

PROCUREMENT REGULATIONS

PART II

CHAPTER 10

PROFESSIONAL AND CONSULTANT SERVICES CONTRACT

As used in this part, the term "State agencies" shall include all departments, agencies, boards, commissions, and institutions of higher education of the State of Arkansas, other than the Arkansas State Highway and Transportation Department and contracts covered by the Federal Highway Administration, or wherein the cost and fee are established by competitive bidding. The term "Contractor" shall refer to any person or organization which executes a contract with a state agency under which "Consultant Services" to said state agency or agencies, and the individuals performing the services are not state employees occupying regular full-time or part-time or extra help positions provided by law; except as provided for by Arkansas Code 19-4-1701.

A professional services contract between a state agency and a contractor is a contract in which the relationship between the contractor and the state agency is that of an independent contractor, rather than that of an employee. The services to be rendered consist of the personal services of an individual or individuals which are professional in nature. Under such contracts, the agency does not have direct managerial control over the day-to-day activities of the individual or individuals providing the services, and the contract will specify the results expected from the rendering of the services rather than detailing the manner in which services shall be rendered. Any contract under which the state agency retains day-to-day managerial control over the person or persons performing the services and in which the relationship between the contractor and agency is that of an employer and employee is not a professional services contract, is illegal, and expressly prohibited. Services rendered under a professional services contract may be rendered to the agency itself or to a third party beneficiary. However, the Department of Information Systems is authorized to employ persons over which they exercise day-to-day managerial control as specified under Arkansas Code 25-4-112, for which such services as a professional services contract may be utilized.

A consultant services contract is a contract between a state agency and an individual or organization in which 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 or problems facing the agency or the third party beneficiary. The contractor shall have the relationship of an independent contractor with respect to the state agency. The state agency shall not exercise managerial control over the day-to-day activities of the contractor, but the contract shall specify the results expected from the services to be rendered by the contractor and the advice or assistance to be provided.

The principal purpose of a professional services contract or a consultant services contract shall be the procurement of the services of an individual or individuals by the state agency, rather than the procurement of commodities.

Service contracts (Example: elevator service, janitorial service, pest control services, etc.) shall be governed by Arkansas Code 19-4-816, which requires each agency to keep a copy of such contracts on file.

No contract for procurement of professional services and consultant services may be entered into which requires the services of one or more individuals on a regular full-time or part-time work week basis for longer than one year. Provided, however, that in the unusual event that the best interest of the State would be served by a contract which exceeds one year, the Chief Fiscal Officer may approve such contract, having first received the review of the Legislative Council or the Joint Budget Committee. Provided further, that in no event shall any contract be entered into that would contemplate that payments under such contract be made beyond the expiration of the current biennial period, unless the General Assembly, prior to the expiration of the current biennial period, makes an appropriation for such purpose. Professional and consultant service contracts shall include a non-appropriation clause which specifies that in the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of the contract for the services to be provided by the contractor, the contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purpose.

Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract form but must be listed as attachment(s).

Procurement of Professional and Consultant Services is to be accomplished as follows:

1. Obtain copies of the approved Office of State Procurement Professional /Consultant Services standard contract form and PCS-D, (Contract and Grant Disclosure and Certification form) and letter from the Office of the Attorney General when attorneys are retained.
2. Complete the Professional/Consultant Services Form for each contract. Except for those agencies exempt from State Building Services review, contracts subject to SBS prior approval shall also include the SBS Contract Justification Form.
3. For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the state agency does not exceed five thousand dollars (\$5,000.00), a purchase order may be utilized in lieu of the standard contract form; provided that, should the agency enter into a subsequent contract or contracts with the same contractor during the same fiscal year, regardless of the nature of said contract or contracts, the details of the original contract which

utilized a purchase order form and all subsequent contracts, regardless of amount or type, shall be promptly reported to the Chief Fiscal Officer of the State.

4. One of the following methods should be utilized to receive and evaluate offers for professional and consultant services. The Office of State Procurement maintains a listing of professionals and consultants desiring to do business with the state.
 - a. SBS Criteria: The guidelines and procedures established by the Arkansas State Building Services shall be used by all agencies, except those exempt from SBS review, in selecting architects, land surveyors and engineers for state construction projects. Refer to Architectural Section 6-100 of SBS Standards and Criteria - Professional Services Selection Procedures for State Agencies.
 - b. Competitive Bid: A bid is a quotation from a respondent of his bid amount, duration of engagement, qualifications, and acceptance of responsibility to achieve the results as defined in a request for bids. This method is preferred when the agency is able to define in detail the specific project objectives, methods, results and desired qualifications. When using this method the agency should intend to award the contract to the qualified respondent submitting the lowest bid amount. A minimum of three (3) bids should be solicited, or documentation should be furnished as to why three (3) were not received. Only firms that offer the type of service required shall be contacted.
 - c. Request for Proposal (RFP): The RFP should include a complete description of the problem and/or circumstances as perceived by the agency, and any special requirements of the agency such as time limitations and should be submitted to several recognized experts. When the RFP is used, the agency should intend to select the respondent proposing the most effective solution for the price quoted. Discussions may be conducted with responsible offerors who submit proposals 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.
 - d. Request for Qualifications (RFQ): The Request for Qualifications is, in the absence of sole source justification, the procurement method required when contracting for architectural, engineering, land surveying and legal services. It may also be used, with prior approval from the Office of State Procurement, as the selection method for other P&CS 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 architects, engineers, and land surveyors shall be in accordance with State Building Services' selection criteria. 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.

- e. Professional and Consultant Services Exempt by Law: Although exempt from the competitive bidding process, the contracting for "professional services" for legal, architectural, engineering and land surveying will be conducted in accordance with § 19-11-801, which directs, "that the state shall negotiate contracts for professional services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices." By regulation, contracting for the above referenced exempt professional services will be made utilizing the Request for Qualifications contracting method.

- f. Sole Source: The "single source" 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; those for performing artists and lecturers, 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. 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.

- g. Sole Source Justification: Sole source professional and consultant service contracts, except for those exempt by law; those for performing artists and lecturers, and those that are published in a newspaper of statewide circulation, must be accompanied by written justification. The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the state. The justification must fully address:
 - why the service is needed;
 - the methods used to determine that a lack of responsible/responsive competition exists for the service;
 - how it was determined that the provider possesses exclusive capabilities;
 - why the service is unique;

- whether or not there are patent or proprietary rights which make the required service unavailable from other sources;
 - what the agency would do if the provider/service were no longer available, and
 - any program considerations which make the use of a “Sole Source” critical to the successful completion of the agency’s task.
 - h. Emergency Contracting: 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 capacity 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).
5. All sections of the contract form **must** be completed with the following items emphasized:
- a. Indicate whether this is a Professional or Consultant Services Contract.
 - b. Enter the agency assigned contract number and amendment number. This number must be utilized when inquiring as to the status of an approved contract and entered on all vouchers submitted for payment to the contractor. 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.
 - c. Enter the date the agreement was signed by the agency and the contractor, the purchase order information and the vendor number. Also enter the agency's code and title, division, if applicable, and the contractor's Federal ID number or social security number, name and address.
 - d. State the objectives and scope clearly and concisely so that the contractor's performance can be effectively evaluated at any time to assure evaluation of satisfactory achievement toward attainment of the contract agreement. Any written data, procedures, forms, survey results,

etc., expected to be supplied by the contractor should be enumerated. If the contract is part of a larger plan, this should also be noted. Use attachments as required.

- e. State the compensation clearly, 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. Calculate and extend totals. A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to. Enter items, rates by items, and extend the total by item column. Finally, enter total of compensation inclusive of reimbursable expenses.
- f. Check box(s) indicating funding source: State, Federal, Cash, Trust or Other (specify). Also, indicate the percentage of Federal and/or State funds when applicable.

Enter source of funds (fund code, business areas, fund center, commitment item, and grantor agency of federal grants funds) to be utilized for payment of the contract. (NOTE: The source of cash (bank) funds must be specifically stated - such as: tuition, fees, federal funds, etc.).

- g. Indicate the schedule of payments agreed to, to include any method(s) that might be utilized to evaluate performance of the criteria enumerated in the objectives and scope section of the contract as a condition of rendering payment to the contractor.
- h. 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:
 - (1) any 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;
 - (2) all contracts, unless specifically excepted, must be filed with the Department of Finance and Administration and/or the Office of

Construction of Arkansas State Building Services no fewer than five (5) working days prior to the starting date of such contracts.

- i. List any resources to be provided by the agency to the contractor as part of the agreement.
- j. Provide the name of the agency representative who will represent the agency in coordinating the work of the contractor.
- k. List the name, address, social security number 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.
- l. Insure that on any contract or amendment to a contract executed by an agency, which exceeds the dollar limit established by Executive Order 98-04, the contractor discloses all information as required under the terms of Executive Order 98-04 and the Regulation pursuant thereto. 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.

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.

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.

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.

- m. Be advised that although the contract form is signed by both the agency and contractor, it is not binding until reviewed by the Legislative Council or Joint Budget Committee, if required, and approved by the Department of Finance and Administration.

The head of the agency shall certify by his/her signature on each contract entered into by that agency that:

- (1) All information required by law and by regulations 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/her knowledge and belief;
- (4) All general guidelines prescribed by the Chief Fiscal Officer of the State and all specific regulations of the state agency governing such contracts have been complied with;
- (5) The services proposed to be provided under the contract are necessary for the operation of the State agency in fulfilling its legal responsibilities and cannot be provided by an existing State agency or institution;
- (6) The Contractor is fully qualified to perform the services and has no vested interest in the subject matter of the contract which would constitute a conflict of interest and a bar to his providing services of a professional and disinterested quality;
- (7) The contract terms are reasonable and the benefits to be derived sufficient to warrant the expenditure of the funds called for in the contract.
- (8) No obligations will be incurred by a state agency unless sufficient funds are available to pay the obligations when they become due.

6. Procedures for Approval of Architects, Engineers and Land Surveyor Contracts

With the exception of those agencies exempt from State Building Services review, all contracts for architectural, engineering and land surveyor services must be first submitted to Arkansas State Building Services for their recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts to SBS seven (7) working days prior to the deadline for submittal to DF&A. After receiving the recommendation and approval of Arkansas State Building Services, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration. No contract requiring SBS review shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of Arkansas State Building Services.

In the event Arkansas State Building Services 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 State Building Services. The Legislative Council may then request Arkansas State Building Services to review their previous decision, abide by the decision of Arkansas State Building Services, or request the agency to make changes in the contract.

In no event shall Arkansas State Building Services have the final authority to deny a contract solely on the basis of its propriety.

7. Procedures for Approval of Data Processing or Telecommunications Planning or Services

All contracts for data processing, management systems, or telecommunications equipment planning or services must be submitted first to the State Executive Chief Information Officer for recommendation and approval. After receiving the recommendation and approval of the State Executive Chief Information Officer, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration. No contract shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of the State Executive Chief Information Officer.

Contracts for projects with an estimated value of \$25,000 or more involving the planning and installation of cabling or other capital improvements shall be submitted to SBS for review and approval prior to forwarding to the Office of State Procurement. See paragraph 6 for submittal of SBS contracts.

If the State Executive Chief Information Officer refuses to give favorable recommendation, the agency may appeal in writing to the Governor whose decision is final as provided under Arkansas Code 25-4-115.

8. Contracts Requiring Review of the Legislative Council or Joint Budget Committees

APPROVAL PROCEDURES:

- a. Any contract for professional or consultant services requiring the services of an individual or individuals for regular full-time or part-time weekly work where the total compensation exceeds ten thousand dollars (\$10,000.00), must be presented to the Legislative Council or the Joint Budget Committee by the Department of Finance and Administration prior to the execution date of such contract. The Legislative Council or the Joint Budget Committee shall provide the Chief Fiscal Officer of the State with their review as to the propriety of the contract within thirty (30) days of said submission. Such contracts shall not be submitted to the Legislative Council or the Joint Budget Committee until the Department of Finance and Administration has received said contract and provided the Legislative Council or the Joint Budget Committee with a recommendation as to the legality of such contract. NOTE: The Legislative Council or Joint Budget Committee may review or exempt from review any contract or group of contracts contemplated by Arkansas Code 19-4-1710, Section (3)(B).
- b. Contracts between state agencies where the total compensation exceeds ten thousand dollars (\$10,000.00), 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.
- c. 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.

- d. Amendments to contracts that originally did not require review by Legislative Council or Joint Budget Committee: An amendment which increases the total compensation 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. Any amendment changing the total dollar amount of a contract; the term of that contract, or any substantive specifications to a contract must be submitted for review, along with a copy of the original contract and any attachments thereto. **Contracts which have expired cannot be amended.**

An agency representative should be present at the meeting.

It is the responsibility of the requesting agency to provide the contractor with an approved copy of the contract and related documentation.

9. Contracts Requiring Approval by the Department of Finance and Administration Only

- Those contracts for professional and consultant services not defined in Section 8 as requiring review of the Legislative Council or Joint Budget Committee, excluding those of the Arkansas State Highway and Transportation Department cited in that section, require prior approval ONLY of the Department of Finance and Administration. These include, but are not limited to, professional or consultant services contracts for grants between state agencies and local governmental units that are funded primarily by Federal funds, whereby the monies expended are pass through grants and do not directly affect the state agency.
10. The requesting agency shall submit the original and two (2) copies each of the contract and attachments thereto, to the Office of State Procurement; however, those contracts for architectural, engineering and land surveyor services require an original and three (3) copies and shall first be submitted to Arkansas State Building Services. The approved original will be returned to the agency; a copy filed in the Office of State Procurement; and, if necessary, a copy returned to Arkansas State Building Services.
 11. In addition to the information supplied on the Contract, the Chief Fiscal Officer of the State may make whatever additional inquiry he deems necessary and may require the supplying of additional information should he have reason to believe that the contract should be rejected because it does not comply with the provisions contained herein. It shall be the duty of the Chief Fiscal Officer of the State to return as "disapproved" to the contracting state agency any contract which fails to comply with the applicable laws and regulations governing said contract, and to approve any contract which does comply with the provisions contained herein.
 12. The Chief Fiscal Officer shall immediately report to the Legislative Council or the Joint Budget Committee the disapproval of any contracts or payments thereunder, and the reason therefore. The state agency involved may then request

hearing before the Legislative Council or the Joint Budget Committee. The Legislative Council or the Joint Budget committee upon a hearing of the fact may:

- a. request the state agency to make certain changes in the contract involved;
- b. request the Chief Fiscal Officer of the State reconsider his previous disapproval of said contract or payment; or
- c. notify the state agency that it concurs in the decision of the Chief Fiscal Officer of the State.

The Chief Fiscal Officer of the State shall have final and ultimate authority over the supervision and approval of all contracts described in this Section. Provided that the Chief Fiscal Officer of the State shall seek and receive the review of the Legislative Council before approving or disapproving any contract or class or group of contracts authorized under the provisions of this Act, unless the Legislative Council or Joint Budget Committee specifically exempts the contract or class or group of contracts by formal committee action.