STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF STATE PROCUREMENT

RULE

IMPLEMENTING GOVERNOR'S EXECUTIVE ORDER 98-04, ACT 34 OF 1999 AND ACT 2262 OF 2005

Pursuant to the authority vested in the Department of Finance and Administration by Ark. Code Ann. §§ 19-11-217, 19-11-715, 21-5-207, and 25-8-102, and by Act 34 of the 1999 Acts of the Arkansas General Assembly, and in the Chief Fiscal Officer of the State by Ark. Code Ann. § 19-4-104, and by the promulgation of Executive Order 98-04, and in compliance with Ark. Code Ann. § 25-15-204 and Ark. Code Ann. § 10-3-309, the Director of the Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following rule for the enforcement and administration of Executive Order 98-04, Act 34 of 1999 and of Act 2262 of the 2005 Acts of the Arkansas General Assembly, to take effect as amended, on August 12, 2005.

1. DEFINITIONS – For purposes of this Rule, unless otherwise required by the context, the following definitions apply:

A. AGENCY or STATE AGENCY shall mean every agency, board, commission, department, division, institution, and other office of state government located within the executive branch of government and under the control of the Governor, for purposes of Executive Order 98-04. For purposes of Act 34 of 1999, State Agency is defined to also include an office of state government located within the legislative and judicial branches of government. Agency shall also include state-supported colleges and universities.

B. BOARD OR COMMISSION MEMBER shall mean any person who is an appointed member of a state board or commission, whether appointed by a member of the legislative, executive, or judicial branches of government, or otherwise.

C. COMPETITIVE SEALED BID shall mean a method of procurement in which the purchase price exceeds twenty-five thousand dollars ($25,000). It requires issuance of an Invitation to Bid, public notice, public opening at a pre-designated time and place, and award to the lowest responsive and responsible bidder.

D. CONSTITUTIONAL OFFICER shall mean Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State, for purposes of Executive Order 98-04. For purposes of Act 34 of 1999, "constitutional officer" shall include, in addition to the foregoing, members of the Arkansas House of Representatives and members of the Arkansas Senate. For purposes of clarity, when the Rule refers to "constitutional officer" the intent is to refer only to Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State. When the intent is to also include

members of the General Assembly, the Rule shall state "constitutional officer, including members of the General Assembly."

E. CONTRACT shall mean any agreement entered into by and between a state agency and an individual or entity pursuant to which the agency agrees to purchase or lease tangible personal property, real property, or services, or any agreement for the disposal of commodities and services. Contract includes, but is not limited to, awards and notices of award; contracts of a fixed price, cost, or incentive type; contracts providing for the issuance of job or task orders, leases, lease purchase agreements, letter contracts, purchase orders, and professional or consultant services contracts. Contract also includes supplemental agreements with respect to any of these categories.

F. CONTRACT LABOR shall mean temporary personnel hired through a private employment agency to meet unanticipated staffing needs. The duration of these assignments cannot exceed six (6) consecutive weeks per calendar quarter. Expenses for these services are paid from the agency/institution maintenance and operations budget. Temporary personnel hired in this manner are not state employees.

G. CONTRACTOR shall mean any individual or entity that enters into a contract with a state agency.

H. 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 capacity of a state agency.

I. ENTITY shall mean any type of business organization other than an individual, including, but not limited to, a corporation, partnership, limited liability company, or joint venture.

J. FORMER BOARD OR COMMISSION MEMBER shall mean any person who was a board or commission member within two years prior to entering into any contract with a state agency.

K. FORMER CONSTITUTIONAL OFFICER shall mean any person who was a Constitutional Officer within two years prior to entering into any contract with a state agency.

L. FORMER MEMBER OF THE GENERAL ASSEMBLY shall mean any person who was a member of the General Assembly within two years prior to entering into any contract with a state agency.

M. FORMER STATE EMPLOYEE shall mean any person who was a state employee of any state agency within two years prior to entering into any contract a state agency.

N. GRANTS shall mean all appropriations made by the General Assembly from state, federal, or other moneys for educational assistance, welfare grants, rehabilitation

services, aid to counties and municipalities, and to all other special appropriations which have for their purpose the appropriating of state, federal, or other moneys for public benefits; provided, however, grants shall not include scholarships to institutions of higher education. For purposes of this Rule, a discretionary grant is a grant in which the recipient of the grant funds or the formula for the grant award is not specifically stated in the legislation authorizing the grant.

O. IMMEDIATE FAMILY MEMBER shall mean an individual's spouse, children of that individual or his or her spouse, and brothers, sisters, or parents of the individual or his or her spouse.

P. INDIVIDUAL shall mean one particular person.

Q. JOB CREATED OR ENHANCED BY LEGISLATION shall mean any regular salary or extra-help position created by legislation or any position previously created by legislation for which the salary was increased in excess of fifteen percent (15%) authorized by legislative action or was upgraded or reclassified.

R. LEASE shall mean a contract by which an individual or entity conveys to another an interest in real property or tangible personal property for a designated period of time for a specified rent or other compensation. Lease shall include transactions in which a transfer of title or possession of tangible personal property occurs, such as a license transaction.

S. LEASE-PURCHASE AGREEMENT shall mean a lease containing a purchase option providing that the lessee's periodic payments, or parts thereof, may be applied to the rent required and to the payments required to purchase the property, upon lessee exercising the purchase option; a conditional sales contract.

T. MEMBERS OF THE GENERAL ASSEMBLY shall mean member(s) of the Arkansas House of Representative or of the Arkansas Senate. The term "Legislator," when used in the Rule, shall have the same meaning.

U. POSITION OF CONTROL shall mean the possession, direct or indirect, of the power to direct or cause the direction of the purchasing policies of an entity, or the power to exercise a deciding influence over the management of the entity.

V. PUBLIC OFFICIAL shall mean The Secretary of State, Governor, Lieutenant Governor, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, a member of the Senate, and a member of the House of Representatives; The executive head of any agency, department, board, commission, institution, bureau, or council of this state.

W. PURCHASE AGREEMENT shall mean any written instrument evidencing the agreement of an agency to purchase tangible personal property or services from a vendor.

X. RELATIVE shall mean the definition of IMMEDIATE FAMILY MEMBER plus stepmother, stepfather, stepbrother, stepsister, half-brother, half-sister, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece.

Y. REQUEST FOR PROPOSAL shall mean a method of procurement which requires issuance of a Request for Proposal, public notice, public opening at a pre-designated time and place, and evaluation of proposals to determine the relative abilities of bidders to perform, including the degree of technical or professional experience, and price is not the only consideration in selection of the bidder.

Z. SOLE SOURCE shall mean a procurement or contractual agreement which by virtue of the performance specifications is available from a single source.

AA. STATE AGENCY INTERNAL AUDIT OFFICE shall mean the Internal Audit Section of the Office of Accounting created by Executive Order 04-04 within the Department of Finance and Administration to promote accountability, integrity, and efficiency in the operation of the Executive Branch. This Office shall be responsible for the examination of records that agencies are required to maintain pursuant to Executive Order 98-04 and this Rule.

BB. SUPERVISORY EMPLOYEE shall mean any individual having authority in the interest of the state agency to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees of a state agency; or the responsibility to direct other employees of a state agency, to adjust their grievances, or to effectively recommend an action if the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

CC. STATE EMPLOYEE shall mean any employee of any state agency employed in a regular salary position or extra-help position not to include contract labor.

DD. SUBCONTRACTOR shall mean any person or entity entering into an agreement with a state agency contractor, whereby the contractor assigns or otherwise delegates to the person or entity, for consideration, all, or any part, of the performance required of the contractor under the terms of the contract between the state agency and the contractor. For purposes of this Rule, the term subcontractor shall apply to any assignment of an agreement with a state agency, specifically including, but not limited to, a contract, a purchase agreement, and a lease.

EE. TAXPAYER IDENTIFICATION NUMBER (TIN) shall mean the individual's Social Security Number or the entity's Federal Identification Number.

FF. VENDOR shall mean an individual or entity that offers commodities or services for sale.

2. DISCLOSURE REQUIRED

A. INFORMATION REQUIRED TO BE DISCLOSED. For purposes of the requirements of this Rule, disclosure is required of any of the following, whether current or former:

(1) member of the Arkansas General Assembly,
(2) constitutional officer,
(3) board or commission member,
(4) state employee,
(5) the immediate family member*, including the spouse, of any of (1) - (4), or
(6) any entity in which any person designated in (1) - (5):
  (i) holds any position of control, or
  (ii) holds any ownership interest of 10% or greater.

* For purposes of employment disclosures, the term "immediate family member" shall be replaced with the term "relative".

B. DISCLOSURE REQUIRED OF CONSTITUTIONAL OFFICERS AND SPOUSE TO BE MADE UNDER PENALTY OF PERJURY. Act 34 of 1999 provides that all disclosure required to be made by a constitutional officer, including a member of the General Assembly, or the spouse of a constitutional officer shall be made under penalty of perjury.

C. CONTRACTS AND EMPLOYMENT EXEMPT FROM DISCLOSURE REQUIREMENTS.

(1) CONTRACTS AND SUBCONTRACTS LESS THAN $25,000. Agencies are not required to obtain the disclosure listed in Section 2 from potential contractors, whether individuals or entities, for which the total consideration is less than or equal to $25,000. Contractors are not required to obtain the disclosure listed in Section 2 from potential subcontractors, whether individuals or entities, for which the total consideration is less than or equal to $25,000. Agencies shall not split procurements into two or more contracts in order to circumvent the limit on the amount allowed to be purchased exempt from the disclosure requirements.

(2) OTHER CONTRACTS EXEMPT FROM DISCLOSURE REQUIREMENTS by Ark. Code Ann. § 19-11-203

(a) Contracts with another governmental entity such as a state agency, public educational institution, federal governmental entity, or body of a local government.

(b) Commodities procured from non-profit workshops authorized by Ark. Code Ann. § 19-11-501 et seq.

(c) Farm products procured in accordance with Ark. Code Ann. § 19-11-203(14)(H).

(d) Procurement of postage.

(e) Payment of taxes.

(f) Contracts with utilities defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering.

(g) Medical items used for the treatment and diagnosis of patients, if procured through a group purchasing entity serving other public health institutions when substantial savings are available.

(h) Purchase orders issued by agencies against Office of State Purchasing contracts.

(i) Expenditures not involving public funds.

(j) 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.

(k) Services of visiting speakers, lecturers, and performing artists.

(l) Works of art for museum and public display.

(3) EXEMPTION FROM DISCLOSURE FOR WORK STUDY STUDENTS. Agencies shall not be required to obtain disclosure or approval of applicants for work study positions.

D. DISCLOSURE BY INDIVIDUALS.

(1) DISCLOSURE GENERALLY. Except for contracts exempt from disclosure by Section 2 C and employment applicants exempt from disclosure by Section 2 D(2), agencies shall require any individual who desires to enter into, extend, amend, or renew a contract, lease,

or purchase agreement, or obtain employment to disclose whether that individual is one of the persons designated in Section 2 A (1) - (5).

(2) EMPLOYMENT - ONLY FINALISTS FOR POSITION REQUIRED TO DISCLOSE. Agencies are not required to obtain disclosure of all applicants for employment. Only those applicants who are chosen as finalists for the position are required to disclose. Agencies may elect to obtain disclosure from each of the finalists for the position at the time of the interview.

E. DISCLOSURE BY ENTITIES. Except for contracts exempt from disclosure by Section 2 C, agencies shall require any entity that desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement to disclose whether any person designated in Section 2 A (1) - (5) holds any position of control or holds any ownership interest of 10% or greater.

F. DISCLOSURE BY SUBCONTRACTORS. Except for contracts exempt from disclosure by Section 2 C, agencies shall require any individual who, or entity that, desires to enter into, extend, amend, or renew a contract, lease, or purchase agreement to certify, in writing:

(1) That, prior to entering any agreement with any subcontractor, as defined in this Rule, for which the total consideration is greater than $25,000, the contractor shall require the subcontractor to complete a **Contract and Grant Disclosure and Certification Form** (Pages 27 and 28).

(3) That any agreement, current or future, between the contractor and a subcontractor for which the total consideration is greater than $25,000 shall contain the following language:

> Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

(3) That no later than 10 days after entering into any agreement with a subcontractor for which disclosure is required, the contractor shall transmit to the agency a copy of the **Contract and Grant Disclosure and Certification Form** completed and signed by the subcontractor and a statement containing the dollar amount of the subcontract.

(4) This disclosure requirement applies only to agreements entered into between subcontractors and the contractor who contracts with the state agency.

G. MODIFIED DISCLOSURE REQUIRED FOR CHANGE ORDERS TO CAPITAL IMPROVEMENT PROJECTS. If at the time a change order is processed against an original approved capital improvement project, all of the subcontractors are the same as those on the original approved project, the contractor may certify that fact on the change order in lieu of obtaining a new set of disclosure forms from each of the subcontractors. In the event the contractor enters into an agreement with a new subcontractor after the execution of the original approved project, the contractor is then responsible for insuring that disclosure has been obtained from the new subcontractor prior to processing and approval of the change order. All capital improvement construction contract changes orders that are subject to this Rule shall contain the following language:

> "I, the undersigned contractor, do hereby certify that I have reviewed my files and declare that there are / are not (circle one) new or additional subcontractors, which are required to be disclosed under this contract pursuant to Governor's Executive Order 98-04. I have attached to this change order those disclosures required under the Order. I understand that any false information provided by, or omission made by, me may be grounds for termination due to a material breach of the contract."

3. <u>RESPONSIBILITY OF AGENCY TO OBTAIN DISCLOSURE</u>.

A. DISCLOSURE MADE ON APPROVED DISCLOSURE FORMS.

(1) CONTRACTS
Each agency shall inform any potential contractor, with the exception of those otherwise exempt from the disclosure requirements, of the disclosure required by Section 2 and shall provide the potential contractor with the appropriate disclosure form approved for that purpose by the Department of Finance and Administration, as amended from time to time. The current **Contract and Grant Disclosure and Certification Form** is located at Pages 27 and 28.

(2) EMPLOYMENT
Each agency shall inform all applicants of the disclosure required by Section 2. Agencies may comply with the disclosure requirement for employment by either of the following methods:

(a) require that each applicant who is chosen as a finalist for the position complete and sign the **Employee Disclosure/Certification and Employment of Family Members Form** at the time s/he is interviewed by the agency; or

(b) require that each applicant complete a checklist that identifies whether any family or business relationship prohibits the agency from employing that applicant or requires further approval (see sample checklist on Page 33 that may be included in the application). If the applicant checks "none of the above" on the checklist, no further disclosure is required, even if that applicant is hired for the position. If the applicant checks any item on the checklist, the agency must require any applicant who becomes a finalist to complete and sign the **Employee Disclosure/Certification and Employment of Family Members Form** at the time s/he is interviewed by the agency.

B. DISCLOSURE IS CONDITION OF CONTRACT. The agency shall inform each potential contractor who desires to enter into a contract that is not exempt from the disclosure requirements that disclosure is a condition of the contract and that the agency cannot enter into any such contract for which disclosure is not made.

C. CONTRACTOR'S DUTY TO OBTAIN DISCLOSURE OF SUBCONTRACTORS. The agency shall inform each potential contractor that:

(1) disclosure is required to be a condition of any present or future subcontract for which the total consideration is greater than $25,000;

(2) the contractor must require any present or future subcontractor, for which the subcontract amount is greater than $25,000, to complete and sign a **Contract and Grant Disclosure and Certification Form**; and

(4) the contractor must transmit a copy of the subcontractor's disclosure form to the agency and a statement containing the dollar amount of the subcontract.

D. GOODS AND SERVICES FOR WHICH DISCLOSURE MAY BE OBTAINED AFTER PURCHASE. Certain goods and services are exempt from the requirement that disclosure be obtained prior to entering into the contract by virtue of the necessity for obtaining these goods or services expediently. Example: emergency procurements authorized by Ark. Code Ann. § 19-11-233. The exemption applies only to the requirement that the

agency obtain disclosure prior to entering the contract. The agency is not exempt from the requirement of obtaining disclosure for any such contracts greater than $25,000 as soon as reasonably possible and reporting any contract that would otherwise be subject to reporting to Department of Finance and Administration.

4. PROHIBITED CONTRACTS; CONTRACTS REQUIRING APPROVAL.

A. PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND STATE EMPLOYEES PROHIBITED. Except as otherwise permitted by law, agencies are prohibited from entering into, extending, amending, or renewing professional or consultant services contracts with state employees who are paid from extra help or regular salaries. None of the exceptions contained in Section 4 C allow agencies to enter into otherwise prohibited professional or consultant services contracts with state employees.

B. PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND CONSTITUTIONAL OFFICERS SUBJECT TO PRIOR APPROVAL. Constitutional officers, including members of the General Assembly, or their spouses may enter into professional or consultant services contracts with agencies only upon the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

C. CONTRACTS SUBJECT TO COMPETITIVE SEALED BID OR REQUEST FOR PROPOSAL.

(1) An agency may enter into, extend, or renew a contract, lease, or grant with a constitutional officer, including members of the General Assembly, the spouse of a constitutional officer, or an entity in which the officer or spouse holds an ownership interest greater than ten percent (10%) if (i) the contract is the result of competitive sealed bidding or a request for proposal, and (ii) such officer played no role, directly or indirectly, in the administrative determination of specifications for the bid or request for proposal, in the administrative evaluation or consideration of bid or request for proposal, or in the administrative decision to accept the bid or request for proposal.

(2) An agency may enter into, extend, amend, or renew a contract, lease, or purchase agreement with a board or commission member, state employee, the immediate family member of any of these, or any entity in which any of these persons has an ownership interest of 10% or greater if the contract is the result of competitive sealed bidding or a request for proposal.

D. CONTRACTS AND GRANTS GREATER THAN $25,000 AND NOT SUBJECT TO COMPETITIVE SEALED BIDDING OR REQUEST FOR PROPOSAL REQUIRE APPROVAL. An agency must obtain approval in order to enter into, extend, amend, or renew a contract, lease, or purchase agreement not subject to competitive sealed bidding or a request for proposal, as follows.

(1) If the total consideration for the contract is greater than $25,000 the approval of the Chief Fiscal Officer of the State is required if the potential contractor or lessee is one of the following:

(a) a state employee or the employee's immediate family member;
(b) a board or commission member or the member's immediate family member, or
(c) any entity in which a state employee or board or commission member, or an immediate family member of any of these:
holds any position of control, or
holds any ownership interest of 10% or greater.

(2) If the total consideration for the contract is greater than $25,000 and the potential contractor, lessee, or grantee is a constitutional officer, including a member of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%), the contract, lease, or grant must receive the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

E. SUBCONTRACTS. A constitutional officer including members of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%) may not receive any subgrant, subcontract, or assignment of lease from a state agency unless:

(1) the constitutional officer, spouse, or legal entity is disclosed as a subgrantee or subcontractor in the competitive bid or request for proposal; or
(2) for contracts not requiring competitive bidding or a request for proposal, prior approval is obtained from the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

F. APPROVAL PROCEDURE. The following procedures shall apply to all contracts for which the prior approval of the Joint Budget Committee during

legislative session, or the Legislative Council between sessions, and the Governor is required. The Office of State Procurement shall submit the request for approval of the contract to the Chief Fiscal Officer and to the appropriate legislative body. The Chief Fiscal Officer, on behalf of the Governor, will notify the agency in writing whether the contract is approved or disapproved. The legislative body will notify the agency whether the contract is approved or disapproved. The agency may proceed with the contract upon receipt of the approval of both the Chief Fiscal Officer on behalf of the Governor and the appropriate legislative body.

5. AGENCY APPROVAL OF CONTRACTS.

A. NO CONTRACT FOR COMMODITIES OR SERVICES GREATER THAN $25,000 SHALL BE AWARDED, EXTENDED, AMENDED, OR RENEWED BY ANY AGENCY TO ANY CONTRACTOR WHO HAS NOT DISCLOSED AS REQUIRED IN SECTION 2, WITH THE EXCEPTION OF CONTRACTS IN SECTION 3 D FOR GOODS AND SERVICES FOR WHICH DISCLOSURE MAY BE OBTAINED AFTER PURCHASE.

B. OFFICE OF STATE PROCUREMENT'S DUTY TO VERIFY THAT CONTRACTS NOT PROHIBITED. Prior to the award, extension, amendment, or renewal of any contract greater than $25,000, the agency shall review the contract and verify:

(1) that the **Contract and Grant Disclosure and Certification Form** has been completed, signed, and included in the contract, and

(2) (a) that the contract is not prohibited or subject to approval; or

(b) if subject to approval, that the required approval has been obtained.

C. REQUIRED CONTRACT LANGUAGE. Every contract greater than $25,000 executed by an agency shall include any and all disclosures as a term of the contract. The required language may be inserted in the request for proposal, if the RFP is incorporated into the contract document that is executed by the agency. Agencies shall include the following language in any contract, lease, or any assignment of the terms of the agreement to any individual or entity:

> Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any

rule, regulation, or policy shall be subject to all legal remedies available to the agency.

6. <u>PROHIBITED EMPLOYMENT; EMPLOYMENT REQUIRING APPROVAL</u>.

A. PROHIBITED EMPLOYMENT. The following employment is prohibited:

(1) Constitutional officers, including members of the Arkansas General Assembly, are prohibited, after being elected and during the term for which elected, from entering into employment with any state agency or employment in any noncertified position with any public school district of this state, any vocational education school funded by the state, any education service cooperative, or the Cooperative Education Services Coordinating Council, unless the constitutional officer resigns prior to entering into the employment.

(2) Former members of the Arkansas General Assembly and their spouses are prohibited from entering into employment with any state agency within twenty-four (24) months after the legislator leaves office in any job or position which was either (a) newly created by legislative action within the twenty-four months prior to the legislator leaving office, or (b) had a maximum salary level increase of more than fifteen percent (15%) authorized by legislative action within the twenty-four months prior to the legislator leaving office.

(3) A public official shall not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the state agency in which the official is serving or over which the official exercises jurisdiction or control over any person who: (a) is a relative of the public official; and (b) is an employee of a state agency; or as a result of the public official's action would be an employee of a state agency.

(4) Within each state agency, no employees who are related shall be placed within the same direct line of supervision whereby one (1) relative is a supervisory employee and responsible for supervising the job performance or work activities of another relative.

B. EMPLOYMENT REQUIRING APPROVAL OF LEGISLATURE AND GOVERNOR AND SUBJECT TO CONDITIONS OF EMPLOYMENT.

(1) CONSTITUTIONAL OFFICERS EMPLOYED BY STATE AGENCY PRIOR TO ELECTION. Any constitutional officer, including a member of the General Assembly, who was employed by a state agency prior to being elected a constitutional officer, may

continue such employment. However, the employment shall not be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally nor shall the constitutional officer receive any pay increase after election, other than the cost of living increases authorized by the General Assembly, without the prior approval of the Joint Budget Committee during sessions, the Legislative Council between sessions, and the Governor.

(2) HIRING SPOUSES OF CONSTITUTIONAL OFFICERS, INCLUDING MEMBERS OF THE GENERAL ASSEMBLY. Agencies may hire spouses of constitutional officers, including members of the General Assembly, after the spouse is elected to the constitutional office and during the term for which the spouse is elected, only upon the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between legislative sessions, and the Governor; provided, however, if the spouse's entry salary does not exceed the amount prescribed by level 4 of grade 13 of the state pay plan at Ark. Code Ann. § 21-5-209, as presently codified or as amended, no approval is required.

(3) SPOUSE OF CONSTITUTIONAL OFFICER EMPLOYED BY STATE AGENCY SUBJECT TO CONDITIONS. Any spouse of a constitutional officer, including members of the General Assembly, employed by a state agency, whether the employee spouse is hired prior to election or during the spouse's service in the constitutional office, is subject to the following conditions:

(a) the employee spouse's position cannot be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally;
(b) the employee spouse cannot be promoted or transferred, while the spouse is serving in the constitutional office or within two (2) years after the spouse leaves office, without the prior approval of the Joint Budget Committee during sessions, or the Legislative Council between sessions, and the Governor; and
(c) the employee spouse cannot receive any pay increase in excess of fifteen percent (15%) without the prior approval of the Joint Budget Committee during session, or the Legislative Council between sessions, and the Governor.

C. EMPLOYMENT REQUIRING APPROVAL OF STATE AGENCY HUMAN RESOURCE MANAGER. Agencies may hire relatives, other than spouses, of constitutional officers and members of the General Assembly, with the prior written approval of the hiring state agency's human resource manager. Agencies may hire relatives, including spouses, of state

employees and board and commission members, with the prior written approval of the hiring state agency's human resource manager.

D. PROCEDURES FOR OBTAINING APPROVAL.

(1). Agencies may request approval to hire the spouse of a constitutional officer, including members of the General Assembly, or approval to promote or transfer the employee spouse while the spouse is serving in the constitutional office or within two (2) years after the spouse leaves office, or approval to increase the pay of the employee spouse in excess of fifteen percent (15%) by submitting the request to the Chief Fiscal Officer and to the Joint Budget Committee or the Legislative Council. The Chief Fiscal Officer, on behalf of the Governor, will notify the agency in writing whether the request is approved or disapproved. The legislative body will notify the agency whether the request is approved or disapproved. The agency may proceed with the employment, the promotion or transfer, or the increase in pay upon receipt of the approval of both the Chief Fiscal Officer on behalf of the Governor and the appropriate legislative body.

(2) Agencies may develop their own procedures for obtaining approval from their agency human resource manager to hire a relative (other than the spouse) of a constitutional officer or member of the General Assembly or to hire a relative (including the spouse) of a state employee or board or commission member. These procedures should provide for written documentation to be maintained within the agency, including the **Employee Disclosure/Certification and Employment of Family Members Form** located on Page 29 of the Rule, state application and/or resume, job description, and documentation to support reasons why other applicants were not selected.

7. <u>AGENCY APPROVAL OF EMPLOYMENT</u>.

A. NO INDIVIDUAL, WHO HAS NOT DISCLOSED AS REQUIRED IN SECTION 2, SHALL BE HIRED BY ANY AGENCY.

B. AGENCY'S DUTY TO VERIFY THAT EMPLOYMENT NOT PROHIBITED. Prior to hiring any individual, the agency shall review the application and verify:

(1) that the applicant has completed and signed the **Employee Disclosure/Certification and Employment of Family Members Form** or that the applicant checked "none of the above" on the disclosure checklist; and

(2) (a) that the disclosure did not identify any of the individuals or entities designated in Section 6 A; or

(b) that the appropriate approval has been obtained, either from the proper legislative body and the Governor or from the state agency's director or his or her designee.

8. <u>RESPONSIBILITY OF AGENCY TO REPORT</u>.

A. GRANTS, CONTRACTS, OR LEASES AWARDED TO CONSTITUTIONAL OFFICER INCLUDING MEMBERS OF THE GENERAL ASSEMBLY, OR SPOUSE, OR TO ENTITY IN WHICH OFFICER OR SPOUSES HOLDS 10% OWNERSHIP INTEREST. The Office of State Procurement shall report, in writing, for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor, if (i) any constitutional officer, including members of the General Assembly, or (ii) constitutional officer's spouse, or (iii) corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%) becomes the recipient of a grant, contract, or lease through competitive sealed bidding or a request for proposal, or if a grant, contract, or lease awarded prior to the person becoming a constitutional officer is renewed or extended.

B. CONTRACTS, LEASES, PURCHASE AGREEMENTS AWARDED TO STATE EMPLOYEES, BOARD OR COMMISSION MEMBERS OR THEIR IMMEDIATE FAMILY MEMBERS, OR TO LEGAL ENTITIES OWNED IN PART BY THEM. The Office of State Procurement shall report, in writing, for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor if (i) any state employee or immediate family member, or (ii) board or commission member or immediate family member, or (iii) any legal entity of which a state employee or board or commission member, or the immediate family member of either, holds an ownership interest of at least ten percent (10%) becomes the recipient of a contract, or lease for which the total consideration is greater than Twenty-Five Thousand Dollars ($25,000) and which is not subject to competitive bidding or a request for proposal.

C. EMPLOYMENT OF RELATIVES. Any state agency that enters into employment with any of the following:

(1) relative, other than the spouse, of a constitutional officer, including members of the General Assembly;
(2) relative, including the spouse, of a state employee or a board or commission member shall report the employment, in writing, to the

Office of State Procurement for transmission to the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

D. PROCEDURE FOR REPORTING. All required reports, as provided in this section 8, shall be made by each agency on a quarterly basis to the Department of Finance and Administration, Office of State Procurement, P.O. Box 2940 , Little Rock, Arkansas 72203. Reports shall be made no later than ten (10) business days following the end of each calendar quarter. Reports shall be transmitted electronically via the Web site at http://www.arkansas.gov/dfa/procurement/pro_eo9804.html, unless the agency lacks the capacity to transmit electronically, in which case reports shall be made in paper format. Transmission of the report to the DFA Office of State Procurement shall satisfy the requirement that the report be made to the appropriate legislative body and the Governor. These reports that were previously made to the Office of Disclosure and Review are now made by the agency to the Office of State Procurement. The Office of State Procurement shall compile the reported information and transmit a copy to the appropriate legislative body and the Governor.

9. SOLE SOURCE PROCUREMENT.

A. Agencies shall review all sole source contractual agreements to ensure compliance with the purpose and intent of Executive Order 98-04.

B. All professional or consultant services contracts that indicate a sole source shall include written justification for using the sole source and shall be included in the contract.

C. The State Purchasing Director or a designee above the level of an agency purchasing official must determine in writing that it is not practicable to use other than the required or designated commodity or service.

10. AGENCIES TO KEEP ADEQUATE RECORDS; PRESERVATION OF RECORDS; EXAMINATION OF RECORDS.

A. RECORDS REQUIRED. All records, including the required supporting documents, shall be considered a part of each agency contract, lease, or other agreement, and shall be retained in the files of the agency.

B. PRESERVATION OF RECORDS. All records pertaining to transactions involving agency purchases made by the agency shall be preserved for a period of not less than 5 years from the expiration of the contract, and as required by Ark. Code Ann. § 13-4-101 et seq.

C. EXAMINATION OF RECORDS. All of the foregoing records shall be

made available for examination upon request of an authorized representative(s) of the Department of Finance and Administration, Office of State Agency Internal Audit. The purpose of the examination is to verify that agencies have complied with Executive Order 98-04, Act 34 of 1999, Act 2262 of 2005 and this Rule.

11. FAILURE TO DISCLOSE AND REPORT; VIOLATIONS.

A. Any willful and knowing violation of Act 34 of 1999 shall constitute a Class D felony. Venue for a judicial action for such a violation shall be in the county of the defendant's domicile.

B. Violation of this rule or any other rules promulgated to administer Act 34 of 1999 or the failure of a constitutional officer including members of the General Assembly or spouse to disclose his or her interest in any contract, grant, or lease, or in any subcontract, subgrant, or assignment of lease as required by Act 34 of 1999 or by this rule shall be grounds for voiding the contract, grant, lease agreement, subcontract, subgrant, or lease assignment and the constitutional officer or spouse may be required to refund any monies received thereunder.

C. The Arkansas Ethics Commission is authorized to investigate any complaints or allegations of violations of Act 34 of 1999 and to make findings thereon. In the investigation of such matters, Act 34 specifically gives the Commission all authority and powers as granted to it under the provisions of Ark. Code Ann. §§ 7-6-217 and 7-6-218.

D. CONDITIONS WHICH CONSTITUTE MATERIAL BREACH OF CONTRACT. The failure of any contractor, whether individual or entity, to satisfy any of the following conditions, in addition to those conditions provided in existing law, may, at the option of the agency, be considered a material breach of the contract:

(1) the person or entity has failed to disclose any information required by Section 2 A, or has otherwise violated any rule, regulation, or policy adopted pursuant to Executive Order 98-04;

(2) the person or entity has failed to include as a condition in any agreement with any subcontractor the disclosure requirements of Section 2 F; or

(3) the person or entity has failed to obtain and report disclosure obtained from a subcontractor at any time during the term of the contract.

E. OPTIONS AVAILABLE TO AGENCY UPON NON-FRAUDULENT OR NOT IN-BAD-FAITH BREACH BY CONTRACTOR. If it is determined that a contractor, not acting fraudulently or in bad faith, has failed to satisfy any of the conditions in Section 12 A, an agency may, at its option:

(1) PRIOR TO AWARD OF CONTRACT.

(a) Cancel the solicitation; or

(b) Revise the solicitation to satisfy the conditions which were previously unsatisfied, and proceed with the contract, if the agency determines that doing so is in the best interests of the state.

(2) SUBSEQUENT TO AWARD OF CONTRACT.

(a) Ratify and affirm the contract, if the agency determines that doing so is in the best interests of the state; or

(b) Declare the contractor to be in default and terminate the contract.

F. RATIFICATION OF CONTRACT.

(1) Prior to any determination that ratification is the appropriate option, the agency shall prepare a written justification for the determination that ratification of the contract is in the best interests of the state.

(2) In connection with ratification of the contract, the agency shall:

(a) Require the contractor to complete a Contract Disclosure and Certification Form containing any information required by Section 2 A that the contractor previously failed to disclose; or

(b) Require the contractor to amend the subcontract to include as a condition in the subcontract the disclosure requirements of Section 2 F; or

(c) Require the contractor to provide the subcontractor disclosure; and

(d) Submit all contracts in Section 4 C(2) for which approval is required, to the Chief Fiscal Officer of the State for approval of the ratification of the contract. The request for approval should indicate that the contract was previously approved,

that the agency subsequently discovered that the contractor failed to meet one or more of the disclosure and reporting requirements, and that the agency determined that ratification of the contract is in the best interests of the state. The request should include the written justification for the agency's determination that ratification is in the best interests of the state.

G. TERMINATION OF CONTRACT. The election of the option to terminate the contract for any failure of a contractor to satisfy any of the conditions in Section 12 A should be determined in writing by the designated agency official. The procedures for resolution of contract and breach of contract controversies and any other applicable procedures contained in the State of Arkansas Purchasing Law and Rules promulgated by the Office of State Procurement shall apply in the event of a termination of any contract as a result of breach of the contract as provided in Section 12 A.

H. OPTIONS AVAILABLE TO AGENCY UPON FRAUDULENT OR BAD FAITH BREACH BY CONTRACTOR. Upon discovery that a contractor, who has acted fraudulently or in bad faith, has failed to satisfy any of the conditions in Section 12 A, an agency may, at its option:

(1) Declare the contract to be null and void; or

(2) Direct the individual or entity awarded the contract 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.

I. REPORT OF CONTRACTS RATIFIED, TERMINATED, OR DECLARED VOID. All contracts which are ratified pursuant to Section 12 C, terminated pursuant to Section 12 D, or declared null and void pursuant to Section 12 E, shall be reported by the agency to the Department of Finance and Administration no later than 10 days following ratification, termination, or declaration of nullity by the agency.

12. AGENCIES' NOTIFICATION TO EMPLOYEES OF EMPLOYEE DISCLOSURE OF BENEFITS REQUIREMENTS.

A. NOTICE TO EMPLOYEES. Each agency shall provide written notice to all finalists for agency employment of the employee disclosure requirements contained in Ark. Code Ann. §19-11-706, along with the civil and administrative remedies provided in Ark. Code Ann. §19-11-712, which may be imposed upon employees who breach these disclosure requirements, and the criminal penalties provided in Ark. Code Ann. § 19-11-702, upon conviction of a knowing violation of the disclosure requirements. The

required **Employee Disclosure Requirements/Restrictions Notice** is located on Pages 28 and 29 of the Rule.

(1) Agencies shall provide the **Employee Disclosure Requirements/Restrictions Notice** to all finalists for agency employment. The Notice shall be considered to be part of the application, and the application will be deemed incomplete until the acknowledgment is signed and submitted by the finalist.

(2) Agencies must maintain the employee's acknowledgement of receipt of the **Employee Disclosure Requirements/Restrictions Notice** in the employee's personnel file.

(3) Agencies shall post a copy of Section 12 of the Rule in a conspicuous place that is easily accessible to all employees, along with a sample reporting of benefits form (**Employee Disclosure Requirements Form)** and a notice that informs employees from whom in the agency they may obtain copies of the **Employee Disclosure Requirements Form.**

B. DISCLOSURE OF BENEFIT RECEIVED FROM CONTRACT. All employees are required to report to the Director of the Department of Finance and Administration any benefit from any state contract with a business in which the employee has a financial interest, including:

(1) Ownership of any interest or involvement in any business 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;
(2) Ownership of more than a five percent (5%) interest in any business; or
(3) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

For purposes of the reporting requirements of this section, "Employee" and "State agency," as defined in Ark. Code Ann. § 19-11-701, are adopted as follows. "Employee" includes an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency. "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.

Reports shall be made in writing addressed to Director, Department of Finance and Administration, P. O. Box 3278, Little Rock, Arkansas 72203-

3278. Reports shall be considered complete if made on the **Employee Disclosure Requirements Form**, or if the report contains all of the information required on the **Employee Disclosure Requirements Form**. All reports made pursuant to this section by present state employees shall be transmitted to the Director no later than 30 days following the receipt of the benefit by the employee; provided, however, only one report is required for each contract pursuant to which a state employee is paid in installments, which report shall be transmitted no later than 30 days following the receipt of the first installment payment. All reports made pursuant to this section by a person who has a benefit from a state contract at the time that person becomes a state employee shall be transmitted to the Director no later than 30 days following the first day of state employment.

C. FAILURE TO DISCLOSE. If any agency determines that an employee knew or should have known of a benefit from any state contract with a business in which the employee has a financial interest, but such employee failed to disclose such benefit to the Director of the Department of Finance and Administration, the agency shall immediately report the violation to the Director of the Department of Finance and Administration.

D. REMEDIES AGAINST EMPLOYEES

(1) In addition to existing civil and administrative remedies, the Director of the Department of Finance and Administration may impose, after notice and an opportunity for a hearing, any one (1) or more of the following for failure of the employee to disclose:

(a) Oral or written warnings or reprimands;
(b) Forfeiture of pay without suspension;
(c) Suspension with or without pay for specified periods of time; and
(d) Termination of employment.

(2) The value of anything received by an employee in breach of these restrictions shall be recoverable by the State.

E. CRIMINAL PENALTIES. Pursuant to Ark. Code Ann. § 19-11-702, any employee or non-employee who knowingly fails to disclose any benefit 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.

13. <u>AGENCIES' NOTIFICATION OF RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES</u>.

A. NOTICE TO EMPLOYEES. Each Agency shall provide written notice to all finalists for agency employment of the restrictions on employment of

present and former employees contained in Ark. Code Ann. §19-11-709, along with the civil and administrative remedies provided in Ark. Code Ann. §19-11-712, which may be imposed upon employees who breach these restrictions, and the criminal penalties provided in Ark. Code Ann. § 19-11-702, upon conviction of a knowing violation of the restrictions. The required **Employee Disclosure Requirements/Restrictions Notice** is located on Pages 28 and 29 of the Rule.

(1) The **Employee Disclosure Requirements/Restrictions Notice** shall be considered to be part of the application, and the application will be deemed incomplete until the acknowledgment is signed and submitted by the finalist.

(2) Agencies must maintain the employee's acknowledgement of receipt of the **Disclosure Requirements/Restrictions Notice** in the employee's personnel file.

(3) Agencies shall post a copy of Section 13 of the Rule in a conspicuous place that is accessible to all employees.

(4) If any agency determines that an employee has violated these Employment Restrictions, such Agency shall immediately report to the Director of the Department of Finance and Administration.

B. CONTEMPORANEOUS EMPLOYMENT PROHIBITED. No state employee involved in procurement for an Agency is allowed to also be the employee of any party contracting with the state agency by which the employee is employed.

C. RESTRICTIONS ON FORMER EMPLOYEES IN MATTERS CONNECTED WITH THEIR FORMER DUTIES.

(1) No former employee shall knowingly act as a principal or 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) No 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

shall knowingly act as a principal or as an agent for anyone other than the state in matters that were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest.

D. DISQUALIFICATION OF PARTNERS

(1) No person who is a partner of an employee shall knowingly 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 that is the subject of the employee's official responsibility, where the state is a party or has a direct and substantial interest.

(2) No person who is a partner of a former employee shall knowingly act as a principal or as an agent for anyone other than the state where such former employee is barred under the restrictions on former employees in matters connected with their former duties (see paragraph C).

E. SELLING TO STATE AFTER TERMINATION OF EMPLOYMENT. Former employees are prohibited (unless the former employee's last annual salary did not exceed $10,500) from engaging in selling or attempting to sell commodities or services to the state for one (1) year following the date employment ceased. This prohibition does not preclude a former employee from accepting employment with private industry solely because his employer is a contractor with this state nor does it 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 Ark. Code Ann. §19-11-701, et seq.

F. REMEDIES AGAINST EMPLOYEES

(1) In addition to existing civil and administrative remedies, the Director of the Department of Finance and Administration may impose, after notice and an opportunity for a hearing, any one (1) or more of the following for breach of the employment restrictions:

(a) Oral or written warnings or reprimands;
(b) Forfeiture of pay without suspension;
(c) Suspension with or without pay for specified periods of time; and
(d) Termination of employment.

(2) The value of anything received by an employee in breach of these restrictions shall be recoverable by the State.

G. CRIMINAL PENALTIES. Pursuant to Ark. Code Ann. § 19-11-702, any employee or non-employee who knowingly violates these employment restrictions 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.

14. <u>AGENCIES AFFECTED; VOLUNTARY DISCLOSURE</u>.

A. AFFECTED AGENCIES. The provisions of Executive Order 98-04, and this Rule, shall apply to all agencies within the control of the Governor.

B. VOLUNTARY COMPLIANCE ENCOURAGED OF EXEMPT PERSONS AND AGENCIES. The following persons, agencies, and other entities not subject to the control of the Governor are encouraged to voluntarily comply with Executive Order 98-04 and this Rule: Members of the Legislature, any employees of, or positions in the Legislative branch of Arkansas State Government; the Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Circuit, Chancery or Circuit/Chancery Courts, Judges of the Inferior Courts, or any employee of, or position in the Judicial branch of Arkansas State government; elective officers of the State and any employee of the offices of Lieutenant Governor, Attorney General, Secretary of the State, State Auditor, Land Commissioner, and State Treasurer; members and staff of multi-member boards, commissions or committees that are exempt by law from the provisions of the "Arkansas Purchasing Law," Ark. Code Ann. § 19-11-201 et seq.; and employees of the Arkansas Highway and Transportation Department and the Arkansas Game and Fish

Commission.

C. PROCEDURE FOR VOLUNTARY COMPLIANCE. Any person, agency, or other entity desiring to voluntarily comply should contact the Office of State Procurement at P. O. Box 2940, Little Rock, Arkansas 72203, telephone number (501) 324-9316 or via web site at http://www.arkansas.gov/dfa/procurement/pro_eo9804.html to obtain a copy of this Rule and to notify the Office of the person's or agency's intent to voluntarily comply.

15. RULES SUPPLEMENTAL TO AND NOT IN ABROGATION OF CURRENT REQUIREMENTS OF AGENCIES IN BOTH LAW AND RULES. No provision of this Rule shall be considered to repeal any requirement of existing law or rule promulgated pursuant to existing law. The agency requirements contained in this Rule are supplemental to all current agency responsibilities.

Date: _____

_____
RICHARD WEISS, Director
Department of Finance and Administration

_____
TIM LEATHERS, Deputy Director
Department of Finance and Administration

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: ☐ **Yes** ☐ **No** **SUBCONTRACTOR NAME:**

TAXPAYER ID NAME: IS THIS FOR: ☐ **Goods?** ☐ **Services?** ☐ **Both?**

YOUR LAST NAME: **FIRST NAME:** **M.I.:**

ADDRESS:

CITY: **STATE:** **ZIP CODE:** --- **COUNTRY:**

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse *is* a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and how are they related to you? [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

☐ **None of the above applies**

FOR AN ENTITY (BUSINESS)*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

☐ **None of the above applies**

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a *state agency* I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

   Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature_____Title_____Date_____

Vendor Contact Person_____Title_____Phone No._____

Agency use only

Agency Number_____ Agency Name_____ Agency Contact Person_____ Contact Phone No._____ Contract or Grant No._____

STATE OF ARKANSAS
Department of Finance and Administration

EMPLOYEE DISCLOSURE/CERTIFICATION AND EMPLOYMENT OF FAMILY MEMBERS FORM

This form is to be completed by all interviewed applicants for a position.

Definitions for the symbols in questions 1 – 9 below. Please read before continuing.

A **State Employee** any employee of any state agency employed in a regular salary position or extra-help position not to include contract labor.

B **Former** is defined as within the last 24 months.

C **Constitutional Officer:** Governor, Lt. Governor, Secretary of State, Attorney General, Auditor, Treasurer, Land Commissioner, General Assembly member.

D **General Assembly member:** member of the Arkansas Senate or the Arkansas House of Representatives.

E **Relative includes**: husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in-law, sister, brother, stepsister, stepbrother, half-sister, half-brother, sister-in-law, brother-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, aunt, uncle, first cousin, niece or nephew.

F **Public Official:** constitutional officers; members of the Arkansas General Assembly; the executive head of any agency, department, board, commission, institution, bureau, or council of the state.

G **Agency or State Agency:** every agency, board, commission, department, division, institution, and other office of state government located within the executive branch of government and under the control of the Governor.

1. ☐ Yes ☐ No Are you a current **state employee**[A]?

2. ☐ Yes ☐ No Are you a **former**[B] **state employee**[A]?

3. ☐ Yes ☐ No Are you a current **Constitutional Officer**[C]?

3a. ☐ Yes ☐ No If "Yes", were you employed prior to your election into office?

3b. ► If "Yes," give date elected _____

4. ☐ Yes ☐ No Are you the spouse of a current **Constitutional Officer**[C]?

4a. ► If "Yes," give spouse's name _____
position/office _____

4b. ☐ Yes ☐ No If "Yes", is your expected salary above $37,649 annually or above $18.10 per hour?

5. ☐ Yes ☐ No Are you the spouse of a **former**[B] **Constitutional Officer**[C]?

5.a ► If "Yes," give spouse's name _____
position/office _____

6. ☐ Yes ☐ No Are you or your spouse a **former**[B] **General Assembly member**[D]?

6a. ► If "Yes," give spouse's name _____
position/office _____

6b. ☐ Yes ☐ No If "Yes", within the 24 months prior to your leaving office or your spouse leaving office, was the position for which you are being considered created by legislative action, or if the maximum salary level increased by more than 15%, was this authorized by legislative action?

7. ☐ Yes ☐ No Are you a **relative**[E] of the **Public Official**[F] in charge of the **agency**[G] in which you are applying?

7a. ► If "Yes," give **relative's**[E] name _____
position/office _____
relationship _____

8. ☐ Yes ☐ No Are you a **relative**[E] of a **state employee**[A], state board or commission member or are you a **relative**[E] **(other than the spouse)** of a **Constitutional Officer**[C] or an Arkansas **General Assembly member**[D]?

8a. ► If "Yes," give **relative's**[E] name _____
position/office _____
relationship _____

9. ☐ Yes ☐ No If you checked "Yes" in #8 above, does this **relative**[E] work within the **state agency**[G] in which you are applying?

9a. ☐ Yes ☐ No If "Yes", is the position for which you are applying in the direct line of supervision of your **relative**[E] or will the position be a supervisory employee of the **relative**[E].

I understand to be eligible for employment with the State of Arkansas, I must comply with Governor's Executive Order 98-04, ACA §21-1-401-408, and ACA §25-16-1001-1007. I also understand that as an employee of the State of Arkansas I am restricted from supervising or being supervised by a relative specifically under ACA §25-16-1002. If I am hired and it can be proven I falsely disclosed or failed to disclose information I could be subject to criminal, civil and/or administrative remedies. I assert that I have answered the above questions to the best of my knowledge.

_____ _____ _____
Applicant Name (Please Print) *Applicant Signature* *Date*

STATE OF ARKANSAS
Department of Finance and Administration

EMPLOYEE DISCLOSURE/CERTIFICATION AND EMPLOYMENT OF FAMILY MEMBERS FORM

INSTRUCTIONS FOR HIRING OFFICIAL:

Please check each table below with the disclosure statement and proceed accordingly for the position finalist(s) prior to a job offer.

No Approval Required		√ if applies
Answered "Yes"	**or Answered "No"**	
Question 1 and/or 2	Questions 1-9a	

**Hiring Official must complete information below and forward with hire packet to HR.*

Hiring Official must check that the applicant completed all required information and answered all questions before signing form.

Please initial to confirm: _____

Approval by HR Manager Only		√ if applies
Answered "Yes"	**Answered "No"**	
Question 4	Question 1 and 4b	
Question 5	Question 1	
Question 6	Question 6b	
Question 8		
Question 9	Question 9a	

**Submit the form to your agency Human Resource Manager for approval with the hire packet .*

Hiring Official must check that the applicant completed all required information and answered all questions before signing form.

*Ensure the salary for 4b is correct.
*Ensure the information for 6b is correct.

Please initial to confirm: _____

Approval by appropriate Legislative Branch and Governor		√ if applies
Answered "Yes"	**Answered "No"**	
Question 3 and 3a		
Question 4 and 4b	Question 1	
Question 4 and 1	Question 4b	
Question 5		

**Submit the form to the Office of Personnel Management (OPM) for review and submission to the Governor, and if approved, to the Personnel Subcommittee.*

Hiring Official must check that the applicant completed all required information and answered all questions before signing form.

*Ensure the date elected for 3b is after employment date.
*Ensure the salary for 4b is correct.
*Ensure spouse is a **former[B] Constitutional Officer[C]**.

Please initial to confirm: _____

Cannot be Hired		√ if applies
Answered "Yes"	**Answered "No"**	
Question 3	Question 3a	
Question 6 and 6b		
Question 7		
Question 9 and 9a		

The applicant **cannot be hired if one or more of the items above apply.*

Hiring Official must check that the applicant completed all required information and answered all questions before signing form.

*Ensure 3a was answered before signing below.
*Ensure the information for 6b is correct.
*Ensure the information for 9a is correct.

Please initial to confirm: _____

This form must be completed by the Hiring Official (Supervisor) for the position finalist(s) prior to a job offer.

Applicant Name _____ Agency Number _____ Hiring Official _____

Position Applied for _____ Position # _____ Pay Grade _____ Salary _____

I certify that the applicant meets the education and experience qualifications required to perform the duties of the position for which they are being considered.

_____ _____ _____
Signature of Agency/Institution Hiring Official *Date* *Phone Number*

☐ Approved
☐ Disapproved

_____ _____ _____
Signature of Agency/Institution Human Resource Manager Agency Number Date

STATE OF ARKANSAS
Department of Finance and Administration

Employee Disclosure Requirements/Restrictions Notice

Employee Disclosure Requirements Notice

Employees must report any benefit obtained from a state contract by a business in which the employee has a financial interest. Ark. Code Ann. § 19-11-706. The employee must report this benefit to the Director of the Department of Finance and Administration.

A state employee has a "financial interest" in a business if he/she:

- has received within the past year, or is presently or in the future entitled to receive, more than one thousand dollars ($1000) per year, as a result of ownership of any part of the business or any involvement in the business; or
- owns more than a five percent (5%) interest in the business; or
- holds a position in the business such as an officer, director, trustee, partner, employee, or the like, or holds any position of management.

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 Ark. Code Ann. § 19-11-706.

Employee Disclosure Restriction Notice

State employees are restricted from employment under certain conditions, both during the time they are employed by the state and after they leave state employment. Ark. Code Ann. § 19-11-709. These restrictions include:

- employment of a current state employee involved in procurement by any party contracting with the state;
- former employees from representing anyone other than the state under certain conditions in matters which the employee participated personally and substantially or which were within the former employee's official responsibility;
- partners of a current or former state employee from representing anyone other than the state under certain conditions;
- selling to the state after termination of employment under certain conditions.

Any current or former state employee who violates any of these employment restrictions is in breach of the ethical standards of Ark. Code Ann. § 19-11-709.

Penalties for Non-Compliance with Ark. Code Ann. § 19-11-706 or § 19-11-709

In addition to civil and administrative remedies, Ark. Code Ann. § 19-11-712 allows the Director of the Department of Finance and Administration to impose against any employee who fails to comply with Ark. Code Ann. § 19-11-706 or § 19-11-709, after notice and an opportunity for a hearing, any one or more of the following:

- oral or written warnings or reprimands;
- forfeiture of pay without suspension;
- suspension with or without pay for specified periods of time; and
- termination of employment.

Pursuant to Arkansas Code Annotated § 19-11-702, any employee who shall knowingly violate either of these restrictions 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.

I certify that I have read this Notice and the Ark. Code Ann. §§ 19-11-706, 19-11-702, 19-11-709 and 19-11-712 on the reverse side. The Rule promulgated to enforce Executive Order 98-04 contain additional information regarding this reporting requirement at Section 13 & 14, posted by the agency in a conspicuous place. I understand that it is my responsibility to comply with the requirement to report as explained in Ark. Code Ann §§ 19-11-706 & 19-11-709, this Notice and the rule.

Agency Name ***Hiring Official***

Name of Applicant/Employee (Please Print)

Applicant/Employee Signature ***Date***

See back for Arkansas Code Annotated §§ 19-11-702, 19-11-706, 19-11-709 and 19-11-712

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EXCERPTS FROM ARKANSAS CODE ANNOTATED §19-11 SUBCHAPTER 7

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.

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.

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 respons bility, 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) (1) **Selling to State After Termination of Employment Is Prohibited.** 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 to the state for one (1) year following the date employment ceased.

(2) The term "sell", as used in this subsection, means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore 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 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.

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; &
(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.

STATE OF ARKANSAS
Department of Finance and Administration

Employee Disclosure Requirements

In Compliance with Governor's Executive Order 98-04
Arkansas Code Annotated § 19-11-706

Pursuant to Arkansas Code Annotated § 19-11-706, employees are required to disclose any benefit received from any state contract. Specifically:

(a) 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) 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.

This employee disclosure shall be made within 30 days after the employee has actual or constructive notice of a benefit received or to be received. Such disclosure shall be made by completing this **Employee Disclosure Requirements** form and forwarding this completed form to:

Director
Department of Finance and Administration
P. O. Box 3278
Little Rock, AR 72203-3278

Applicant/Employee Name:

Agency Name/Division where employed:

Name of Person/Business involved with State Contract:

Name of Government Body with which the Business has a Contract:

Dollar Amount and Nature of Contract:

Nature and extent of the benefit received or to be received:

Applicant/Employee Signature Date

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THE FOLLOWING IS A PAGE FROM A SAMPLE EMPLOYMENT APPLICATION THAT CONTAINS THE CHECKLIST FOR EMPLOYEE DISCLOSURE.

DISCLOSURE REQUIREMENTS

Governor's Executive Order 98-04, Governor's Policy Directive #8, and ACA §21-8-304 require that the following information be disclosed to be considered for employment with the State of Arkansas.

1. Are **you** one of the following:
   - ☐ current member of the AR General Assembly?
   - ☐ former member of the AR General Assembly?
   - ☐ current constitutional officer?
   - ☐ former constitutional officer?
   - ☐ current state employee?
   - ☐ former state employee?

2. Are any of your relatives one of the following: (Relative is defined as husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece)
   - ☐ current member of the AR General Assembly?
   - ☐ former member of the AR General Assembly?
   - ☐ current constitutional officer?
   - ☐ former constitutional officer?
   - ☐ current state employee?
   - ☐ former state employee?

3. ☐ None of the above applies.

4. Certain family or business relationships may prohibit an agency from hiring you. If any block is checked in #1 or #2 above, you will be required to disclose additional information if you are selected for interview to determine whether your employment would be prohibited or would require approval. I understand, should I become an employee of the State of Arkansas, that I may be reprimanded or terminated for failing to disclose the required information or disclosing incorrect information.

I understand that, should I become an employee of the State of Arkansas, I will be required to disclose any benefit obtained from a state contract by a business in which I have a financial interest, pursuant to ACA §19-11-706, and will be subject to civil, criminal, and/or administrative remedies if I fail to report such benefits.

I understand that, should I become an employee of the State of Arkansas, I will be restricted both during and after state employment from certain activities concerning procurement and selling to the state, pursuant to ACA §19-11-709, and will be subject to civil, criminal, and/or administrative remedies if I violate any of these restrictions.

I also understand that as an employee of the State of Arkansas I am restricted from supervising or being supervised by a relative. If I am hired and it can be proven that I falsely disclosed information in gaining employment that I could be subject to criminal or civil penalties under ACA § 25-16-1004 or § 25-16-1005.

Applicant/Employee Name:_____ Date: _____
(Please Print)

Applicant/Employee Signature _____

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