

**STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF STATE PROCUREMENT
MARKUP RULE 2012-03
CHANGES TO RULES UNDER THE ARKANSAS PROCUREMENT LAW
Agency Code 006.27**

R3:19-11-203. Proprietary Software

Software exemption under subsection (14)(BB) does not apply to the initial purchase of proprietary software. Nor does the exemption apply to the purchase of software that is part of any mandatory software contract. Exempt software purchases shall include the purchase of additional proprietary software licenses, copies, license renewals, technical software upgrades, and proprietary software support for proprietary software after the initial purchase.

R4:19-11-203. Signatures defined

The definition of "signed" for the purposes of submitting a solicitation response can be found in the Uniform Commercial Code, Ark. Code Ann. § 4-1-201(39) (General Definitions), which "...includes any symbol executed or adopted by a party with present intention to authenticate a writing." Allowance should therefore be made for any mark or writing, whether printed or cursive, which that person uses as his signature.

R5:19-11-203. Tax-Supported Institutions defined.

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

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

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

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

R5:19-11-217. State Certification.

The State Procurement Director may create a statewide procurement training and certification program to advance state agency procurement personnel's knowledge.

R1:19-11-221. Sale, acquisition or use of commodities by a public procurement unit.

Department of Correction Industry Program.

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

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

(3) Copies of all such contracts, orders, compacts or agreements entered into under the provisions of this regulation shall be kept by the Department of Correction with respect to all transactions, deliveries, and obligations under each contract, compact, or agreement

(4) All records and reports required pursuant to this regulation shall be available to public inspection during normal business hours, and shall be retained for a period of five (5) years after completion of the contract, compact, or agreement.

R1:19-11-230 Competitive sealed proposals

Request for Proposals for which OSP is responsible shall be posted on the OSP website in adequate time to allow response.

R4:19-11-230 Competitive sealed proposals

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

R3:19-11-230. Competitive sealed proposals.

Proposal submission.

(1) Bidders shall submit proposals at the place and on or before the date and time set in the Request for Proposal. Proposals received after the date and time designated for the proposal opening are considered late and shall not be considered.

(2) All proposals and any modifications to the proposals previously filed, received prior to the date and time fixed for opening the proposals, shall be kept secure and unopened. If a proposal is submitted and the Request for Proposals number is not clearly marked to indicate the date and time of the proposal opening the State Procurement Director or agency procurement official shall make a reasonable attempt, including, but not limited to, opening, marking and resealing, to determine which Request for Proposal the submission is for, resealing it and shall open it formally at the date and time of that proposal opening.

(3) Retrieval of a proposal for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the business.

R4:19-11-230. Competitive sealed proposals.

Request for Proposals opening. The names of the bidders may be read aloud. An abstract of proposals shall be retained in the Request for Proposals file and shall be available for public inspection.

R25:19-11-230. Competitive sealed proposals

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

(b) (1) Responsibility of offeror. Past performance of an offeror on a state contract may be used by the procurement agency to determine whether the offeror is "responsible." No points for past performance may be used in the evaluation scoring criteria. However, this does not preclude the awarding of points for references when used as evaluation criteria. Past performance must be supported by written documentation. Documentation used for evaluation should not be greater than three (3) years old. Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(i) Past performance on contracts from other Arkansas State

Agencies may also be used for evaluation. Supporting documentation should be provided.

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

(2) The awarding of points for references may be used as evaluation scoring criteria if set forth in the solicitation.

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

R6:19-11-230. Rejection.

Grounds for rejection of proposals include but shall not be limited to:

(1) failure of a proposal to conform to the essential requirements of a Request for Proposals;

(2) a proposal imposing conditions which would modify the stated terms and conditions of the Request for Proposal;

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

(4) failure to furnish a bond when required by a Request for Proposals; and

(5) any or all proposals when the procurement official makes a written determination that it is in the best interest of the State.

R7:19-11-230. Correction or withdrawal of proposals.

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

(2) Amendments to proposals shall be allowed if the amendments are in writing and signed, are received prior to the date and time of the proposal opening, and clearly indicate the date and time of proposal opening and Request for Proposals number.

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

(4) Proposal prices shall not be increased after the date and hour of the proposal opening.

(5) When a mistake in a proposal is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the proposal, and that due to such mistake the proposal submitted was not the proposal intended, the bidder may be permitted to withdraw his proposal.

R38:19-11-230. Negotiations.

(a) Negotiation of Competitive Sealed Proposals Request for Proposals should be authorized in those cases where the best interests of the State are served. Only those professionals who are trained in the negotiation process should conduct negotiations. Negotiations are begun with the highest ranked offeror based on the scores as established in the Request for Proposals' scoring criteria. If a satisfactorily negotiated contract cannot be developed, the bidder may be declared non-responsive and time permitting, the negotiation process may be repeated with the next respondent deemed most likely to be awarded a contract.

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

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

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

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

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

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

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

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

(5) Timetable for completion of negotiation.

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

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

(g) All proposals may be rejected if, after evaluation of the proposals, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the procurement official that no satisfactory

proposal has been received.

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

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

R9:19-11-230. Cancellation of the Request for Proposals.

A notice of cancellation of an OSP Request for Proposals shall be posted on the OSP website. The proposals may be returned if properly identified.

R410:19-11-230. Ethical standards.

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

R511:19-11-230. Procedures for approval of information technology products or services obtained by competitive sealed proposals.

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

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

R1:19-11-235. Nonresponsibility.

(a) (1) Determination of responsibility is accomplished made prior to the award of a contract.

(2) A non-responsible bidder or offeror is one who has been determined through evaluation of bid/offer to lack the capability, integrity and/or reliability to fully perform the contract.

(b) Determination of responsibility may include, but not be limited to, ~~some or all~~ one or any combination of the following:

(1) the ability, capacity and skill to perform the contract or provide the service;

(2) the responsibility and experience of the business;

(3) the quality of performance on previous contracts or services;

(4) the previous and existing compliance by the business with laws relating to the contract or services; and

(5) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.

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

Disposition of commodities other than computers and electronic equipment.

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

(b) Transfer Intrastate Agency Sale. Commodities that are no longer needed by an agency may be sold to another agency by completing and submitting a an Intrastate Agency Sale Form, written request to Marketing and Redistribution detailing the equipment description, serial number, property number, the agency the property will be sold to and the dollar value agreed upon. Written communication from the agency requesting the purchase must also be forwarded to Marketing and Redistribution indicating agreement to the transfer and the dollar value agreed upon, which can be found on the M&R website under forms, to Marketing & Redistribution. This form shall be completed and forwarded electronically from the selling agency to the purchasing agency, then to M&R, where it is forwarded to DFA Office of Accounting for completion and transfer of funds.

(c) Disposal. When commodities have no scrap or resale value, a written request for certificate of property disposal ("CPD") form shall be submitted to Marketing and Redistribution, which shall then forward, return to the requestor

within ten (10) working days, a certificate of property disposal authorization, indicating the proper handling procedure for the commodities.

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

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

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

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

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

(a) Using agency. The allocation of proceeds from the sale, lease, or disposal of surplus commodities, and proceeds from an insurance policy for loss of property because of fire, storm or other causes, less appropriate fees, will be made and deposited ~~monthly~~ to the using agency which had possession of the commodity. Such allocations and deposits will be made at the sooner of when the using agency’s account balance has reached at least fifty dollars (\$50.00) or the end of each fiscal year.

(b) Fee schedule. The Office of State Procurement will develop a fee schedule

to defray the costs of the commodity management program. The fee schedule will set forth various charges for services rendered.

R1:19-11-244. Protest Periods

(a) The statute allows for two periods in which protests may be lodged. The first such period to protest is open to any "actual or prospective bidder, offeror, or contractor" who takes issue with the specifications contained in a solicitation. Such person may protest the solicitation in writing no later than seventy-two (72) hours before the date and time specified in the solicitation.

(b) The second such period to protest is open only to those persons who actually submitted bids or responses to a solicitation. Such persons may protest the award of a contract in writing within fourteen (14) calendar days after they know or should have known of the facts giving rise to their protest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) repeated failure of a vendor or any of its owners to pay all outstanding tax liabilities to the State of Arkansas;

(A) "repeated failure" shall include, but not be limited to,

(i) the existence of seven (7) or more certificates of indebtedness, liens, or other evidence of tax indebtedness that are in the public record during any biennial period;

(ii) the suspension or revocation of a state excise tax permit or any other state permit for non-payment of taxes;

(iii) the existence of three (3) or more writs of garnishment issued for non-payment of taxes during any biennial period;

(B) This rule shall not apply to

(i) tax debts that are the subject of an administrative or judicial proceeding contesting the validity of such debt until such proceedings are concluded and such tax debts are adjudicated to be valid, or

(ii) any outstanding individual tax liability of a non-owner employee of a vendor or that of non-controlling, individual shareholders in a Subchapter C corporation;

~~(12)~~ (13) any other cause the State Procurement Director or head of a procurement agency determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by any other governmental entity for any cause; and or violation of the ethical standards set forth in Ark. Code Ann. § 19-11-708.

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

(d) Debarment hearing.

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

hear the Debarment proceedings.

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

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

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

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

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

(f) Other remedies. The procedures in this section shall not preclude the taking of other action by the state, based on the same facts, as may be otherwise available, either at law or in equity.

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

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

~~**Department of Correction Industry Program.**~~

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

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

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

~~obligations under each contract, compact, or agreement. Copies of these books and records shall be filed monthly with the Office of State Procurement.~~

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

R4:19-11-265. Reporting of Contracts for Commodities including Services with a projected total cost greater than \$250,000

These are contracts where the purchase of the commodities/equipment includes services that an agency would not purchase independently.

R2:19-11-902 Work center certification.

(a) Before commodities and services may be procured from Work Centers, the Work Center will be required to maintain evidence of: certification from the United States Department of Labor as a “sheltered workshop” and a license from the Division of Developmental Disabilities Services of the Arkansas Department of Human Services or certification from Arkansas Rehabilitation Services.

(b) Before commodities or services may be procured from a work center for the blind, such work center will be required to maintain evidence from the Division of State Services for the Blind of the Department of Human Services.

~~R1:19-11-1008: Professional and Consultant Service Contracts Requiring Approval of the Office of State Procurement Only.~~

~~Those contracts for professional and consultant services not defined in R19-11-1006 and R2:19-11-1006 as requiring review of the Legislative Council or Joint Budget Committee, excluding those of the Arkansas State Highway and Transportation Department, require prior approval ONLY of the Department of Finance and Administration, Office of State Procurement.~~

~~The requesting agency shall submit the original and one (1) copy each of the contract and attachments thereto, to the Office of State Procurement. Those contracts for architectural, engineering and land surveyor services require an original and one (1) copy and shall first be submitted to Arkansas Building Authority. The approved original will be returned to the agency; a copy filed in the Office of State Procurement.~~

R2R1:19-11-1008 Procedures for Approval of Architects, Engineers and Land Surveyor Contracts

~~With the exception of those agencies exempt from Arkansas Building Authority review, all contracts for architectural, engineering and land surveyor services must be first submitted to reviewed by the Arkansas Building Authority for their its recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts to requiring ABA review in accordance with the time guidelines as prescribed on the Office of State Procurement website seven (7) working days prior to the deadline for submittal to DF&A. After receiving the recommendation and approval of the Arkansas Building Authority, the contract shall be submitted to the Office of State Procurement of the Department of Finance and Administration shall review and prepare such contracts for their ultimate submission to the Arkansas Legislative Council or the Joint Budget Committee. No contract requiring ABA review shall be submitted to the Office of State Procurement without first seeking the recommendation and approval of Arkansas Building Authority.~~

~~In the event Arkansas Building Authority refuses to give a favorable recommendation to the propriety of the a contract, the agency involved may request the Legislative Council to review the decision of Arkansas Building Authority. The Legislative Council may then request the Arkansas Building Authority to review their previous decision, abide by the decision of the Arkansas Building Authority, or request the agency to make changes in the contract.~~

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

~~R3:19-11-1008 Procedures for approval of information technology products or services.~~

~~Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is \$100,000 or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be \$100,000 or more, must be submitted to STP for approval. Documentation regarding sole source and emergency procurements that include Information Technology products or services of \$100,000 or more must also be submitted to STP for approval. If approved by STP, STP will provide a letter of approval to the Office of State Procurement prior to processing the procurement. STP shall have ten (10) business days from receipt of the documents to complete the necessary review. If the STP review is not completed within the time frame allowed, the agency and STP must mutually agree to an extension of the review process.~~

~~In the event a state agency and STP are unable to resolve a dispute, the matter shall jointly be referred to the director of the Department of Finance and Administration for resolution.~~

R2:19-11-1008. Public Notice of Professional & Consultant Contract Solicitations

All solicitations, whether an Invitation for Bid, Request for Proposals, or Request for Qualifications, conducted by State Agencies for contracts greater than \$25,000 shall post a public notice on the Office of State Procurement website not fewer than five (5) calendar days preceding the date for the solicitation opening. This manner of notice is required even if an agency elects to publish a notice in at least one (1) newspaper having general circulation in the state.

R2:19-11-1012. Contract Dates.

For each professional and consultant service contract, the agency is required to enter the beginning and ending date of the contract. The beginning date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract are to begin and not the date upon which the agreement was made. This date should be arrived at with emphasis placed on the following:

(a) any contract or amendment to a contract that requires review by the Legislative Council Committee must be submitted to the Department of Finance and Administration, Office of State Procurement, ~~no less than ten (10) working days prior to the Committee meeting~~ in accordance with the time guidelines as prescribed on the Office of State Procurement website. 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, when the General Assembly is in session, shall provide the Chief Fiscal Officer with their review as to the propriety of the contract within thirty (30) days of said submission;

(b) all contracts greater than \$25,000, unless specifically excepted, must be filed with the Department of Finance and Administration and/or the Office of Construction of Arkansas the Arkansas Building Authority ~~no fewer than five (5) working days prior to the starting date of such contracts.~~

~~R4:19-11-1012 Reporting Multiple Purchase Orders for Professional and Consultant Services issued from the same Cost Center or Business Area to the same Provider during the same Fiscal Year.~~

~~To assist the Director of State Procurement in determining whether an agency is issuing multiple purchase orders in an attempt to circumvent the requirement of establishing a professional or consultant service contract, agencies will be required to provide to the Office of State Procurement a copy of each purchase order issued for professional or consult services to the same provider from the same cost center or business area during the same fiscal year. Each purchase order will be accompanied with an explanation of the nature of work performed and the reason why a professional or consultant service contract was not initially developed. This information will be due within ten (10) working days from the date of the most recent purchase order.~~

~~R5~~R4:19-11-1012. Professional and Consultant Service Contract Form

~~Each contract should be completed and include the following information:~~

~~(1) agency assigned contract number or outline agreement and amendment number. All amendments must have a copy of the original contract and any previous amendments attached. For those contracts for which payment will be made wholly or in part against a Method of Financing, enter the assigned Method of Financing on the contract form.~~

~~(2) date the agreement was signed by the agency and the contractor, the outline agreement or contract number and the vendor number. Also enter the agency's code (or business area) and title, division, if applicable, and the contractor's Federal ID number, name and address.~~

~~(3) funding source: State, Federal, Cash, Trust or Other (specify).~~

~~(4) any resources to be provided by the agency to the contractor as part of the agreement.~~

~~(5) name of the agency representative who will represent the agency in coordinating the work of the contractor.~~

~~(6) disclose all information as required under the terms of any existing Executive Order 98-04. The contractor shall also require the subcontractor to disclose the same information. Any existing The Contract and Grant Disclosure and Certification Form (Form PCS-D, Attachment II-10.3) shall be used for this purpose.~~

~~R6~~:19-11-1012. Disclosure Requirements for Professional and Consultant Service Contract.

~~(1) No contract for services greater than the dollar limit established by Executive Order 98-04, shall be awarded, extended, amended, or renewed by any agency to any contractor who has not disclosed as required in Executive Order 98-04.~~

~~(2) Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements. 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.~~

R1:22-8-102. Authority of Director

(a) **For the purposes of this subsection, "the director" shall refer to the Director of the Office of State Procurement.**

(b) **All state agencies shall submit a written request to the State Procurement Director specifying all needed requirements for a lease of a vehicle. The Office of State Procurement will issue the solicitation based upon the criteria set forth by the agency to determine the lowest responsible and responsive bidder. The Office of State Procurement will award the contract for the lease after review by the Arkansas Legislative Council, or Joint Budget Committee when the General Assembly is in session.**