director of the Department of Finance and Administration.

(b) The administrator shall be at least thirty (30) years of age, of good moral character, and of demonstrated ability or capacity in the field of purchasing commodities and services.

History. Acts 1979, No. 482, § 14; 1983, No. 517, § 1; A.S.A. 1947, § 14-242; Acts 2001, No. 1237, § 8; 2007, No. 478, § 5.

19-11-217. Powers and duties of State Procurement Director.

(a) The State Procurement Director shall serve as the principal procurement officer of the state.

(b) (1) Except as otherwise provided in this subchapter and upon the approval of the Director of the Department of Finance and Administration, the State Procurement Director shall have the authority and responsibility to promulgate regulations consistent with this subchapter.

(2) In addition, consistent with the provisions of this subchapter, the State Procurement Director may adopt rules governing the internal procedures of the Office of State Procurement.

(c) Except as otherwise specifically provided in this subchapter, the State Procurement Director, within the limitations of this subchapter and the rules and regulations promulgated under authority of this subchapter:

(1) Shall procure or supervise the procurement of all commodities and services for each state agency not having an agency procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract;

(2) (A) Shall develop and implement a plan for all state agencies acquiring vehicles that will reduce the overall annual petroleum consumption of those state agencies by at least ten percent (10%) by January 1, 2009, through measures that include:

(i) The use of alternative fuels, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005;

(ii) The acquisition of vehicles with higher fuel economy, such as a hybrid vehicle operating on electricity and gasoline or diesel or bio-diesel fuel; and

(iii) The substitution of cars for light trucks.

(B) (i) By January 30 of each year, the Director of State Procurement shall submit to the Legislative Council his or her report evaluating the progress of the plan toward achieving the goal set in subdivision (c)(2)(A) of this section.

(ii) The report shall include:

(a) The number and type of alternative fueled vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005, procured;

(b) The total number of alternative fueled vehicles used by each state agency;

(c) The difference between the cost of the purchase, maintenance, and operation of alternative fueled vehicles and comparable conventionally fueled motor vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005;

(d) An evaluation of the plan's success; and

(e) Suggestions for modifying the plan;

(3) Shall manage and establish internal procedures for the office;

(4) Shall sell, trade, or otherwise dispose of surplus commodities belonging to the state;

(5) May establish and maintain programs for the inspection, testing, and acceptance of commodities and services;

(6) Shall establish and manage a list of vendors desiring written notice of invitations for bid;

(7) May establish, by regulation, a fee for receiving a written or electronic notice of invitations for bid; and

(8) Shall ensure compliance with this subchapter and implementing regulations by reviewing and monitoring procurements conducted by any designee, department, agency, or official delegated authority under this subchapter.

History. Acts 1979, No. 482, § 15; A.S.A. 1947, § 14-243; Acts 1991, No. 1018, § 2; 2001, No. 1237, § 9; 2005, No. 2322, § 1.

R1:19-11-217 Authority of the State Procurement Director

Quality assurance, inspection, and testing. The State Procurement Director or college or university shall be responsible for assuring that commodities and services conform to the

necessary specifications, terms and conditions in the following situations:

- (1) upon delivery, in response to a purchase order or contract award;**
- (2) before delivery when the bidder has responded to an invitation for bids and/or received a contract award;**
- (3) after a vendor(s) has submitted an alternative bid. Examination of commodities and services may, where and when necessary, include laboratory testing and/or simulation studies.**

R2:19-11-217. Authority of the State Procurement Director.

Reporting. The State Procurement Director shall have the authority to collect information from all procurement agencies to facilitate the preparation of statistical and financial reports on state government procurement activity.

R3:19-11-217 Authority of the State Procurement Director

(a) Vendor fee. Vendors shall make application on the Office of State Procurement web site at www.arkansas.gov/dfa/procurement to have their name placed on the State Master Vendor list for the commodities and services they wish to supply or provide. An annual fee may be required.

(b) State master vendor list. Inclusion of the name of a business on the vendor's list does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(c) Vendors not on vendor lists. Hard copies of invitations to bid requested in response to public notice or other notification of a particular procurement will be provided to the requestor at a charge consistent with the current costs of reproduction and distribution.

(d) Recommended vendors. Vendors listed as recommended vendors on agency purchase requests will be furnished invitations to bid, however, if the contract is awarded to a "recommended vendor", that vendor must register on the State Master Vendor List prior to contract award and pay the fee.

R4: 19-11-217. Vendors List.

(a) Vendors list. The Office of State Procurement and each agency procurement official shall maintain a vendors list.

(b) Application. A business shall make application on the Office of State Procurement web site at www.arkansas.gov/dfa/procurement to have its name placed on the vendors lists for the commodities and services it wishes to supply or provide. The business must provide

complete information requested in the application before it will be considered for placement on a vendors list.

(c) Determination. The procurement agencies may refuse to list any prospective bidder not making proper application. The prospective bidder has the burden of showing that it meets the qualifications for inclusion on the vendors list on which it seeks to be listed. The prospective bidder will be promptly advised if its application is disapproved and the reasons for disapproval shall be stated.

(d) Reapplication. Any prospective bidder whose application is disapproved may reapply following the date of disapproval.

(e) Removal.

(1) Any bidder who requests in writing to be removed from the vendors list shall be removed.

(2) Bidders who have been suspended and/or debarred shall be removed from the vendors list.

(f) Vendors seeking to contract with colleges and universities need to contact those institutions.

19-11-218. Assistants and designees.

Subject to the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

- (1) Employ and supervise such assistants and other persons as may be necessary;
- (2) Fix their compensation as provided by law; and
- (3) Delegate authority to such designees or to any state agency as the director may deem appropriate, within the limitations of state law and the state procurement regulations.

History. Acts 1979, No. 482, § 16; A.S.A. 1947, § 14-244; Acts 2001, No. 1237, § 10; 2003, No. 487, § 3.

R1:19-11-218. Appointment of assistants and other employees; Delegation of authority by the State Procurement Director.

(a) Delegation. The delegation to state agencies of the authority for the procurement of commodities and services may be made by the State Procurement Director. The delegation may be for a specific commodity or service or for all commodities and services for a specific period of time. Such delegation shall be made by a written order signed by the State Procurement Director or by regulations promulgated by the State Procurement Director setting forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority.

(b) Limitations. All delegations of procurement authority shall remain in force according to the original terms thereof unless modified or until rescinded by the State Procurement Director.

(c) Small procurements and competitive bidding. All state agencies shall be authorized to make purchases according to the procedures for small purchases and competitive bidding as authorized by §§ 19-11-231 and 19-11-234 and regulations adopted pursuant thereto. All state agencies not having an agency procurement official shall designate a procurement agent for said delegated purchases and shall submit a letter signed by the administrative head of the state agency to the State Procurement Director designating each employee who shall be a procurement agent.

19-11-219. Legal counsel.

The Attorney General shall act as counsel for the State Procurement Director in preparation of necessary contracts and in all legal matters.

History. Acts 1979, No. 482, § 26; A.S.A. 1947, § 14-251.3; Acts 2001, No. 1237, § 11.

19-11-220. Agency procurement officials.

(a) In addition to any state agency authorized by regulation to have an agency procurement official, each of the following state agencies may elect to have such an official for commodities, technical and general services, and professional and consultant services, which are not within the exclusive jurisdiction of the State Procurement Director and which are not under state contract:

- (1) Arkansas State Highway and Transportation Department;
- (2) Arkansas State University at Beebe;
- (3) Arkansas State University at Jonesboro;
- (4) Arkansas State University System;
- (5) Arkansas Tech University;
- (6) Henderson State University;
- (7) Southern Arkansas University;
- (8) University of Arkansas at Fayetteville;
- (9) University of Arkansas Fund entities;
- (10) University of Arkansas at Little Rock;
- (11) University of Arkansas at Monticello;
- (12) University of Arkansas at Pine Bluff;
- (13) University of Arkansas for Medical Sciences;
- (14) University of Central Arkansas;
- (15) Arkansas State University at Mountain Home;
- (16) Arkansas State University at Newport;
- (17) Black River Technical College;
- (18) Cossatot Community College of the University of Arkansas;
- (19) East Arkansas Community College;
- (20) National Park Community College;
- (21) Mississippi County Community College;
- (22) Mid-South Community College;
- (23) North Arkansas College;

- (24) Northwest Arkansas Community College;
- (25) Ouachita Technical College;
- (26) Ozarka College;
- (27) Phillips Community College of the University of Arkansas;
- (28) Petit Jean College;
- (29) Pulaski Technical College;
- (30) Rich Mountain Community College;
- (31) Southern Arkansas University Tech;
- (32) Southeast Arkansas College;
- (33) South Arkansas Community College;
- (34) University of Arkansas Community College at Batesville;
- (35) University of Arkansas Community College at Hope;
- (36) University of Arkansas at Fort Smith; and
- (37) Department of Higher Education.

(b) (1) Each official shall manage and establish internal procedures for the procurement office of the state agency authorized to have the official to ensure adequate administrative procedures and controls pursuant to law and the procurement regulations.

(2) (A) Approval by the Office of State Procurement of contracts administered by the official shall not be required, unless a determination has been made by the Director of the Department of Finance and Administration that administrative procedures and controls are not adequate.

(B) (i) Such determination shall result in notification by the Director of the Department of Finance and Administration of the specific deficiencies and the reasons therefor.

(ii) After the notification, approval of contracts by the Office of State Procurement shall be required until the Director of the Department of Finance and Administration determines that the deficiencies have been corrected.

(c) Except for the promulgation by the State Procurement Director of rules and regulations authorized in this subchapter and the letting of state contracts, all rights and practices granted herein to the Office of State Procurement and the State Procurement Director are granted to an official in the administration of contracts for the state agency authorized to have the official.

(d) Nothing in this section is intended to prohibit a state agency from utilizing the Office of State Procurement in the same manner as state agencies not authorized to have officials.

History. Acts 1979, No. 482, § 19; 1981, No. 600, §§ 7, 8; A.S.A. 1947, § 14-247; Acts 1991, No. 1018, § 3; 2001, No. 1237, § 12; 2005, No. 1680, § 2.

R1:19-11-220. Procurement agencies.

(a) Designation. Each state agency authorized by §19-11-220 to elect to have an agency procurement official shall submit a letter signed by the administrative head of the state agency to the State Procurement Director designating an employee who shall be the agency procurement official.

(b) Internal procedures. The internal procurement procedures must ensure adequate management and control of the agency procurement functions pursuant to law and regulations. Each agency shall ensure that a current copy of its internal procurement

procedures and regulations is kept on file. The internal procurement procedures established may include, but are not limited to:

(1) A method of recording and filing each transaction as follows:

(A) legal notice where applicable;
(B) the original invitation for bids, purchase order, internal purchase request, printing order, or other applicable document;

(C) a list of all bidders invited to participate;
(D) the original of all bids received;
(E) an abstract of bids received; and
(F) a copy of all correspondence, memos, or other documents related to the award and administration of each transaction, including administrative determinations or justifications when applicable.

(2) A file containing each vendor's application and reports regarding the vendor's performance.

(c) Limitations. Upon request of the Director of the Department of Finance and Administration or his designee, the agency procurement official shall make available for audit and inspection records of any and all transactions pertaining to the procurement of commodities and services.

(d) General. A state agency having an agency procurement official may request the Office of State Procurement to procure specific commodities and services which the agency procurement official is authorized to procure or to procure all commodities and services which the agency procurement official is authorized to procure for a specific period of time.

19-11-221. Agency procurement official for Department of Correction.

(a) In addition to those agencies, institutions, and departments of state government enumerated in § 19-11-220 which may elect to have agency procurement officials for commodities, technical and general services, and professional and consultant services which are not within the exclusive jurisdiction of the State Procurement Director, which are not under state contract, and which are not procured in accordance with § 19-11-230, the Department of Correction and the Department of Community Correction may have such officials for the sole purpose of procuring perishable food items, who shall possess all powers, functions, and duties as authorized for agency procurement officials under the provisions of this subchapter with respect to perishable food items only.

(b) (1) The officials of the Department of Correction and the Department of Community Correction shall have exclusive authority to procure perishable food items in accordance with applicable administrative procedures and controls established pursuant to this subchapter and the procurement regulations.

(2) Except as noted in this subsection and in subsection (c) of this section, the officials of the departments shall be subject to all other provisions and requirements of this subchapter and administrative procedures controls and procurement regulations provided in or promulgated pursuant to it.

(c) (1) (A) The Board of Corrections, annually, and at more frequent intervals if deemed necessary, shall make studies and determine whether it would be in the best interest of the management of the farm

croplands at the farm units or at each of the separate farm units of the Department of Correction to provide for the lease of farm machinery and equipment, or certain items thereof, required for the production of farm crops, or whether it would be in the better interest of the Department of Correction to acquire such items of farm machinery and equipment by purchase.

(B) (i) Upon conclusion of the study, the board, by resolution adopted by a majority of the members of the board at a regular or special meeting, may authorize the agency procurement official for the Department of Correction to advertise for bids for the leasing of farm equipment or for the purchase of the items of farm equipment noted in the resolution.

(ii) (a) No lease of farm equipment shall be for more than two (2) years nor extend beyond June 30 of the fiscal biennium for which current funds have been appropriated for the operation of the Department of Correction.

(b) However, nothing in this section shall prohibit the lease from including provisions, terms, or conditions upon which the lease may be renewed for an additional period of time, not exceeding two (2) years, at the option of the board.

(2) (A) In the event the board determines to provide for the leasing of farm machinery or equipment necessary in the farming operations of the Department of Correction, the official of the Department of Correction shall be the exclusive purchasing agent for advertising of bids and awarding of contracts for the leases, subject to the approval of the Director of the Department of Correction and the board.

(B) In the advertising for bids and the awarding of contracts, the state laws, procurement procedures, and rules and regulations shall be complied with in awarding the contracts.

(C) (i) It shall not be mandatory upon the board to award the contract for the furnishing of farm machinery and equipment under a lease agreement to the lowest bidder, unless the board shall determine that the awarding of the contract to such bidder would be in the best interest of the farming operations of the Department of Correction.

(ii) In that event, the board may award the contract to the bidder whose bid proposal is deemed by the board to be in the better interest of the farming operations of the Department of Correction.

(D) In making this determination the board shall consider, but not be limited by, the following factors:

- (i)** The type of equipment to be furnished;
- (ii)** Compatibility of the equipment with the training and experience of the farm managers and employees of the Department of Correction and the experience and skills of the inmates who will be using the equipment;
- (iii)** Provisions contained in the bid proposal providing for maintenance, repair, and service and upkeep of the equipment during the lease period, availability of the service and repair facilities, and source of replacement or repair parts;
- (iv)** The age and condition of the equipment to be leased; and
- (v)** Such other factors as the board deems essential to performance under the contract and dependability and reliability of the equipment to be furnished during the period of the lease.

(3) (A) (i) In determining the items of farm machinery and equipment to be acquired by purchase, the board may designate, if the board determines it to be within the better interest of the management of farm croplands of the Department of Correction, those items of farm machinery and equipment to be purchased.

(ii) The board may restrict the bid to equipment produced by no fewer than two (2) manufacturers of each item of equipment.

(B) In making this determination, the board shall include, but not be limited to, a consideration of the following factors:

- (i)** The types of farm machinery equipment now being used by the Department of

Correction and the experience gained by the Department of Correction in the use of the equipment for the purposes for which it is being purchased;

- (ii) Availability of service and replacement and spare parts for the equipment;
- (iii) Familiarity with the equipment of the employees or inmates responsible for the maintenance, repair, and upkeep thereof;
- (iv) Compatibility of the farm machinery and equipment with repair and maintenance shop facilities available at the Department of Correction;
- (v) Access to the dealer responsible for warranty service; and
- (vi) Such additional factors as the board deems pertinent to the better interests of the management and operation of the farm crop lands of the Department of Correction.

(C) (i) All purchases of farm machinery and equipment shall be in accordance with the applicable state procurement laws and rules and regulations promulgated thereunder.

(ii) Contracts for the providing or furnishing of service, repair, and replacement parts of farm machinery and equipment may include provision for the furnishing of a stated quantity of replacement and spare parts to be stored at the Department of Correction or may include contract prices for major or standard items of service or for the furnishing of replacement and spare parts at stated prices, which shall be at a discount from the published dealer price list, as the board may deem in the best interest of the department.

(iii) As an alternative, the board may elect to authorize the official to acquire replacement and spare parts on a need basis by following the applicable state procurement procedure in the acquisition of each item thereof as needed.

(4) (A) The official of the Department of Correction acting under the instruction and direction of the board and the Director of the Department of Correction shall be the sole and exclusive purchasing agent for the acquisition of farm machinery and equipment, whether by lease or purchase, and for the acquisition of repair services for farm machinery and equipment and repair and replacement parts therefore in the manner set forth in this section, and for the acquisition of those items covered in subsection (b) of this section.

(B) Nothing in this section shall prohibit the Department of Correction from requesting the State Procurement Director to make available the services of the Office of State Procurement in the acquisition of any item for which the official of the Department of Correction is exclusive purchasing agent under this section.

History. Acts 1981, No. 240, §§ 1-3; A.S.A. 1947, §§ 14-247.1 — 14-247.3; Acts 1997, No. 351, § 1; 2001, No. 1237, § 13; 2005, No. 1680, § 3.

19-11-222. Exclusive jurisdiction over procurement.

(a) The State Procurement Director shall have exclusive jurisdiction over the procurement of:

- (1) Items subject to Arkansas Constitution, Amendment 54;
- (2) Wholesale gasoline, oil, and related products;
- (3) Tires;
- (4) Passenger motor vehicles and trucks, except highway construction and highway maintenance equipment or any specialized type of equipment used in highway construction, except as otherwise provided in this subchapter;
- (5) Paper products;
- (6) New and used school buses for state agencies;
- (7) A purchasing card program and travel card program to include implementation and administration; and

(8) An electronic commerce procurement solution to include planning and administration consistent with the established financial systems of the state.

(b) As used in this section:

(1) "Printing" means the process of transferring images, by the use of standard industrial type printer ink, upon documents such as letterhead, envelopes, pamphlets, booklets, and forms;

(2) "Stationery" means imprinted letterhead and envelopes used by the General Assembly and other departments of state government to identify an individual department, agency, board, commission, etc.; and

(3) "Supplies" means paper and inks used to produce stationery.

History. Acts 1979, No. 482, § 20; 1981, No. 600, § 9; A.S.A. 1947, § 14-248; Acts 1991, No. 749, § 3; 1993, No. 896, § 4; 2001, No. 1237, § 14; 2001, No. 1309, § 1; 2003, No. 487, § 4; 2005, No. 1680, § 4.

19-11-223. Commodities, technical and general services, and professional and consultant services under state contract.

(a) In addition to establishing a state contract for those commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the State Procurement Director under § 19-11-222, the director may award a state contract for other commodities, technical and general services, and professional and consultant services in those instances when substantial savings may be effected by quantity purchasing of commodities, technical and general services, or professional and consultant services in general use by several state agencies.

(b) (1) State contracts shall be limited to those commodities on which, by virtue of custom or trade, substantial savings may be realized.

(2) In those instances in which substantial savings are not effected, the letting of state contracts for those commodities shall be discontinued.

(c) (1) Except for the procurement of commodities, technical and general services, and professional and consultant services within the exclusive jurisdiction of the director, state agencies with agency procurement officials that can demonstrate a geographical or volume buying advantage need not participate in the state contract.

(2) However, if the commodities, technical and general services, or professional and consultant services obtained are procured at a substantially higher price during the same state contract period, that state agency must participate in the state contract upon expiration of the state agency's contract.

(d) Except as authorized in this section, all state agencies which require commodities, technical and general services, and professional and consultant services that are under state contract shall procure these commodities, technical and general services, and professional and consultant services exclusively under such contract.

(e) All contracts concerning commodities, technical and general services, and professional and consultant services shall disclose a projected total cost, including, but not limited to, expenditures that may be incurred under all available periods of extension if the extensions were executed.

History. Acts 1979, No. 482, § 21; 1981, No. 600, § 10; A.S.A. 1947, § 14-249; Acts 2001, No. 1237, §§ 15, 16; 2005, No. 1680, § 5.

R1:19-11-223 Commodities and services under state contract

(a) Request for exclusion. State agencies having agency procurement officials may request exemption from a proposed state contract by submitting to the State Procurement Director a written justification for such exemption.

(b) Determination by State Procurement Director. Approval or denial of exemption from a state contract shall be made in writing by the State Procurement Director prior to issuance of the invitation for bids.

19-11-224. Interest and carrying charges.

State agencies, including exempt agencies, may enter into contracts which contemplate the payment of interest and late charges, but only when such late charges are incurred sixty (60) days after payment is due or carrying charges under such regulations as may be promulgated by the State Procurement Director.

History. Acts 1979, No. 482, § 22; A.S.A. 1947, § 14-250; Acts 1997, No. 1066, § 2; 2001, No. 1237, § 17.

R1:19-11-224. Interest, carrying charges, and termination fees. (a) Limitations.

(1) Contracts may be entered into which contemplate the payment of interest or carrying charges only in the following conditions:

(A) when the interest or carrying charge is required because the term of the contract is extended over a period of time; and

(B) when a provision for termination of the contract is included in the contract, as provided in § 19-11-238(c) and the regulations promulgated pursuant thereto.

(2) Contracts may be entered into which contain a provision for the payment of the following charges on delinquent accounts: interest charges, carrying charges, late payment charges or any other charge which may be construed as a penalty, but only if incurred sixty (60) days after the due date.

(3) Service charges may be paid on credit card procurements.

19-11-225. Regulations.

(a) Regulations shall be promulgated by the State Procurement Director in accordance with the applicable provisions of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) No regulation shall change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of the regulation.

(c) (1) No clause which is required by regulation to be included shall be considered to be incorporated

by operation of law in any state contract without the consent of both parties to the contract to the incorporation.

(2) The parties to the contract may give such consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

History. Acts 1979, No. 482, § 23; A.S.A. 1947, § 14-251; Acts 2001, No. 1237, § 18.

19-11-226. Recommendations.

(a) The State Procurement Director shall maintain a close and cooperative relationship with the using agencies.

(b) (1) The State Procurement Director shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to matters affecting the using agency.

(2) At any time, any using agency may make recommendations to the State Procurement Director, and the State Procurement Director may make recommendations to any using agency.

(3) The Director of the Department of Finance and Administration may make recommendations to the State Procurement Director.

History. Acts 1979, No. 482, § 24; A.S.A. 1947, § 14-251.1; Acts 2001, No. 1237, § 19.

19-11-227. Statistical data.

The State Procurement Director shall cooperate with the Office of Budget of the Department of Finance and Administration and the Office of Accounting of the Department of Finance and Administration in the preparation of statistical data concerning the procurement and disposition of all commodities and services, unless otherwise provided in this subchapter.

History. Acts 1979, No. 482, § 25; A.S.A. 1947, § 14-251.2; Acts 2001, No. 1237, § 20.

19-11-228. Methods of source selection.

Unless otherwise authorized by law, all contracts shall be awarded by competitive sealed bidding, pursuant to § 19-11-229, which refers to competitive sealed bidding, except as provided in:

- (1) Section 19-11-230, which refers to competitive sealed proposals;
- (2) Section 19-11-231, which refers to small procurements;
- (3) Section 19-11-232, which refers to proprietary or sole source procurements;
- (4) Section 19-11-233, which refers to emergency procurements;
- (5) Section 19-11-234, which refers to competitive bidding;
- (6) Section 19-11-262, which refers to multiple award contracts; or
- (7) Section 19-11-263, which refers to special procurements.

History. Acts 1979, No. 482, § 28; 1981, No. 600, § 12; A.S.A. 1947, § 14-253; Acts 1995, No. 428, § 2; 1995, No. 507, § 2; 2001, No. 1237, § 21.

19-11-229. Competitive sealed bidding.

- (a) “Competitive sealed bidding” means a method of procurement which requires:
- (1) Issuance of an invitation for bids with a purchase description and all contractual terms and conditions applicable to the procurement;
 - (2) Public, contemporaneous opening of bids at a predesignated time and place;
 - (3) Unconditional acceptance of a bid without alteration or correction, except as authorized in §§ 19-11-204 and 19-11-228 — 19-11-240;
 - (4) Award to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids; and
 - (5) Public notice.
- (b) (1) Contracts exceeding an estimated purchase price of twenty-five thousand dollars (\$25,000) shall be awarded by competitive sealed bidding, unless a determination is made in writing by the agency procurement official or the State Procurement Director of the Office of State Procurement of the Department of Finance and Administration that this method is not practicable and advantageous and specifically states the reasons that this method is not practicable and advantageous.
- (2) The director may provide by regulation that it is not practicable to procure specified types of commodities, technical and general services, or professional and consultant services by competitive sealed bidding.
- (3) Factors to be considered in determining whether competitive sealed bidding is not practicable shall include whether:
- (A) Purchase descriptions are suitable for award on the basis of the lowest evaluated bid price; and
 - (B) The available sources, the time and place of performance, and other relevant circumstances are appropriate for the use of competitive sealed bidding.
- (c) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced technical proposals to be followed by an invitation for bids limited to those bidders whose technical proposals meet the requirements set forth in the first invitation.
- (d) (1) Notice inviting bids shall be given not fewer than five (5) calendar days nor more than thirty (30) calendar days preceding the date for the opening of bids by publishing the notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances, adequate notice shall be given.
- (2) (A) The notice shall include a general description of the commodities, technical and general services, or professional and consultant services to be procured and shall state where invitations for bid may be obtained.
- (B) The notice shall also state the date, time, and place of bid opening.
- (e) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and open to public inspection.
- (f) (1) (A) Bids shall be evaluated based on the requirements set forth in the invitation for bids.
- (B) These requirements may include criteria to determine acceptability such as:
- (i) Inspection;
 - (ii) Testing;
 - (iii) Quality;
 - (iv) Workmanship;
 - (v) Delivery;
 - (vi) Past performance; and
 - (vii) Suitability for a particular purpose and criteria affecting price such as life-cycle or total ownership costs.

(2) (A) The invitation for bids shall set forth the evaluation criteria to be used.

(B) No criteria may be used in bid evaluation that were not set forth in the invitation for bids.

(g) (1) Correction of patent or provable errors in bids that do not prejudice other bidders or withdrawal of bids may be allowed only to the extent permitted under regulations promulgated by the director and upon written approval of the Attorney General or a designee of such officer.

(2) No award shall be made on the basis of a corrected bid, if the corrected bid exceeds the next lowest bid of a responsible bidder.

(h) (1) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

(2) In the event all bids exceed available funds as certified by the appropriate fiscal officer in situations in which time or economic considerations preclude resolicitation of work of a reduced scope, the director or the head of a procurement agency may negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(3) All other bidders requesting to be notified of the award decision shall be promptly notified of the decision.

(i) An invitation for bid may be cancelled or any or all bids may be rejected in writing by the director or the agency procurement official.

History. Acts 1979, No. 482, § 29; 1981, No. 600, §§ 13-16; A.S.A. 1947, § 14-254; Acts 1987, No. 540, § 2; 1995, No. 317, § 2; 1995, No. 340, § 2; 2001, No. 1237, § 22; 2003, No. 487, § 5; 2005, No. 1680, § 6.

R1:19-11-229 Competitive sealed bidding

Definition.

Invitations for bids for which OSP is responsible shall be posted on the OSP website www.arkansas.gov/dfa/procurement in adequate time to allow response.

R2:19-11-229. Competitive sealed bidding.

Conditions for use.

(a) Lease. All contracts for the lease of a commodity which exceed a cost of twenty-five thousand dollars (\$25,000) during the initial period of the contract shall be awarded on the basis of competitive sealed bids. All contracts for the lease of a commodity which do not exceed twenty-five thousand dollars (\$25,000) during the initial period of the contract but contain an option to purchase a commodity costing more than twenty-five thousand dollars (\$25,000) shall be awarded on the basis of competitive sealed bids. No lease duration including renewals can extend beyond a seven-year period. The term "lease" shall include rent.

(b) Purchase of commodities subject to the Arkansas Constitution, Amendment 54. Commodities subject to the Arkansas Constitution, Amendment 54 (printing, stationery and supplies) may

be purchased only by the State Procurement Director or his designee.

R3:19-11-229 Competitive sealed bidding

Commodities and services which are not practicable to procure by competitive sealed bidding:

- (1) Postage meter leases;**
- (2) Motor vehicle rentals (for thirty (30) days or less) may be procured by use of competitive bid procedures. All motor vehicle leases (over thirty days) must be approved by the State Procurement Director under the provisions of ACA § 22-8-102.**
- (3) Agricultural equipment leases for 180 days or less may be procured by use of competitive bid procedures.**

R4:19-11-229. Competitive sealed bidding.

Leases.

Lease of commodities on state contract. No contract greater than ninety (90) days for the lease of commodities on state contract shall be approved unless the State Procurement Director determines in writing that it is in the best interest of the state and states the reasons therefore.

R5:19-11-229. Competitive sealed bidding.

Bid submission.

- (1) Bidders shall submit bids at the place and on or before the date and time set in the invitation for bids. Bids received after the date and time designated for bid opening are late bids and shall not be considered.**
- (2) All bids and any modifications to bids previously filed, received prior to the date and time fixed for opening bids, shall be kept secure and unopened. If a bid is submitted and the invitation for bids number is not clearly marked to indicate the date and time of bid opening the State Procurement Director or agency procurement official shall make a reasonable attempt, including, but not limited to, opening, marking and resealing, to determine which bid the submission is for, resealing it and shall open it formally at the date and time of that bid opening.**
- (3) Retrieval of a bid for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the business.**

R6:19-11-229. Competitive sealed bidding.

Bid opening. When practical, the names of the bidders and amounts of their bids may be read aloud. Except where it may be deemed impractical, due to the nature or complexity of an invitation for bids, an abstract of bids which contains the amount of each bid and the name of the bidder shall be prepared for each invitation for bids. An abstract of bids shall be retained in the bid file and shall be available for public inspection.

R7:19-11-229 Competitive sealed bidding

Bid evaluation.

(1) Those criteria that will affect the bid price and be considered in evaluation for award shall be stated in the bid and objectively measured, such as transportation costs and total or life cycle cost. Judgmental evaluation of commodities and services may be used in determining whether the commodity or service offered by a bidder meets the specification requirements of the procurement, or the bidder is qualified to provide the service.

(2) The following matters shall be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities:

(A) Time discounts or cash discounts shall not be considered;

(B) Quantity discounts should be included in the price of the item. When not included in the item price, the discount shall be considered only if the procurement agency, or the agency for whose benefit the procurement has been undertaken, deems it to be in the state's best interest. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated in the bid;

(C) An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the state's best interest.

(D) Only signed, sealed bids delivered prior to the date and time of bid opening shall be accepted.

(E) Past Performance

(i) The past performance of a bidder on a state contract may be used by the procurement agency to determine whether the bidder is "responsible". Past performance must be supported by written documentation not greater than three years old.

Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(ii) Past performance on contracts from other Arkansas State Agencies may also be used for evaluation. Supporting documentation should be provided.

(iii) Past performance evaluation should not take the place of suspension or debarment procedures.

(3) Tie bids. In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of a coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

R8:19-11-229 Competitive sealed bidding

Rejection. Grounds for rejection of bids include but shall not be limited to:

(1) failure of a bid to conform to the essential requirements of an invitation for bids;

(2) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;

(3) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(4) a bid imposing conditions which would modify the stated terms and conditions of the invitation for bids;

(5) any bid determined by the procurement official in writing to be unreasonable as to price;

(6) bids received from bidders determined to be nonresponsible bidders;

(7) failure to furnish a bid guarantee when required by an invitation for bids; and

(8) any or all bids when the procurement official makes a written determination that it is in the best interest of the state.

R9:19-11-229. Competitive sealed bidding.

(a) Correction or withdrawal of bids.

(1) The State Procurement Director or agency procurement official may waive technicalities or minor irregularities in bids which do not affect the material substance of the bids when it is in the state's best interest to do so.

(2) Amendments to bids shall be allowed if the amendments are in writing and signed, are received prior to the date and time of bid opening, and clearly indicate the date and time of bid opening and bid number.

(3) If there is a suspected bid mistake, the State Procurement Director or agency procurement official may request confirmation of a bid and shall request the confirmation to be made in writing. The bid of any bidder who fails or refuses to clarify in writing within a reasonable time any matter contained in his bid shall be rejected. The written clarification shall become a part of the contract awarded on the basis of that bid.

(4) Bid prices shall be based on the unit prices and any correction of the price extension or of the price addition by the Office of State Procurement or state agency having an agency procurement official shall not be considered the correction of a bid. Bid prices shall not be increased after the date and hour of bid opening. A bid price may be decreased only after a determination has been made that the bid is low.

(5) An otherwise low bidder may be permitted the opportunity to furnish other information requested in the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6) When a mistake in a bid is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the bid, and that due to such mistake the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract and the contractor will sustain a financial loss (a reduction or diminution in profit margin shall not be deemed a financial loss under this subsection) if required to perform the contract, the contract may be rescinded.

(b) Correction. Any negotiated adjustments, as defined in §19-11-229 (h), will not be considered the correction of a bid.

R10:19-11-229. Competitive sealed bidding.

(a) Award. After a reasonable bid evaluation period, the bid shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids. All bids may be rejected if, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the procurement official that no satisfactory bid has been received.

(b) Negotiation. In the event that negotiation is necessary, a bidder may be determined to be non-responsive if the bidder and agency are unable to reach a negotiated adjustment. If negotiations fail or the agency is unable to reach a negotiated adjustment with the

apparent low bidder, the next lowest bidder can be contacted for the purposes of entering into negotiations.

(c) Unsuccessful bid. In the event no bids are received or items bid do not meet specifications and it is apparent that further solicitation of bids would be futile, requested commodities may be purchased from any available source.

R11:19-11-229. Competitive sealed bidding.

Life cycle cost.

(1) Life cycle or total ownership costs may include but are not limited to, costs of operation, maintenance, repair, disposal and/or acquisition.

(2) Application. Life cycle cost formulas may be used for procurements. Certain specified commodities must be procured using life cycle cost formulas provided by the Office of State Procurement. For those specified commodities, the State Procurement Director shall provide formulas to be used in the evaluation of bids by the State Procurement Director, the agency procurement officials or the procurement agents.

R12:19-11-229 Competitive sealed bidding

Cancellation of invitations for bids. A notice of cancellation of OSP bids shall be posted on the OSP website www.arkansas.gov/dfa/procurement. The bids may be returned if the bid is properly identified.

R13:19-11-229. Procedures for approval of information technology products or services obtained by competitive sealed bids

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid, (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is \$100,000.00 or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be \$100,000.00 or more, must be submitted to STP for approval.

If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to release for bid. STP shall have 10 business days from receipt of the bid documents to complete the necessary reviews. If the STP review is not completed within the timeframe allowed, the agency and STP must mutually agree to an extension of the review process.

R14:19-11-229. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

R15:19-11-229 Negotiations

(a) Negotiation of Competitive Sealed Bids should be used only in those cases where the best interests of the State are served. Only those procurement professionals who are trained in negotiation and procurement processes should conduct negotiations.

(b) Prior to negotiation, a written justification supporting negotiations must be included in the bid folder. The justification must include:

(1) Bid tabulation with indication of lowest responsive and responsible bidder.

(2) Certification of available funds by agency chief fiscal officer.

(3) Reason(s) precluding re-solicitation including but not limited to time constraints and economic impact to agency.

(c) After it is determined that negotiation is necessary, appropriate representatives shall proceed with negotiations and award recommendation. Appropriate representatives shall include purchasing staff and representatives from the original requesting unit.

(d) Agency should investigate the factors affecting the price offered by the apparent low bidder to include but not be limited to cost, delivery requirements, warranty, location of supplier, volatile nature of goods or services requested and current economic condition of the market.

(e) The agency must develop a plan to include at least:

(1) The acceptable range of price, the desired "best" price and the highest acceptable price.

(2) What adjustment may be made to delivery requirements that may affect price.

(3) Acceptable adjustments in quantity.

(4) A prioritized list of acceptable adjustments in specifications that may result in price reduction.

(5) Timetable for completion of negotiation.

(f) Negotiation plan shall not be revealed to bidder(s) nor made available for public review until after award.

(g) An acceptable negotiated contract shall be signed and in writing listing agreed upon terms, conditions, specifications, quantities and pricing.

(h) If a negotiated contract can not be developed, the bidder may be declared non-responsive and time permitting, the negotiation process may be repeated with the next low bidder.

(i) If negotiations do not result in an acceptable contract, the Director or head of a procurement agency may authorize that a new solicitation be issued or elect to procure by special procurement (§19-11-263).

19-11-230. Competitive sealed proposals.

(a) Definition. “Competitive sealed proposals” means a method of procurement which involves, but is not limited to:

- (1) Solicitation of proposals through a request for proposals;
- (2) Submission of cost or pricing data from the offeror where required;
- (3) Discussions with responsible offerors whose proposals have been determined to be reasonably susceptible to being selected for award; and
- (4) An award made to the responsible offeror whose proposal is determined in writing to be the most advantageous considering price and evaluation factors set forth in the request for proposals.

(b) When the use of competitive sealed bidding is not practicable and advantageous, a contract may be awarded by competitive sealed proposals.

(c) Public notice of the request for proposals shall be given in the same manner as provided in § 19-11-229(d), which refers to public notice of competitive sealed bidding.

(d) The request for proposals shall indicate the relative importance of price and other evaluation factors.

(e) (1) As provided in the request for proposals and under regulations, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(2) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

(3) In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) (1) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, the evaluation factors set forth in the request for proposals, and the results of any discussions conducted with responsible offerors.

(2) No other factors or criteria shall be used in the evaluation.

(g) A competitive sealed proposal may be cancelled or any or all proposals may be rejected in writing by the State Procurement Director or the agency procurement official.

History. Acts 1979, No. 482, § 30; 1981, No. 600, §§ 17-20; A.S.A. 1947, § 14-255; Acts 2001, No. 1237, § 23; 2007, No. 478, § 6.

R1:19-11-230 Competitive sealed proposals

Conditions of use. The key element in determining the necessity for utilization of the competitive sealed proposal method is the type of evaluation required. Where evaluation involves the relative abilities of bidders to perform, including the degree of technical or professional experience, and price is not the only consideration, use of competitive sealed proposals is appropriate. Further, where the types of supplies or services may require the use of comparative, judgmental evaluation, competitive sealed proposals is the appropriate procurement method.

R2:19-11-230 Competitive sealed proposals

(a) Evaluation. The evaluation shall be based on the evaluation factors set forth in the request for proposals. All members of evaluation committees shall participate in Evaluation Committee Training sponsored either by OSP or the college or university agency procurement official. Evaluations will be conducted in accordance with the OSP Policy on evaluations found at OSP website www.arkansas.gov/dfa/procurement A written determination shall be made by the evaluator(s) stating the basis on which the recommendation for award was found to be most advantageous to the state.

(b) Responsibility of offeror. Past performance of an offeror on a state contract may be used by the procurement agency to determine whether the offeror is "responsible". No points for past performance may be used in the evaluation criteria. However, this does not preclude the awarding of points for references when used as evaluation criteria. Past performance must be supported by written documentation. Documentation used for evaluation should not be greater than three years old. Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(i) Past performance on contracts from other Arkansas State Agencies may also be used for evaluation. Supporting documentation should be provided.

(ii) Past performance evaluation should not take the place of suspension or debarment procedures.

(c) Tie bids. In the event the evaluation of criteria and awarding of points result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of a coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas.

A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

R3:19-11-230. Negotiations.

(a) Negotiation of Competitive Sealed Proposals should be authorized in those cases where the best interests of the State are served. Only those professionals who are trained in the negotiation process should conduct negotiations.

(b) Prior to negotiation, a written determination addressing the need for negotiations must be signed by the Director of the Office of State Procurement; the head of a procurement agency or the designated representative above the level of the agency purchasing agent. The determination must include the stated purpose of the negotiations and the objectives to be achieved.

(c) After written determination is made, appropriate representatives shall proceed with negotiations and award recommendation. Appropriate representatives shall include purchasing staff and representatives from the original requesting unit.

(d) Agency should investigate, with the provider determined most likely to be awarded a contact, factors affecting the price, performance, and scope of services to be offered including current market conditions.

(e) Prior to initiating negotiations, the agency must develop a plan to include at least:

(1) The acceptable range of price, the desired "best" price and the highest acceptable price.

(2) Adjustments to the scheduled delivery of services that may have an impact on price.

(3) Acceptable modifications in the overall scope of work.

(4) A prioritized list of acceptable changes in services that may result in price reduction.

(5) Timetable for completion of negotiation.

(f) No part of any negotiation plan shall be revealed to bidder(s) or made available for public review until after a contact award.

(g) An acceptable negotiated contract shall list agreed upon terms, conditions, specifications, quantities and pricing, and be signed by the agency and the provider.

(h) If a satisfactorily negotiated contract can not be developed, the bidder may be declared non-responsive and time permitting, the negotiation process may be repeated with the next respondent deemed most likely to be awarded a contract.

(i) If negotiations do not result in an acceptable contract, the Director or head of a procurement agency may authorize that a new solicitation be issued or elect to procure by special procurement (§19-11-263).

R4:19-11-230. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

R5:19-11-230 Procedures for approval of information technology products or services obtained by competitive sealed proposals

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid, (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is \$100,000.00 or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be \$100,000.00 or more, must be submitted to STP for approval.

If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to release for bid. STP shall have 10 business days from receipt of the bid documents to complete the necessary reviews. If the STP review is not completed within the timeframe allowed, the agency and STP must mutually agree to an extension of the review process.

19-11-231. Small procurements.

(a) Any procurement not exceeding the amount under § 19-11-204(12), which refers to small procurements, may be made in accordance with small procurement procedures promulgated by the State Procurement Director.

(b) However, procurement requirements shall not be artificially divided so as to constitute a small procurement under this section.

History. Acts 1979, No. 482, § 32; 1981, No. 600, § 22; A.S.A. 1947, § 14-257; Acts 2001, No. 1237, § 24.

R1:19-11-231. Small procurements.

Conditions for use.

(1) Lease. All state agencies may lease commodities with the exclusion of vehicles (See § 22-8-102) where the cost does not exceed five thousand dollars (\$5,000) during the initial period of the contract without seeking competitive bids, provided the lease does not contain an option to purchase. Such leases may not be renewed beyond accumulated expenditures of five thousand dollars (\$5,000).

(2) Purchase of commodities subject to Amendment 54 to the Arkansas Constitution. Purchase of commodities subject to Amendment 54 to the Arkansas Constitution must be procured in accordance with competitive bidding and competitive sealed bidding procedures. (See § 19-11-222 (b) for definitions of printing, stationery, and supplies.)

19-11-232. Proprietary or sole source procurements.

(a) Under regulations promulgated under this subchapter, a contract may be awarded for a required or designated commodity or service to a sole or mandatory supplier when the State Procurement Director, the head of a procurement agency, or a designee of either officer above the level of agency procurement official determines in writing that it is not practicable to use other than the required or designated commodity or service.

(b) Unless a written determination is made that there is only one (1) source for the required or designated commodity or service, efforts shall be made to obtain price competition.

History. Acts 1979, No. 482, § 33; A.S.A. 1947, § 14-258; Acts 2001, No. 1237, § 25.

R1:19-11-232 Proprietary or sole source procurements

(a) General. Sole source procurements of commodities and technical services shall be those procurements which, by virtue of the performance specification, are available from a single source. Brand name or design specifications shall not be sufficient explanation for sole source. Such procurements may include but shall not be limited to:

(1) requirements of performance compatibility with existing commodities or services; or

(2) repairs involving hidden damage.

(b) Approval. Request for approval shall be made in writing and shall include in the justification:

(1) a copy of the purchase order or requisition

(2) why the service is needed;

(3) the methods used to determine that a lack of responsible/responsive competition exists for the service;

(4) how it was determined that the provider possesses exclusive capabilities;

(5) why the service is unique;

(6) whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(7) what the agency would do if the provider/service were no longer available, and

(8) any program considerations which make the use of a "Sole Source" critical to the successful completion of the agency's task.

(9) the "Contract and Grant Disclosure and Certification Form" required by Governor's Executive Order 98-04, if applicable.

(c) procurements under this section shall be approved in advance by the head of a state agency having an agency procurement official or the State Procurement Director for all other state agencies, or a designee of either officer above the level of agency procurement official.

(d) Sole Source Procurements of Professional and Consultant Services. The procurement from a single source, as it relates to professional and consultant service contracts, should only be used when all other methods of contracting are clearly not applicable. The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may authorize the use of sole source purchases. Sole source professional and consultant service contracts, except for those exempt by law and those that are documented by sole source justification, may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation and no other provider responds. If any other provider responds and requests the opportunity to bid, then the sole source procurement method cannot be used. The notice must clearly state the nature of the contract, the contracting agency, and the deadline by which interested providers must respond. Notification must also be posted on the agency or Office of State Procurement website.

(e) Sole Source Justification. Sole source professional and consultant service contracts, except for those exempt by law; and those that are published in a newspaper of statewide circulation, must be accompanied by written justification and be approved by the Director of the Office of State Procurement. The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the state. The justification must fully address:

(1) why the service is needed;

(2) the methods used to determine that a lack of responsible/responsive competition exists for the service;

(3) how it was determined that the provider possesses exclusive capabilities;

(4) why the service is unique;

(5) whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(6) what the agency would do if the provider/service were no longer available, and

(7) any program considerations which make the use of a "Sole Source" critical to the successful completion of the agency's task.

(f) Sole Source by Law. The procurement of professional and consultant services from a specific provider that results from a mandate issued by the court systems or state or federal law.

R2:19-11-232. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

R3:19-11-232 Procedures for approval of information technology products or services obtained by sole source

(a) Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) sole source documentation for approval of Information Technology products or services where the anticipated cost is \$100,000 or more.

(b) If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to processing the procurement. STP shall have ten (10) business days from receipt of the documents to complete the necessary review. If the STP review is not completed within the timeframe allowed, the agency and STP must mutually agree to an extension of the review process.

19-11-233. Emergency procurements.

The State Procurement Director, the head of a procurement agency, or a designee of either officer may make or authorize others to make emergency procurements as defined in § 19-11-204(4) and in accordance with regulations promulgated by the director.

History. Acts 1979, No. 482, § 34; 1981, No. 600, § 23; A.S.A. 1947, § 14-259; Acts 2001, No. 1237, § 26.

R1:19-11-233 Emergency procurements

(a) Bids. The state agency must, at a minimum, receive three (3) competitive bids unless the emergency is critical. The quotation

abstract must show the names of at least three (3) firms contacted in attempting to obtain competition.

(b) Approval. All emergency procurements shall be approved in advance by the State Procurement Director, the head of a procurement agency, or a designee of either officer. Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date. Requests for approval shall be made in writing and shall include:

- (1) a copy of the purchase order;**
- (2) a copy of the quotation abstract; and**
- (3) a written explanation of the emergency.**

(c) Tie bids. In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of a coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

(d) Professional and Consultant services. Emergency procurements of professional and consultant services that total \$25,000 or less may be procured using the method as described in R1 19-11-233 (A) through (C). For those P&CS contracts that exceed \$25,000, the agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may institute a request for emergency action review of a professional or consultant service contract by providing in writing a request to the Director of State Procurement. The request must detail that to procure using other methods would endanger human life or health, state property or the functional capability of the agency. The State Procurement Director may then approve submission of the contract to the Legislative Council. Under its emergency action procedures, the Co-chairpersons of the Legislative Council and/or the Co-chairpersons of the Legislative Council Review Committee may review P&CS contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting. (This regulation implements Arkansas Legislative Council Rule # 19).

R2:19-11-233. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established

commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-234. Competitive bidding.

- (a) (1) Competitive bidding is a method of procurement which requires obtaining bids by:
- (A) Direct mail request to prospective bidders and obtaining written bids; or
 - (B) Telephone; or
 - (C) Telegraph; or
 - (D) Written form; or
 - (E) Electronic media.
- (2) A competitive bid form authorized by the State Procurement Director must be completed.
- (3) If three (3) competitive bids are not obtained on purchases when bids are required, the form must show the names of at least three (3) firms contacted in attempting to obtain competition or show the reason three (3) firms were not contacted.
- (4) (A) Only firms which sell the type of commodity or service to be procured shall be contacted.
- (B) The purchase procedures outlined in this section shall not apply to commodities, technical and general services, and professional and consultant services under state contract.
- (b) (1) Contracts in which the purchase price exceeds five thousand dollars (\$5,000) and is less than or equal to twenty-five thousand dollars (\$25,000) may be awarded by use of competitive bidding procedures.
- (2) However, in any such instances, competitive sealed bidding is permitted.
- (c) (1) (A) All procurements shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements, criteria, and specifications.
- (B) Delivery time required must be reasonable and consonant with current industry norms.
- (2) Complete justification must be given if award is made to other than the low bidder.
- (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.

History. Acts 1979, No. 482, § 35; 1981, No. 600, § 24; A.S.A. 1947, § 14-260; Acts 1991, No. 1018, §§ 4, 5; 1995, No. 317, §§ 3, 4; 1995, No. 340, §§ 3, 4; 2001, No. 1237, § 27; 2003, No. 487, § 6; 2005, No. 1680, § 7.

R1:19-11-234. Competitive bidding.

Conditions for use.

Purchase of commodities subject to the Arkansas Constitution, Amendment 54. The commodities subject to Amendment 54 to the Arkansas Constitution are printing, stationery, and supplies. (See also § 19-11-222(b).)

(1) Supplies. All state agencies may purchase certain supplies subject to Amendment 54 under the following conditions:

if the cost of the commodity is twenty-five thousand dollars (\$25,000) or less, the state agency must obtain, wherever possible, at least three (3) written competitive bids.

(2) Printing and stationery. The State Procurement Director or his designee shall purchase all printing and stationery subject to Amendment 54 under the following conditions:

if the cost of the commodity is twenty-five thousand dollars (\$25,000) or less, the State Procurement Director or his designee must obtain, wherever possible at least three (3) written competitive bids.

R2:19-11-234. Competitive bidding.

Leases.

(1) Lease of commodities on state contract. No contract greater than ninety (90) days for the lease of commodities on state contract shall be approved unless the State Procurement Director determines in writing that it is in the best interest of the State and states the reason therefore.

(2) All contracts for the lease of a commodity which exceed a cost of five thousand dollars (\$5,000) but are less than twenty-five thousand dollars (\$25,000) during the initial period of the contract shall be awarded on the basis of competitive bidding. A purchase option and/or lease renewal is allowed as long as the accumulated expenditure does not exceed twenty-five thousand dollars (\$25,000).

R3:19-11-234. Competitive bidding.

Life cycle cost.

(1) Life cycle or total ownership costs may include but are not limited to costs of operation, maintenance, repair, disposal and/or acquisition.

(2) Application. Life cycle cost formulas may be used for procurements. Certain specified commodities may be procured using life cycle cost formulas provided by the Office of State Procurement. For those specified commodities, the State Procurement Director may provide formulas to be used in the evaluation of bids by the State Procurement Director, the agency procurement officials or the procurement agents.

R4:19-11-234. Competitive bidding.

Cancellation. Bids may be cancelled by the State Procurement Director, agency procurement official or procurement agent prior to contract award. Notice of cancellation shall be given to all bidders who have submitted bids. (posted on OSP website <http://www.arkansas.gov/dfa/procurement>)

R5:19-11-234. Competitive bidding.

Rejection. Grounds for rejection of bids include but shall not be limited to:

(1) failure of a bid to conform to the essential requirements of an invitation for bids;

(2) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;

(3) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(4) a bid imposing conditions which would modify the terms and conditions of the invitation for bids;

(5) any bid determined by the procurement official in writing to be unreasonable as to price;

(6) bids received from bidders determined to be non-responsible bidders;

(7) failure to furnish a bid guarantee when required by an invitation for bids; and

(8) any or all bids when the procurement official determines it to be in the best interest of the state.

R6:19-11-234. Competitive bidding.

Tie bids. In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of the coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas. Documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

R7:19-11-234. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees of bona fide established

commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-235. Responsibility of bidders and offerors.

- (a) (1) A determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the State Procurement Director.
- (2) A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted.
- (3) The unreasonable failure of a bidder or offeror to promptly supply information in connection with such an inquiry may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.
- (4) If a bidder or offeror is determined to be nonresponsible, the reasons therefor shall be included in the determination.
- (b) (1) Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the Office of State Procurement or the procurement agency without prior written consent by the bidder or offeror.
- (2) This section is not intended to prohibit the office from disclosing such information to the Governor, the Attorney General, or the Director of the Department of Finance and Administration when any of those officers deems it necessary.
- (c) The State Procurement Director or the agency procurement official may require the posting of a bid bond, a performance bond, or a similar assurance by any actual or prospective bidder, offeror, or contractor, under regulations promulgated under this subchapter.

History. Acts 1979, No. 482, § 36; A.S.A. 1947, § 14-261; Acts 1991, No. 1018, § 6; 2001, No. 1237, § 28.

R1:19-11-235. Nonresponsibility.

- (a) (1) Determination of responsibility is accomplished prior to award of a contract.***
- (2) A non-responsible bidder or offeror is one who has been determined through evaluation of bid/offer to lack the capability, integrity and/or reliability to fully perform the contract.***
- (b) Determination of responsibility may include, but not be limited to some or all of the following:***
- (1) the ability, capacity and skill to perform the contract or provide the service;***
- (2) the responsibility and experience of the business;***
- (3) the quality of performance on previous contracts or services;***
- (4) the previous and existing compliance by the business with laws relating to the contract or services; and***
- (5) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.***

R2:19-11-235. Bonds.

Bonds.

(1) General. *Bidders shall submit bid bonds or performance bonds or similar assurances when required by the terms and conditions of the invitation for bids, solicitation or request for proposals, as obligee with surety satisfactory to the procurement agency, in a sum not to exceed one hundred percent (100%) of the contract price.*

(2) Award. *A bid shall not be awarded to any bidder who fails or refuses to provide a bond when required by the invitation for bids.*

(3) Default. *A contractor may be declared in default of his contract with the state, and his bond forfeited, when it is determined by the procurement official that the contractor is in breach of the terms and conditions of the contract.*

19-11-236. Prequalification of suppliers.

(a) (1) The State Procurement Director may provide for prequalification of suppliers as responsible prospective contractors for particular types of commodities, technical and general services, and professional and consultant services.

(2) Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

(b) Prequalifications shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and making of an award that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

History. Acts 1979, No. 482, § 37; A.S.A. 1947, § 14-262; Acts 2005, No. 1680, § 8.

19-11-237. Cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee contracts.

As used in this subchapter, unless the context otherwise requires, the cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee system may be used under the authority of the State Procurement Director when:

(1) There exists no other economically practicable price arrangement to secure the commodity;

(2) A cost saving may be proved over the least expensive alternative; or

(3) The pricing schedule involved is tied to an industry standard or other reliable system of cost prediction.

History. Acts 1979, No. 482, § 39; 1983, No. 517, § 2; A.S.A. 1947, § 14-264; Acts 1995, No. 1234, § 1; 2001, No. 1237, § 29.

19-11-238. Multiyear contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for commodities or services may be

entered into for periods of not more than seven (7) years if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefore.

(b) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing that:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement; and

(3) In the event of termination for any reason, the contract provides for cessation of services and/or surrender by the state of the commodities and repayment to the state of any accrued equity.

(c) Termination Due to Unavailability of Funds in Succeeding Years. Original terms of such multiyear contracts shall terminate on the last day of the current biennium, and any renewals by the state based upon continuing appropriation shall not exceed the next succeeding biennium. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year shall be terminated and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the commodities or services delivered under the contract. The cost of termination may be paid from:

(1) Appropriations currently available for performance of the contract;

(2) Appropriations currently available for procurement of similar commodities or services and not otherwise obligated; or

(3) Appropriations made specifically for the payment of such termination costs.

History. Acts 1979, No. 482, § 43; A.S.A. 1947, § 14-267; Acts 1995, No. 317, § 5; 1995, No. 340, § 5; 1995, No. 912, § 1.

19-11-239. Finality of determinations.

The determinations required by:

(1) Section 19-11-229(h), which refers to competitive sealed bidding, award;

(2) Section 19-11-230(b), which refers to competitive sealed proposals, conditions for use;

(3) Section 19-11-230(f), which refers to competitive sealed proposals, award;

(4) Section 19-11-232, which refers to proprietary or sole source procurements;

(5) Section 19-11-233, which refers to emergency procurements;

(6) Section 19-11-234, which refers to competitive bidding;

(7) Section 19-11-235, which refers to responsibility of bidders and offerors, determination of responsibility;

(8) Section 19-11-238(b), which refers to multiyear contracts, determination prior to use; and

(9) Section 19-11-263, which refers to special procurements,

are final and conclusive, unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

History. Acts 1979, No. 482, § 46; 1981, No. 600, § 27; A.S.A. 1947, § 14-270; Acts 2001, No. 1237, § 30.

19-11-240. Reporting of suspected collusion.

(a) Notification to the Attorney General. When for any reason collusion is suspected among any

bidders or offerors, a written notice of the relevant facts shall be transmitted to the Attorney General.

(b) Retention of All Documents. All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be destroyed. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

History. Acts 1979, No. 482, § 47; A.S.A. 1947, § 14-270.1.

19-11-241. Specifications.

(a) Definition.

(1) "Specification" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature, of a commodity or service.

(2) "Specification" may include a description of any requirement for inspecting, testing, or preparing a commodity or service for delivery.

(b) The State Procurement Director shall promulgate regulations governing the preparation, maintenance, and content of standard and nonstandard specifications for commodities, technical and general services, and professional and consultant services procured by the Office of State Procurement.

(c) Maximum Practicable Competition. All specifications shall be drafted so as to assure the maximum practicable competition for the state's actual requirements.

History. Acts 1979, No. 482, §§ 49-51; 1981, No. 600, § 28; A.S.A. 1947, §§ 14-271 — 14-272.1; Acts 2001, No. 1237, § 31; 2005, No. 1680, § 9.

R1:19-11-241 Issuance of restrictive specifications

Restrictive specifications. A specification may be drafted which describes a product which is proprietary to one manufacturer only where there is a requirement for specifying a particular design or make of product due to factors of compatibility, standardization, or maintainability.

R2:19-11-241 Issuance of qualified products list specifications Qualified products list.

(1) Restrictions on use. A specification for commodities may include a qualified products list only when the State Procurement Director has approved in writing the written determination of the Agency Procurement Official or Office of State Procurement that:

(A) the interests of the state require assurance before award that the desired commodity is satisfactory; and

(B) the cost or the time required to test before award would be excessive.

(2) Notice of intent to adopt a qualified products list. Whenever it is determined to include a qualified products list in any specification or to adopt such a list, prompt notice of the intent shall

be given to all reasonably known makers and suppliers of the affected commodity. Such notice shall describe all requirements for achieving qualification.

(3) Written records of evaluation. Detailed written records shall be made of the evaluation of any and all commodities offered for inclusion on any qualified products list. Except for records which contain trade secrets or other proprietary information, those records shall be made available for inspection by any member of the public upon request.

19-11-242. Commodity management regulations.

The State Procurement Director shall promulgate regulations governing:

(1) The sale, lease, or disposal of surplus commodities by public auction, competitive sealed bidding, or other appropriate method designated by regulation, and no employee of the Department of Finance and Administration or member of the employee's immediate family shall be entitled to purchase any such commodities; and

(2) Transfer of excess commodities within the state.

History. Acts 1979, No. 482, § 55; A.S.A. 1947, § 14-275.1; Acts 2001, No. 1237, § 32.

R1:19-11-242. Agency commodity management procedures.

Disposition of commodities other than computers and electronic equipment.

(a) Resale. Marketing and Redistribution shall make available to agencies and tax supported entities commodities in serviceable condition and/or commodities of potential use by agencies or tax supported entities for a twenty-day period prior to making them available to the general public. During the twenty-day hold period commodities shall be sold to agencies or tax supported entities by Marketing and Redistribution. Commodities that historically have not sold to agencies or tax supported entities or items that are unserviceable may be offered for sale to the general public without the requirement of the twenty-day hold period. The Director may waive the 20 day requirement when he determines that such waiver is in the state's best interest.

(b) Transfer. Commodities that are no longer needed by an agency may be sold to another agency by submitting a written request to Marketing and Redistribution detailing the equipment description, serial number, property number, the agency the property will be sold to and the dollar value agreed upon. Written communication from the agency requesting the purchase must also be forwarded to Marketing and Redistribution indicating agreement to the transfer and the dollar value agreed upon.

(c) Disposal. When commodities have no scrap or resale value, a written request for disposal shall be submitted to Marketing

and Redistribution, which shall then forward, within ten (10) working days, a certificate of property disposal indicating the proper handling procedure for the commodities.

(d) Cannibalization.

(1) The disassembly of an item for use of its component parts for repair or maintenance of a similar item will only be authorized if such action has greater potential value and benefit than disposal or trade-in of the item in its existing form. Authorization for cannibalization shall be approved by Marketing and Redistribution prior to any disassembly or removal of components parts. If authorized, the item will be removed from the agency's property listing by the requesting agency. Any residual material remaining after cannibalization must be processed through Marketing and Redistribution. Requests for authorization for cannibalization shall be expedited. If properly marked, authorization should be returned to agency with ten (10) working days. It is understood that there may be no residual material remaining after cannibalization, but if any, residual material must be processed through Marketing and Redistribution.

(2) Motor vehicles eligible to be registered for highway use (cars and trucks), whether registered or not, may be cannibalized after obtaining authorization from Marketing and Redistribution. These vehicles WILL NOT be removed from the property listing until the carcass of the vehicle has been disposed of by Marketing and Redistribution. In no event shall more than ninety days (90) elapse between the authorization of cannibalization and processing of the carcass by Marketing and Redistribution. These procedures do not exempt an agency from compliance with any other requirements relating to the disposal or acquisition of motor vehicles.

(e) Handling of Surplus Equipment. Agencies with surplus items must contact Marketing and Redistribution to schedule a delivery or pick-up date. A Surplus Disposal Form (SDF) shall be transmitted by the agency showing the agency name, address, phone number, contact person and listing all items with serial and property numbers (if available). The property transfer request will be processed by Marketing and Redistribution when the surplus items are delivered or picked up.

R2:19-11-242 Auction and on-site sales

Disposition of commodities after holding period.

(1) General requirements. Commodities having no foreseeable use to an agency or tax-supported entity or commodities that have completed the twenty-day hold period may be offered for sale. Furniture or equipment may be loaned or rented to a state agency with the approval of the owning agency. The rental fee(s) less applicable handling fee(s) will be remitted to the owning agency.

(2) Notice required. Public notice of commodities sold by competitive sealed bid shall be given at least five days prior to the date established for the sale. The notice will include publication in any electronic or printed medium.

(3) Public auction.

(A) Public auction whether electronic or traditional may be used when deemed in the best interest of the State. Auction costs will be paid from proceeds. In a traditional auction, if proceeds do not cover the costs, the agency requesting the auction will be responsible for any expenses not covered from the proceeds. Any cost associated with an electronic auction will be covered by proceeds from the sale.

(B) Procedures. In a traditional auction a licensed auctioneer will be used. The solicitation to bidders shall stipulate, at a minimum: all terms and conditions of any sale, that the purchaser must remove all items purchased within a stated time, and that the state retains the right to reject any and all bids. In an electronic auction items will be shipped to the successful bidder, unless the bidder wishes to pick up the item.

(4) Competitive sealed bidding.

(A) Competitive sealed bidding will be used when:

(i) the value of the item cannot be determined based on market value or past history of same or similar items sold; or

(ii) it is determined by Marketing and Redistribution that it is in the best interest of the State.

(B) Procedures. When surplus commodities are to be sold by competitive sealed bidding, the procedures followed shall be in accordance with §19-11-204, §19-11-228, §19-11-229 and the regulations promulgated hereunder except:

(i) the award shall be made to the highest bidder with the state retaining the right to accept or reject any or all bids when in the best interest of the State.

(5) On-site Sales.

(A) Definition. Onsite sales includes the process of (1) internet auctioning and (2) sale of commodities to the general public from the Marketing and Redistribution office, a satellite location and/or other agency locations when approved by Marketing and Redistribution.

(B) Onsite sales will be used for surplus items not purchased by other state agencies or tax supported entities.

(C) Procedure. Selling price will be established by Marketing and Redistribution based upon demand, condition of commodities, past experience gained from auction or competitive sealed bid sales; and prevailing retail prices for same or similar commodities in the local market.

(6) Negotiated sale. Negotiated sale may be used if no acceptable bids were received during the bid process and an offer is made "after the fact" for the item. Offers will only be accepted from bidders that participated in the sealed bid offering the item.

(7) Trade-in. Surplus commodities may be traded in when the Marketing and Redistribution Manager or Assistant Marketing and Redistribution Manager determines that the trade-in value is expected to exceed the value estimated to be obtained through the sale of the commodity less administrative expenses incurred during a sale.

(8) Donation. Surplus property may be donated to tax supported entities, non-profit organizations, etc. when requested in writing by the owning agency and approved by Marketing and Redistribution.

(A) Written communication must be submitted identifying the equipment by name, serial number, property number, etc. to the Marketing and Redistribution Manager. The Marketing and Redistribution Manager will estimate the property value and forward the request to the Director of the Office of State Procurement for his approval/disapproval.

(B) The Director of the Office of State Procurement will respond in written communication to the requesting agency on a case-by-case basis.

(C) The requesting agency must maintain a copy of the original request for the donation and the written approval/disapproval from the Director of the Office of State Procurement for audit purposes.

(D) Copies of the request and approval/disapproval will also be maintained at Marketing and Redistribution.

(9) The Arkansas State Highway and Transportation Department may dispose of commodities without the assistance of the Office of State Procurement, but it shall comply with the procedures outlined herein for said disposition. Nothing herein is intended to prohibit the use of the Office of State Procurement for the disposition of those commodities, and the Department may request the Office of State Procurement make the disposition.

(10) Excess commodities in remote locations and/or property too heavy or expensive to transport to Marketing and Redistribution.

(A) Excess commodities that are in remote locations and/or commodities where the cost to transport to Marketing and Redistribution would be prohibitive should be reported by written communication to Marketing and Redistribution with a complete description and details of the condition of the equipment. Marketing and Redistribution will make one of the following recommendations:

(i) The commodity should be redistributed for state use and Marketing and Redistribution will notify agencies and/or tax-supported entities that could utilize the commodity. When the property is sold, the receiving agency will be responsible for the removal of the item(s), with the expense of moving being taken into consideration when price is determined.

(ii) Marketing and Redistribution will prepare an invitation for bids or authorize the agency to prepare an invitation for bids with inspection being held at the agency location.

(iii) A certificate of property disposal will be transmitted to the owning agency designated as follows:

{a} The property identified is authorized for cannibalization by the Marketing and Redistribution Manager who hereby authorizes the agency to perform the cannibalization.

{b} The property identified is authorized for destruction by the Marketing and Redistribution manager who hereby authorizes the agency to perform the destruction.

{c} Property that has a material content of lead, copper, brass, iron, etc. will be disposed of by sale to a local scrap dealer(s) at local prices. Payment(s) received are to be sent and made payable to: Marketing and Redistribution with a copy of the Certificate of Property Disposal authorizing the sale.

{d} Property with resale value that is not feasible for transport to Marketing and Redistribution may be disposed of by obtaining quote bids "as is, where is". Owing agencies should attempt to obtain (3) bids. A copy of the bid quotes, a copy of the Certificate of Property Disposal authorizing the sale and the proceeds are to be sent and made payable to Marketing and Redistribution.

(11) Specialized commodities may be offered for trade-in with the trade-in price offered being forwarded in a written transmission to Marketing and Redistribution for determination of price acceptability.

(12) If none of the above procedures are applicable, the Director of the Office of State Procurement shall make an individual determination.

19-11-243. Proceeds from surplus commodities.

The State Procurement Director shall promulgate regulations for the allocation of proceeds from the sale, lease, or disposal of surplus commodities, to the extent practicable, to the using agency which had possession of the commodity.

History. Acts 1979, No. 482, § 56; A.S.A. 1947, § 14-275.2; Acts 2001, No. 1237, § 33.

R1:19-11-243. Allocation of proceeds from sale or disposal of surplus commodities

(a) Using agency. The allocation of proceeds from the sale, lease, or disposal of surplus commodities, less appropriate fees, will be made and deposited monthly to the using agency which had possession of the commodity.

(b) Fee schedule. The Office of State Procurement will develop a fee schedule to defray the costs of the commodity management program. The fee schedule will set forth various charges for services rendered.

25-8-106. Marketing and redistribution of state personal property.

(a) The provisions of this section shall be applicable only with respect to personal property and shall not be interpreted to apply or to affect in any way the disposition of surplus real property of the state.

(b) (1) There is created within the Office of State Procurement of the Department of Finance and Administration a Marketing and Redistribution Section for the purpose of promoting and ensuring effective utilization of surplus state property.

(2) (A) All state agencies, boards, commissions, departments, and colleges and universities are required and county, municipal, or other tax-supported institutions are authorized to utilize the services of the Marketing and Redistribution Section, unless specifically exempted in writing by the Director of the Office of State Procurement of the Department of Finance and Administration.

(B) (i) Nothing in this section shall be construed to make it mandatory that county, municipal, or other local government units utilize the services of the Marketing and Redistribution Section.

(ii) Nothing in this section shall be construed to make it mandatory that any agency, department, division, office, board, commission, or institution of this state, including state-supported institutions of higher education, utilize the services of the Marketing and Redistribution Section in the sale of surplus computer equipment and electronics to state agency employees for a price not less than ten percent (10%) above depreciated value.

(3) The Department of Finance and Administration shall maintain adequate and accurate records of the costs for operating the Marketing and Redistribution Section and is authorized to establish fair and reasonable charges for the services of the section. The charges for services shall be deposited in the State Treasury as nonrevenue receipts, there to be credited to the Property Sales Holding Fund for the operation, maintenance, and improvement of the Marketing and Redistribution Section.

(c) The Office of State Procurement may maintain an inventory of furniture, equipment, and other items which shall be made available to state agencies on rental agreements based upon fair and reasonable rental values.

(d) The department is authorized to establish a fair and reasonable fee schedule for redistributing property between state agencies upon their request.

(e) Proceeds from the sale, transfer, or rental of property by the Director of the Office of State Procurement of the Department of Finance and Administration shall be accounted for as follows:

(1) The purchasers, transferees, and lessees of property available for such purposes as are authorized by this section shall transmit to the Office of State Procurement the agreed sale price, service charge, or rental fee;

(2) The Office of State Procurement shall deposit the full amount of proceeds received, as set out above, in the State Treasury in the manner as provided by law;

(3) (A) Proceeds from the sale or transfer of property deposited in the State Treasury shall be classified as nonrevenue receipts and credited to the Property Sales Holding Fund herein created on the books of the Treasurer of State as a trust fund.

(B) Funds deposited in the Property Sales Holding Fund may be expended only by the selling or transferring agency under procedures established by the Chief Fiscal Officer of the State and appropriations provided by the General Assembly.

(C) However, funds deposited in the Property Sales Holding Fund from the sale of property purchased from agency cash funds may be refunded to the agency cash fund from which the original expenditure was made by the issuance of a warrant under procedures established by the Chief Fiscal Officer of the State and the Auditor of State to be payable from appropriations provided by the General Assembly for disposition of the proceeds.

(f) The Director of the Department of Finance and Administration is authorized to promulgate reasonable rules and regulations, not inconsistent with law, for compliance with the provisions of this section, the Arkansas Procurement Law, § 19-11-201 et seq., and the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq.

History. Acts 1968 (1st Ex. Sess.), No. 44, §§ 1-7; 1972 (Ex. Sess.), No. 50, § 1; 1973, No. 806, §§ 4, 5; 1973, No. 876, § 30; 1977, No. 436, § 1; A.S.A. 1947, §§ 5-812 - 5-818; Acts 2001, No. 589, § 1; 2001, No. 1410, § 13.

25-34-107. Surplus equipment not sold.

(a) (1) Unsold surplus computer and electronic equipment may be donated by the owning agency to Arkansas public schools or local governments if the agency policy so provides.

(2) Arkansas public schools and local governments are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(b) (1) Unsold surplus computer and electronic equipment may be donated by the owning agency to law enforcement agencies if the agency policy so provides.

(2) Law enforcement agencies are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(c) (1) Unsold surplus computer equipment may be sent to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration for sale, auction, recycling, donation, demanufacturing, or disposal.

(2) Alternatively, the agency may maintain possession of computers and electronics and allow the Marketing and Redistribution Section to sell or auction the computer or electronic equipment via an Internet website.

History. Acts 2001, No. 1410, § 7; 2003, No. 1028, § 1; 2005, No. 970, § 5.

R1:25-34-107. Marketing and Redistribution Surplus Computer Sales Procedures

(a) Sales made within the agency.

The agency will:

(1) create a customer receipt for the sales price and calculate sales tax. Included on the receipt will be the type of equipment, model number, serial number and property tag number, who the equipment was sold to and the amount.

(2) Record the receipt in the cash journal as a customer payment.

(3) Request a funds transfer through DFA-Office of Accounting from the receipting agency's fund to:

(A) Marketing and Redistribution's Cost Center 383333, Fund MPH0000 – 15% of the sales price.

(B) Arkansas Department of Environmental Quality's Cost Center 451346, Fund MER0100 – 25% of the sales price.

(4) The sales tax will be paid when DFA-Office of Accounting does their (owning agency's) monthly billing for Sales & Use tax.

(b) Sales made through Marketing and Redistribution on behalf of the agency

Marketing and Redistribution will:

(1) create a customer receipt to record the sales price and sales tax

(2) record the receipt as a customer payment in the cash journal

(3) request funds transfer through DFA – Office of Accounting from Marketing and Redistribution fund MPH0000 to Agency fund and cost center – 50% of the sales price Arkansas Department of Environmental Quality Cost Center 451346, Fund MER0100 – 25% of the sales price.

(4) The sales tax due will be included in the DFA monthly report of Sales & Use tax

25-34-108. Disbursement of revenues.

Funds generated from the sale of agency surplus computer and electronic equipment to state employees, public schools, or by other sale shall be allocated as follows:

(1) If the sale of surplus computer or electronic equipment is made within the agency:

(A) Sixty percent (60%) of the proceeds shall be returned to the owning agency;

(B) Fifteen percent (15%) of the proceeds shall be deposited with the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration; and

(C) Twenty-five percent (25%) of the proceeds shall be deposited in the Computer and Electronic Recycling Fund established by this chapter;

(2) If the sale of surplus computer or electronic equipment is outside the agency and conducted by the Marketing and Redistribution Section:

(A) Fifty percent (50%) of the proceeds shall be returned to the owning agency;

(B) Twenty-five percent (25%) of the proceeds shall be deposited with the Marketing and Redistribution Section; and

(C) Twenty-five percent (25%) of the proceeds shall be deposited in the Computer and Electronic Recycling Fund established by this chapter and § 19-5-1213.

History. Acts 2001, No. 1410, § 8.

R1:25-34-108. Surplus computer sale reporting

(a) Each agency shall be responsible for providing to Marketing and Redistribution by the 10th of the month following the sale a list of all items sold. Include the type of equipment, model number, serial number, and property tag number, to whom the equipment was sold and the amount.

(b) If the sale is conducted by Marketing and Redistribution outside the agency, the agency will receive 50% of the proceeds, 25% of the proceeds will be retained by Marketing and Redistribution, and 25% of the proceeds will go to the Computer and Electronic Recycle Fund at ADEQ.

19-11-244. Resolution of protested solicitations and awards.

(a) (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the State Procurement Director or the head of a procurement agency.

(2) The protest shall be submitted in writing within fourteen (14) calendar days after the aggrieved person knows or should have known of the facts giving rise to the grievance.

(b) (1) Prior to the commencement of an action in court or any other action provided by law concerning the controversy, the director, the head of a procurement agency, or a designee of either officer may settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(2) This authority shall be exercised in accordance with laws governing the Arkansas State Claims Commission and the regulations promulgated by the director.

(c) (1) If the protest is not resolved by mutual agreement, and after reasonable notice to the protestor involved and reasonable opportunity for the protestor to respond to the protest issues according to the regulations promulgated by the director, the head of a procurement agency, the director, or a designee of either officer shall promptly issue a decision in writing.

(2) The decision shall state the reasons for the action taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the protestor and any other party intervening.

(e) A decision under subsection (c) of this section shall be final and conclusive.

(f) In the event of a timely protest under subsection (a) of this section, the state shall not proceed further with the solicitation or with the award of the contract until the director or the head of a procurement agency makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

(g) When the protest is sustained and the successfully protesting bidder or offeror was denied the contract award, the protesting bidder or offeror may be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs, through the commission.

History. Acts 1979, No. 482, § 57; A.S.A. 1947, § 14-276; Acts 2001, No. 1237, § 34; 2003, No. 487, § 7; 2005, No. 1680, § 10.

R1:19-11-244.Decision.

After submittal of a timely protest and prior to issuance of a written decision to that protest, the protestor shall be afforded an opportunity to discuss with the Director or head of a procurement agency the issues giving rise to the protest.

R2:19-11-244. Authority to resolve protested solicitations and awards.

Authority to resolve protested solicitations and awards.

(1) Counsel. *Before agreeing to settle any protest by the award of costs, the State Procurement Director or head of a procurement agency shall consult the Attorney General or legal counsel.*

(2) Award. *The award of costs shall be allowed only to compensate a party for reasonable expenses incurred in preparation and submission of a bid or proposal for which that party was wrongfully denied a contract award, and shall be allowed only by filing a claim with the Claims Commission for the agreed costs.*

(3) Costs. *The costs which are allowable shall be those which the party is able to prove that are incurred in preparation and submission of the bid or proposal in question, but exclude travel and production costs that may result from participation in pre-bid conferences; attending on-site inspections, and demonstrations or presentations made in responding to formal solicitations issued by the State. No party can recover profit which it anticipates would have been made if that party had been awarded the contract. Attorney's fees associated with the filing and prosecution of the protest are not recoverable.*

19-11-245. Debarment or suspension.

(a) Applicability. This section applies to debarment for cause from consideration for award of contracts, or a suspension from such consideration during an investigation, when there is probable cause for such a debarment.

(b) (1) (A) (i) After reasonable notice to the person involved and reasonable opportunity for that person to have a hearing before a committee according to regulations promulgated by the State Procurement Director, the director or the head of a procurement agency shall have authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interests of the state.

(ii) The debarment shall not be for a period of more than three (3) years.

(B) (i) The same officer shall have authority to suspend a person from consideration for award of contracts, provided that doing so is in the best interests of the state and there is probable cause for debarment.

(ii) The suspension shall not be for a period exceeding three (3) months.

(2) The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the director.

(c) The causes for debarment or suspension because of unsuitability for award of a contract shall be set forth in regulations promulgated by the director.

(d) The director or the head of a procurement agency shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(e) Notice of Decision. A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the debarred or suspended person and any other party intervening.

(f) Finality of Decision. A decision under subsection (d) of this section shall be final and conclusive.

History. Acts 1979, No. 482, § 58; A.S.A. 1947, § 14-277; Acts 2001, No. 1237, § 35; 2003, No. 487, § 8.

R1:19-11-245. Suspension

(a) Prior to any suspension the contractor will be afforded an opportunity to discuss with the Director or head of a procurement agency the circumstances which led to the possible suspension and to potentially reach a settlement.

(b) Suspension. In the event a bidder is suspended, a written determination shall be made by the State Procurement Director or head of a procurement agency concerning the facts of any allegation or claim that a bidder has done any action in R3:19-11-245(b) and shall be sent to the bidder at the address shown in the procurement agency's records.

R2:19-11-245. Debarment.

Prior to any debarment hearing the suspended contractor will be afforded an opportunity to discuss with the Director or head of a procurement agency the circumstances which led to the suspension and to potentially reach a settlement.

R3:19-11-245 Authority to debar or suspend.

(a) General. Any bidder or contractor to the state of Arkansas who, except for good cause shown, shall have done any of the matters listed in subsection (2) may be suspended or debarred from consideration for award of contracts.

(b) Causes for debarment or suspension. The causes for debarment or suspension include, but are not limited to, the following:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(3) conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the State Procurement Director or the head of a procurement agency to be so serious as to justify debarment action:

(A) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) continuous failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in the form acceptable to the procurement agency in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;

(6) substitution of commodities without the prior written approval of the contracting authority;

(7) failure to replace inferior or defective commodities within a reasonable time after notification by the procurement agency or the agency to which such commodity has been delivered;

(8) refusal to accept a contract awarded pursuant to the terms and conditions of the contractor's bid;

(9) falsifying invoices, or making false representations to any state agency or state official, or untrue statements about any payment under a contract or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(10) collusion or collaboration with another bidder or other bidders in the submission of a bid or bids for the purpose of lessening or reducing competition;

(11) falsifying information in the submission of an application for listing on a state vendor's list;

(12) any other cause the State Procurement Director or head of a procurement agency determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by any other governmental entity for any cause; and

(13) violation of the ethical standards set forth in §19-11-708

(c) Debarment. Prior to any action for debarment, the Office of State Procurement or agency procurement official shall notify the bidder of the opportunity for a hearing fourteen (14) days prior to said hearing. Such notification shall state the facts of any allegation or claim. The State Procurement Director or head of a procurement agency shall consult with the Attorney General or legal counsel prior to debarring a person for cause from consideration for award of contracts.

(d) Debarment hearing.

(1) The director or head of a procurement agency shall form a Committee composed of three qualified individuals, from government and private industry to hear the Debarment proceedings.

(2) The Attorney General or legal counsel representing the Director or head of a procurement agency will have the right to present evidence and elicit testimony from witnesses and cross examine opposing witnesses before the Committee.

(3) The Contractor may be heard in person or by counsel, may cross-examine witnesses and may offer witnesses, documentary evidence and/or evidentiary depositions in defense of the debarment charges. The committee will subpoena witnesses for the Contractor upon timely request. Should Contractor fail to appear, the Committee shall proceed to hear the state's evidence and make its recommendations to the Director or head of a procurement agency.

(4) After hearing the evidence the Committee will make recommendations to the Director or head of the procurement agency.

(5) The Director or head of a procurement agency will receive the recommendation and review the record of the hearing and make a decision regarding the debarment.

(e) Decision. The written decision concerning debarment will be sent to the contractor within 14 days and shall state the reasons for the action taken and shall inform the debarred person involved of his rights to judicial review.

(f) Other remedies. The procedures in this section shall not preclude the taking of other action by the state, based on the same

facts, as may be otherwise available, either at law or in equity.

(g) Distribution of decisions. All agency procurement officials shall send a copy of any determination of debarment to the Office of State Procurement and the Office of State Procurement shall post the results of any debarment on the OSP website www.arkansas.gov/dfa/procurement

19-11-246. Resolution of contract and breach of contract controversies.

(a) Applicability. This section applies to controversies between the state and a contractor which arise under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modifications or rescission.

(b) (1) The State Procurement Director, the head of a procurement agency, or a designee of either officer is authorized, prior to commencement of an action in a court or any other action provided by law concerning the controversy, to settle and resolve a controversy described in subsection (a) of this section.

(2) This authority shall be exercised in accordance with the law governing the Arkansas State Claims Commission and the regulations promulgated by the director.

(c) (1) If such a claim or controversy is not resolved by mutual agreement, and after reasonable notice to the contractor and reasonable opportunity for the contractor to present the claim or controversy in accordance with the regulations promulgated by the director, the head of a procurement agency, the director, or the designee of either officer shall promptly issue a decision in writing.

(2) The decision shall state the reasons for the action taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the contractor.

(e) The decision under subsection (c) of this section shall be final and conclusive.

(f) If the director, the head of a procurement agency, or the designee of either officer does not issue the written decision required under subsection (c) of this section within one hundred twenty (120) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision has been received.

History. Acts 1979, No. 482, § 59; A.S.A. 1947, § 14-278; Acts 2001, No. 1237, § 36; 2003, No. 487, § 9; 2005, No. 1680, § 11.

R1:19-11-246. Authority to resolve contract and breach of contract controversies.

(a) General. Any contractor who is determined in writing by the State Procurement Director, or the procurement official, or a designee of either officer to be in breach of any of the terms and conditions of a contract held by such contractor shall, at the discretion of the procurement official, be declared in default and such contract may be terminated as a result of such default. Declaration of default and contract termination may only be determined by the procurement official who awarded the contract, and only after the contractor has been afforded the opportunity, to discuss

with the Director or agency procurement official circumstances giving rise to the potential breach of contract to cure the breach of contract.

(b) Default. A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications, or failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.

(c) Contractor's liability. The contractor and/or his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the state for any and all loss or damage as provided in the contract between the state and the contractor as a result of the contractor's default; provided, however, that a contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.

19-11-247. Remedies for unlawful solicitation or award.

- (a) The provisions of this section apply where it is determined upon any review provided by law that a solicitation or award of a contract is in violation of law.
- (b) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:
- (1) Cancelled; or
 - (2) Revised to comply with the law.
- (c) If after an award it is determined that a solicitation or award of a contract is in violation of law, then in addition to or in lieu of other remedies provided by law:
- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (A) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or
 - (B) The contract may be terminated;
 - (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (A) The contract may be declared null and void; or
 - (B) The person awarded the contract may be directed to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.

History. Acts 1979, No. 482, §§ 60-62; A.S.A. 1947, §§ 14-279 — 14-279.2.

19-11-248. Finality of administrative determinations.

In any judicial action or other action provided by law, factual or legal determinations by employees, agents, or other persons appointed by the state shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation, or rule of law to the contrary, except to the extent provided in:

- (1) Section 19-11-239, which refers to finality of determinations;
- (2) Section 19-11-244(e), which refers to resolution of protested solicitations and awards, finality of decision;
- (3) Section 19-11-245(f), which refers to debarment or suspension, finality of decision; and
- (4) Section 19-11-246(e), which refers to resolution of contract and breach of contract

controversies, finality of decision.

History. Acts 1979, No. 482, § 63; A.S.A. 1947, § 14-280.

19-11-249. Cooperative purchasing.

Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any commodities or services with one (1) or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

History. Acts 1979, No. 482, § 65; A.S.A. 1947, § 14-282.

R1:19-11-249. Cooperative purchasing.

Cooperative purchasing contracts or agreements must be approved by the Director of the Office of State Procurement prior to being entered into by a state public procurement unit.

19-11-250. Sale, etc., of commodities.

Any public procurement unit by agreement with another public procurement unit may sell to, acquire from, or use any commodities belonging to or produced by another public procurement unit or external procurement activity independent of the requirements of:

- (1) Sections 19-11-204, 19-11-228 — 19-11-240, and 19-11-263, which refer to source selection and contract formation; and
- (2) Sections 19-11-205, 19-11-242, and 19-11-243, which refer to commodity management.

History. Acts 1979, No. 482, § 66; A.S.A. 1947, § 14-283; Acts 2001, No. 1237, § 37; 2003, No. 487, § 10.

R1:19-11-250. Sale, acquisition or use of commodities by a public procurement unit.

Department of Correction Industry Program.

(1) The Department of Correction is authorized to enter into contracts, purchase orders, compacts or agreements with the appropriate officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods and products produced by and belonging to their respective institutions. The buying and selling of these materials will be for the purpose of producing finished products through a correctional industries program.

(2) The Department of Correction shall be governed by the Arkansas Code of 1987 Annotated, § 12-30-101 et seq., §12-30-201 et seq., and other appropriate laws when utilizing the provisions of these regulations. The procurement official/agent for the Department of Correction is authorized to enter into contracts, orders, compacts or agreements pursuant to these regulations.

(3) Copies of all such contracts, orders, compacts or agreements entered into under the provisions of this regulation shall be filed with the Office of State Procurement and a complete set of books and records shall be kept by the Department of Correction with respect to all transactions, deliveries, and obligations under each contract, compact, or agreement. Copies of these books and records shall be filed monthly with the Office of State Procurement.

(4) All records and reports required pursuant to this regulation shall be available to public inspection during normal business hours, and shall be retained for a period of three (3) years after completion of the contract, compact, or agreement.

19-11-251. Intergovernmental use of commodities or services.

Any public procurement unit may enter into an agreement with any other public procurement unit or external procurement activity for the intergovernmental use of commodities, technical and general services, or professional and consultant services under the terms agreed upon between the parties and in accordance with the rules and regulations promulgated under this subchapter, independent of the requirements of:

(1) Sections 19-11-204, 19-11-228 — 19-11-240, and 19-11-263 that refer to source selection and contract formation; and

(2) Sections 19-11-205, 19-11-242, and 19-11-243 that refer to commodity management.

History. Acts 1979, No. 482, § 67; A.S.A. 1947, § 14-284; Acts 2001, No. 1237, § 38; 2005, No. 1680, § 12.

R1:19-11-251. Intergovernmental agreements.

(a) Intergovernmental agreements should include at a minimum:

(1) Scope of work to be accomplished;

(2) Amount of compensation (if any);

(3) Delineation of responsibilities and duties of each entity;

(4) Term of agreement; and

(5) Authorized signatures from each entity.

(b) (1) All intergovernmental agreements involving commodities and/or technical services will not be reviewed by the Office of State Procurement prior to implementation.

(2) Those agreements which contemplate the use of professional consultant services will be reviewed by the Office of State Procurement.

19-11-252. Rules and regulations.

The State Procurement Director may promulgate reasonable rules and regulations pertaining to the sale or acquisition of any commodities, technical and general services, or professional and consultant services belonging to or produced by another public procurement unit or external procurement activity as authorized in §§ 19-11-206 and 19-11-249 — 19-11-258.

History. Acts 1979, No. 482, § 68; A.S.A. 1947, § 14-285; Acts 2001, No. 1237, § 39; 2005, No. 1680, § 13.

19-11-253. Joint use of facilities.

Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

History. Acts 1979, No. 482, § 69; A.S.A. 1947, § 14-286.

19-11-254. State information services.

(a) Upon request, the State Procurement Director may make available to public procurement units the following services, among others:

- (1) Standard forms;
- (2) Printed manuals;
- (3) Product specifications and standards;
- (4) Quality assurance testing services and methods;
- (5) Qualified products lists;
- (6) Source information;
- (7) Common use commodities listings;
- (8) Supplier prequalification information;
- (9) Supplier performance ratings;
- (10) Debarred and suspended bidders lists;
- (11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
- (12) Contracts, or published summaries thereof, including price and time of delivery information.

(b) The director may enter into contractual arrangements and publish a schedule of fees for the services provided under this section.

History. Acts 1979, No. 482, §§ 70, 71; A.S.A. 1947, §§ 14-287, 14-288; Acts 2001, No. 1237, § 40.

19-11-255. Use of payments received.

All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying services shall be available to the supplying public procurement unit.

History. Acts 1979, No. 482, § 72; A.S.A. 1947, § 14-289.

19-11-256. Compliance by public procurement units.

(a) Procurement in Accordance with Requirements. When the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this subchapter, any public procurement unit participating in such a purchase shall be deemed to have complied with this subchapter.

(b) When a public procurement unit or external procurement activity not subject to this subchapter administers a cooperative purchase for a public procurement unit subject to this subchapter, then the State Procurement Director must determine in writing that the procurement system and remedies procedures of the public procurement unit or external procurement activity administering the procurement substantially meet the requirements of this subchapter.

History. Acts 1979, No. 482, § 73; A.S.A. 1947, § 14-290; Acts 2001, No. 1237, § 41.

19-11-257. Review of procurement requirements.

(a) (1) To the extent possible and consistent with efficiency, the State Procurement Director shall collect information concerning the type, cost, quality, and quantity of commonly used commodities or services being procured or used by state public procurement units.

(2) The director may also collect such information from local public procurement units.

(b) The director may make available all such information to any public procurement unit upon request.

History. Acts 1979, No. 482, § 74; A.S.A. 1947, § 14-291; Acts 2001, No. 1237, § 42.

19-11-258. Contract controversies.

Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with §§ 19-11-244 — 19-11-248, which refer to legal and contractual remedies, where the administering public procurement unit is a state public procurement unit or otherwise subject to §§ 19-11-244 — 19-11-248.

History. Acts 1979, No. 482, § 75; A.S.A. 1947, § 14-292.

19-11-259. Preferences among bidders.

(a) Definitions.

(1) The definitions in this subsection shall not be applicable to other sections of this subchapter.

(2) As used in this section:

(A) “Commodities” means materials and equipment used in the construction of public works projects;

(B) “Firm resident in Arkansas” means any individual, partnership, association, or corporation, whether domestic or foreign, who:

(i) Maintains at least one (1) staffed office in this state;

(ii) For not fewer than two (2) successive years immediately prior to submitting a bid, has paid taxes under the Arkansas Employment Security Law, § 11-10-101 et seq., unless exempt, and either the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., on any property used or intended to be used for or in connection with the firm's business; and

(iii) Within the two-year period, has paid any taxes to one (1) or more counties, school districts, or municipalities of the State of Arkansas on either real or personal property used or intended to be used or in connection with the firm's business.

(C) “Lowest qualified bid” means the lowest bid which conforms to the specifications and request for bids;

(D) “Nonresident firm” means a firm which is not included in the definition of a “firm resident in Arkansas”; and

(E) “Public agency” means all counties, municipalities, and political subdivisions of the state.

(b) (1) (A) In the purchase of commodities by competitive bidding, all public agencies shall accept the lowest qualified bid from a firm resident in Arkansas.

(B) This bid shall be accepted only if the bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and if one (1) or more firms resident in Arkansas made written claim for a preference at the time the bids were submitted.

(C) (i) In calculating the preference to be allowed, the appropriate procurement officials, pursuant to §§ 19-11-201 — 19-11-259, shall take the amount of each bid of the Arkansas dealers who claimed the preference and deduct five percent (5%) from its total.

(ii) If, after making such deduction, the bid of any Arkansas bidder claiming the preference is lower than the bid of the nonresident firm, then the award shall be made to the Arkansas firm which submitted the lowest bid, regardless of whether that particular Arkansas firm claimed the preference.

(2) (A) The preference provided for in this section shall be applicable only in comparing bids where one (1) or more bids are by a firm resident in Arkansas and the other bid or bids are by a nonresident firm.

(B) This preference shall have no application with respect to competing bids if both bidders are firms resident in Arkansas, as defined in this section.

(C) (i) All public agencies shall be responsible for carrying out the spirit and intent of this section in their procurement policies.

(ii) Any public agency which, through any employee or designated agent, is found guilty of violating the provisions of this section or committing an unlawful act under it, shall be guilty of a misdemeanor.

(D) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than six (6) months or a fine of not more than one thousand dollars (\$1,000), or both.

(E) (i) If any provision or condition of this subchapter conflicts with any provision of federal law or any rule or regulation made under federal law pertaining to federal grants-in-aid programs or other federal aid programs, such provision or condition shall not apply to such federal-supported contracts for the purchase of commodities to the extent that the conflict exists.

(ii) However, all provisions or conditions of this subchapter with which there is no conflict shall apply to contracts to purchase commodities to be paid, in whole or in part, from federal funds.

(c) (1) The provisions of this section shall only apply to projects designed to provide utility needs of a county or municipality.

(2) Those projects shall include, but shall not be limited to, pipeline installation, sanitary projects, and waterline, sewage, and water works.

History. Acts 1979, No. 482, § 76; 1981, No. 600, § 29; 1983, No. 760, § 2; A.S.A. 1947, § 14-293; Acts 1989, No. 477, § 2; 1989 (3rd Ex. Sess.), No. 45, § 1; 1991, No. 846, § 1; 1991, No. 855, § 1; 1993, No. 263, § 1; 1993, No. 678, §§ 1, 2; 2001, No. 1237, § 43; 2003, No. 487, § 11.

19-11-260. Recycled paper products — Preference.

(a) The State Procurement Director shall issue a recycled paper content specification for each type of paper product.

(b) (1) The goal of state agencies for the percentage of paper products to be purchased that utilize recycled paper shall be:

- (A) Ten percent (10%) in fiscal year 1991;
- (B) Twenty-five percent (25%) in fiscal year 1992;
- (C) Forty-five percent (45%) in fiscal year 1993; and
- (D) Sixty percent (60%) by calendar year 2000.

(2) (A) The Office of State Procurement shall prepare a semiannual report of the state's progress in meeting the goals for the purchase of paper products with recycled content.

(B) The report shall be made to the Governor.

(c) (1) Whenever a bid is required, a preference for recycled paper products shall be exercised if the use of the products is technically feasible and price is competitive.

(2) (A) For the purpose of procurement of recycled paper products, "competitive" means the bid price does not exceed the lowest qualified bid of a vendor offering paper products manufactured or produced from virgin material by ten percent (10%).

(B) An additional one percent (1%) preference shall be allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas.

(3) A bidder receiving a preference under this section shall not be entitled to an additional preference under § 19-11-259.

History. Acts 1991, No. 749, § 4; 2001, No. 1237, §§ 44, 45.

19-11-261. Cooperative purchase of paper products for local governments.

(a) (1) All cities, counties, and school districts shall participate in a cooperative purchasing program for the purchase of paper products.

(2) The program shall be administered by the State Procurement Director.

(b) (1) The director shall promulgate regulations for administration of the program.

(2) The regulations shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

History. Acts 1991, No. 749, § 4; 1997, No. 179, § 18; 2001, No. 1237, § 46.

19-11-262. Multiple award contracts.

- (a) (1) Multiple award contracts may be made only if the State Procurement Director or an agency procurement official determines in writing that a single award is not advantageous to the State of Arkansas.
- (2) The determination shall state in writing a rationale and basis for the multiple award contract.
- (3) Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the using agencies.
- (b) If the director anticipates that multiple award contracts will be made, the invitation for bids shall include a notification of the right of the office to make such an award and the criteria upon which such an award will be based.

History. Acts 1995, No. 428, § 3; 1995, No. 507, § 3; 2001, No. 1237, § 47.

R1:19-11-262. Multiple award contracts

No multiple award contracts can be awarded unless the invitation for bids or request for proposals included notification of the right to make multiple awards.

19-11-263. Special procurements.

- (a) Notwithstanding any other provision of this subchapter, the State Procurement Director or the head of a procurement agency may initiate a procurement above the competitive bid amount specified in § 19-11-234, when the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest.
- (b) A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the director or the head of a procurement agency in the contract file, and he or she shall file a monthly report with the Legislative Council describing all such determinations.

History. Acts 2001, No. 1237, § 48.

R1:19-11-263 Special procurement reporting.

Agencies are required to report special procurements to the Office of State Procurement. The reports shall include a copy of the written determination of the basis for the procurement and for the selection of a particular contract, and a copy of the contract. The reports will be reviewed and collated and a consolidated report for the state will be forwarded to the Legislative Council as required.

19-11-264. Submission of contracts with members of the General Assembly required.

- (a) All contracts with a member of the General Assembly, his or her spouse, or with any business in which such person or his or her spouse is an officer, a director, or a stockholder owning more than ten percent (10%) of the stock in the business shall be presented to the Legislative Council or to the Joint Budget Committee, if the General Assembly is in session, before the execution date of the contract.
- (b) The Legislative Council or the Joint Budget Committee shall provide the State Procurement

Director and the Director of the Arkansas Ethics Commission with its review as to the propriety of the contract, including without limitation whether the agency properly complied with the procurement process and whether the contract represents an improper conflict of interest between the member and the agency, within thirty (30) days after receipt of the proposed contract.

(c) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Department of Finance and Administration has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

History. Acts 2007, No. 567, § 1.

R1:19-11-264 Submission of contracts with members of the General Assembly

It shall be the responsibility of state agencies and colleges and universities to submit all contracts and disclosure forms to the Office of State Procurement prior to the execution of the contract where the total contract amount exceeds \$25,000 if the contract is with a member of the General Assembly, his or her spouse, or with any business in which such a person or his or her spouse is an officer, a director, or a stockholder owning more than ten percent (10%) of the stock in the business.

19-11-265. Submission of contracts required.

(a) (1) All contracts for technical and general services, except for those that are specifically exempt from review, requiring the service of an individual or individuals for regular full-time or part-time weekly work in the areas of information technology, the actual delivery of health care or human services or educational services shall be presented to the Legislative Council or to the Joint Budget Committee, if the General Assembly is in session, before the execution date of the contract if the total contract amount exceeds one hundred thousand dollars (\$100,000).

(2) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with their review as to the propriety of the contract within thirty (30) days after receipt of the proposed contract.

(3) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the Office of State Procurement has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

(b) The Legislative Council or the Joint Budget Committee may review or exempt from review any contract or group of contracts contemplated by this section.

History. Acts 2007, No. 870, § 1.

R1:19-11-265 Review Requirements of Technical and General Service Contracts as defined in ACA 19-11-265 (a)(1)

(a) Amendments to contracts that were originally reviewed by Legislative Council or Joint Budget Committee. An amendment will

require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount and/or involves major changes in the objectives and scope of the contract.

(b) Amendments to contracts that originally did not require review by Legislative Council or Joint Budget Committee. Any amendment which increases the total dollar amount of a technical or general services contract to exceed the sum of \$100,000 shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. The amendment along with a copy of the original contract and any attachments thereto must be submitted to the Office of State Procurement.

R2:19-11-265 Technical and General Services Contract Form

Each contract should be completed using the appropriate contract form determined by the agency or college or university.

R3:19-11-265 Disclosure Requirements for Technical and General Service Contracts

(1) No contract for Technical or general services greater than the dollar limit established by Executive Order 98-04, shall be awarded, extended, amended, or renewed by any agency to any contractor who has not disclosed as required in Executive Order 98-04. However, contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from Executive Order 98-04 disclosure requirements.

(2) No contract for technical or general services greater than the dollar limit established by the ACA § 19-11-105 Illegal Immigrant Certification program shall be awarded extended, amended or renewed by any agency to any contractor or subcontractor who has not completed the proper certification.

(3) The failure of any person or entity to disclose as required under any term of Executive Order 98-04, the ACA § 19-11-105 Illegal Immigrant Certification requests or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the agency under the provisions of existing law.

19-11-266. High efficiency lighting — Preference.

(a) (1) The General Assembly finds:

(A) The expansion of state government makes it one of the state's leading purchasers of lighting commodities;

(B) Recent technological developments have produced energy-efficient devices that reduce energy costs through a reduction in energy usage; and

(C) Prudent use of taxpayer dollars dictates that the State of Arkansas should be at the forefront of implementing energy-efficient devices in facilities operated with public funds.

(2) The intent of this section is to promote the use of high efficiency lighting in facilities operated with public funds when feasible.

(b) As used in this section:

(1) (A) "Fluorescent lamp" means a gas-discharge lamp that:

(i) Utilizes a magnetic, electronic, or other ballast; and

(ii) Uses electricity to excite mercury vapor in argon or neon gas resulting in a plasma that produces short-wave ultraviolet light that causes a phosphor to fluoresce and produce visible light.

(B) "Fluorescent lamp" includes without limitation a compact fluorescent lamp;

(2) "High efficiency lighting" means fluorescent lamp or solid state lighting;

(3) "Solid state lighting" means a light device that utilizes light-emitting diodes, organic light-emitting diodes, or polymer light-emitting diodes as sources of illumination rather than electrical filaments or gas; and

(4) (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.

(B) "State agency" includes 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 Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts.

(c) Whenever a state agency purchases or requires a bid for the purchase of an indoor lamp, a preference for high efficiency lighting shall be exercised if the use of high efficiency lighting is technically feasible and the price is competitive with consideration given to the long-term cost effectiveness and savings of high efficiency lighting.

(d) (1) The goal of state agencies for the percentage of purchased indoor lamps that are high efficiency lighting shall be one hundred percent (100%) by January 1, 2008.

(2) The Office of State Procurement shall prepare an annual report to the Legislative Council of the state's progress in meeting the goals for the purchase of high efficiency lighting.

History. Acts 2007, No. 1597, § 1.

Subchapter 3 **— Bidding — State Industry Priority**

19-11-301. Purpose.

The purpose of this subchapter is to protect Arkansas private industries which employ Arkansas taxpayers and citizens from the unfair advantage held by certain out-of-state penal institutions that utilize convict labor and are exempt from minimum wage requirements, Occupational Safety and Health Act requirements, and other such standards which are imposed on private industries and which increase the costs of products manufactured by private industries. This advantage which is enjoyed by many out-of-state penal institutions allows them to often receive contracts under the Arkansas Purchasing Law, § 19-11-201 et seq., bidding process when Arkansas private industries also submit bids, thus hindering a healthy competitive environment for the private industries of this state.

History. Acts 1981, No. 309, § 1; A.S.A. 1947, § 14-294.

19-11-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “State” means the government of the State of Arkansas and all departments, branches, agencies, and subdivisions thereof;
- (2) “Private industry” means manufacturers, makers of products, companies, corporations, or firms which are not departments, divisions, or arms of the federal, state, or local governments;
- (3) “Private industry located within the State of Arkansas” means private industries, as defined in subdivision (2) of this section, which are located in Arkansas, employing Arkansas citizens and taxpayers as laborers in the process of manufacturing goods and products within this state;
- (4) “Bids” means proposals submitted to the state for the sale of products to the state; and
- (5) “Penal institution” means a penitentiary, jail, prison, reformatory, or other such establishment owned, operated, or funded by a state or local government wherein incarcerated criminals are kept.

History. Acts 1981, No. 309, § 2; A.S.A. 1947, § 14-294.1.

19-11-303. Provisions controlling.

Where provisions of this subchapter are inconsistent with provisions of the current Arkansas Purchasing Law, § 19-11-201 et seq., the provisions in this subchapter shall control.

History. Acts 1981, No. 309, § 7; A.S.A. 1947, § 14-294.5.

19-11-304. Priority for state industries.

In the bidding process for the sale of products for use by the state, bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers shall be given priority over bids submitted by out-of-state penal institutions employing convict labor.

History. Acts 1981, No. 309, § 3; A.S.A. 1947, § 14-294.2.

19-11-305. Award to lowest state bidder — Exceptions.

Subject to any applicable bonding requirements, in all bidding procedures involving a bid by one (1) or more out-of-state penal institutions and a bid by one (1) or more private industries located within the State of Arkansas, the contract shall be awarded to the sole Arkansas bidder or lowest Arkansas bidder if the Arkansas bidder is not underbid by more than five percent (5%), as provided in § 19-11-259, by another representative of private industry located outside the State of Arkansas or by more than fifteen percent (15%) by an out-of-state correctional institution.

History. Acts 1981, No. 309, § 4; A.S.A. 1947, § 14-294.3.

19-11-306. Underbid by nonresident industry or penal institution.

Subject to any applicable bonding requirements, in the event that a private Arkansas bidder is underbid by more than five percent (5%), as provided in § 19-11-259, by another representative of private industry located outside the State of Arkansas or is underbid by more than fifteen percent (15%) by an out-of-state correctional institution, the state contract shall be awarded to the lowest responsible bidder, whether that bidder is a penal or correctional institution or is a representative of private industry.

History. Acts 1981, No. 309, § 5; A.S.A. 1947, § 14-294.4.

Title 12
Law Enforcement, Emergency Management, And Military Affairs

Chapter 30
State Inmate Industries And Labor

Subchapter 2
— Prison-Made Goods Act of 1967

12-30-201. Title.

This subchapter may be cited as the "Prison-Made Goods Act of 1967".

History. Acts 1967, No. 473, § 2; A.S.A. 1947, § 46-235.

12-30-202. Legislative intent.

Whereas, the means now provided for the employment of prison labor are inadequate to furnish a sufficient number of prisoners with diversified employment, it is declared to be the intent of this subchapter:

- (1) To further provide more adequate, regular, and suitable employment for the prisoners of this state, consistent with proper penal purposes;
- (2) To further utilize the labor of prisoners for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment;
- (3) To effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

History. Acts 1967, No. 473, § 1; A.S.A. 1947, § 46-234.

12-30-203. Establishment of prison industries.

The Board of Corrections is authorized to purchase, in the manner provided by law, equipment, raw materials, and supplies and to engage supervisory personnel necessary to establish and maintain for this state, at the Department of Correction or any penal farm or institution under control of this board, industries for the utilization of services of prisoners in the manufacture or production of articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported in whole or in part by this state and the political subdivisions thereof.

History. Acts 1967, No. 473, § 3; A.S.A. 1947, § 46-236.

12-30-204. Purchase of goods by state and local agencies.

(a) (1) All offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state, and all political subdivisions of this state, may purchase, at the discretion of the office, department, institution, or agency, from the Board of Corrections any products required by the offices, departments, institutions, agencies, or political subdivisions of this state produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(2) (A) (i) The Revenue Division of the Department of Finance and Administration may request that the board propose the purchase of license plates which are necessary as evidence of registration of motor vehicles and trailers to be issued by the division's revenue offices.

(ii) The license plates would be produced or manufactured by the Department of Correction utilizing prison labor.

(B) The provisions of this subdivision (a)(2) shall be applicable beginning with the contracts for purchase or any purchases of license plates which are required after the expiration of any contracts for the purchase or manufacture of license plates that are in effect.

(b) Such offices, departments, institutions, and agencies shall not be required to submit an invitation for bid to the board for all products known to be produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(c) All purchases made pursuant to this section shall be made through the Department of Correction's purchasing department, upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of this state requiring the articles or products.

History. Acts 1967, No. 473, §§ 4, 5; 1985, No. 825, § 1; A.S.A. 1947, §§ 46-237, 46-238; Acts 1995, No. 944, § 1; 1997, No. 1284, § 1.

12-30-205. Purchase of goods by nonprofit organizations and other individuals.

(a) A nonprofit organization may purchase goods produced by the Department of Correction's Industry Division as provided for by this subchapter upon the condition that the goods may not be resold for profit.

(b) (1) Goods produced by the division as provided for by this subchapter may also be purchased by:

(A) Current employees and retirees of the Department of Correction;

(B) (i) All employees of the offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state.

(ii) Subdivision (b)(1)(B)(i) of this section shall not include members of the General Assembly; and

(C) Current and former members of the Board of Corrections.

(2) Goods purchased by an individual under subdivision (b)(1) of this section shall be for personal use only and not for resale.

History. Acts 1967, No. 473, § 4; 1985, No. 825, § 1; A.S.A. 1947, § 46-237; Acts 1999, No. 1375, § 1; 2005, No. 1182, § 1.

12-30-206. Prices.

(a) The Board of Corrections shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(b) The prices shall be uniform and nondiscriminating to all and shall not exceed the wholesale market prices.

History. Acts 1967, No. 473, § 9; A.S.A. 1947, § 46-242.

12-30-207. Catalogues.

(a) The Board of Corrections shall cause to be prepared, at such times as the board may determine, catalogues containing the description of all articles and products manufactured or produced by the board pursuant to the provisions of this subchapter.

(b) Copies of the catalogue shall be sent by the board to all offices, departments, institutions, and agencies of this state and made accessible to all political subdivisions of this state referred to in § 12-30-204.

History. Acts 1967, No. 473, § 7; A.S.A. 1947, § 46-240.

12-30-208. [Repealed.]

12-30-209. Order of distribution.

The articles or products manufactured or produced by prison labor in accordance with the provisions of this subchapter shall be devoted:

(1) First, to fulfilling the requirements of the offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state; and

(2) Second, to supply the political subdivisions of this state with the articles and products.

History. Acts 1967, No. 473, § 8; A.S.A. 1947, § 46-241.

12-30-210. Annual statements.

(a) The Director of the Department of Correction and the manager or authorities, by whatever name known, having charge of the penal institutions of this state, shall annually make a full detailed statement of:

(1) All materials, machinery, or other property procured, and the cost thereof, and the expenditures made during the last preceding year for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured;

(2) All machinery, fixtures, or other appurtenances for the purpose of carrying on the labor of the prisoners; and

(3) The earnings realized during the last preceding year as the proceeds of the labor of the prisoners at the Department of Correction or penal institutions of this state.

(b) The statement shall be verified by the oath of the manager or authorities having charge of penal institutions to be just and true and shall be forwarded to the Board of Corrections by the manager or authorities having charge within thirty (30) days after the end of the last preceding year.

History. Acts 1967, No. 473, § 10; A.S.A. 1947, § 46-243.

12-30-211. Rules and regulations.

The Board of Corrections shall have power and authority to prepare and promulgate rules and regulations which are necessary to give effect to the provisions of this subchapter with respect to matters of administration and procedure respecting them.

History. Acts 1967, No. 473, § 11; A.S.A. 1947, § 46-244.

12-30-212. Auditor bound by voucher or warrant.

No voucher, certificate, or warrant issued on the Auditor of State by any office, department, institution, or agency shall be questioned by the Auditor of State or by the Treasurer of State on the grounds that this subchapter has not been complied with by the office, department, institution, or agency.

History. Acts 1967, No. 473, § 6; A.S.A. 1947, § 46-239.

12-30-213. Intentional violations.

If an intentional violation of this subchapter by any office, department, institution, or agency continues, after notice from the Governor to desist, then the intentional violation shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension or removal from office.

History. Acts 1967, No. 473, § 6; A.S.A. 1947, § 46-239.

12-30-214. Appropriations - Contracts.

(a) Incident to the employment of prisoners as provided in this subchapter, the Board of Corrections is authorized to:

- (1) Erect buildings;
- (2) Purchase, install, or replace equipment;
- (3) Procure tools, supplies, and materials;
- (4) Employ personnel; and
- (5) Otherwise defray necessary expenses.

(b) (1) To further aid the purposes in subsection (a) of this section, the board is empowered to enter into contracts and agreements with any person or persons upon a self-liquidating basis respecting the acquisition and purchase of any equipment, tools, supplies, and materials to the end that they may be paid for over a period of not exceeding ten (10) years.

(2) The aggregate amount of the purchases or acquisitions are not to exceed five hundred thousand dollars (\$500,000) unless specifically approved by the Governor with the amounts to be payable solely out of the revenues derived from the activities authorized by this subchapter.

(c) Nothing in this section shall be construed or interpreted to authorize or permit the incurring of a state debt of any kind or nature as contemplated by the Arkansas Constitution in relation to the debt.

History. Acts 1967, No. 473, § 12; A.S.A. 1947, § 46-245.

12-30-215. Purchase for construction or operation of prison.

Any contractor or subcontractor who has entered into a contract with or for the benefit of a state board, state agency, or state-supported institution of higher education for constructing, equipping, or operating, in whole or in part, any facility of the board, agency, or institution may purchase goods produced by the Department of Correction and the Department of Community Correction for use in the performance of the contract.

History. Acts 1997, No. 877, § 1; 1999, No. 145, § 1.

Subchapter 4
— **Bidding — Bonds**

19-11-401 — 19-11-405. [Repealed.]

Subchapter 5
— **Purchases of Workshop-Made Products and Services.**

19-11-501 — 19-11-504. [Repealed.]

Subchapter 6
— **Federal Government Surplus Property**

19-11-601. Authority to transfer to state and local agencies.

(a) The State Board of Education is authorized to cooperate with the federal government in the transfer of government surplus property to any and all departments and agencies of state and local government and to any and all other agencies eligible to receive surplus property under the provisions of Public Laws 81-152 and 81-754, and any and all other statutory laws that may be enacted by the Congress of the United States covering the disposal of federal government surplus property.

(b) The board is authorized to take any and all action necessary to the proper administration of the surplus property program in the acquisition of and the distribution of government surplus properties to eligible claimants in this state, distribution to be in accordance with the appropriate controlling federal statutes.

(c) The board is authorized to add to the cost of the properties an amount necessary to defray the expenses of this service.

History. Acts 1951, No. 353, §§ 1-3; A.S.A. 1947, §§ 80-135.2 — 80-135.4.

19-11-602. Purchase for schools and school districts.

(a) The State Board of Education is authorized to purchase surplus commodities, materials, supplies, equipment, and other property from the federal government through any of its agencies for tax-supported schools and for school districts in Arkansas. The board is authorized to cooperate with the State Purchasing Director in the purchase of school items.

- (b) Schools and school districts desiring to obtain federal surplus materials, equipment, etc., shall make application to the board on blanks furnished by the board for that purpose.
- (c) Schools and school districts making application to the board to purchase surplus materials, equipment, and other property from the federal government shall pay cash for it by drawing a voucher or warrant in favor of the federal government for the purchase price of such materials.

History. Acts 1945, No. 303, §§ 1-3; 1953, No. 384, § 17 [18]; A.S.A. 1947, §§ 80-132—80-134.

19-11-603. Service charge.

- (a) The State Board of Education is authorized to add to the cost of surplus properties secured by the agency for surplus property an amount necessary to defray the expense of this service and to repay into the Revolving Loan Fund loans made to the agency as provided in this section.
- (b) The board is also authorized to establish service charges in such amounts as may be necessary to cover the expenses of the Department of Education in administering special federal service programs for schools and agencies. These charges are to be paid by the school, institution, or agency in the amount designated by the board.
- (c) The board is authorized and directed to take such action as is necessary to collect such charges and may, in its discretion, withhold from any state moneys over which the board has control funds necessary to pay the amounts owing by such school districts and agencies.
- (d) It is the intention of the General Assembly that the schools and agencies shall pay for such services amounts sufficient to reimburse the board for expenses incurred in the operation of the Surplus Property Program and in the operation of special federal service programs.

History. Acts 1959, No. 357, § 12; A.S.A. 1947, § 80-135.1.

19-11-604. Rural water associations.

Rural water associations shall be deemed eligible to participate in the federal Surplus Property Program as now administered by the Vocational and Technical Education Division of the Department of Education, or any successor agency.

History. Acts 1988, (3rd Ex. Sess.), No. 7, § 2.

Subchapter 7 — Ethics

19-11-701. Definitions.

As used in this subchapter:

- (1) “Blind trust” means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust;
- (2) “Business” means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity;

- (3) “Commodities” means all property, including, but not limited to:
- (A) Equipment;
 - (B) Printing;
 - (C) Stationery;
 - (D) Supplies;
 - (E) Insurance; and
 - (F) Real property;
- (4) “Confidential information” means any information which is available to an employee only because of the employee's status as an employee of this state and is not a matter of public knowledge or available to the public on request;
- (5) “Conspicuously” means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it;
- (6) “Contract” means all types of state agreements, regardless of what they may be called, for the purchase or disposal of commodities and services. It 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. It also includes supplemental agreements with respect to any of the foregoing;
- (7) “Contractor” means any person having a contract with a state agency;
- (8) “Employee” means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency;
- (9) “Financial interest” means:
- (A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
 - (B) Ownership of more than a five percent (5%) interest in any business; or
 - (C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;
- (10) “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received;
- (11) “Immediate family” means a spouse, children, parents, brothers and sisters, and grandparents;
- (12) “Official responsibility” means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct state action;
- (13) “Person” means any business, individual, union, committee, club, or other organization or group of individuals;
- (14) “Procurement” means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services. It 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, and all phases of contract administration;
- (15) “Services” means technical, professional, or other services involving the furnishing of labor, time, or effort by a contractor; and
- (16) “State agency” means any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.

History. Acts 1979, No. 483, § 1; A.S.A. 1947, § 14-1101; Acts 2003, No. 1093, §§ 1, 2.

19-11-702. Penalties.

Any employee or nonemployee who shall knowingly violate any of the provisions of this subchapter shall be guilty of a felony and upon conviction shall be fined in any sum not to exceed ten thousand dollars (\$10,000) or shall be imprisoned not less than one (1) nor more than five (5) years, or shall be punished by both.

History. Acts 1979, No. 483, § 15; A.S.A. 1947, § 14-1115; Acts 1995, No. 1296, § 77.

19-11-703. Statement of policy.

(a) Public employment is a public trust. It is the policy of the state to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state. The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.

(b) Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization.

(c) To achieve the purpose of this subchapter, it is essential that those doing business with the state also observe the ethical standards prescribed in this subchapter.

History. Acts 1979, No. 483, § 2; A.S.A. 1947, § 14-1102.

19-11-704. General standards of ethical conduct.

(a) General Ethical Standards for Employees.

(1) Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

(2) In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in § 19-11-705, which refers to employee conflict of interest; § 19-11-706, which refers to employee disclosure requirements; § 19-11-707, which refers to gratuities and kickbacks; § 19-11-708, which refers to prohibition against contingent fees; § 19-11-709, which refers to restrictions on employment of present and former employees; and § 19-11-710, which refers to use of confidential information.

(b) **General Ethical Standards for Nonemployees.** Any effort to influence any public employee to breach the standards of ethical conduct set forth in this subchapter is also a breach of ethical standards.

History. Acts 1979, No. 483, § 3; A.S.A. 1947, § 14-1103.

19-11-705. Employee conflict of interest.

(a) Conflict of Interest.

(1) It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application, in any request for ruling or other determination, in any claim or controversy, or in any other particular matter pertaining to any contract or subcontract, and any

solicitation or proposal therefor, in which to the employee's knowledge:

- (A) The employee or any member of the employee's immediate family has a financial interest;
- (B) A business or organization has a financial interest, in which business or organization the employee, or any member of the employee's immediate family, has a financial interest; or
- (C) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is a party.

(2) "Direct or indirect participation" shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(b) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest if disclosure of the existence of the blind trust has been made to the Director of the Department of Finance and Administration.

(c) Discovery of Conflict of Interest, Disqualification, and Waiver. Upon discovery of a possible conflict of interest, an employee shall promptly file a written statement of disqualification with the Director of the Department of Finance and Administration and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the director in accordance with § 19-11-715(b) for an advisory opinion as to what further application, if any, the employee may have in the transaction, or for a waiver in accordance with § 19-11-715(c).

History. Acts 1979, No. 483, § 4; A.S.A. 1947, § 14-1104.

19-11-706. Employee disclosure requirements.

(a) Disclosure of Benefit Received from Contract. Any employee who has or obtains any benefit from any state contract with a business in which the employee has a financial interest shall report such benefit to the Director of the Department of Finance and Administration. However, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(b) Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report the benefit to the director is in breach of the ethical standards of this section.

History. Acts 1979, No. 483, § 5; A.S.A. 1947, § 14-1105.

19-11-707. Gratuities and kickbacks.

(a) Gratuities. It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any contract or subcontract

and any solicitation or proposal therefor.

(b) Kickbacks. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.

History. Acts 1979, No. 483, § 6; A.S.A. 1947, § 14-1106.

19-11-708. Prohibition against contingent fees.

(a) Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

(b) Representation of Contractor. Before being awarded a state contract other than by procedures set forth in the Arkansas Purchasing Law, § 19-11-201 et seq., and regulations promulgated thereunder for small purchases, every person shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards.

(c) Notice. The representation prescribed in subsection (b) of this section shall be conspicuously set forth in all contracts and solicitations therefor.

History. Acts 1979, No. 483, § 7; A.S.A. 1947, § 14-1107.

19-11-709. Restrictions on employment of present and former employees.

(a) Contemporaneous Employment Prohibited. It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the state agency by which the employee is employed.

(b) Restrictions on Former Employees in Matters Connected with Their Former Duties.

(1) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

- (A)** Judicial or other proceeding, application, request for a ruling, or other determination;
- (B)** Contract;
- (C)** Claim; or
- (D)** Charge or controversy,

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest.

(2) One-Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

- (A)** Judicial or other proceeding, application, request for a ruling, or other determination;
- (B)** Contract;
- (C)** Claim; or

(D) Charge or controversy,

knowingly to act as a principal or as an agent for anyone other than the state in matters which were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest.

(c) Disqualification of Partners.

(1) When Partner Is a State Employee. It shall be a breach of ethical standards for a person who is a partner of an employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy,

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the state is a party or has a direct and substantial interest.

(2) When a Partner Is a Former State Employee. It shall be a breach of ethical standards for a partner of a former employee knowingly to act as a principal or as an agent for anyone other than the state where such former employee is barred under subsection (b) of this section.

(d) Selling to State After Termination of Employment Is Prohibited.

(1) It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed ten thousand five hundred dollars (\$10,500), to engage in selling or attempting to sell commodities or services, including technical or professional consultant services, to the state for one (1) year following the date employment ceased.

(2) As used in this subsection, "sell" means:

(A) Signing a bid, proposal, or contract;

(B) Negotiating a contract;

(C) Contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;

(D) Settling disputes concerning performance of a contract; or

(E) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract for the sale is subsequently negotiated by another person.

(e) (1) This section is not intended to preclude a former employee from accepting employment with private industry solely because his or her employer is a contractor with this state.

(2) This section is not intended to preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations of this subchapter.

History. Acts 1979, No. 483, § 8; A.S.A. 1947, § 14-1108; Acts 2003, No. 1093, § 3.

19-11-710. Use of confidential information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

History. Acts 1979, No. 483, § 9; A.S.A. 1947, § 14-1109.

19-11-711. Public access to procurement information.

Procurement information shall be public record to the extent provided in the Freedom of Information Act, § 25-19-101 et seq., except as otherwise provided in this subchapter and the Arkansas Purchasing Law, § 19-11-201 et seq.

History. Acts 1979, No. 483, § 10; A.S.A. 1947, § 14-1110.

19-11-712. Civil and administrative remedies against employees who breach ethical standards.

- (a) **Existing Remedies Not Impaired.** Civil and administrative remedies against employees which are in existence on July 1, 1979, shall not be impaired.
- (b) **Supplemental Remedies.** In addition to existing remedies for breach of the ethical standards of this subchapter, or regulations promulgated thereunder, the Director of the Department of Finance and Administration may impose any one (1) or more of the following:
- (1) Oral or written warnings or reprimands;
 - (2) Forfeiture of pay without suspension;
 - (3) Suspension with or without pay for specified periods of time; and
 - (4) Termination of employment.
- (c) **Right to Recover from Employee Value Received in Breach of Ethical Standards.** The value of anything received by an employee in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, shall be recoverable by the state as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.
- (d) **Due Process.** Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

History. Acts 1979, No. 483, § 11; A.S.A. 1947, § 14-1111.

19-11-713. Civil and administrative remedies against nonemployees who breach ethical standards.

- (a) **Existing Remedies Not Impaired.** Civil and administrative remedies against nonemployees which are in existence on July 1, 1979, shall not be impaired.
- (b) **Supplemental Remedies.** In addition to the existing remedies for breach of the ethical standards of this subchapter, or regulations promulgated thereunder, the Director of the Department of Finance and Administration may impose any one or more of the following:
- (1) Oral or written warnings or reprimands;
 - (2) Termination of transactions; and
 - (3) Suspension or debarment from being a contractor or subcontractor under state contracts.
- (c) **Right to Recover from Nonemployee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, by a nonemployee shall be recoverable by the state from such person as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.
- (d) **Due Process.** Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

History. Acts 1979, No. 483, § 12; A.S.A. 1947, § 14-1112.

19-11-714. Recovery of value transferred or received in breach of ethical standards.

(a) General Provisions. The value of anything transferred or received in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, by an employee or a nonemployee may be recovered from both the employee and the nonemployee.

(b) Recovery of Kickbacks by the State. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the state and will be recoverable under this subchapter from the recipient. In addition, this value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

History. Acts 1979, No. 483, § 13; A.S.A. 1947, § 14-1113.

19-11-715. Duties of Director of Department of Finance and Administration.

(a) Regulations. The Director of the Department of Finance and Administration shall promulgate regulations to implement this subchapter and shall do so in accordance with this subchapter and the applicable provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Advisory Opinions. On written request of employees or contractors and in consultation with the Attorney General, the director may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions may be duly published in the manner in which regulations of this state are published. Compliance with the requirements of a duly promulgated advisory opinion of the director shall be deemed to constitute compliance with the ethical standards of this subchapter.

(c) Waiver. On written request of an employee, the director may grant an employee a written waiver from the application of § 19-11-705, which refers to employee conflict of interest, and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote.

History. Acts 1979, No. 483, § 14; A.S.A. 1947, § 14-1114.

19-11-716. Participation in business incubators — Regulations and guidelines.

(a) The provisions of this subchapter shall not be applicable to faculty or staff of state-supported institutions of higher education participating in business incubators within this state.

(b) (1) The Director of the Department of Finance and Administration shall promulgate rules and regulations pursuant to the procedure for adoption as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and under § 10-3-309 to implement a program allowing admittance to business incubators by faculty or staff of state-supported institutions of higher education or admittance by companies in which faculty or staff may hold an ownership interest.

(2) The program may include guidelines setting forth full disclosure requirements, any limitations on ownership interests, maximum income amounts to be received, annual reporting to the General Assembly, mandatory levels of student participation and such other reasonable restrictions and requirements as are necessary to maintain the public trust while encouraging the facilitation of commercialization of university-generated technology or discovery.

History. Acts 1989, No. 29, § 1.

19-11-717. Institutions of higher education.

(a) Notwithstanding anything in this subchapter to the contrary, if, in either of the events in subdivisions (a)(1) and (2) of this section, the contract or subcontract, solicitation, or proposal involves patents, copyrights, or other proprietary information in which an institution of higher education and an employee or former employee of the institution have rights or interests, provided that any contract or subcontract shall be approved by the governing board of the institution in a public meeting, it shall not be a violation of § 19-11-709, a conflict of interest, or a breach of ethical standards for:

(1) The institution to contract with a person or firm in which an employee or former employee of the institution has a financial interest; or

(2) The employee or former employee of the institution to participate directly or indirectly in any matter pertaining to any contract or subcontract or any solicitation or proposal for any contract or subcontract between the institution and a person or firm in which the employee or former employee has a financial interest.

(b) (1) Nothing in the Arkansas Procurement Law, § 19-11-201 et seq., or in § 19-11-1001 et seq., shall prevent a state agency from contracting for goods or services, including professional or consultant services, with an organization that employs or contracts with a regular, full-time, or part-time employee of a public institution of higher education in situations in which the employee of the public institution of higher education will provide some or all of the goods or services under the contract.

(2) Any organization or state agency entering into a contract described under this subsection shall comply with the provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and § 19-11-1001 et seq., to the extent that the provisions do not conflict with this section.

(3) An employee of a public institution of higher education who provides goods or services to a state agency through his or her association with an organization that has a contract with the state agency to provide goods or services shall obtain the requisite approvals under the policies of the public institution of higher education by which he or she is employed and comply with all provisions of this subchapter.

History. Acts 1989, No. 875, § 1; 2005, No. 949, § 1.

Subchapter 8 — Procurement of Professional Services

19-11-801. Policy — Definitions.

(a) It is the policy of the State of Arkansas that state agencies shall follow the procedures stated in this section, except that competitive bidding shall not be used for the procurement of legal, architectural, engineering, construction management, and land surveying professional consultant services if:

(1) State agencies not exempt from review and approval of the Arkansas Building Authority shall follow procedures established by the authority for the procurement of architectural, engineering, land surveying, and construction management services; and

(2) Institutions of higher education exempt from review and approval of the authority shall follow procedures established by their governing boards for the procurement of architectural, engineering, land surveying, and construction management professional consultant services.

(b) It is the policy of the State of Arkansas and its political subdivisions 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.

(c) For purposes of this subchapter, a political subdivision of the state may elect to not use competitive bidding for other professional services not listed in subsection (b) of this section with a two-thirds (2/3) vote of the political subdivision's governing body.

(d) (1) As used in this section, "construction management" means a project delivery method based on an agreement in which a state agency, political subdivision, public school district, or institution of higher education acquires from a construction entity a series of services that include, but are not limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

(2) "Construction management" includes, but is not limited to:

(A) (i) "Agency construction management", in which a public school district selects a construction manager to serve as an agent for the purpose of providing administration and management services.

(ii) The construction manager shall not hold subcontracts for the project or provide project bonding for the project;

(B) "At-risk construction management", in which the construction entity, after providing agency services during the preconstruction period, serves as the general contractor and the following conditions are met:

(i) The construction manager provides a maximum guaranteed price;

(ii) The public school district holds all trade contracts and purchase orders; and

(iii) The portion of the project not covered by the trade contracts is bonded and guaranteed by the construction manager; and

(C) (i) "General contractor construction management", in which the construction entity, after providing agency services during the preconstruction period, serves as the general contractor.

(ii) The general contractor shall hold all trade contracts and purchase orders and shall bond and guarantee the project.

(e) As used in this subchapter:

(1) "Political subdivision" means counties, school districts, cities of the first class, cities of the second class, and incorporated towns; and

(2) "Other professional services" means professional services not listed in subsection (b) of this section as defined by a political subdivision with a two-thirds (2/3) vote of its governing body.

History. Acts 1989, No. 616, § 1; 1995, No. 429, § 1; 1995, No. 1331, § 1; 2003, No. 1315, § 8; 2005, No. 2154, § 1; 2005, No. 2171, § 1.

R1:19-11-801. ABA Criteria

The guidelines and procedures established by the Arkansas Building Authority shall be used by all agencies, except those exempt from ABA review, in selecting architects, land surveyors and

engineers for state construction projects. Refer to Architectural Section 6-100 of ABA Standards and Criteria Professional Services Selection Procedures for State Agencies.

R2:19-11-801 Procedures for Approval of Architects, Interior Designers, and Engineers and Land Surveyor Contracts.

With the exception of those agencies exempt from Arkansas Building Authority review. All contracts for architectural, interior design, and engineering and land surveyor services must be first submitted to Arkansas Building Authority for their recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts to ABA seven (7) working days prior to the deadline for submittal to DF&A. After receiving the recommendation and approval of Arkansas Building Authority, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration. No contract requiring ABA review shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of Arkansas Building Authority.

In the event Arkansas Building Authority refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of Arkansas Building Authority. The Legislative Council may then request Arkansas Building Authority to review their previous decision, abide by the decision of Arkansas Building Authority, or request the agency to make changes in the contract.

In no event shall Arkansas Building Authority have the final authority to deny a contract solely on the basis of its propriety.

19-11-802. Annual statements of qualifications and performance data — Restrictions on competitive bidding.

- (a)** 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.
- (b)** The state agency or political subdivision shall evaluate current statements of qualifications and performance data of firms on file or may request such information as needed for a particular public project whenever a project requiring professional services is proposed.
- (c) (1)** The political subdivision shall not use competitive bidding for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consulting services.
- (2)** A political subdivision shall not use competitive bidding for the procurement of other professional services with a two-thirds (2/3) vote of its governing body.
- (d) (1)** A public school district that utilizes construction management services shall encourage

construction management firms to submit to the school district annual statements of qualifications and performance data or may request such information as needed for a particular public project.

(2) The public school district shall evaluate current statements of qualifications and performance data on file with the school district or when submitted as requested whenever a project requiring professional services of a construction manager is proposed.

(3) The public school district shall not use competitive bidding for the procurement of professional services of a construction manager.

History. Acts 1989, No. 616, § 2; 1995, No. 429, § 2; 1995, No. 1331, § 2; 2003, No. 1315, § 9; 2005, No. 2171, § 2.

R1:19-11-802 Request for Qualifications (RFQ) Procurement Method Used in the Establishment of Professional and Consultant Service Contracts

Request for Qualifications (RFQ): The Request for Qualifications is, in the absence of sole source justification, the procurement method recommended when contracting for architectural, engineering, land surveying, legal, and interior design services. It may also be used, with prior approval from the Office of State Procurement, as the selection method for other PCS contracts when it is determined to be the most suitable method of contracting. The RFQ is sent to those vendors whose work resume' indicates they are best suited to perform the work specified. Notification to the public shall be in accordance with the provisions of Arkansas Code Annotated §19-11-229 (d). The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussions may be conducted with responsible offerors who, based upon qualifications submitted, are determined to be reasonably susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.

19-11-803. Evaluation of qualifications.

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.

History. Acts 1989, No. 616, § 3; 2003, No. 1315, § 10.

19-11-804. Selection.

- (a) The state agency or political subdivision shall select three (3) qualified firms.
- (b) The state agency or political subdivision shall then select the firm considered the best-qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.

History. Acts 1989, No. 616, § 4; 2003, No. 1315, § 11.

19-11-805. Negotiation of contracts.

- (a) For the basis of negotiations, the state agency or political subdivisions and the selected firm shall jointly prepare a detailed, written description of the scope of the proposed services.
- (b) (1) (A) If the state agency or political subdivision is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated.
 - (B) The state agency or political subdivision shall then undertake negotiations with another of the qualified firms selected.
- (2) (A) If there is a failing of accord with the second firm, negotiations with the firm shall be terminated.
 - (B) The state agency or political subdivision shall undertake negotiations with the third qualified firm.
- (c) If the state agency or political subdivision is unable to negotiate a contract with any of the selected firms, the state agency or political subdivision shall reevaluate the necessary professional services, including the scope and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of this subchapter.
- (d) When unable to negotiate a contract for construction management, a public school district shall also perform a reevaluation of services in accordance with subsection (c) of this section.

History. Acts 1989, No. 616, § 5; 1995, No. 429, § 3; 1995, No. 1331, § 3; 2003, No. 1315, § 12.

19-11-806. [Repealed.]**19-11-807. Design-build construction.**

- (a) As used in this section:
 - (1) “Design-build” means a project delivery method in which the school district acquires both design and construction services in the same contract from a single legal entity, referred to as the “design-builder”, without competitive bidding;
 - (2) (A) “Design-builder” means any individual, partnership, joint venture, corporation, or other legal entity that is appropriately licensed in the State of Arkansas and that furnishes the necessary design services, in addition to the construction of the work, whether by itself or through subcontracts, including, but not limited to, subcontracts for architectural services, landscape architectural services, and engineering services.
 - (B) Architectural services, landscape architectural services, and engineering services shall be performed by an architect, landscape architect, or engineer licensed in the State of Arkansas.
 - (C) Construction contracting shall be performed by a contractor qualified and licensed under Arkansas law; and

- (3) “Design-build contract” means the contract between the school district and a design-builder to furnish the architecture, engineering, and related services as required and to furnish the labor, materials, and other construction services for the same project.
- (b) (1) Any school district may use design-build construction as a project delivery method for building, altering, repairing, improving, maintaining, or demolishing any structure, or any improvement to real property owned by the school district.
- (2) The design-builder shall contract directly with subcontractors and shall be responsible for the bonding of the project.
- (3) A project using design-build construction shall comply with state and federal law.
- (c) The Division of Public School Academic Facilities and Transportation of the Department of Education shall develop and promulgate rules consistent with the provisions of this section concerning the use of design-build construction by school districts.

History. Acts 2005, No. 2155, § 1.

Subchapter 9

— Purchases of Disabled Work Center Products and Services

19-11-901. Purchase required — Exception.

- (a) All suitable commodities and services, including small purchases, hereafter procured in accordance with applicable state specifications by or for any state department, institution, or agency shall be procured from nonprofit work centers for the disabled in all cases when such commodities are available within the period specified and at the fair market price for the article or articles so procured.
- (b) Services offered by work centers shall be procured by competitive sealed bidding as specified by § 19-11-229, competitive sealed proposals as specified by § 19-11-230, or competitive bidding as specified by § 19-11-234, subject to purchase exceptions set forth in § 19-11-902.
- (c) This section shall not apply in any cases in which products and services are available for procurement from any state department, institution, or agency, and procurement therefrom is required under the provisions of any law in effect on or after March 1, 1991.

History. Acts 2001, No. 1718, § 1.

19-11-902. Rules.

- (a) The Office of State Procurement shall be responsible for developing rules governing implementation of this subchapter.
- (b) As used in this subchapter:
- (1) “Arkansas Rehabilitation Services” means the Arkansas Rehabilitation Services of the Department of Workforce Education;
- (2) “Commodities” means all property, including, but not limited to, equipment, printing, stationery, supplies, and insurance, but excluding real property, leases on real property, or a permanent interest in real property;
- (3) “Disabled individuals” means those persons who have a medically or psychiatrically determined physical, mental, or developmental disability constituting a substantial vocational handicap;

(4) "Fiscal year" means July 1 of one (1) year through June 30 of the next year;

(5) "Ordering office" means any state department, independent establishment, board, commission, bureau, service, or division of state government and any wholly owned state corporation;

(6) "Products", for purposes of this subchapter, means commodities or services wherein the price of the commodities includes at least twenty percent (20%) value added when the work center is awarded a contract using the ten percent (10%) preference, and in the case of services, that they are performed by the disabled;

(7) (A) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

(B) "Services" shall not include employment agreements, collective bargaining agreements, or architectural or engineering contracts requiring approval of Arkansas Building Authority;

(8) "Sheltered workshop" means a work center which has:

(A) Certification from the United States Department of Labor as a sheltered workshop;

and

(B) Been licensed by the Division of Developmental Disabilities Services of the Department of Human Services or certification from Arkansas Rehabilitation Services; and

(9) (A) "Work center" means any facility certified by the Arkansas Rehabilitation Services where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing evaluation, training, and gainful employment to disabled individuals of Arkansas:

(i) As an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or

(ii) During such time as employment opportunities for them in the competitive labor market do not exist.

(B) "Work center" includes a sheltered work center.

(c) All state agencies as defined in § 19-11-203 are required to purchase their requirements of needed available and suitable products and purchase suitable services from nonprofit work centers for disabled individuals, unless such commodities and services are authorized by prior legislation for production in another state agency, department, or institution.

(d) (1) The Office of State Procurement shall issue to all agency purchasing agents a schedule of work center-made commodities and services and the conditions under which they are to be procured from the workshops.

(2) The schedule shall include the item or service description.

(e) Arkansas Rehabilitation Services shall undertake the inspection on a continuing basis of the workshops certified by Arkansas Rehabilitation Services to determine that they operate in accordance with the requirements of the statute and the regulations of this section.

(f) (1) (A) In order to qualify for participation in the program as a work center, an organization shall submit an application to the Office of State Procurement.

(B) If required for all vendors, there should be included a list of the commodities and services offered for sale to the state.

(2) Work centers shall:

(A) Furnish commodities and services in strict accordance with the allocation and government order;

(B) Maintain records of wages paid, hours of employment, and sales;

(C) Make available pertinent books and records of the agency for inspection at any reasonable time to representatives of Arkansas Rehabilitation Services; and

(D) (i) Submit to Arkansas Rehabilitation Services by September 1 an annual report for the preceding fiscal year.

(ii) This report shall include data on disabled workers, wages and wage

supplements, hours of employment, sales, whether the workshop requires a facilities sheltered workshop certificate from the United States Department of Labor and special minimum rates authorized where such certificate is held and such other relevant information as may be required.

(g) When a commodity or service is identified in the schedule of work center-made commodities and services as being available through the Office of State Procurement, it shall be obtained in accordance with the requisitioning procedures of the supplying agency.

(h) An ordering office may purchase from a nonworkshop source commodities or services listed in the schedule of work center-made commodities and services in any of the following circumstances:

(1) Necessity requires delivery within the specified period, and the work center cannot give assurance of positive availability;

(2) When commodities listed on the schedule of work center-made commodities can be purchased from a nonwork center source by the agency for a price more than ten percent (10%) lower than work center-made commodities included in the schedule;

(3) Services offered by any work center shall be procured by any agency in accordance with this section at a price not more than ten percent (10%) above the lowest price submitted from a nonwork center source.

(i) Work center-made product commodities will be delivered in accordance with the terms of the purchase order.

(j) When a workshop fails to comply with the terms of a government order, the ordering office shall make reasonable efforts to negotiate an adjustment before taking action to cancel the order.

(k) Any alleged violation of these regulations shall be investigated by the Office of State Procurement, which shall notify the work center concerned and afford it an opportunity to submit a statement of facts and evidence.

History. Acts 2001, No. 1718, § 1; 2007, No. 186, § 7.

R1:19-11-902. Work Center-Made Products Program rules.

For the purposes of the Work Center-Made Products Program, the fair market price of commodities offered in a competitive environment shall be at least 20% more than the cost of materials. In the case of services, those services must be performed by disabled individuals directly under the control of Work Center representatives.

R2:19-11-902 Work center certification.

Before commodities and services may be procured from Work Centers, the Work Center will be required to maintain evidence of: certification from the United States Department of Labor as a "sheltered workshop" and a license from the Division of Developmental Disabilities Services of the Arkansas Department of Human Services or certification from Arkansas Rehabilitation Services.

R3: 19-11-902. Work center product and service schedules

Work Centers must provide a schedule of their commodities, services and prices to Office of State Procurement. Schedules will be posted on the Office of State Procurement website (www.arkansas.gov/dfa/procurement). Ordering offices will contract directly with Work Centers.

R4: 19-11-902. Work center applications for bidding.

(a) All Work Centers who wish to participate in the Work Center Made Products Program will be required to register as a vendor with the Office of State Procurement.

(b) The Office of State Procurement may check with Arkansas Rehabilitation Services, Developmental Disabilities Services and Department of Labor to verify certification(s).

R5: 19-11-902. Purchase procedure.

In the case of small order procurement, competitive bidding, and competitive sealed bidding and proposals, the agency shall procure commodities and services from the Work Centers, when contract terms and specifications are equal and the price is not more than 10% above the lowest competitive price, obtained from a non-work center.

Subchapter 10

— Professional and Consultant Services Contracts

19-11-1001. Definitions.

As used in this subchapter:

(1) “Consultant services contract” means a contract between a state agency and an individual or organization in which:

(A) The service to be rendered to the state agency or to a third-party beneficiary under the contract is primarily the giving of advice by the contractor on a particular problem facing the state agency or the third-party beneficiary;

(B) The contractor is an independent contractor with respect to the state agency;

(C) The state agency does not exercise managerial control over the day-to-day activities of the contractor; and

(D) The contract specifies the results expected from the services to be rendered by the contractor and the advice or assistance to be provided;

(2) “Contractor” means any person or organization that executes a contract with a state agency under which the person or organization agrees to provide professional services or consultant services to the state agency, and the individuals performing the services are not state employees occupying regular full-time or part-time or extra help positions provided by law;

(3) (A) “Design professional contract” means a contract that is primarily for:

- (i) Minor projects that are time critical; and
- (ii) Minor remodeling projects that do not exceed one million dollars

(\$1,000,000) in cost.

(B) Design professional contracts are primarily for the procurement of architectural, engineering, and professional services competitively selected under § 19-11-801 et seq.

(C) Design professional contracts shall be reviewed by the agency or institution at least yearly and adjusted to reflect historical expenditures.

(D) State agencies shall follow applicable Arkansas Building Authority guidelines and procedures.

(E) Institutions of higher education that are exempt from review and approval of the Arkansas Building Authority shall comply with the provisions of this section;

(4) “Director” means the State Procurement Director;

(5) “Employee” means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing professional services for any state agency;

(6) “Professional services contract” means a contract between a state agency and a contractor in which:

(A) The relationship between the contractor and the state agency is that of an independent contractor rather than that of an employee;

(B) The services to be rendered consist of the personal services of an individual that are professional in nature;

(C) The state agency does not have direct managerial control over the day-to-day activities of the individual providing the services;

(D) The contract specifies the results expected from the rendering of the services rather than detailing the manner in which the services shall be rendered; and

(E) Services rendered under a professional services contract are rendered to the state agency itself or to a third-party beneficiary; and

(7) “State agency” means any department, agency, board, commission, or institution of higher education of the State of Arkansas.

History. Acts 2003, No. 1315, § 13; 2007, No. 478, § 7.

19-11-1002. Purpose of contracts.

The principal purpose of a professional services contract or a consultant services contract is the procurement of services by the state agency rather than the procurement of commodities.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 14.

19-11-1003. Contracts exempted.

(a) This subchapter shall not apply to the contracts of the Arkansas State Highway and Transportation Department that are covered by the technical work requirements and administrative controls of the Federal Highway Administration, nor shall the provisions of this subchapter be applicable to contracts entered into by the department in which the costs and fees are established by competitive bidding.

(b) This subchapter shall not apply to contracts of institutions of higher education that are for services related to patents, copyrights, or trademarks.

(c) This subchapter does not apply to contracts created under federally approved state plans for services reimbursed under Title V of the federal Social Security Act, 42 U.S.C. §§ 701 — 710, or Title XIX of the federal Social Security Act, 42 U.S.C. §§ 1396 — 1396v, as they existed on January 1, 2001, if those contracts and services conform to all applicable federal laws and rules, and to the ethical standards provided for in § 19-11-704.

History. Acts 2003, No. 1315, § 13.

19-11-1004. Restrictions on contracts.

(a) No contract under this subchapter shall be used to avoid the purpose or the spirit of the General Accounting and Budgetary Procedures Law of Arkansas, § 19-4-101 et seq.

(b) No contract shall be approved that would be in violation of § 19-4-701 et seq. relating to expenditures.

(c) (1) Except as provided in this subsection, no state agency shall engage in a professional services or consultant services contract with a part-time or full-time employee who occupies a position authorized to be paid from extra help or regular salaries for a state agency, except as provided in § 21-1-403.

(2) However, this subsection does not prohibit an institution of higher education from executing a contract with a state agency under which professional or consulting services will be performed by employees of the institution of higher education.

(3) An employee of an institution of higher education performing professional or consulting services to a state agency may receive additional compensation if:

(A) The institution of higher education requests and receives written approval from the Office of Personnel Management of the Department of Finance and Administration concerning the amount of additional compensation to be paid to any employee; and

(B) The total salary payments received from the employee's regular salaried position and amounts received for services performed under a professional services contract do not exceed one hundred twenty-five percent (125%) of the maximum annual salary authorized by law for the employee's position with the institution of higher education.

(d) No director or any other department head of any state agency shall receive additional compensation under this subchapter.

(e) (1) Any contract under which a state agency retains day-to-day managerial control over the person performing the services or in which the relationship between the contractor and the state agency is that of employer and employee is not a professional services contract and is prohibited.

(2) However, the Department of Information Services may employ persons over whom they exercise day-to-day managerial control for those services under § 25-4-112 for which professional services contracts may be used.

History. Acts 2003, No. 1315, § 13.

19-11-1005. General guidelines and regulations.

The State Procurement Director, after soliciting suggestions from state agencies and after seeking and receiving the advice of the Attorney General and review by the Legislative Council or by the Joint Budget Committee, if the General Assembly is in session, shall publish general guidelines for the procurement of professional and consultant services contracts and general regulations governing the use of each type of contract.

History. Acts 2003, No. 1315, § 13.

19-11-1006. Submission of contracts required.

(a) (1) All contracts for professional services or consultant services, except for those which are specifically exempt from review, requiring the services of an individual for regular full-time or part-time weekly work where the total contract amount exceeds twenty-five thousand dollars (\$25,000) must be presented to the Legislative Council or to the Joint Budget Committee, if the General Assembly is in session, before the execution date of the contract.

(2) The Legislative Council or the Joint Budget Committee shall provide the State Procurement Director with their review as to the propriety of the contract within thirty (30) days after receipt of the proposed contract.

(3) The contract shall not be submitted to the Legislative Council or to the Joint Budget Committee until the department has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation regarding the legality of the contract.

(b) The Legislative Council or the Joint Budget Committee may review or exempt from review any contract or group of contracts contemplated by this subchapter.

(c) (1) Funds from grants and contracts to any state institution of higher education may be used for the purpose of subcontracting with institutions under the performance conditions of the grants or contracts.

(2) Subcontracts for research that are derived from grants and contracts to any state institution of higher education require the prior approval of the director and a review by the Legislative Council or by the Joint Budget Committee.

History. Acts 2003, No. 1315, § 13.

R1:19-11-1006 Performance Evaluation and Expenditure Review of Professional and Consultant Service Contracts.

Professional and consultant service contracts between state agencies where the total contract amount exceeds twenty-five thousand dollars (\$25,000.00), must be presented to the Performance Evaluation and Expenditure Review Committee (PEER) or Joint Budget Committee by the Department of Finance and Administration prior to the execution date of such contract.

R2:19-11-1006 Review Requirements of Professional and Consultant Service Contracts that are Amended.

Amendments to contracts that were originally reviewed by Legislative Council or Joint Budget Committee: An amendment will require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount

and/or involves major changes in the objectives and scope of the contract.

Amendments to contracts that originally did not require review by Legislative Council or Joint Budget Committee: Any amendment which increases the total dollar amount of a professional or consultant service contract to exceed the sum of \$25,000, shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. The amendment along with a copy of the original contract and any attachments thereto must be submitted to the Office of State Procurement in accordance with the time guidelines as prescribed in R2: 11-19-1012. Contracts which have expired cannot be amended.

19-11-1007. Certification by agency head.

The head of every state agency shall certify by his or her signature on each contract entered into by that state agency that:

- (1) All information required by law and by regulation is supplied;
- (2) The proper contracting form is utilized;
- (3) All information contained in the contract is true and correct to the best of his or her knowledge and belief;
- (4) All general guidelines prescribed by the State Procurement Director have been complied with;
- (5) The services proposed to be provided under the contract are necessary for operation of the state agency in fulfilling its legal responsibilities and cannot be provided by any existing state agency;
- (6) The contractor is fully qualified to perform the contract and has no vested interest in the subject matter of the contract that would constitute a conflict of interest and a bar to the contractor's providing services of a professional and disinterested quality;
- (7) The contract terms are reasonable and the benefits to be derived are sufficient to warrant the expenditure of the funds called for in the contract;
- (8) Sufficient funds are available to pay the obligations when they become due; and
- (9) A projected total cost of the contract is provided to include expenditures that may be incurred under all available periods of extension if the extensions were executed.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 15.

19-11-1008. Approval or disapproval of contracts.

- (a) The State Procurement Director may make whatever additional inquiry he or she deems necessary and may require that additional information be supplied if he or she has reason to believe that the contract should be rejected because it does not comply with this subchapter.
- (b) The director shall return to the contracting state agency any contract which fails to comply with the applicable laws and regulations governing the contract and shall approve any contract that complies with this subchapter.
- (c) (1) The director shall have final and ultimate authority over the supervision and approval of all contracts described in this subchapter.

(2) However, the director shall seek review of the Legislative Council or the Joint Budget Committee before approving or disapproving any contract or class or group of contracts authorized under this subchapter, unless the Legislative Council or Joint Budget Committee specifically exempts the contract or class or group of contracts by formal committee action.

History. Acts 2003, No. 1315, § 13.

***R1:19-11-1008: Professional and Consultant Service Contracts
Requiring Approval of the Office of State Procurement Only.***

Those contracts for professional and consultant services not defined in R19-11-1006 and R2:19-11-1006 as requiring review of the Legislative Council or Joint Budget Committee, excluding those of the Arkansas State Highway and Transportation Department, require prior approval ONLY of the Department of Finance and Administration, Office of State Procurement.

The requesting agency shall submit the original and one (1) copy each of the contract and attachments thereto, to the Office of State Procurement. Those contracts for architectural, engineering and land surveyor services require an original and one (1) copy and shall first be submitted to Arkansas Building Authority. The approved original will be returned to the agency; a copy filed in the Office of State Procurement.

***R2:19-11-1008 Procedures for Approval of Architects, Engineers
and Land Surveyor Contracts***

With the exception of those agencies exempt from Arkansas Building Authority review, all contracts for architectural, engineering and land surveyor services must be first submitted to Arkansas Building Authority for their recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts to ABA seven (7) working days prior to the deadline for submittal to DF&A. After receiving the recommendation and approval of Arkansas Building Authority, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration. No contract requiring ABA review shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of Arkansas Building Authority.

In the event Arkansas Building Authority refuses to give a favorable recommendation to the propriety of the contract, the agency involved may request the Legislative Council to review the decision of Arkansas Building Authority. The Legislative Council may then request Arkansas Building Authority to review their previous decision, abide by the decision of Arkansas Building Authority, or request the agency to make changes in the contract.

In no event shall Arkansas Building Authority have the final authority to deny a contract solely on the basis of its propriety.

R3:19-11-1008 Procedures for approval of information technology products or services.

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is \$100,000 or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be \$100,000 or more, must be submitted to STP for approval. Documentation regarding sole source and emergency procurements that include Information Technology products or services of \$100,000 or more must also be submitted to STP for approval.

If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to processing the procurement. STP shall have ten (10) business days from receipt of the documents to complete the necessary review. If the STP review is not completed within the timeframe allowed, the agency and STP must mutually agree to an extension of the review process.

In the event a state agency and STP are unable to resolve a dispute, the matter shall jointly be referred to the director of the Department of Finance and Administration for resolution.

19-11-1009. Filing of contracts.

Service contracts filed with a state agency under § 19-4-1109 shall be available for public inspection and auditing purposes.

History. Acts 2003, No. 1315, § 13.

R1:19-11-1009 Professional and Consultant Service Contracts on File at a State Agency.

Professional and Consultant Service Contracts on file with a state agency shall be available for public inspection to the extent permitted by Arkansas State Freedom of Information Laws.

19-11-1010. Development and use of performance-based contracts.

(a) Performance-based contracts provide an effective, efficient method of monitoring and evaluating the

overall quality of services provided.

(b) The practice of including benchmark objectives that the provider must attain at specific intervals during the term of the contract is an essential requirement for measuring performance.

(c) Under regulations promulgated by the State Procurement Director, all state agencies, boards, commissions, and institutions of higher education shall use performance-based standards in professional and consultant service contracts.

History. Acts 2003, No. 1315, § 13.

R1:19-11-1010 Use of Performance Based Standards in Professional and Consultant Service Contracts.

All P&CS contracts over \$25,000, other than those listed herein and those specifically exempted by the Director of the Office of State Procurement, will include performance standards. Agencies are encouraged, however as a matter of good procurement principle, to include performance standards in all professional and consultant service contracts. The purpose of these standards will be to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.

Performance standards may be standardized for use with similar contracts or may be specifically developed for unique requirements.

Performance standards should measure, at prescribed points throughout the term of the contract, the quality and quantity of work being performed.

Performance standards may be refined by the agency and the provider as a part of the contract negotiations.

A provider's inability to meet established performance standards may be sufficient cause for declaring default and may also result in cancellation of the contract.

Contracts that may be exempt from the use of performance standards include:

(1) Sole source by law contracts in which the state is compelled as a result of court, state or federal mandate to award for services from a specific provider.

(2) Emergency contracts in which the need for expediency does not permit for the development of performance standards.

(3) Architectural and Engineering contracts that are awarded using Arkansas Building Authority criteria or similar criteria developed by those colleges and universities which are exempt from ABA review.

19-11-1011. Review requirement.

(a) (1) Every contract for professional consultant services covered by this subchapter that is executed using the professional and consultant service contract form approved by the State Procurement Director shall be filed with the Office of State Procurement of the Department of Finance and Administration.

(2) The execution date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract is to begin and not the date upon which the agreement was made.

(b) (1) No purchase order shall be paid if a copy of the contract under which the payment is being made has not previously been filed with the Office of State Procurement.

(2) No payment shall be made covering services rendered prior to the execution date of the contract.

(c) (1) It is the intent of the General Assembly that this section be strictly construed and enforced.

(2) However, in the unusual event that an obligation has been incurred by a state agency under any contractual agreement or proposed contract prior to the approval of the contract, the Chief Fiscal Officer of the State may approve payment for such services after having first received the review of the Legislative Council.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 16.

***R1:19-11-1011 Professional and Consultant Service Contracts
on File in the Office of State Procurement.***

All agencies will be required to maintain copies in accordance with current document retention laws (§19-11-214) of all purchase orders issued for the procurement of professional and consultant services.

19-11-1012. Standard contract forms.

(a) The State Procurement Director shall prescribe standard forms to be utilized by all state agencies.

(b) The standard contract form shall include the following items, plus such additional items as the director shall deem desirable for the purposes of this subchapter:

(1) A section setting forth in reasonable detail the objectives and scope of the contractual agreement and the methods to be used to determine whether the objectives specified have been achieved;

(2) The rates of compensation, transportation, per diem, subsistence, out-of-pocket allowances, and all other items of costs contemplated to be paid the contractor by the state agency;

(3) The method by which the rate of compensation and the total payment shall be calculated;

(4) The maximum number of dollars which the state agency may be obligated to pay to the contractor under the terms of the contract, including all expenses and other items of costs, and the source of funding to be utilized;

(5) The term of the contract;

(6) (A) The names of all individuals who will be supplying services to the state agency or to third-party beneficiaries under the terms of the contracts, so far as those names are known to the contractor at the time of the execution of the contract.

(B) If the names of all individuals supplying services under the contract are not available at the time of the execution of the contract, the contract shall contain a provision requiring the contractor to submit periodically the names of individuals supplying services as soon as the identity of those individuals is known to the contractor;

(7) When the contractor is a business entity, the federal identification number of the business entity shall be listed on the contract form;

(8) (A) A certification signed by the contractor shall be included as follows:

“ _____ (name)
 _____ (title)

I _____, certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of any state agency of the State of Arkansas will receive any personal, direct, or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract.”

(B) As used in subdivision (b)(8)(A) of this section, it shall be understood that when the contractor is a widely held public corporation “direct or indirect monetary benefit” shall not apply to any regular corporate dividends paid to a stockholder of the corporation who is also a state employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation;

(9) (A) For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the state agency does not exceed twenty-five thousand dollars (\$25,000), a purchase order may be utilized in lieu of the standard form or forms prescribed by the director.

(B) (i) However, should the state agency enter into a subsequent contract with the same individual or organization during the same fiscal year, regardless of the nature of the contract, then the details of the original contract which utilized a purchase order form and of all subsequent contracts, regardless of amount or type, shall be promptly reported to the director.

(ii) This reporting shall be done to allow the director to determine whether the state agency is utilizing a series of contracts to avoid the use of the standard form and to avoid the application of appropriate regulations;

(10) Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract forms; and

(11) All professional consultant services contracts shall contain the following clause:

“In the event the State of Arkansas fails to appropriate funds or make moneys available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or moneys made available for such purposes.

“This provision shall not be construed to abridge any other right of termination the agency may have.”

(c) For the purpose of reporting methods of finance, a state agency shall disclose the total estimated project cost in addition to any other reporting requirements of the Legislative Council or the Joint Budget Committee.

History. Acts 2003, No. 1315, § 13; 2005, No. 1680, § 17.

R1:19-11-1012 Compensation.

Each professional and consultant service contract shall clearly state the compensation, and indicate if various levels of expertise are to be supplied by the contractor. A rate for each level and the number of personnel within each level should be listed. All calculations should be extended and totaled. A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to. All items should be listed along with respective rates. Rates should be totaled by item column, and a total compensation provided that is inclusive of reimbursable expenses.

R2: 19-11-1012 Contract Dates.

For each professional and consultant service contract, the agency is required to enter the beginning and ending date of the contract. The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was made. This date should be arrived at with emphasis placed on the following:

(a) any contract or amendment to a contract that requires review by the Legislative Council Committee must be submitted to the Department of Finance and Administration, Office of State Procurement, no less than ten (10) working days prior to the Committee meeting. Those requiring Sole Source Justification approval must be submitted at least fifteen (15) days prior to the published review date of the Legislative Council Review Committee. The beginning date of the contract must not precede the date of the Arkansas Legislative Council meeting in which such contract is to be reviewed. The Review Committee meets on the first Wednesday of each month, and the Legislative Council meets the third Friday of each month except when the General Assembly is in session, at which time Joint Budget will review contracts. The Legislative Council or the Joint Budget Committee shall provide the Chief Fiscal Officer with their review as to the propriety of the contract within thirty (30) days of said submission;

(b) all contracts, unless specifically excepted, must be filed with the Department of Finance and Administration and/or the Office of Construction of Arkansas Building Authority no fewer than five (5) working days prior to the starting date of such contracts.

R3:19-11-1012 Required Information.

Information should be provided on each professional and consultant service contract form listing the name, and relationship of those persons who will be supplying services to the state agency insofar as they are known at the time the contract is signed. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed.

R4:19-11-1012 Reporting Multiple Purchase Orders for Professional and Consultant Services issued from the same Cost Center or Business Area to the same Provider during the same Fiscal Year.

To assist the Director of State Procurement in determining whether an agency is issuing multiple purchase orders in an attempt to circumvent the requirement of establishing a professional or consultant service contract, agencies will be required to provide to the Office of State Procurement a copy of each purchase order issued for professional or consult services to the same provider from the same cost center or business area during the same fiscal year. Each purchase order will be accompanied with an explanation of the nature of work performed and the reason why a professional or consultant service contract was not initially developed. This information will be due within ten (10) working days from the date of the most recent purchase order.

R5:19-11-1012 Professional and Consultant Service Contract Form.

Each contract should be completed and include the following information:

(1) agency assigned contract number or outline agreement and amendment number. All amendments must have a copy of the original contract and any previous amendments attached. For those contracts for which payment will be made wholly or in part against a Method of Financing, enter the assigned Method of Financing on the contract form.

(2) date the agreement was signed by the agency and the contractor, the outline agreement or contract number and the vendor number. Also enter the agency's code (or business area) and title, division, if applicable, and the contractor's Federal ID number, name and address.

(3) funding source: State, Federal, Cash, Trust or Other (specify).

(4) any resources to be provided by the agency to the contractor as part of the agreement.

(5) name of the agency representative who will represent the agency in coordinating the work of the contractor.

(6) disclose all information as required under the terms of Executive Order 98-04. The contractor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form (Form PCS-D, Attachment II - 10.3) shall be used for this purpose.

R6:19-11-1012 Disclosure Requirements for Professional and Consultant Service Contract.

(1) No contract for services greater than the dollar limit established by Executive Order 98-04, shall be awarded, extended, amended, or renewed by any agency to any contractor who has not disclosed as required in Executive Order 98-04.

(2) Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.

(3) The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the agency under the provisions of existing law.

Subchapter 11

— Purchase Of Technology Systems

19-11-1101. Contracts.

(a) An agency procurement official or procurement agent may enter into contracts to acquire technology systems for performing the revenue-generating functions and duties of the agency, including, but not limited to, registration, processing, and collection functions.

(b) Any contract entered into under this subchapter between an agency procurement official or procurement agent and a vendor of technology systems shall provide for:

(1) Payment of the technology systems on the basis of a percentage of the increase in the amount of specific taxes or fees collected, including interest and penalties thereon, for a fixed time period, which increase exceeds revenues projected prior to the project and is attributable to the implementation and use of the technology system; or

(2) Payment of the technology system on a fixed fee contract basis, the fee to be paid from the increase in the amount of specific taxes or fees collected, including interest and penalties thereon, which increase exceeds revenues projected prior to the project and is attributable to the implementation and use of the technology system.

(c) (1) All contracts authorized by this subchapter shall be entered into pursuant to the requirements of the Arkansas Procurement Law, § 19-11-201 et seq., and amendments thereto.

(2) Prior to execution of the contract, the following process shall be followed:

(A) The requesting agency shall request approval from the Chief Fiscal Officer of the State to prepare a request for proposal for a project authorized under this subchapter;

(B) The request shall include the general nature of the project, the anticipated revenues that will be enhanced, and the forecasted revenues for the current biennium;

(C) Upon approval of the Chief Fiscal Officer of the State, the requesting agency shall prepare a request to the Department of Finance and Administration for approval to prepare a request for proposal for a technology project authorized under this subchapter;

(D) The request must include the revenue source or sources that will be increased as a result of the project and the projected revenues for the anticipated life of the project;

(E) The requesting agency shall prepare a request for proposal, with advice and consultation from the department, for the purchase of technology systems on the basis of a portion of the increase in the agency's revenues produced by the technology system; and

(F) (i) The request for proposal may provide that the agency and the vendor may negotiate an amount or baseline upon which the increase in taxes or fees is measured.

(ii) Any contract other than a fixed fee contract shall include a factor in the baseline calculation to account for an increase in taxes or fees due solely to economic factors and not to the use of the technology.

(3) The agency procurement official or procurement agent and the vendor shall negotiate the contract, with the oversight of the department to assist in negotiating an advantageous contract.

(4) (A) The agency director shall submit the proposed contract and a request for new appropriation to the Governor or his or her designee.

(B) The accompanying information will include the methodology used to calculate the baseline amount proposed by the agency and other justifications and information that detail the program and the expected benefits of the agreement.

(C) The Governor or his or her designee shall study the request and determine whether the appropriation requested and the terms of the proposed contract are in strict compliance with this subchapter.

(D) (i) The Governor may approve or modify the request for new appropriation and the proposed contract.

(ii) Any modification of the proposed contract shall be submitted to the vendor for approval.

(5) (A) Upon approval of the shared benefit agreement and new appropriation request, the Governor shall seek the advice and recommendation of the Legislative Council.

(B) Upon review of the Legislative Council, the Governor shall forward a copy of his or her approvals to the agency director and the Chief Fiscal Officer of the State.

(d) After receipt of the Governor's approvals, the Chief Fiscal Officer of the State shall direct the Auditor of State and the Treasurer of State to establish upon their books of record the necessary appropriation accounts in accordance with the provisions as set out in this section from the Shared Benefit Holding Appropriation.

(e) The requesting agency may utilize these appropriations to implement the approved contract.

(f) Nothing in this section shall prohibit an agency that enters into a contract according to this section from acquiring any goods or services through appropriations for any function or program of that agency not specifically included in any contract entered into according to this section.

(g) The Chief Fiscal Officer of the State may promulgate such rules, regulations, procedures, and guidelines as he or she may deem necessary and proper in order to carry out the provisions of this section.

History. Acts 2003, No. 1095, § 1; 2007, No. 751, § 9.

19-11-1102. Shared Benefit Payment Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the "Shared Benefit Payment Fund".

(b) (1) All moneys collected under this subchapter shall be deposited into the State Treasury to the credit of the fund as special revenues.

(2) The fund shall also consist of any other revenues as may be authorized by law.

(c) The fund shall be used by the state agencies to pay vendors for contracts entered into under this subchapter.

(d) The fund shall consist of the amount of taxes or fees collected for the relevant time period less the baseline amount stated in each technology purchase contract entered into pursuant to § 19-11-1101,

which difference is attributable to the implementation and use of the technology systems as provided in the contract and approved under the provisions of § 19-11-1101(c).

(e) As soon as practical after the close of each month during the biennial period beginning July 1, 2003, and thereafter, each agency purchasing official who has a technology purchase contract shall determine the difference between the amount of taxes or fees collected and the contract baseline amount and report these findings to the Chief Fiscal Officer of the State.

(f) The Chief Fiscal Officer of the State shall certify to the Treasurer of State the following:

(1) The amounts determined in subsection (e) of this section for transfer to the fund; and

(2) That portion of the amount determined in subsection (e) of this section which is currently required to be paid to each technology contract vendor.

(g) The Treasurer of State shall make the transfer of the amount determined in subsection (f)(1) of this section, after making the deduction required from the net special revenues as set out in § 19-5-203(b)(2)(A).

History. Acts 2003, No. 1095, § 2.

Subchapter 12

— Guaranteed Energy Cost Savings Act

19-11-1201. Title.

This subchapter shall be known and may be cited as the “Guaranteed Energy Cost Savings Act”.

History. Acts 2005, No. 1761, § 1.

19-11-1202. Definitions.

As used in this subchapter:

(1) (A) “Energy cost savings measure” means:

(i) A new facility that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that:

(a) Do not degrade the level of service or working conditions;

(b) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, as it existed on January 1, 2005; and

(c) Are measured and verified by an independent audit performed by a qualified provider; or

(ii) An existing facility alteration that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that conform with subdivisions (1)(A)(i)(a) and (b) of this section.

(B) “Energy cost savings measure” includes:

(i) Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs or systems within the building;

(ii) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce

energy consumption;

(iii) Automated or computerized energy control systems, including computer software and technical data licenses;

(iv) Heating, ventilating, or air conditioning system modifications or replacements;

(v) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(vi) Indoor air quality improvements;

(vii) Energy recovery systems;

(viii) Electric system improvements;

(ix) Life safety measures that provide long-term, operating-cost reductions;

(x) Building operation programs that reduce operating costs;

(xi) Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy;

(xii) Water and other natural resources conservation; or

(xiii) An alteration or measure identified through a comprehensive audit or assessment of new or existing facilities;

(2) (A) “Guaranteed energy cost savings contract” means a contract for the implementation of one (1) or more energy cost savings measures and services provided by qualified energy service companies in which the energy and cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term.

(B) “Guaranteed energy cost savings contract” does not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply;

(3) “Operational cost savings” means expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed;

(4) “Public notice” means the same as “public notice” is defined in § 19-11-203;

(5) “Qualified provider” means a person or business, including all subcontractors and employees of that person or business and third-party financing companies, that:

(A) Is properly licensed in the State of Arkansas;

(B) Is experienced in the design, implementation, financing, and installation of energy cost savings measures; and

(C) Has demonstrated at least five (5) years of experience in the analysis, design, implementation, and installation of energy efficiency and facility improvements; and

(6) “State agency” means the same as “state agency” is defined in § 19-11-203.

History. Acts 2005, No. 1761, § 1.

R1:19-11-1202 Definitions

(a) “ESCO” means an energy service company which makes recommendations to the agencies regarding energy efficiency upgrades, provides labor to perform energy upgrades, finances the energy improvements and guarantees energy savings to the agencies.

(b) “Energy consultant” means a company which assists the agencies in developing their energy cost savings project bid documents, evaluates proposals and makes recommendations for award.

(c). “Energy consultants are prohibited from performing the tasks of an ESCO and vice versa.

19-11-1203. Energy cost savings measures authorized.

(a) (1) A state agency may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities in accordance with this subchapter.

(2) A state agency or several state agencies together may enter into an installment payment contract or lease purchase agreement with a qualified provider for the purchase and installation of energy cost savings measures in accordance with this subchapter.

(b) All energy cost savings measures shall comply with current local, state, and federal construction and environmental codes and regulations.

(c) The provisions of the Arkansas Procurement Law, § 19-11-201 et seq., shall control if there is any conflict with that law and the provisions of this subchapter.

History. Acts 2005, No. 1761, § 1.

R1:19-11-1203 Procurement Authorization

The State Procurement Director may authorize solicitations on behalf of state agencies for the purpose of developing a guaranteed energy cost savings contract.

19-11-1204. Method of solicitation.

Any solicitation of a guaranteed energy cost savings contract by a state agency shall be consistent with the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 2005, No. 1761, § 1.

R1:19-11-1204 Procurement Method

All energy cost savings contracts, unless specifically exempted by the Director of the Office of State Procurement, will be developed in accordance with procedures issued by the Office of State Procurement.

19-11-1205. Evaluation of proposals.

(a) A state agency's evaluation of each qualified provider's proposal shall include an analysis of:

- (1) The estimates of all costs, including, but not limited to, modifications, remodeling, a preinstallation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, and postinstallation project monitoring, data collection, and reporting;
 - (2) A determination whether there will be a reduction in energy consumption or operating costs resulting from the proposal;
 - (3) The qualifications of the properly state-licensed provider;
 - (4) The relative importance of price, return of investment, financial performance, stability, quality, technical ability, experience, or any other relevant evaluation factor;
 - (5) Tasks to be performed under the proposal; and
 - (6) Timeframes within which the work will be completed.
- (b) After evaluating the proposals:
- (1) The state agency may reject any proposal; or
 - (2) Award the guaranteed energy cost savings contract in a manner consistent with the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 2005, No. 1761, § 1.

19-11-1206. Contract requirements.

- (a) A guaranteed energy cost savings contract shall include the properly state-licensed qualified provider's guarantee that:
- (1) The energy and operational cost savings to be realized over the term of the guaranteed energy cost savings contract shall meet or exceed the costs of the energy cost savings measures;
 - (2) The payback period for heating, ventilation, and air conditioning systems shall be based on the equipment capacity and efficiency as certified by the Air-Conditioning and Refrigeration Institute; and
 - (3) If the annual energy or operational cost savings fail to meet or exceed the annual costs of the energy cost savings measure as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the state agency for any shortfall of guaranteed energy cost savings on an annual basis.
- (b) The guaranteed energy cost savings contract may not have a term beyond twenty (20) years.
- (c) Before entering into a guaranteed energy cost savings contract, the state agency shall require the qualified provider to file with the state agency a bid bond, performance bond, or similar assurance as provided under § 19-11-235.

History. Acts 2005, No. 1761, § 1.

APPENDIX 1

DISBURSEMENT OF PUBLIC FUNDS

Title 19

Public Finance

19-4-1206. Duties generally.

(a) The bonded disbursing officer for each state agency or the bonded disbursing officer for any regular or special fund provided for by the General Assembly shall be responsible and held accountable for the proper expenditure of the funds under his control.

(b) It shall be the responsibility and duty of each disbursing officer or agent to:

(1) Keep advised as to the availability of the appropriations and funds for which he is the disbursing officer and be informed as to the legality of and authority for any obligations which may be incurred before any disbursements are made;

(2) Keep advised as to the laws or administrative regulations relating to general accounting procedures and restrictions for the disbursement of funds; and

(3) Certify that:

(A) Any disbursements which he may make are in accordance with the terms of any applicable contracts, purchasing procedure, or other authority;

(B) The services have been performed or the goods received; and

(C) The vendor or payee is entitled to the amount set forth in the check or voucher.

History. Acts 1973, No. 876, § 14; A.S.A. 1947, § 13-340.

APPENDIX 2

MINORITY PROCUREMENT

Title 15

Natural Resources and Economic Development

Chapter 4

Development of Business and Industry Generally

Subchapter 3

— Division of Minority Business Enterprise

15-4-301. Definitions.

As used in this subchapter:

(1) “Division” means the Division of Minority Business Enterprise of the Department of Economic Development; and

(2) “Minority business enterprise” means a business enterprise that is owned or controlled solely by one (1) or more socially or economically disadvantaged persons. The disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause.

History. Acts 1977, No. 544, § 2; A.S.A. 1947, § 5-916.3; Acts 1997, No. 540, § 69.

15-4-302. Creation.

The Division of Minority Business Enterprise of the Department of Economic Development:

- (1) Is established and confirmed within the Department of Economic Development under the jurisdiction of the Arkansas Economic Development Commission;
- (2) Shall be operated as a division within the department; and
- (3) Shall perform the functions and duties as provided in this subchapter.

History. Acts 1977, No. 544, § 1; 1979, No. 1060, § 9; 1983, No. 644, § 1; A.S.A. 1947, §§ 5-916.2, 5-916.2a, 5-916.2a note; Acts 1997, No. 540, §§ 24, 70.

15-4-303. Advisory council.

(a) The Division of Minority Business Enterprise of the Department of Economic Development shall be represented by a statewide Minority Business Advisory Council and shall report to that council.

(b) (1) The council shall consist of seven (7) members.

(2) The council shall:

(A) Monitor progress, make recommendations, and develop strategic plans for performance improvement; and

(B) Report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c) (1) The Governor shall appoint three (3) members of the council with the advice and consent of the Senate.

(2) The President Pro Tempore of the Senate shall appoint two (2) members of the council.

(3) The Speaker of the House of Representatives shall appoint two (2) members of the council.

(4) Appointments shall be representative of the minority business community, resource organizations, entrepreneurs, corporations, and other minority business advocates.

(d) Except as otherwise provided by law, members of the council shall serve without compensation.

(e) The term of office of the council shall be at the pleasure of the appointing officer.

History. Acts 1977, No. 544, § 5; A.S.A. 1947, § 5-916.6; Acts 2003, No. 1814, § 2.

15-4-304. Administrator.

The head of the Division of Minority Business Enterprise of the Department of Economic Development is the Administrator of the Division of Minority Business Enterprise of the Department of Economic Development and shall be appointed by the Governor.

History. Acts 1977, No. 544, § 3; A.S.A. 1947, § 5-916.4.

15-4-305. Duties.

The Division of Minority Business Enterprise of the Department of Economic Development shall:

(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises;

(2) With the participation of other state departments and agencies as appropriate:

(A) Develop comprehensive plans and specific program goals for a minority business enterprise program;

(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and

(C) Evaluate the impact of federal and state support in achieving the objectives established by the Department of Economic Development;

(3) Implement state policy in support of minority business enterprise development and may coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises;

(4) Coordinate, make application for, and administer federal funding grants from the United States Office of Minority Business Enterprise and other federal agencies where applicable;

(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of other state departments and agencies;

(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises;

(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;

(8) Recommend appropriate legislative or executive actions to enhance minority business opportunities in this state;

(9) Assist minority businesses in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;

(10) Provide services to promote the organization of local development corporations for rural development and assist minority businessmen in agrarian endeavors;

(11) Assist minority businesses to promote reciprocal foreign trade and investment;

(12) Assist minority businessmen in business contract procurement from governmental and private commercial sources; and

(13) Provide a program effort to ensure participation of veterans in Arkansas, minority business enterprise activities.

History. Acts 1977, No. 544, § 4; A.S.A. 1947, § 5-916.5.

15-4-306 — 15-4-310. [Reserved.]

15-4-311. Title.

This section and §§ 15-4-312 — 15-4-320 shall be known and may be cited as the “Minority Business Economic Development Act”.

History. Acts 1991, No. 698, § 1; 2007, No. 692, § 1.

15-4-312. Purpose.

The General Assembly finds it is the policy of the State of Arkansas to support equal opportunity as well as economic development in every sector. The General Assembly recognizes as the purpose of this

section and §§ 15-4-311 and 15-4-313 — 15-4-319, to support to the fullest all possible participation of firms owned and controlled by minority persons in state-funded and directed public construction programs and in the purchase of goods and services for the state. The annual procurement goal of ten percent (10%) for state agencies with minority businesses each year is established.

History. Acts 1991, No. 698, § 2.

15-4-313. Definitions.

As used in this section and §§ 15-4-311, 15-4-312, and 15-4-314 — 15-4-319:

- (1) “Advisory Council” or “council” means the Minority Business Advisory Council;
- (2) “Director” means the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission;
- (3) “Division” means the Division of Minority Business Enterprise of the Arkansas Economic Development Commission;
- (4)(A) “Exempt” and “nonexempt” mean goods and services classified as either exempt or nonexempt for the purpose of administering this section and §§ 15-4-311, 15-4-312, and 15-4-314 — 15-4-319.
 - (B) The classification shall be determined by the Office of State Procurement and the division and submitted to the council for its review and consideration for the purposes of this section and §§ 15-4-311, 15-4-312, and 15-4-314 — 15-4-319;
- (5) “Minority” means a lawful permanent resident of this state who is:
 - (A) An African American;
 - (B) An Hispanic American;
 - (C) An American Indian; or
 - (D) An Asian a Pacific Islander;
- (6) “Minority business enterprise” means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons as defined in this section;
- (7) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;
- (8) “State agency” means all departments, offices, boards, commissions, and institutions of the state, including the state-supported institutions of higher education; and
- (9) “State 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.

History. Acts 1991, No. 698, § 3; 1995, No. 1296, § 48; 1997, No. 540, § 25; 2003, No. 487, § 12; 2007, No. 692, § 2.

15-4-314. Minority Business Advisory Council.

- (a) There is established a formal relationship between the Minority Business Advisory Council and the minority business officer.
- (b)(1) The minority business officer and the small disadvantaged business officer shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under the provisions of this section and §§ 15-4-311 — 15-4-313 and 15-4-315 — 15-4-319.

(2) Their duties in relation to this section and §§ 15-4-311 — 15-4-313 and 15-4-315 — 15-4-319 shall be considered official duty in the conduct of state business.

(c) The council's duties and responsibilities shall be to:

(1) Review reports and interpret each agency's achievement of its goals;

(2) Advise the Governor when an agency has not reached its goals;

(3) Make annual reports to the Governor;

(4) Recommend to the state agency, the Division of Minority Business Enterprise of the Department of Economic Development, and the office of State Procurement corrective actions to strengthen minority business opportunities in the state; and

(5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out the provisions of this section and §§ 15-4-311 — 15-4-313 and 15-4-315 — 15-4-319.

History. Acts 1991, No. 698, § 6.

15-4-315. Administration.

(a) The Division of Minority Business Enterprise of the Department of Economic Development and the Office of State Procurement of the Department of Finance and Administration shall serve as the principal coordinators of the initiative to ensure the successful implementation of this section and §§ 15-4-311 — 15-4-314 and 15-4-316 — 15-4-319.

(b) The division and the office shall provide assistance to minority businesses seeking contract opportunities with various state agencies.

(c) The division and the office shall maintain a directory of all minority business officers for each state agency.

(d) The division and the office shall provide management and technical assistance to any state agency who is experiencing difficulties in complying with the provisions of this section and §§ 15-4-311 — 15-4-314 and 15-4-316 — 15-4-319.

(e) The division and the office shall maintain a current directory of minority businesses and shall make the directory available to each state agency and minority business officer.

(f) The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority businesses may participate.

History. Acts 1991, No. 698, § 7; 1995, No. 1296, § 48.

15-4-316. Exempt contracts.

Upon the approval of the Minority Business Advisory Council, the Division of Minority Business Enterprise of the Department of Economic Development and the Office of State Procurement shall determine the classifications of contracts to be exempted from the goals established by this section and §§ 15-4-311 — 15-4-315 and 15-4-317 — 15-4-319 whenever there exists an insufficient number of minority businesses to ensure adequate competition.

History. Acts 1991, No. 698, § 9; 1995, No. 1296, § 48.

15-4-317. Minority business officer.

- (a) Each state agency shall designate an individual as its minority business officer.
- (b) The minority business officer shall be the person within the agency with whom the Division of Minority Business Enterprise of the Department of Economic Development and the Minority Business Advisory Council shall work in its efforts to accomplish the goals of this section and §§ 15-4-311 — 15-4-316, 15-4-318, and 15-4-319.
- (c) Upon the appointment of the minority business officer in each state agency, the agency shall notify the division and the Office of State Procurement.

History. Acts 1991, No. 698, § 5.

15-4-318. State agencies to submit reports.

The Minority Business Advisory Council shall require each state agency to produce within fifteen (15) days of the close of each six-month period a report summing up total procurement for all contracts, except exempt contracts of the agency, and the dollar value and the percentage of the contracts of the agency awarded to small businesses and small disadvantaged businesses.

History. Acts 1991, No. 698, § 4.

15-4-319. Accelerated payments.

To ensure that minority businesses are not financially hindered due to delays in payment by state agencies entering into contracts with minority businesses under the provisions of this section and §§ 15-4-311 — 15-4-318, state agencies shall accelerate payment to minority vendors to preclude accounts receivable problems of minority businesses caused by the State of Arkansas.

History. Acts 1991, No. 698, § 8.

15-4-320. Minority business enterprises certification process.

- (a) The Division of Minority Business Enterprise of the Department of Economic Development shall promulgate rules to create a certification process for minority business enterprises.
- (b) The certification process shall include, but not be limited to:
 - (1) Criteria for certification that shall include, but not be limited to:
 - (A) A determination that the business is structured as a minority business enterprise;
 - (B) Verification of minority ownership and control of the business; and
 - (C) Annual updates indicating continuing minority ownership and control;
 - (2) A formal application process;
 - (3) An education program to assist minority business enterprises in achieving certification; and
 - (4) An outreach to ensure the broadest possible participation of minority business enterprises and persons proposing new minority business enterprises.
- (c) The Office of State Procurement of the Department of Finance and Administration shall cooperate with the division to the fullest extent possible in sharing information concerning

certification and registration of minority business enterprises carrying out the purposes of this section.

History. Acts 2003, No. 1456, § 1.

25-36-104. Data recording and tracking.

(a) (1) The State Procurement Director shall track data regarding minority participation in state contracts that exceed twenty-five thousand dollars (\$25,000).

(2) The data shall include, but not be limited to, information regarding:

(A) The dollar amount for each contract awarded to a minority-owned business;

(B) The total dollar amount spent on contracts by each state agency; and

(C) The number and percentage of minority-owned businesses awarded contracts by the agency.

(b) The director shall report the data required under subsection (a) of this section semiannually to the Governor and to the cochairs of the Legislative Council and to the Legislative Joint Auditing Committee and the Minority Business Advisory Council.

(c) (1) Each state agency shall include in its budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding twenty-five thousand dollars (\$25,000) awarded to minority-owned businesses.

(2) The vice president or vice chancellor for finance of each state college and university shall include in his or her budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding twenty-five thousand dollars (\$25,000) awarded to minority-owned businesses.

(d) The director shall promulgate rules and regulations necessary for the implementation of this chapter.

History. Acts 2003, No. 1814, § 1; 2005, No. 1962, § 113.

R1:25-36-104. Data recording and tracking

(a) Agency Procurement Officials shall submit reports monthly to the Office of State Procurement, of data regarding minority participation in that agencies contracts which exceed \$25,000 (www.state.ar.us/dfa/procurement)

(b) The Director of the Office of State Procurement shall gather the above information and similar information regarding all other state agencies and submit a report semi annually to the Governor and to the co-chairs of the Legislative Council and to the Legislative Joint Audit Committee and the Minority Business Advisory Council.

APPENDIX 3

MOTOR VEHICLES

Title 22

Public Property

Chapter 8 Motor Vehicles

Subchapter 1 — General Provisions

22-8-101. Registration of state-owned motor vehicles - Report.

(a) (1) In order that a complete inventory of all state-owned motor vehicles is maintained, every state agency, including the Arkansas State Highway and Transportation Department, the Arkansas State Game and Fish Commission, the Department of Arkansas State Police, the Arkansas National Guard, and all constitutional offices shall annually register each motor vehicle owned by the State of Arkansas with the Director of the Department of Finance and Administration in a manner prescribed by the director.

(2) The registration shall include a description of each motor vehicle, including the year, make, model, license number, vehicle identification number, and other information which the director might require.

(3) Whenever any state agency sells or disposes of a motor vehicle, a complete record thereof shall be furnished to the director as authorization for the removal of the vehicle from the official state inventory.

(4) Whenever any state agency acquires a new or additional motor vehicle, the information required by this subsection to be placed in the state inventory shall be furnished to the director within ten (10) days after the acquisition of the vehicle by the agency.

(5) The director shall keep the inventory of motor vehicles owned by the State of Arkansas and its agencies current at all times, categorized in accordance with the motor vehicles owned by each of the respective state agencies.

(b) (1) The director shall make an annual report to the Legislative Council as to the number of motor vehicles owned by the State of Arkansas.

(2) The report shall include a comparison of the current inventory of motor vehicles with an inventory of the preceding year.

History. Acts 1977, No. 455, §§ 1, 2; A.S.A. 1947, §§ 14-524, 14-525.

22-8-102. Leasing and renting of vehicles by state agencies.

(a) For purposes of this section:

(1) "Lease" means obtaining the use of a motor vehicle from any source for a monetary fee, for a period of thirty-one (31) days or more; and

(2) "Rental" means obtaining the use of a motor vehicle from any source for a monetary fee for a period of thirty (30) days or less.

(b) (1) Before any state agency shall lease any motor vehicle or renew any existing lease for a motor vehicle, the agency shall submit a written request to the State Procurement Director identifying the motor vehicles sought to be leased by the agency and all facts and circumstances the director may request to enable him or her to determine the economics, need, and feasibility of leasing the motor vehicle.

(2) Upon receipt, the director shall review the request to lease the motor vehicle, and if he or she determines that the lease is in the best interest of the State of Arkansas and that the agency has adequate funds to pay the lease, he or she may approve the request but only if he or she has first received the approval of the Legislative Council.

(3) After receiving the approval of the Legislative Council, the director shall stamp his or her approval on the request and return it to the state agency, which may then proceed to enter into the lease as proposed and approved by the director.

(4) In emergency situations, the director may approve a temporary lease of a motor vehicle, not to exceed thirty (30) days, but only if he or she has sought the advice of the Chair of the Legislative Council and scheduled the temporary lease of a motor vehicle for consideration at the next meeting of the Legislative Council.

(c) If the director disapproves a proposed lease of a motor vehicle, he or she shall stamp his or her disapproval on the request and return it to the state agency, and it shall be unlawful for the state agency to proceed to lease the motor vehicle.

History. Acts 1977, No. 455, § 3; A.S.A. 1947, § 14-526; Acts 2001, No. 588, § 1.

22-8-103. Penalty for noncompliance with §§ 22-8-101 and 22-8-102.

Any department head or employee of the State of Arkansas failing or refusing to carry out the provisions of §§ 22-8-101 and 22-8-102 shall be deemed guilty of a Class B misdemeanor and upon conviction shall be punished in the manner provided by law.

History. Acts 1977, No. 455, § 4; A.S.A. 1947, § 14-527.

22-8-104. Private use of state or county vehicles - Penalty.

(a) It shall be unlawful for any state or county employee who is employed by the Arkansas State Highway and Transportation Department or by a county highway department, county judge, or road commissioner to use trucks and automobiles that belong to the state or county for any purpose other than performing actual service for the state or county.

(b) The use of publicly owned cars and trucks for individual use to make pleasure trips on Sundays and other holidays, except when going to and from the place of employment or transporting tools, material, and other supplies to places of necessity, is prohibited.

(c) The provisions of this section shall not be so construed as to prevent judges and road commissioners from making road inspection trips when the judge or road commissioner deems the inspections necessary.

(d) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100).

History. Acts 1941, No. 318, §§ 1, 2; A.S.A. 1947, §§ 14-501, 14-502.

APPENDIX 4

RISK MANAGEMENT

Title 23 Public Utilities and Regulated Industries

Chapter 11 State Insurance Department

Subchapter 6 — Risk Management

23-61-601. Title.

This subchapter may be cited as the "Risk Management Act".

History. Acts 1981, No. 272, § 3; A.S.A. 1947, § 66-5703.

23-61-602. Purpose.

- (a) It is the purpose of this subchapter to reduce the cost to the state of insurance coverage, including surety bonds, by establishing the Risk Management Division.
- (b) It is also the purpose of this subchapter that the division analyze and make recommendations as to cost-effective loss control and safety programs for the various state agencies.
- (c) It is also the purpose of this subchapter to authorize the division to advise and give assistance to municipalities, counties, school districts, and improvement districts as to the procurement of insurance coverage and other risk management techniques.

History. Acts 1981, No. 272, § 1; A.S.A. 1947, § 66-5701.

23-61-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Risk management" means the minimization of loss through the discovery of loss sources, evaluation of the impact of a possible loss on the organization, and the selection of the most effective and efficient technique of dealing with risk of loss;
- (2) "Risk manager" means the Administrator of the Risk Management Division; and
- (3) "State agencies" means any agencies, boards, bureaus, commissions, councils, departments, institutions, or other establishments of this state.

History. Acts 1981, No. 272, § 2; A.S.A. 1947, § 66-5702.

23-61-604. Risk Management Division - Creation.

There is created a Risk Management Division within the State Insurance Department.

History. Acts 1981, No. 272, § 4; A.S.A. 1947, § 66-5704.

23-61-605. Risk manager - Appointment - Authority.

- (a) (1) The Administrator of the Risk Management Division will be appointed by the Insurance Commissioner.
- (2) The risk manager shall be knowledgeable and experienced in risk management techniques.
- (b) The risk manager shall have the authority to:
- (1) Establish standardized specifications for insurance coverage of all state agencies;
 - (2) Determine all specifications for insurance coverage of state agencies;
 - (3) Assist and advise state agencies in the procurement of insurance coverage;
 - (4) Establish a system for reporting insured or uninsured losses incurred by state agencies and purchases of insurance by state agencies within guidelines established by the risk manager;
 - (5) Develop and promote programs to control losses and encourage safety; and
 - (6) Perform any other function of risk management as directed by the commissioner.

History. Acts 1981, No. 272, §§ 4, 5; A.S.A. 1947, §§ 66-5704, 66-5705.

23-61-606. Procurement of insurance or surety bonding.

- (a) The State Procurement Director shall procure insurance or surety bonding in accordance with the Arkansas Procurement Law, § 19-11-201 et seq., unless the risk manager determines that it is in the best interest of the state for the director to procure insurance or surety bonding by negotiation, or for any state agency to procure all or part of its own insurance or surety bonding.
- (b) When the Administrator of the Risk Management Division authorizes state agencies to procure insurance or surety bonding, the authorization shall be made in writing and approved by the Insurance Commissioner. The authorization may be made for, but not limited to, purchases not exceeding an amount established by regulations, particular lines of insurance, and purchases by state agencies with a demonstrated expertise in the field of risk management.
- (c) Upon approval of the risk manager and the director, a state agency may be authorized to procure insurance or surety bonding under emergency conditions. Emergency conditions exist when life, health, welfare, assets, or functional operations of an agency are or may be threatened or impaired.
- (d) The director shall not have jurisdiction over the procurement of surety bonding or insurance coverage for state agencies except as provided by this subchapter.

History. Acts 1981, No. 272, §§ 7-10; 1983, No. 522, §§ 41, 42; A.S.A. 1947, §§ 66-5707 - 66-5710.

23-61-607. Rules and regulations.

- (a) The Administrator of the Risk Management Division shall have the authority to promulgate rules and regulations consistent with this subchapter.
- (b) All rules and regulations shall be subject to the approval of the Insurance Commissioner and conform with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1981, No. 272, § 11; A.S.A. 1947, § 66-5711.

23-61-608. Advice and assistance for certain political subdivisions.

- (a) At the request of any municipality, county, school district, or improvement district, the risk manager may give advice and assistance on the purchase of insurance coverage and other risk management techniques.
- (b) However, counties, municipalities, school districts, and improvement districts may be required to reimburse the State Insurance Department for expenses incurred by providing the assistance. Reimbursements shall not include salary and benefit expenses for full-time state employees.
- (c) The reimbursements shall be deposited in the State Treasury as nonrevenue receipts refund to expenditures.
- (d) This section shall only be used in the event that budgetary constraint dictates this action to prevent undue fiscal hardships on the department.

History. Acts 1981, No. 272, § 13; 1983, No. 522, § 43; A.S.A. 1947, § 66-5713.

23-61-609. Reports by state agencies.

State agencies shall report to the Administrator of the Risk Management Division information that the risk manager determines to be necessary to analyze and manage the risk of loss of state assets.

History. Acts 1981, No. 272, § 12; A.S.A. 1947, § 66-5712.

23-61-610. Annual report.

The Administrator of the Risk Management Division shall report annually to the Governor and the Legislative Council on his or her findings and recommendations.

History. Acts 1981, No. 272, § 6; A.S.A. 1947, § 66-5706.

APPENDIX 5

SIGNATURE REQUIREMENTS ON INVITATIONS FOR BIDS

Procurement regulation *R7:19-11-229(b)(4)* stipulates *"only signed sealed bids delivered prior to date and time of bid opening shall be accepted."*

The definition of "signed" for our purposes can be found in the Uniform Commercial Code, Arkansas Code Annotated of 1987, § 4-1-201(39) (General Definitions), "...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/her signature.

§ 19-11-203(29) "Signature" means a manual or an electronic or 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.

§ 19-11-203(35) "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.

Act 905 of 2001, The uniform Electronic Transactions Act
Section 2. Definitions

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

APPENDIX 6

PROCUREMENT CODES

<u>CODE</u>	<u>CODE DESCRIPTION</u>	<u>EXPLANATION</u>
EI	Exempt Item	Use for payroll items
EL*	Exempt from	Procurements listed as exempt in A.C.A
ML	Purchasing Law	§ 19-11-203(5) and (14)
EM MM	Emergency	Acquisitions of commodities or services which, if not immediately initiated, will endanger human life, health, state property or the functional capability of a state agency
SS MS	Sole Source	Procurements which, by virtue of the performance specification, are available from a single source, including repairs involving hidden damages
SO MO	Small Order	Purchases not subject to Amendment 54 to the Arkansas Constitution, not included on state contract, and costing \$5,000 or less
QC MC	Quote Constitutional Item	Procurements of printing and supplies subject to Amendment 54 to the Arkansas Constitution, not included on state contract, and costing \$25,000 or less; whenever possible, at least three competitive bids must be obtained. Quotations in this category may be obtained by state agencies only if issued a delegation order for this specific purpose.
CB MB	Competitive Bid	Procurements not subject to Amendment 54 to the Arkansas Constitution, not included on state contracts, and costing between \$5,000 and \$25,000
WS	Workshop Products	Items listed in the workshop-made products price list in accordance with A.C.A. of 1987 § 19-11-901 of subchapter 9
ER	Exempt by	Retail credit card purchases
MR	Purchasing Regs	
ST MT	State Term	Procurements made under a term contract issued by the Office of State Procurement
SF MF	State Firm	Procurements made by the issuance of a firm contract by the Office of State Procurement

<u>CODE</u>	<u>CODE DESCRIPTION</u>	<u>EXPLANATION</u>
AA MA	Agency Contract Award	Procurements made under a term contract by a state agency having an Agency Procurement Official
AX MX	Agency Quantity Fixed	Procurements made by the issuance of a fixed quantity contract by a state agency having an Agency Procurement Official
BU MU	Bid Unsuccessful	Procurements authorized by Agency Procurement Officials for their agency or the Office of State Procurement for all other state agencies when the competitive sealed bid process has produced no satisfactory results
FE ME	Funds Exempt	Procurements from auxiliary and restricted funds
RP MP	Resale Purchase	Items procured for resale in cafeterias, bookstores, etc.; however, these items cannot be transferred or sold to a department or agency in order to circumvent applicable procurement procedures

***EXAMPLES:**

<u>Exempt From Procurement Law:</u>	<u>Exempt by other laws:</u>
1. Interagency expenditures	1. Contract labor
2. Travel reimbursement	2. Workers' compensation
3. Taxes	
4. Advertising in newspapers	
5. Fees	
6. Postage	
7. Copyrighted educational aids	
8. Services of visiting speakers	
9. Freight and storage charges	
10. Licenses	
11. Arkansas Highway Department for construction, reconstruction and maintenance of roads and bridges	

MINORITY PURCHASES

The purchase codes have been revised to enable automatic reporting of minority purchases by the

Department of Finance and Administration, relieving state agencies from the requirements of submitting the reports. Agencies need only enter the second alpha designator on requests or invitations to bid prior to award. The first alpha designator is added at the time of award. If awarded to a minority vendor, the first alpha designator will be an "M" in all cases. If awarded to other than a minority vendor, the alpha designator will be that indicated in the above list of purchase codes.