

2003 Procurement Regulation Changes

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

Exempt commodities and services means:

(a) (14) (D) (i) Commodities procured for resale does not include items used to support the sale of goods or services such as reusable items or items used in preparing, serving, dispensing, or packaging, except for vendor packaging included with the item purchased.

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

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

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

(e) (14) (P) Technical equipment for maintenance purposes shall include, but not be limited to, medical, dental, laboratory, and health aid equipment, climate control equipment, water treatment services, elevators, musical instruments, communications equipment, data processing equipment, and specialized research equipment.

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

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

(h) (14) Renewals of termite protection contracts with the contractor who performed the initial treatment of the facility are exempt. Not exempt are termite protection contracts which include the initial treatment.

R2:19-11-203. Capital Improvements

(14) (AA) Capital improvements valued at less than twenty thousand dollars (\$20,000) and not subject to SBS minimum standards and criteria are exempt from the requirements of the Procurement Law.

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.

R1:19-11-214. Determination.

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

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

2003 Procurement Regulation Changes

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

Quality assurance, inspection, and testing. The State Procurement Director or agency procurement official shall be responsible for assuring that commodities and services conform to the necessary specifications, terms and conditions in the following situations:

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

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

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

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

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

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

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

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

R4: 19-11-217. Vendors List.

2003 Procurement Regulation Changes

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

(b) Application. A business shall make application on the Office of State Procurement web site at www.accessarkansas.org/dfa/purchasing to have its name placed on the vendors lists for the commodities and services it wishes to supply or provide. The business must provide complete information requested in the application before it will be considered for placement on a vendors list.

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

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

(e) Removal.

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

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

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

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

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

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

2003 Procurement Regulation Changes

procurement agent.

R1:19-11-220. Procurement agencies.

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

(b) Internal procedures. The internal procurement procedures must ensure adequate management and control of the agency procurement functions pursuant to law and regulations. Each agency shall ensure that a current copy of its internal procurement procedures and regulations is kept on file. The internal procurement procedures established may include, but are not limited to:

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

(A) legal notice where applicable;

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

(C) a list of all bidders invited to participate;

(D) the original of all bids received;

(E) an abstract of bids received; and

(F) a copy of all correspondence, memos, or other documents related to the award and administration of each transaction, including administrative determinations or justifications when applicable.

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

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

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

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

(a) Notice. Notice of all term contracts initiated by the Office of State Procurement will be given to applicable agencies at least thirty (30) days prior to issuance of invitations for bids in order to invite comments and questions, and notice will be posted on Office of State Procurement website. See www.state.ar.us/dfa/purchasing/index.html.

2003 Procurement Regulation Changes

(b) Request for exclusion. State agencies having agency procurement officials may request exemption from a proposed state contract no less than ten (10) calendar days prior to issuance of an invitation for bids by submitting to the State Procurement Director a written justification for such exemption.

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

R1:19-11-224. Interest, carrying charges, and termination fees.

(a) Limitations.

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

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

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

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

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

R1:19-11-229. Competitive sealed bidding.

Definition.

(1) Invitations for bids shall be mailed, hand delivered, or conveyed in written or electronic form, to all parties on the applicable vendors_list in adequate time to allow response.

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

Conditions for use.

(a) Lease. All contracts for the lease of a commodity which exceed a cost of twenty-five thousand dollars (\$25,000) during the initial period of the contract shall be awarded on the basis of competitive sealed bids. All contracts for the lease of a commodity which do not exceed twenty-five thousand dollars (\$25,000) during the initial period of the contract but contain an option to purchase a commodity costing more than twenty-five thousand dollars (\$25,000) shall be awarded on the basis of competitive

2003 Procurement Regulation Changes

sealed bids. No lease duration including renewals can extend beyond a seven-year period. The term "lease" shall include rent.

(b) Purchase of commodities subject to the Arkansas Constitution, Amendment 54. Commodities subject to the Arkansas Constitution, Amendment 54 (printing, stationery and supplies) may be purchased only by the State Procurement Director or his designee.

R3:19-11-229. Competitive sealed bidding.

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

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

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

Leases.

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

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

Bid submission.

(1) Bidders shall submit bids at the place and on or before the date and time set in the invitation for bids. Bids received after the date and time designated for bid opening are late bids and shall not be considered.

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

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

2003 Procurement Regulation Changes

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

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

R7:19-11-229. Competitive sealed bidding.

Bid evaluation.

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

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

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

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

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

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

(E) Past Performance

(i) Past performance must be supported by written documentation. Documentation used for evaluation should not be greater than three years old. Documentation may be as a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

(ii) Past performance on contracts from other Arkansas State

2003 Procurement Regulation Changes

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

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

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

R8:19-11-229. Competitive sealed bidding.

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

- (1) failure of a bid to conform to the essential requirements of an invitation for bids;*
- (2) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;*
- (3) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;*
- (4) a bid imposing conditions which would modify the terms and conditions of the invitation for bids;*
- (5) any bid determined by the procurement official in writing to be unreasonable as to price;*
- (6) bids received from bidders determined to be nonresponsible bidders;*
- (7) failure to furnish a bid guarantee when required by an invitation for bids; and*
- (8) any or all bids when the procurement official determines it to be in the best interest of the state.*

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

(a) Correction or withdrawal of bids.

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

(2) Amendments to bids shall be allowed if the amendments are

2003 Procurement Regulation Changes

in writing and signed, are received prior to the date and time of bid opening, and clearly indicate the date and time of bid opening and bid number.

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

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

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

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

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

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

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

(b) Negotiation. In the event that negotiation is necessary, a bidder may be determined to be non-responsive if the bidder and agency are unable to reach a negotiated adjustment. If negotiations fail or the agency is unable to reach a negotiated adjustment with the apparent low bidder, the next lowest bidder can be contacted for the purposes of entering into negotiations.

2003 Procurement Regulation Changes

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

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

Life cycle cost.

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

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

R12:19-11-229. Competitive sealed bidding.

Cancellation of invitations for bids. A notice of cancellation shall be sent to all bidders on the bidders list and all bidders who have submitted bids. The bids will be returned if the bid is properly identified.

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

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

If approved by the ECIO, the ECIO will provide a letter of approval to the Office of State Procurement prior to release for bid. The ECIO shall have 20 business days from receipt of the bid documents to complete the necessary reviews. If the ECIO review is not completed within the timeframe allowed, the agency and the ECIO must mutually agree to an extension of the review process.

2003 Procurement Regulation Changes

R14:19-11-229. Ethical standards.

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

R1:19-11-230. Competitive sealed proposals.

Conditions of use. Competitive sealed bidding is the preferred method of procurement; however, if it is not practicable and advantageous, competitive sealed proposals may be authorized as provided in § 19-11-230(b).

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

R2:19-11-230. Competitive sealed proposals.

(a) Evaluation. The evaluation shall be based on the evaluation factors set forth in the request for proposals. A written determination shall be made by the evaluator(s) stating the basis on which the recommendation for award was found to be most advantageous to the state.

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

R3:19-11-230. Negotiations.

2003 Procurement Regulation Changes

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

(b) *Prior to negotiation, a written justification authorizing negotiations must be signed by the Director of the Office of State Procurement or the head of a procurement agency. The justification must include:*

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

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

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

(c) *After approval to negotiate is granted, appropriate representatives shall proceed with negotiations and award recommendation. Appropriate representatives shall include purchasing staff and representatives from the original requesting unit.*

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

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

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

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

(3) *Acceptable adjustments in quantity.*

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

(5) *Timetable for completion of negotiation.*

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

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

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

(i) *If negotiations do not result in an acceptable contract, the Director or head of a procurement agency may rebid or elect to procure by sole source method (§19-11-232) or special procurement (§19-11-263).*

R4:19-11-230. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing

2003 Procurement Regulation Changes

more than \$5,000: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

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

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

If approved by the ECIO, the ECIO will provide a letter of approval to the Office of State Procurement prior to release for bid. The ECIO shall have 20 business days from receipt of the bid documents to complete the necessary reviews. If the ECIO review is not completed within the timeframe allowed, the agency and the ECIO must mutually agree to an extension of the review process.

R1:19-11-231. Small procurements.

Conditions for use.

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

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

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

(a) General. Sole source procurements shall be those procurements which, by virtue of the performance specification, are available from a

2003 Procurement Regulation Changes

single source. Brand name or design specifications shall not be sufficient explanation for sole source. Such procurements may include but shall not be limited to:

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

(2) repairs involving hidden damage.

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

(1) a copy of the purchase order; and

(2) an explanation of sole source procurement, to include:

(A) listing of the commodities/services to be procured

(B) rationale for the procurement of those

commodities/services to the exclusion of all others

(C) summary of other similar commodities/service providers and why they were inadequate

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

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

(d) Sole Source Procurements of Professional and Consultant Services. The procurement from a single source, as it relates to professional and consultant service contracts, should only be used when all other methods of contracting are clearly not applicable. The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may authorize the use of sole source purchases. Sole source professional and consultant service contracts, except for those exempt by law; those for performing artists and lecturers, and those that are documented by sole source justification, may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation. The notice must clearly state the nature of the contract, the contracting agency, and the deadline by which interested providers must respond. Notification must also be posted on the agency or Office of State Procurement website.

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

(1) why the service is needed;

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

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

2003 Procurement Regulation Changes

- (4) why the service is unique;*
- (5) whether or not there are patent or proprietary rights which make the required service unavailable from other sources;*
- (6) what the agency would do if the provider/service were no longer*

available, and

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

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

R2:19-11-232. Ethical standards.

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

R1:19-11-233. Emergency procurements.

(a) Bids. The state agency must, at a minimum, receive three (3) competitive bids unless the emergency is critical. The quotation abstract must show the names of at least three (3) firms contacted in attempting to obtain competition.

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

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

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

2003 Procurement Regulation Changes

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

R2:19-11-233. Ethical standards.

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

R1:19-11-234. Competitive bidding.

Conditions for use.

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

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

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

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

2003 Procurement Regulation Changes

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

R2:19-11-234. Competitive bidding.

Leases.

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

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

R3:19-11-234. Competitive bidding.

Life cycle cost.

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

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

R4:19-11-234. Competitive bidding.

Cancellation. Bids may be cancelled by the State Procurement Director, agency procurement official or procurement agent prior to contract award. Notice of cancellation shall be given to all bidders who have submitted bids.

R5:19-11-234. Competitive bidding.

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

2003 Procurement Regulation Changes

- (1) failure of a bid to conform to the essential requirements of an invitation for bids;*
- (2) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;*
- (3) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;*
- (4) a bid imposing conditions which would modify the terms and conditions of the invitation for bids;*
- (5) any bid determined by the procurement official in writing to be unreasonable as to price;*
- (6) bids received from bidders determined to be non-responsible bidders;*
- (7) failure to furnish a bid guarantee when required by an invitation for bids; and*
- (8) any or all bids when the procurement official determines it to be in the best interest of the state.*

R6:19-11-234. Competitive bidding.

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

R7:19-11-234. Ethical standards.

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

R1: 19-11-235. Nonresponsibility.

- (a) (1) Determination of responsibility is accomplished prior to award of*

2003 Procurement Regulation Changes

a contract.

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

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

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

(2) the responsibility and experience of the business;

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

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

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

R2: 19-11-235. Bonds.

Bonds.

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

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

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

R1:19-11-241. Issuance of standard specifications.

(a) Initiating development of a standard specification. The State Procurement Director shall regularly review all state procurement needs to ascertain the commodities or services for which standard specifications can be developed. Any using agency may request the State Procurement Director to develop a standard specification for any commodity or service. The State Procurement Director shall develop standard specifications requested by a using agency unless the State Procurement Director or the designee of such officer determines that a standard specification need not be developed for that item.

(b) Development of the initial draft of a standard specification. In developing the initial draft of a standard specification, the State Procurement Director shall consider the recommendations of all

2003 Procurement Regulation Changes

concerned using agencies and shall, to the extent practicable, make use of similar specifications of the federal government, other state and local governments, and professional, commercial, and trade organizations. In developing that draft, it also may consider the benefits of simplification, standardization, and interchangeability of equipment and spare parts.

(c) Review of draft standard specifications.

(1) Distribution for comments. Copies of all draft standard specifications shall be distributed with a request for comments. Distribution shall be made, to the extent practicable, to known suppliers of similar commodities or services, concerned state agencies, and trade, scientific, or technical organizations known to be concerned with similar commodities or services. The State Procurement Director may give such further public notice of the preparation of a draft standard specification as such officer deems appropriate.

(2) Availability of comments. All comments submitted shall be placed in a standard specifications file and made available for inspection.

(d) Preparation of final standard specifications. After opportunity for comment, the State Procurement Director may distribute additional drafts for comments or prepare the final standard specification.

(e) Revisions of standard specifications. The State Procurement Director shall develop revisions to standard specifications in the same manner as a standard specification unless such director determines, in writing, that the revision would not change a significant technical requirement of the specification and would not significantly reduce competition. If such written determination is made, the revision may be developed.

(f) Standard specifications file. The State Procurement Director shall maintain a file of every standard specification and any revision thereof.

R2:19-11-241. Issuance of nonstandard specifications.

(a) Initiating development of a nonstandard specification. Nonstandard specifications shall be originated upon an agency's written request and after approval by the State Procurement Director or the designee of such officer. A nonstandard specification will be developed for a commodity or service that fails to meet those requirements which would necessitate a statewide standard specification but that needs standardization in order to meet a requirement of one or more agencies.

(b) Development of the initial draft of a nonstandard specification. In developing a nonstandard specification, the State Procurement Director may consider recommendations of the requesting agency and utilize federal, state, local, professional, commercial, and trade organization information to the extent practicable and consistent with agency needs.

(c) Review of draft nonstandard specifications.

(1) Distribution for comment. Copies of all draft nonstandard

2003 Procurement Regulation Changes

specifications shall be forwarded to the requesting agency and to known suppliers of similar commodities or services, to the extent practicable, with a request for comment.

(2) Availability of comments. All comments submitted shall be placed in a nonstandard specification file and made available for inspection.

(d) Preparation of final nonstandard specification. After opportunity for comment, the State Procurement Director or designee of such officer will cause the nonstandard specification to be finalized and copies forwarded to the requesting agency.

(e) Revision or cancellation of nonstandard specifications. Revision or cancellation may be initiated upon written request by a using agency unless the State Procurement Director or designee of such officer determines that the revision or cancellation would not serve the best interests of other using agencies.

(f) Specifications file. The State Procurement Director shall maintain a file for each nonstandard specification and any revisions thereof.

R3:19-11-241. Issuance of restrictive specifications.

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

R4:19-11-241. Issuance of qualified products list specifications.

Qualified products list.

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

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

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

(2) Notice of intent to adopt a qualified products list. Whenever it is determined to include a qualified products list in any specification or to adopt such a list, prompt notice of the intent shall be given to all reasonably known makers and suppliers of the affected commodity. Such notice shall describe all requirements for achieving qualification.

(3) Written records of evaluation. Detailed written records shall be made of the evaluation of any and all commodities offered for inclusion on any qualified products list. Except for records which contain trade secrets

2003 Procurement Regulation Changes

or other proprietary information, those records shall be made available for inspection by any member of the public upon request.

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

Disposition of commodities other than computers and electronic equipment.

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

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

(c) Disposal. When commodities have no scrap or resale value, a written request for disposal shall be submitted to Marketing and Redistribution, which shall then forward, within ten (10) working days, a certificate of property disposal indicating the proper handling procedure for the commodities.

(d) Cannibalization.

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

2003 Procurement Regulation Changes

Redistribution.

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

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

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

Disposition of commodities after holding period.

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

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

(3) Public auction.

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

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

2003 Procurement Regulation Changes

(4) Competitive sealed bidding.

(A) Competitive sealed bidding will be used when:

- (i) the value of the item cannot be determined based on market value or past history of same or similar items sold; or*
- (ii) it is determined by Marketing and Redistribution that it is in the best interest of the State.*

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

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

(5) On-site Sales.

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

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

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

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

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

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

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

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

(C) The requesting agency must maintain a copy of the original request for the donation and the written approval/disapproval from the

2003 Procurement Regulation Changes

Director of the Office of State Procurement for audit purposes.

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

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

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

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

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

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

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

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

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

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

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

2003 Procurement Regulation Changes

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

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

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

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

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

R1:19-11-244. Decision.

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

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

Authority to resolve protested solicitations and awards.

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

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

(3) Costs. The costs which are allowable shall be those which the party is able to prove that are incurred in preparation and submission of the bid or proposal in question. No party can recover profit which it anticipates would have been made if that party had been awarded the contract. Attorney's fees associated with the filing and prosecution of the protest are not recoverable.

2003 Procurement Regulation Changes

R1:19-11-245. Suspension

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

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

R2:19-11-245. Debarment.

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

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

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

2003 Procurement Regulation Changes

contract; or

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

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

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

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

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

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

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

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

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

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

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

(d) Debarment hearing.

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

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

2003 Procurement Regulation Changes

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 send a copy of its determinations to each agency procurement official.

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

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

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

(c) Contractor's liability. The contractor and/or his surety, if a performance or payment bond has been required under the contract,

2003 Procurement Regulation Changes

shall be jointly and severally liable to the state for any and all loss or damage as provided in the contract between the state and the contractor as a result of the contractor's default; provided, however, that a contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.

R1:19-11-249. Cooperative purchasing.

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

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.

R1: 19-11-251. Intergovernmental agreements.

2003 Procurement Regulation Changes

- (a) *Intergovernmental agreements should include at a minimum:*
- (1) *Scope of work to be accomplished;*
 - (2) *Amount of compensation (if any);*
 - (3) *Delineation of responsibilities and duties of each entity;*
 - (4) *Term of agreement; and*
 - (5) *Authorized signatures from each entity.*
- (b) (1) *All intergovernmental agreements involving commodities and/or technical services will not be reviewed by the Office of State Procurement prior to implementation.*
- (2) *Those agreements which contemplate the use of professional consultant services will be reviewed by the Office of State Procurement.*

R1:19-11-262. Multiple award contracts

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

R1:19-11-263 Special procurement reporting.

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

R1:19-11-801. SBS Criteria

The guidelines and procedures established by the Arkansas State Building Services shall be used by all agencies, except those exempt from SBS review, in selecting architects, land surveyors and engineers for state construction projects. Refer to Architectural Section 6-100 of SBS Standards and Criteria - Professional Services Selection Procedures for State Agencies.

R2: 19-11-801 Procedures for Approval of Architects, Interior Designers, and Engineers and Land Surveyor Contracts.

With the exception of those agencies exempt from State Building Services review, All all contracts for architectural, interior design, and engineering and land surveyor services must be first submitted to

2003 Procurement Regulation Changes

Arkansas State Building Services for their recommendation and approval as to the propriety and legality of the contract. Agencies shall submit contracts to SBS seven (7) working days prior to the deadline for submittal to DF&A. After receiving the recommendation and approval of Arkansas State Building Services, the contract shall be submitted to the Office of Accounting State Procurement of the Department of Finance and Administration. No contract requiring SBS review shall be submitted to the Office of Accounting State Procurement without first seeking the recommendation and approval of Arkansas State Building Services.

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

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

R1: 19-11-802 Request for Qualifications (RFQ) Procurement Method Used in the Establishment of Professional and Consultant Service Contracts.

Request for Qualifications (RFQ): The Request for Qualifications is, in the absence of sole source justification, the procurement method recommended when contracting for architectural, engineering, land surveying and legal services. It may also be used, with prior approval from the Office of State Procurement, as the selection method for other P&CS contracts when it is determined to be the most suitable method of contracting. The RFQ is sent to those vendors whose work resume' indicates they are best suited to perform the work specified. Notification to the public shall be in accordance with the provisions of §19-11-229 (d). The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussions may be conducted with responsible offerors who based upon qualifications submitted are determined to be reasonably susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.

R1: 19-11-902. Work Center-Made Products Program regulations.

For the purposes of the Work Center-Made Products Program, the fair

2003 Procurement Regulation Changes

market price of commodities offered in a competitive environment shall be at least 20% more than the cost of materials. In the case of services, those services must be performed by disabled individuals directly under the control of Work Center representatives.

R2: 19-11-902 Work center certification.

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

R3: 19-11-902. Work center product and service schedules

Work Centers must provide a schedule of their commodities, services and prices to Office of State Procurement. Schedules will be posted on the Office of State Procurement website (www.accessarkansas.org/dfa/purchasing). Ordering offices will contract directly with Work Centers.

R4: 19-11-902. Work center applications for bidding.

(a) All Work Centers who wish to participate in the Work Center Made Products Program will be required to register as a vendor with the Office of State Procurement.

(b) The Office of State Procurement may check with Arkansas Rehabilitation Services, Developmental Disabilities Services and Department of Labor to verify certification(s).

R5: 19-11-902. Purchase procedure.

In the case of small order procurement, competitive bidding, and competitive sealed bidding and proposals, the agency shall procure commodities and services from the Work Centers, when contract terms and specifications are equal and the price is not more than 10% above the lowest competitive price, obtained from a non-work center.

R6: 19-11-902. Reporting

2003 Procurement Regulation Changes

Agencies must document purchases of Work Center Made Products as well as purchases of non-work center made commodities and services when work centers are competing but were unsuccessful in obtaining the contract. Semi-annual reports including the circumstances and documentation of purchase exceptions shall be submitted to the Office of State Procurement, (See www.state.ar.us/purchasing/index.html).

R1: 19-11-1006 Performance Evaluation and Expenditure Review of Professional and Consultant Service Contracts.

Professional and consultant service contracts between state agencies where the total contract amount exceeds twenty-five thousand dollars (\$25,000.00), must be presented to the Performance Evaluation and Expenditure Review Committee (PEER) or Joint Budget Committee by the Department of Finance and Administration prior to the execution date of such contract.

R2: 19-11-1006 Review Requirements of Professional and Consultant Service Contracts that are Amended.

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

Amendments to contracts that originally did not require review by Legislative Council or Joint Budget Committee: Any amendment which increases the total dollar amount of a professional or consultant service contract to exceed the sum of \$25,000, shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration and before the execution date of the amendment. The amendment along with a copy of the original contract and any attachments thereto must be submitted to the Office of State Procurement in accordance with the time guidelines as prescribed in R2: 11-19-1012. Contracts which have expired cannot be amended.

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 as requiring review of the Legislative Council or Joint Budget Committee, excluding those of the Arkansas State Highway and

2003 Procurement Regulation Changes

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 State Building Services. The approved original will be returned to the agency; a copy filed in the Office of State Procurement.

R2: 19-11-1008 Procedures for Approval of Architects, Engineers and Land Surveyor Contracts

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

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

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

R3: 19-11-1008 Procedures for Approval of Data Processing and Telecommunications Planning or Services.

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

2003 Procurement Regulation Changes

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

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

R1: 19-11-1009 Professional and Consultant Service Contracts on File at a State Agency.

Professional and Consultant Service Contracts on file with a state agency shall be available for public inspection to the extent permitted by Arkansas State Freedom of Information Laws.

R1: 19-11-1010 Use of Performance Based Standards in Professional and Consultant Service Contracts.

All P&CS contracts over \$25,000, other than those listed herein and those specifically exempted by the Director of the Office of State Procurement, will include performance standards. Agencies are encouraged, however as a matter of good procurement principle, to include performance standards in all professional and consultant service contracts. The purpose of these standards will be to allow the agency to effectively measure the level of performance provided by the contractor at various stages of the contract.

Performance standards may be standardized for use with similar contracts or may be specifically developed for unique requirements.

Performance standards should measure, at prescribed points throughout the term of the contract, the quality and quantity of work being performed.

Performance standards may be refined by the agency and the provider as a part of the contract negotiations.

A provider's inability to meet established performance standards may be sufficient cause for declaring default and may also result in cancellation of the contract.

Contracts that may be exempt from the use of performance standards include:

2003 Procurement Regulation Changes

(1) Sole source by law contracts in which the state is compelled as a result of court, state or federal mandate to award for services from a specific provider.

(2) Emergency contracts in which the need for expediency does not permit for the development of performance standards.

(3) Architectural and Engineering contracts that are awarded using State Building Services criteria or similar criteria developed by those colleges and universities which are exempt from SBS review.

R1: 19-11-1011 Professional and Consultant Service Contracts on File in the Office of State Procurement.

As it applies to 19-11-1011, contracts shall mean all professional and consultant service contracts that are executed using the professional and consultant service contract form approved by the Director of the Office of State Procurement. All agencies will be required to maintain copies on file of all purchase orders issued for the procurement of professional and consultant services.

R1: 19-11-1012 Compensation.

Each professional and consultant service contract shall clearly state the compensation, and indicate if various levels of expertise are to be supplied by the contractor. A rate for each level and the number of personnel within each level should be listed. All calculations should be extended and totaled. A schedule of allowable reimbursable expenses and estimated rates for each item of expense should be agreed to. All items should be listed along with respective rates. Rates should be totaled by item column, and a total compensation provided that is inclusive of reimbursable expenses.

R2: 19-11-1012 Contract Dates.

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

(a) any contract or amendment to a contract that requires review by the Legislative Council Committee must be submitted to the Department of Finance and Administration, Office of State Procurement, no less than ten

2003 Procurement Regulation Changes

(10) working days prior to the Committee meeting. Those requiring Sole Source Justification approval must be submitted at least fifteen (15) days prior to the published review date of the Legislative Council Review Committee. The beginning date of the contract must not precede the date of the Arkansas Legislative Council meeting in which such contract is to be reviewed. The Review Committee meets on the first Wednesday of each month, and the Legislative Council meets the third Friday of each month except when the General Assembly is in session, at which time Joint Budget will review contracts. The Legislative Council or the Joint Budget Committee shall provide the Chief Fiscal Officer with their review as to the propriety of the contract within thirty (30) days of said submission;

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

R3: 19-11-1012 Required Information.

Information should be provided on each professional and consultant service contract form listing the name, social security number and relationship of those persons who will be supplying services to the state agency insofar as they are known at the time the contract is signed. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed.

R4: 19-11-1012 Reporting Multiple Purchase Orders for Professional and Consultant Services issued to the same Provider during the same Fiscal Year.

Agencies will be required to provide to the Office of State Procurement a copy of each purchase order accompanied by an explanation of the nature of work performed and the reason why a professional or consultant service contract was not initially developed. This information will be due within ten (10) working days from the date of the most recent purchase order.

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

Each contract should be completed and include the following information:

2003 Procurement Regulation Changes

(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 or social security number, name and address.

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

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

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

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

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

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

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

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

R1:25-10-404. Data recording and tracking

(a) Agency Procurement Officials shall submit reports monthly to the Office of State Procurement, data regarding minority participation in that

2003 Procurement Regulation Changes

*agencies contracts which exceed \$25,000
(www.state.ar.us/dfa/purchasing/index.html)*

(b) The Director of the Office of State Procurement shall gather the above information and similar information regarding all other state agencies and submit a report semi annually to the Governor and to the co-chairs of the Legislative Council and to the Legislative Joint Audit Committee and the Minority Business Advisory Council.

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

(a) Sales made within the agency.

The agency will:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Each agency shall be responsible for providing to Marketing and Redistribution by the 10th of the month following the sale a list of all items sold.

2003 Procurement Regulation Changes

Include the type of equipment, model number, serial number, and property tag number, to whom the equipment was sold and the amount.

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