

**Emergency Rule 2007-6:
Changes in the Arkansas State Procurement Law**

Effective 31 July 2007

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

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

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

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

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

R2:19-11-203. Capital Improvements

***(14)(AA) Capital improvements valued at less than
Twenty Thousand Dollars (\$20,000) subject to ABA mini-***

mum standards and criteria are exempt from the requirements of the Procurement Law.

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

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

R2:19-11-204 Ethical standards

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

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

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid, (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is One Hundred Thousand Dollars (\$100,000) or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be One Hundred Thousand Dollars (\$100,000) or more, must be submitted to STP for approval.

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

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

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

(1) Upon delivery, in response to a purchase order or contract award;

(2) Before delivery when the bidder has responded to an invitation for bids and/or received a contract award;

(3) After a vendor(s) has submitted an alternative bid. Examination of commodities and services may, where and when necessary, include laboratory testing and/or simulation studies.

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

(a) Vendor fee. Vendors shall make application on the Office of State Procurement web site at www.arkansas.gov/dfa/procurement to have their name placed on the State Master Vendor list for the commodities

and services they wish to supply or provide. An annual fee may be required.

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

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

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

R4:19-11-217 Vendors List

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

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

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

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

(e) Removal.

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

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

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

(a) Request for exclusion. State agencies having agency procurement officials may request exemption from a proposed state contract no less than ten (10) calendar days prior to the posted bid opening date by submitting to the State Procurement Director a written justification for such exemption.

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

R1:19-11-229 Competitive sealed bidding

Definition.

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

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 (30) days] must be approved by the State Procurement Director under the provisions of ACA § 22-8-102.

(3) Agricultural equipment leases for one hundred eighty (180) days or less may be procured by use of competitive bid procedures.

R7:19-11-229 Competitive sealed bidding

Bid evaluation.

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

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

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

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

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

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

(E) Past Performance

(i) The past performance of a bidder may be used by the procurement agency to determine whether the bidder is "responsible," not to disqualify the bidder. No points for past performance may be used in the evaluation criteria. Past performance must be supported by written

documentation not greater than three (3) years old. Documentation may be a formal Vendor Performance Report, an informal memo (signed and dated) or any other appropriate authenticated notation of performance to the vendor file. Reports, memos and files may be in electronic form. Past performance may be positive or negative.

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

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

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

R8:19-11-229 Competitive sealed bidding

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

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

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

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

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

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

(6) Bids received from bidders determined to be 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 makes a written determination that it is in the best interest of the state.

R12:19-11-229 Competitive sealed bidding

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

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

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid, (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is One Hundred Thousand Dollars (\$100,000) or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be One Hundred Thousand Dollars (\$100,000) or more, must be submitted to STP for approval.

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

R14:19-11-229 Negotiations

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

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

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

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

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

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

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

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

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

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

(3) Acceptable adjustments in quantity.

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

(5) Timetable for completion of negotiation.

(f) Negotiation plan shall not be revealed to bidder(s)

nor made available for public review until after award.

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

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

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

R1:19-11-230 Competitive sealed proposals

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

R2:19-11-230 Competitive sealed proposals

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

(b) Responsibility of offeror. Past performance of an offeror may be used by the procurement agency to determine whether the offeror is “responsible”, not to disqualify the offeror. No points for past performance may be used in

the evaluation criteria.

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

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

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid, (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is One Hundred Thousand Dollars (\$100,000) or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be One Hundred Thousand Dollars (\$100,000) or more, must be submitted to STP for approval.

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

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

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

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

(2) Repairs involving hidden damage.

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

(1) A copy of the purchase order;

(2) Why the service is needed;

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

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

(5) Why the service is unique;

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

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

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

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

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

(d) Sole Source Procurements of Professional and Consultant Services. The procurement from a single source, as it relates to professional and consultant service contracts, should only be used when all other methods of contracting are clearly not applicable. The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may authorize the use of sole source purchases. Sole source professional and consultant service contracts, except for those

exempt by law and those that are documented by sole source justification, may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation and no other provider responds. If any other provider responds and requests the opportunity to bid, then the sole source procurement method cannot be used. The notice must clearly state the nature of the contract, the contracting agency, and the deadline by which interested providers must respond. Notification must also be posted on the agency or Office of State Procurement website.

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

(1) Why the service is needed;

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

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

(4) Why the service is unique;

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

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

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

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

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

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

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

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 em-

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

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

R1:19-11-241 Issuance of restrictive specifications

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

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

Qualified products list.

(1) Restrictions on use. A specification for commodities may include a qualified products list only when the

State Procurement Director has approved in writing the written determination of the Agency Procurement Official or Office of State Procurement that:

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

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

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

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

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

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

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

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

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

sponsibility as a state contractor;

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

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

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

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

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

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

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

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

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

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

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

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

(13) Violation of the ethical standards set forth in ACA § 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 (3) qualified individuals from government and private industry to hear the Debarment proceedings.

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

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

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

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

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

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

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

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

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

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

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

Each contract should be completed using the appropriate contract form found at: www.arkansas.gov/dfa/procurement

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

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

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

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

**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 PCS contracts when it is determined to be the most suitable method of contracting. The RFQ is sent to those vendors whose work resume' indicates they are best suited to perform the work specified. Notification to the public shall be in accordance with the provisions of Arkansas Code Annotated §19-11-229 (d). The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussions may be conducted with responsible offerors who, based upon qualifications submitted, are determined to be reasonably susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements, and to obtain best and final offers.

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

Agencies must submit to the Department of Finance and Administration Office of Intergovernmental Services State Technology Planning (STP) any Invitation for Bid (IFB), Request for Proposal (RFP) or Request for Qualifications (RFQ) for Information Technology products or services where the anticipated cost is One Hundred Thousand Dollars (\$100,000) or more. In addition, any IFB, RFP or RFQ that includes Information Technology products or services as part of the IFB, RFP or RFQ, where that part may be One Hundred Thousand Dollars (\$100,000) or more, must be submitted to STP for approval. Documentation regarding sole source and emergency procurements that include Information Technology products or services of One Hundred Thousand Dollars (\$100,000) or more must also be submitted to STP for approval.

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

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

R1:19-11-1202 Definitions

(a) "ESCO" means an energy service company which makes recommendations to the agencies regarding energy efficiency upgrades, provides labor to perform energy upgrades, finances the energy improvements and guarantees energy savings to the agencies.

(b) "Energy consultant" means a company which assists the agencies in developing their energy cost savings project bid documents, evaluates proposals and makes recommendations for award.

(c) "Energy consultants are prohibited from performing the tasks of an ESCO and vice versa.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of July 2007.

***Richard A. Weiss, Director
AR Dept. of Finance & Administration***