CONTRACT MANUAL

For Professional and Consultant Services Contracts and Intra-agency Agreements

OFFICE OF FINANCE AND ADMINISTRATION
CONTRACT SUPPORT SECTION

CONTRACT MANUAL
TABLE OF CONTENTS

		Pg. No.
ACRMS AND ABBREVIATIONS	ACRONYMS AND ABBREVIATIONS	3
CHAPTER ONE	INTRODUCTION	5
CHAPTER TWO	CONTRACTING FORMATS	6
	I. Definitions	6
	II. Contracting Formats for Services	6
	III. Other Agreement Types	8
CHAPTER THREE	DISCLOSURE	10
	I. Policy	10
	II. Procedures	10
	III. Quarterly Report	13
CHAPTER FOUR	PROCUREMENT	14
	I. Policy	14
	II. Procedures	14
CHAPTER FIVE	PROVIDER EXCLUSION	22
	I. Policy	22
	II. DHS Exclusion List	22
	III. List of Parties Excluded from Federal Procurement and Non-procurement Programs	23
	IV. All State Agencies Suspended/Debarred Vendors List	23
	V. Procedure When Developing Contracts/Sub-grants	23
CHAPTER SIX	PROVIDER AUDIT REQUIREMENT	24
	I. Policy	24
	II. Procedures	24
CHAPTER SEVEN	PERFORMANCE BASED CONTRACTING	25
	I. Policy	25
	II. Procedures	25
	III. Performance Evaluation	26
	IV. Contract Amendments	26
CHAPTER EIGHT	MATCHING FUNDS	28
	I. Policy	28
	II. Procedures	28
CHAPTER NINE	RATE INCREASE APPROVAL	29
	I. Policy	29
	II. Requirements	29
	III. Procedures	29
CHAPTER TEN	PROFESSIONAL/CONSULTANT SERVICES CONTRACTS	31
	I. Policy	31
	II. PCS Contracting Requirements	31

	III. Development of Standard PCS Contracts	36
	IV. Signing and Routing of Standard PCS Contracts	43
	V. Legislative and DFA Review of Standard PCS Contracts	43
	VI. Entry of Standard PCS Contracts into AASIS	44
	VII. Distribution of Standard PCS Contracts	44
	VIII. Reporting to OSP on Standard PCS Contracts	44
	IX. Amendments to Standard PCS Contracts	45
	X. Changes to Standard PCS Contracts	48
	XI. Stand-alone PO's for Professional and Consultant Services	50
	XII. Site Visits for PCS Contracts	53
	XII. Billing for PCS Contracts	53
	XIV. Records Retention for PCS Contracts	53
CHAPTER ELEVEN	INTRA-AGENCY AGREEMENTS	55
	I. Policy	55
	II. Procedures	55
CHAPTER TWELVE	PCS CONTRACT INVOICING	56
	I. Procedures	56
	II. Contractor Expenditure Reports	57
	III. Monitoring for Contract Compliance	57
	IV. Recovery of Overpayments	58
	V. Settlements	58
	VI. Internal Revenue Service Levies	58

APPENDIX	
Foreign Corporations Transacting Business in Arkansas	59
Suspension of the Rules Letter	60

Contract Manual
Acronyms and Abbreviations

AASIS	Arkansas Administrative Statewide Information System
ABA	Arkansas Building Authority
A.C.A.	Arkansas Code Annotated
ACO	Administrative Compliance Officer
AP	Accounts Payable, Office of Finance and Administration, Department of Human Services
AR	Accounts Receivable, Office of Finance and Administration, Department of Human Services
BAA	Business Associate Agreement
CAP	Contracting Automation Platform
CAS	Contract Archival System
CB	Competitive Bid
CMU	Contract Management/Comprehensive Annual Financial Report Unit, Office of Finance and Administration, Department of Human Services
CPO	Certified Procurement Official
CPU	Commodities Purchasing Unit, Contract Support Section, Office of Finance and Administration, Department of Human Services
CSB	Competitive Sealed Bid
CSP	Competitive Sealed Proposal
CSS	Contract Support Section, Office of Finance and Administration, Department of Human Services
CSU	Central Support Unit, Contract Support Section, Office of Finance and Administration, Department of Human Services
DAAS	Division of Aging and Adult Services, Department of Human Services
DBH	Division of Behavioral Health, Department of Human Services
DCCECE	Division of Child Care and Early Childhood Education, Department of Human Services
DCFS	Division of Children and Family Services, Department of Human Services
DCO	Division of County Operations, Department of Human Services
DDS	Division of Developmental Disabilities Services, Department of Human Services
DFA	Department of Finance and Administration
DHS	Department of Human Services
DMS	Division of Medical Services, Department of Human Services
DOV	Division of Volunteerism, Department of Human Services
DSB	Division of Services for the Blind, Department of Human Services
DYS	Division of Youth Services, Department of Human Services
EEO	Equal Employment Opportunity
EO	Executive Order
FY	Fiscal Year
GSA	General Service Administration, United States Government
HIPAA	Health Insurance Portability and Accountability Act
IG	Intergovernmental
IRS	Internal Revenue Service, United States Government
MOA	Methods of Administration
OCC	Office of Chief Counsel, Department Human Services
OFA	Office of Finance and Administration, Department of Human Services

Acronyms and Abbreviations

OSP	Office of State Procurement, Department of Finance and Administration
OST	Office of Systems and Technology, Department of Human Services
PASOS	Provider Audit Sign-off Sheet
PCS	Professional/Consultant Services
PEER	Performance Evaluation and Expenditure Review
PHI	Protected Healthcare Information
PO	Purchase Order
RFP	Request for Proposal
RFQ	Request for Qualifications
RMU	Records Management Unit, Contract Support Section, Office of Finance and Administration, Department of Human Services
SSBG	Social Services Block Grant
TIN	Taxpayer Identification Number
TWC	Together We Can

CHAPTER ONE
INTRODUCTION

To carry out some aspects of its mission, the Arkansas Department of Human Services (DHS) uses a statewide network of contracted service providers.

The purpose of this Contract Manual (hereinafter referred to as "Manual") is to provide a common frame of reference for the development of Professional and Consultant Services (PCS) contracts and intra-agency agreements (i.e., agreements between two or more divisions within DHS). This Manual is based on federal and state directives and agency policy, as well as "best practices" which have been standardized for use by DHS program divisions/offices (hereinafter referred to as "divisions").

The essential elements of each agreement are based on mutually binding obligations between the two parties: the service provider and the applicable DHS division, using funds appropriated to carry out the program responsibilities of that division.

The Office of Chief Counsel (OCC) provides legal advisory concerning procurement methods, service performance provisions, and any unique terms and conditions or other proposed deviations from standard practices described in this Manual.

The Office of Finance and Administration (OFA) provides administrative direction to facilitate the successful completion of agreements so that they meet requirements for coordination through the Office of State Procurement (OSP), Department of Finance and Administration (DFA) and review by the Arkansas state legislature, if necessary. OFA also provides financial advisory and technical assistance through a network of divisional Chief Fiscal Officers to assure compliance with the Financial Management Guide and the Accounting and Budgetary Procedures Law.

The Contract Support Section (CSS) of OFA provides this Manual as an element of technical assistance. Please direct all suggestions for corrections, additions and/or updates to:

Contract Support Section/Slot W345
P.O. Box 1437
Little Rock, AR 72203
Telephone: (501) 682-6293

~ ~ ~ ~

- DHS requires fair and equal opportunity in employment and service delivery regardless of race, color, religion, sex, age, national origin, political beliefs, or disability that impair one or more major life activities as defined in the Americans with Disabilities Act.
- DHS requires non-discrimination and equal opportunity in compliance with all applicable federal laws, regulations, executive orders and civil rights rules and regulations.
- Contractors are required to comply with the promulgated DHHS Methods of Administration (MOA) for recipients of federal financial assistance as directed by the United States Department of Health and Human Services.

CHAPTER TWO
CONTRACTING FORMATS

I. Definition (from Rules and Regulations Implementing Governor's Executive Order [EO] 98-04 and Act 34 of 1999)

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

II. Contracting Formats for Services

A purchase of services contract is a legally binding agreement, enforceable by law, between DHS and a provider of services. A provider of services may be a private entity (i.e., an individual, partnership, or corporation) or a public entity (i.e., a governmental agency or entity). The agreement contains mutually binding obligations and a description of the services to be provided with payment contingent on delivery of services. The common contracting formats include:

A. PCS Contracts

1. PCS contracts are governed by Arkansas Procurement Law and applicable statutes (as found in the Arkansas Code Annotated [A.C.A.]) and regulations, including but not limited to the following:
   a. **A.C.A. §19-11-101** et seq. General Provisions
   b. **A.C.A. §19-11-201** et seq. Procurement Law
   c. **A.C.A. §19-11-701** et seq. Ethics in Public Contracting
   d. **A.C.A. §19-11-801** et seq. Procurement of Professional Services
   e. **A.C.A. §19-11-1001** et seq. Professional and Consultant Services
   f. **A.C.A. §15-4-301** et seq. Minority Procurement

2. **Professional Services** contracts are for the purchase of services which are professional in nature and generally require that the provider have some type of specialized training or license/certification (e.g., medical services, social work, therapy, counseling, etc.). **A.C.A. §19-11-203(14)**, as amended in 2003, exempts certain professional services from compliance with the procurement law.

3. **Consultant Services** contracts are utilized when the service to be rendered is primarily the giving of advice by the contractor on a particular problem facing the agency.

4. **PCS Contract Formats**

   a. PCS contracts for which the total compensation exceeds $25,000.00 per vendor, per fiscal year, per cost center shall be executed on the **Professional/Consultant Services Contract** form **(Form OSP-1)** and are commonly referred to as **"standard PCS contracts."**

   b. PCS contracts for which the total compensation does NOT exceed $25,000.00 may be executed on the purchase order (PO) format, in which case they are referred to as **"stand-alone PO's."** A division may, however, execute a PCS contract that does not exceed $25,000.00 in compensation as a **"standard PCS contract"** on the **Form OSP-1**, if preferred.

5. PCS contracts are addressed in **Chapter Ten** of this Manual.

B. Intra-agency Agreements

1. Intra-agency agreements are used when one DHS division purchases services from another DHS division.

2. Intra-agency Agreements are addressed in **Chapter Eleven** of this Manual.

C. Technical Services Contracts

1. Contracts for technical services are governed by the Arkansas Procurement Law and applicable statutes and regulations, including but not limited to the following:

a.	**A.C.A. §19-11-101** et seq.	General Provisions
b.	**A.C.A. §19-11-201** et seq.	Procurement Law
c.	**A.C.A. §19-11-301** et seq.	Bidding – State Industry Priority Goods
d.	**A.C.A. §19-11-601** et seq.	Federal Government Surplus Property
e.	**A.C.A. §19-11-701** et seq.	Ethics in Public Contracting
f.	**A.C.A. §15-4-301** et seq.	Minority Procurement
g.	**A.C.A. §19-11-901** et seq.	Purchases of Workshop Made Products and Services
h.	**A.C.A. §15-4-301** et seq.	Minority Procurement

DHS Administrative Procedures Manual, Chapters 601 through 609, also governs contracts for technical services.

2. "Technical services" are described by **A.C.A. §19-11-203(34)** as:

   a. Work accomplished by skilled individuals involving time, labor, and a degree of expertise, in which performance is evaluated based upon the quality of the work and the results produced;

   b. Work performed to meet a demand, including, but not limited to, work of a recurring nature that does not necessarily require special skills or extensive training, or;

   c. The furnishing of labor, time, or effort by a contractor or vendor, not involving the delivery of any specific end product other than reports that are incidental to the required performance.

3. Examples of services that are typically considered technical in nature include drug screening, criminal background checks, elevator service, janitorial service, pest control service, translator service, nursing, occupational therapy, physical therapy, speech therapy, housekeeping, training, and office machine maintenance.

4. When in doubt if a particular service should be considered technical or professional, divisions should consult with Commodities Purchasing Unit (CPU).

5. Technical services are not within the scope of this Manual. For assistance on the development of technical services contracts, divisions should consult with CPU.

D. Interlocal Agreements

1. Interlocal Agreements are authorized under **A.C.A. §25-20-104**.

2. The purpose of Interlocal Agreements is to facilitate cooperation and sharing of resources at the local level between state agencies.

3. For information regarding Interlocal Agreements, divisions should consult with CSS prior to development

4. Interlocal Agreements are for highly specific situations and the details on their development are not within the scope of this Manual.

III. Other Agreement Types

A. Medicaid Provider Agreements

1. Medicaid Provider Agreements establish an individual or entity as a Medicaid provider and are specific to each service being provided. Contractors may have multiple contracts if they provide more than one of the approximately forty available services.

2. Medicaid Provider Agreements are managed by the Division of Medical Services (DMS) and are governed by Medicaid regulations and rates.

3. Medicaid Provider Agreements are not within the scope of this Manual.

B. Sub-grants

1. Sub-grants are written agreements to provide money or property to eligible recipients under specific federal or state legislation authorizing such assistance.

2. The sub-grant award process shall comply with the Accounting and Budgetary Procedures laws of Arkansas.

3. In accordance with **A.C.A. §19-4-2201** and **2202,** the Legislative Review Subcommittee and the Legislative Council must review non-exempt discretionary sub-grants prior to implementation.

4. Some of the factors to consider when determining if a particular situation warrants a sub-grant or a contract include the following:

   a. Sub-grants are for ASSISTANCE while contracts are for ACQUIRING (PURCHASING) SOMETHING.

   b. Sub-grants are often considered to be an award of resource assistance to fulfill the SUB-GRANTEE'S mission, while contracts are often put in place to fulfill DHS' mission.

   c. If performance based standards are needed, with the extra degree of specificity regarding what is to be done and remedies for failure to perform, a contract is probably more appropriate than a sub-grant.

   d. Just because the funding comes TO DHS as a grant does NOT necessarily mean DHS should put it out to the vendor as a sub-grant.

5. Sub-grants are not within the scope of this Manual.

NOTE:
If there is doubt as to whether a sub-grant or a contract is the more appropriate agreement format, divisions should consult with CSS.

C. Construction Contracts

1. Construction contracts are developed and approved in accordance with Arkansas Building Authority (ABA) regulations.

2. For details on construction contracts, divisions should consult with Central Support Unit (CSU).

3. Construction contracts are not within the scope of this Manual.

CHAPTER THREE
DISCLOSURE

I. Policy

A. IMPORTANT TO NOTE:

1. Any non-exempt contract which exceeds $25,000.00 total (i.e., compensation plus reimbursable expenses) requires the contractor to disclose information as required under the terms of EO 98-04, Act 34 of 1999, and regulations developed by DFA. (**Note:** Contracts with another government entity such as a state agency, public education institution [ex., state university, public school, etc.], federal government entity, or body of a local government are exempt from disclosure requirements.)

2. All amendments to non-exempt contracts greater than $25,000.00 total (compensation plus reimbursable expenses) require disclosure.

3. Non-exempt subcontractors receiving greater than $25,000.00 total are required to disclose.

4. For non-exempt contracts, the **Contract and Grant Disclosure and Certification Form, Form PCS-D,** shall be used for the purpose of disclosing. Disclosure is required of any of the following, whether current or former ("former" is defined as within two years of entering into a contract):

   a. Constitutional officer

   b. Board or commission member

   c. State employee

   d. The immediate family member, including the spouse, of any of the above, or

   e. Any entity in which any person designated in (a) through (d) above:

      (1.) holds any position of control, or

      (2.) holds any ownership interest of 10% or greater

B. Any **contract** with a Constitutional Officer or his/her spouse requires the contractor to disclose.

C. The failure of any person or entity to disclose as required under any term of EO 98-04 or Act 34 of 1999, or the violation of any regulation or policy promulgated by DFA pursuant to the order, shall be considered a material breach of the terms of the agreement and shall subject the party failing to disclose or in violation to all legal remedies available to DHS.

II. Procedures

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

B. Required Language in Contracts and Subcontracts:

1. The following language shall be included in the terms of **every contract** with any individual or entity, for which the total consideration is greater than $25,000.00, for services funded through a contract:

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

NOTE:

- This language is contained in the **Form OSP-1**, which is used for standard PCS contracts.
- For applicable stand-alone PO's, this language shall be added in the text of the PO or as an attachment.

2. Any agreement between the contractor and a subcontractor for which the total consideration is greater than $25,000.00 shall contain the following language:

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

NOTE:

- Contract developer shall advise the contractor of this requirement if the contractor has subcontracts that exceed $25,000.00.

C. For each non-exempt contract that exceeds $25,000.00 total, the contract developer shall ensure that the contractor completes the **Form PCS-D** and shall include it in the contract.

1. Each contract shall also include a completed **Form PCS-D** for any non-exempt <u>subcontractors</u> receiving greater than $25,000.00 total per subcontract and shall include a statement containing the dollar amount of the subcontract. (According to DFA interpretation, Therapeutic Foster Care parents are considered as subcontractors for the purpose of disclosure.) If **Form(s) PCS-D** for subcontract(s) are required but are not submitted with the contract, they shall be submitted to DFA within ten days of subcontract execution.

2. All amendments to non-exempt contracts greater than $25,000.00 total require disclosure on the contractor and on all subcontractors receiving over $25,000.00 total who are affected by the amendment.

D. During the development phase of the contract, the contract developer shall determine

1. That the **Form(s) PCS-D** has/have been completed, signed, and included in the contract, <u>AND</u>

2. a. That the contract is not prohibited or subject to approval, <u>OR</u>

   b. If subject to approval, that the required approval has been obtained.

E. PCS CONTRACTS BETWEEN AGENCIES AND CONSTITUTIONAL OFFICERS SUBJECT TO PRIOR APPROVAL

Constitutional officers, including members of the General Assembly, or their spouses may enter into PCS contracts with agencies only upon the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

F. CONTRACTS SUBJECT TO COMPETITIVE SEALED BID OR COMPETITIVE SEALED PROPOSAL (CSP), also known as REQUEST FOR PROPOSAL (RFP)

1. An agency may enter into, extend, or renew a contract, lease, or sub-grant with a constitutional officer, including members of the General Assembly, the spouse of a constitutional officer, or an entity in which the officer or spouse holds an ownership interest greater than ten percent (10%) if

   a. the contract is the result of competitive sealed bidding or a CSP and

   b. such officer played no role, directly or indirectly, in the administrative determination of specifications for the bid or proposal, in the administrative evaluation or consideration of bid or proposal, or in the administrative decision to accept the bid or proposal.

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

G. CONTRACTS GREATER THAN $25,000.00 TOTAL AND NOT SUBJECT TO COMPETITIVE SEALED BIDDING OR CSP REQUIRE APPROVAL

An agency must obtain approval in order to enter into, extend, amend, or renew a contract, lease, or purchase agreement not subject to competitive sealed bidding or a CSP, as follows:

1. If the total consideration for the contract is greater than $25,000.00 the approval of the Chief Fiscal Officer of the State is required if the potential contractor or lessee is one of the following:

   a. a state employee or the employee's immediate family member;
   b. a board or commission member or the member's immediate family member; or
   c. any entity in which a state employee or board or commission member, or an immediate family member of any of these:

      (1.) holds any position of control, or
      (2.) holds any ownership interest of 10% or greater.

2. If the total consideration for the contract is greater than $25,000.00 and the potential contractor or lessee is a constitutional officer, including a member of the General Assembly, the spouse of a constitutional officer, or a corporation, limited liability company, partnership, or any other legal entity of which a constitutional officer or the officer's spouse has an ownership interest of at least ten percent (10%), the contract or lease must receive the prior approval of the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

H. SUBCONTRACTS

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

1. the constitutional officer, spouse, or legal entity is disclosed as subcontractor in the competitive bid or CSP, or

2. for contracts not requiring competitive bidding or a CSP, prior approval is obtained from the Joint Budget Committee during legislative sessions, or the Legislative Council between sessions, and the Governor.

III. Quarterly Report

A. All state agencies are required to submit a quarterly report to DFA/OSP itemizing the disclosures that were identified during the calendar quarter for all transactions covered by EO 98-04. Those disclosures required to be reported include:

1. Sub-grants, contracts, or leases awarded to a **Constitutional Officer or his/her spouse,** including members of the General Assembly, or to an entity in which a Constitutional Officer or spouse holds 10% ownership interest, **IF the sub-grant, contract, or lease <u>WAS</u> procured competitively**; and

2. Contracts, leases, or purchase agreements awarded to **state employees, board or commission members or their immediate family members,** or to legal entities in which the individual holds 10% ownership interest, **IF the contract, lease, or purchase agreement WAS <u>NOT</u> procured competitively**

B. For PCS contracts, janitorial contracts, and equipment leases, CSS captures the data necessary for the report.

C. For sub-grants, voucher programs, and other purchase agreements, the administering divisions must submit the reportable disclosure data to CSS for inclusion in the report. The division should submit the information to CSS Program Coordinator no later than the 5th working day following the last day of the quarter.

CHAPTER FOUR
PROCUREMENT

I. POLICY

Policy governing procurement is addressed in **A.C.A. §19-11-204**, **§19-11-229 through 234, §19-11-301 through 319**, and **§19-11-801 through 806**.

This policy applies to all PCS contracts, whether the contract is executed as a standard PCS contract (on **Form OSP-1**) or as a stand-alone PO.

"Small Procurements", defined as those purchases not exceeding $5,000.00, may be purchased without a competitive procurement process. Competition should, however, be used to the maximum extent possible.

Purchases exceeding $5,000.00 must be competitively procured unless OSP approves a Sole Source selection (except for exempt commodities and services as defined in **A.C.A. §19-11-203[14])**.

Refer to the **DHS Procurement Manual for Professional and Consultant Services** on DHS-Gold for greater detail on the procurement of PCS services.

!

NOTE:

- **It is DHS policy to use open and competitive public procurement methods to promote cost effectiveness and fairness of opportunity among all prospective providers of service.**
- **Open, competitive procurement practices should also be applied to the greatest extent practicable in contract offers to other state agencies if there is more than one state agency which might have the capability to perform the required service(s).**

!

II. PROCEDURES

A. Service source selection activities in each division must be carried out by qualified procurement officials. Therefore, all Issuing Officers shall be credentialed by CSS as Certified Procurement Officials (CPO's) before exercising their procurement activities.

B. Once the division identifies the need for contracted professional or consultant services, they should set an allocation (funding amount) and select the appropriate procurement method from the following methods identified in Arkansas Code:

1. Small Procurement;
2. Competitive Bid (CB)
3. Competitive Sealed Bid (CSB);
4. CSP, also known as RFP;
5. Request for Qualifications (RFQ);
6. Sole Source;
7. ABA criteria;
8. Intergovernmental (IG); or
9. Emergency

C. For PCS contracts that are to be competitively procured by the **RFQ** method, the FIRST STEP for the division is to request, and be granted, approval from the Director of OSP prior to starting work on the procurement.

D. For PCS contracts that are to be competitively procured by the **CSB**, **CSP**, or **RFQ** method (and after receiving OSP's approval, if necessary), the division shall forward their completed procurement documents to OCC in accordance with the **"Professional/Consultant Services Contract Critical Process Dates"** to allow OCC sufficient time for review, response, and approval. The elements generally required include:

1. **Procurement proposals** prior to public release;
2. **Financial terms**, if they depart from DHS-standard options: fixed rate; final negotiated rate; actual cost, or scheduled reimbursement; and
3. **Terms and Conditions**, if they depart from the standard, OCC-approved **Terms and Conditions**.

NOTE:

> If a division conducts a **CSB, CSP**, or **RFQ** using a procurement document that has been approved by OCC within the last four (4) years, the division does NOT have to submit that document to OCC for re-approval, IF the terms of the procurement are unchanged except for quantity and/or duration.

E. Initial standard PCS contracts shall not extend past the end of the biennium. However, up to six (6) years' worth of extension options can be exercised if the following conditions are met:

1. The OSP Director approves the extension options prior to the procurement (in case of RFQ only);
2. The original competitive procurement explicitly stipulates the extension options;
3. The original contract explicitly stipulates the extension options; AND
4. Service performance under the existing contract has been satisfactory.

Initial contracts can be extended for a total time period no longer than seven (7) years.

The state standard is for the initial contract and each successive extension period to not exceed one (1) year (i.e., the initial contract should normally not exceed one year and the contract should be amended to extend for no more than one year at a time). If circumstances warrant deviation from the state standard, divisions should consult with CSS.

F. A NEW procurement requires a NEW contract (i.e., an existing contract cannot be amended to incorporate the terms of a NEW procurement.)

The procurement/development/approval process can be very time-intensive, especially during the high-volume "surge" period preceding the beginning of the state fiscal year.

The essential elements may be required for presentation to OCC as much as five months prior to proposed contract implementation, to allow for remediation, procurement process completion, contract development, and review through DFA and the Arkansas State Legislature, if required.

Program planning must anticipate a <u>long lead-time</u> from the initial decision-making and commitment of resources to the point of actual initiation of services under the contract.

G. Procurement Methods

NOTE: The A.C.A. reference is provided for each procurement method for more detail on the specific requirements. The information below only highlights the key areas; it does NOT represent a comprehensive repeat of ALL the requirements found in the A.C.A. and relevant Regulations.

The following procurement options are allowable for PCS contracts (**A.C.A. §19-11-203[14]** lists those commodities and services that are exempt from the procurement requirements):

1. **<u>Small Procurement</u>**

   a. Refer to **A.C.A. §19-11-204** and **§19-11-231**.

   b. **Small Procurements** are defined as those purchases that do not exceed $5,000.00 <u>total</u> (i.e., compensation plus reimbursable expenses).

   c. Procurement requirements shall not be artificially divided so as to constitute a **Small Procurement**.

   d. Competitive procurement is not required for **Small Procurements** but is STRONGLY encouraged.

   e. A contract that does not exceed $5,000.00 should normally be executed as a stand-alone PO.

2. **<u>CB</u>**

   a. Refer to **A.C.A. §19-11-234**.

   b. At a minimum, contracts exceeding $5,000.00 total but not exceeding $25,000.00 total must be procured by the CB method (or the more formal CSB or CSP method, if desired) unless OSP approves an alternate procurement method.

   c. The CB method of procurement requires obtaining bids by:
      (1.) Direct mail;
      (2.) Telephone;
      (3.) Telegraph;

(4.) Written form; and/or
(5.) Electronic media

Note: Written requests and written responses are far preferable to verbal requests and responses.

d. Sufficient solicitation should be conducted to elicit three bids. If three bids are not received, the division must document that at least three firms were contacted OR explain why three were not contacted. Only firms that could logically provide the service to be procured should be contacted.

e. The CB request should specify in detail the project objectives, results expected, contract extension options, if applicable, and desired qualifications.

f. The contract shall be awarded to the qualified bidder responding with the lowest bid.

3. **CSB**

a. Refer to **A.C.A. §19-11-229**.

b. At a minimum, contracts exceeding $25,000.00 total must be procured by the more formal CSB method. Contracts exceeding $25,000.00 total may, however, be procured by the CSP method or by the RFQ method with OSP approval.

c. CSB procurement requires public solicitation and public opening of responses.

d. The CSB statutes and regulations are much more detailed than those for non-sealed CB and far more numerous than space here permits. **Referral to the A.C.A. is critical**.

4. **CSP, also known as RFP**

a. Refer to **A.C.A. §19-11-230**.

b. The CSP method of procurement is often more appropriate for PCS contracts because it allows for factors in addition to cost to be considered in the evaluation of responses. .

c. If the division wants the option to extend the contract into successive years, it should state such in the CSP.

d. If the division wants the option to award multiple contracts from the CSP under consideration, it should make that request to the OSP Director,in the following manner:
(1.) Division Director shall prepare an electronic memo to OSP Director requesting the option to award multiple contracts from the identified CSP and stating the reason(s) why multiple awards might be necessary.
(2.) Division shall route the electronic e-mail to CSS Program Administrator who will forward the request to OSP.
(3.) CSS Program Administrator shall forward OSP's response to the division.

e. The CSP method is appropriate when the evaluation involves the relative abilities of respondents to perform, including the degree of technical or professional experience, and price is not the only consideration.

f. Notice inviting bids shall be given no fewer than five nor more than thirty calendar days preceding the date for the opening of responses.

g. Divisions shall post the notice on the DHS website for seven working days. In addition, staff is strongly encouraged to publish a notice in a newspaper having statewide circulation. Divisions may also post on their division website a link to the DHS website in order to promote full awareness of the competitive procurement opportunity to all potential service providers.

h. The division should evaluate proposals by an evaluation committee consisting of three or more qualified members in accordance with the requirements set forth in the CSP.

i. The division shall review and evaluate all proposals that met the established minimum requirements and award the contract to the respondent that provides the most effective solution for the price quoted.

h. The division should be prepared to address, in the legislative review process, their criteria for selection of contractor(s), particularly if the contract(s) was/were awarded to respondent(s) who did not provide the lowest cost proposal.

i. Act 1814 of 2003 requires that ALL CSP's contain language that encourages minority participation. The following approved language shall be included in ALL CSP's:

MINORITY BUSINESS POLICY:

Minority participation is encouraged in this and all other procurements by state agencies. "Minority" is defined by Arkansas Code Annotated §1-2-503 as "black or African American, Hispanic American, American Indian or Native American, Asian, and Pacific Islander." The Division of Minority Business Enterprise of the Department of Economic Development conducts a certification process for minority businesses. Bidders unable to include minority-owned businesses as subcontractors "may explain the circumstances preventing minority inclusion."

j. The CSP statutes and regulations are much more detailed than space here permits. **Referral to the A.C.A. is critical.**

5. **<u>RFQ</u>**

a. Refer to **A.C.A. §19-11-802**.

b. This procurement option is, in the absence of sole source justification, the procurement method recommended when contracting for architectural, engineering, land surveying and legal services.

c. This option may also be used, to a limited extent, with prior approval from DFA/OSP, for other services when it is determined to be the most

suitable method of contracting. Divisions should consult with CSS before considering this option.

d. The RFQ method is typically limited to those situations where there is a clearly defined set of qualifications to be met and cost is not an evaluation factor for selection.

e. Utilization of the RFQ method must be prior approved by DFA/OSP, except for architecture, engineer, land surveying, and legal services, as indicated above.

f. Act 1814 of 2003 requires that ALL RFQ's contain language that encourages minority participation. The following approved language shall be included in ALL RFQ's:

> **MINORITY BUSINESS POLICY:**
> Minority participation is encouraged in this and all other procurements by state agencies. "Minority" is defined by Arkansas Code Annotated §1-2-503 as "black or African American, Hispanic American, American Indian or Native American, Asian, and Pacific Islander." The Division of Minority Business Enterprise of the Department of Economic Development conducts a certification process for minority businesses. Bidders unable to include minority-owned businesses as subcontractors "may explain the circumstances preventing minority inclusion."

g. Architect and engineer contracts for construction projects are NOT indicated as RFQ on the **Form OSP-1** as these contracts are subject to ABA criteria and should, therefore, reflect "ABA Criteria" as the procurement option.

6. **Sole Source**

a. Refer to **A.C.A. §19-11-232.**

b. **The sole source method shall be used only as a last resort, and only when other procurement methods are clearly not applicable**. Exceptions can be requested only if based on statutory requirements or profound programmatic imperatives. The division should expect detailed questioning in the legislative review process for all sole source proposals.

c. Sole Source PCS contracts can be executed under the following circumstances:

(1.) **Sole Source, Exempt by Law**

This refers to a contract with a specific provider which results from a mandate by the court system or from state or federal law.

(2.) **Sole Source, Intent to Award**

Divisions may contract by "sole source, intent to award" under the following conditions:

(a.) They advertised, in a newspaper of statewide circulation **AND** on the DHS or the OSP website, their intent to award

a contract and received no indication from any vendor expressing interest in providing the service(s);

OR

(b.) They advertised, in a newspaper of statewide circulation **AND** on the DHS or the OSP website, their intent to conduct a formal competitive procurement and they received no responses that met the minimum qualifications.

(3.) **Sole Source, Justification Approved by OSP**

Except for those contracts that are "Sole Source, Exempt by Law" or "Sole Source, Intent to Award**"** and those contracts that are for performing artists and lecturers, new sole source contracts require a written narrative justification, which must be approved in advance by DFA/OSP. The written justification will also be provided to legislators for consideration and discussion during review by sub-committees and approval by the Legislative Council. (**EXCEPTION:** DFA/OSP's prior approval is not required for Sole Source contracts with state agencies.)

The procedures for the division to request sole source approval are as follows:

(a.) Division Director shall prepare an electronic memorandum from division Director on division letterhead to Director of OSP in accordance with the sample **Request for Sole Source Procurement** memorandum in the Appendix, addressing the following six questions:

(1.) Why is this service needed?

(2.) What method(s) were used to determine that a lack of responsible/responsive competition exists for this service?

(3.) How was it determined that this provider possesses exclusive capabilities?

(4.) Why is this service unique?

(5.) Are there patent or proprietary rights that make the required service unavailable from other sources?

(6.) What would the agency do if the provider/service were no longer available and what, if any, program considerations make the use of a Sole Source critical to the successful completion of the agency's task?

NOTE:

- If the division intends for the original contract to exceed one (1) year, the division must make that evident in their request.
- If the division wants to have the option to amend the contract to extend for a multi-year period, the division must also include in the request an indication of the number of extension options the contract will have. Even with the OSP Director's approval to exercise this option, division must re-justify the sole source situation to the OSP Director,

and receive his/her approval, before exercising the options to amend to extend.

The maximum length of time that a Sole Source contract can continue without full, formal re-approval by OSP is seven (7) years.

- If known, the division should include the anticipated effective dates and maximum liability of the initial contract.

(b.) All six questions **must** be addressed in the memorandum, even if the proper response is "not applicable."

(c.) The memorandum shall be prepared as a Word© format document suitable for electronic transmission.

(d) The memorandum shall be FROM the division director, TO the Director, Office of State Procurement.

(e.) Division shall submit the memorandum as an attachment via e-mail to CSS Program Administrator for coordination/approval.

(f.) CSS Program Administrator shall coordinate approval with DFA/OSP.

(g.) CSS Program Administrator shall forward DFA's approval or disapproval to the requesting division via e-mail.

(h.) In its submittal of the applicable contract authorization to CSS, the division shall include a copy of the requesting memorandum as well as a copy of DFA's approval message.

7. **ABA**

a. Refer to **Architectural Section 6-100 of State Building Services Standards and Criteria – Professional Selection Procedures for State Agencies.**

b. The guidelines and procedures established by the ABA shall be used in selecting architects, land surveyors, and engineers for state construction projects.

8. **IG**

a. Refer to **A.C.A. §19-11-203(14) and A.C.A. §19-11-251.**

b. **IG** contracts are those involving agreements with governmental agencies (both Arkansas's agencies and other states' agencies).

c. **IG** contracts are not required to be competitively procured. A contract with a governmental agency is considered an **IG** contract even though the contractor may have been selected by a competitive procurement.

d. **IG** contracts with Arkansas state agencies with a total dollar value (compensation plus reimbursement) that exceeds $25,000.00 are reviewed by the Performance Evaluation and Expenditure Review (PEER) subcommittee prior to the execution date of the contract. **IG** contracts with other than Arkansas state agencies, with a total dollar value that exceeds $25,000.00, are reviewed by the Legislative Review subcommittee prior to the execution date of the contract..

e. **IG** contracts do not require EO 98-04 disclosure forms.

f. Although **IG** contracts do not require competitive procurement, program agencies should be able to justify, if the question arises, the selection of a particular agency if there is more than one governmental agency that might have the capability to perform the required service(s).

9. **Emergency**

a. Refer to **A.C.A. §19-11-233**.

b. **Emergency** procurements may only be requested by the agency Chief Fiscal Officer or equivalent or Director, Division Director or Deputy Director. This option is to be used VERY SPARINGLY.

c. The **Emergency** procurement process allows a contract to be implemented prior to review by the full Legislative Council. (Unless critical, **Emergency** procurements should be made using some form of competitive bid process.)

CHAPTER FIVE
PROVIDER EXCLUSION RULE

I. Policy

It is the policy of DHS to conduct business only with responsible participants/contractors. Participants will be excluded from participation in DHS programs, if necessary, to protect public funds, the integrity of publicly funded programs, and public confidence in those programs.

II. DHS Exclusion List

A. The **DHS Exclusion List** is a listing of recipients or contractors determined by DHS to be excluded from contracting with DHS.

B. Upon receipt of notification that an entity has been added to the **DHS Exclusion List**, CSS shall initiate action to terminate all existing contracts with that entity.

C. Staff should refer to **DHS Administrative Policy 1088** and **A.C.A. §19-11-245** for specifics relative to exclusion.

III. List of Parties Excluded from Federal Procurement and Non-procurement Programs

A. The General Service Administration (GSA) maintains the **List of Parties Excluded from Federal Procurement and Non-procurement Programs**.

B. This is a listing of firms and individuals that have been suspended, debarred, or otherwise excluded by the federal government from participating in federal programs.

C. This listing is available on the Internet, the address for which can be obtained from CSS.

D. Search of the list is executed by name of the firm or individual in question.

IV. List of All State Agencies Suspended/Debarred Vendors

A. The **List of All State Agencies Suspended/Debarred Vendors** is a listing of entities suspended or debarred by the State of Arkansas.

B. DFA/OSP maintains this listing.

V. Procedure When Developing PCS Contracts

Division should consult the **DHS Exclusion List,** the **GSA list**, and the **OSP list** during the procurement process **AND** prior to the developing and awarding of any contracts.

CHAPTER SIX
PROVIDER AUDIT REQUIREMENT

I. Policy

DHS Audit Guidelines and OCC Audit Section determine provider audit requirements and the resolution of provider audit findings.

II. Procedures

A. Upon receipt of a provider's independent audit report, OCC Audit reviews the report for any findings and recommendations.

B. If there are findings and recommendations, OCC Audit ensures that there is a Corrective Action Plan and, if necessary, comments on the Corrective Action Plan.

C. OCC Audit forwards the findings and recommendations, the Corrective Action Plan, and any comments to the program division and to CSS administrative staff. CSS administration shall distribute copies of the findings and recommendations to the appropriate Administrative Compliance Officers (ACO's) to use in their site visits.

1. Upon receipt of the above information from OCC Audit, the division shall determine the course of action to be taken.

2. If the division determines that recoupment from the provider or additional payment to the provider is indicated the following action shall be taken.

   a. If the contract is no longer in effect, the division shall forward its determination to OFA/Accounts Receivable (AR) for recoupment or to OFA/Accounts Payable (AP) for payment, with copies forwarded to CSS and OCC Audit.

   b. If the contract is still in effect, the division shall forward its determination to CSS for payment adjustment, with copies forwarded to OCC Audit.

3. If the division determines that no recoupment or additional payment is required, the division shall forward that information to CSS with a copy to OCC Audit.

D. For **every** contract, contract developer shall verify that the contractor's audit status is current.

1. Every standard PCS contract should have on file in Contracting Automation Platform (CAP) an electronic **Provider Audit Sign-off Sheet (PASOS)** on which OCC Audit has indicated that the contractor's audit status is "current."

2. If there is no indication in CAP that the provider's audit is current, developer shall submit to OCC Audit a **PASOS** requesting verification of audit status. Developer should review the returned **PASOS** to determine contractor's audit status.

3. If the status is "current", developer shall file the **PASOS** in CAP.

4. If the status is "not current", developer should contact contractor to determine if audit has been submitted, to determine when it will be submitted, or to otherwise resolve the delinquency. When the developer determines the audit has been submitted to OCC Audit, he/she should submit another **PASOS** to OCC Audit.

CHAPTER SEVEN
PERFORMANCE BASED CONTRACTING

I. Policy

Refer to **DHS Policy 1066 "Performance Based Contracting Policy"** and **A.C.A. §19-11-1010**.

These policies are applicable to every PCS contract and PCS contract amendment to which DHS is a party except as listed below:

A. PCS contracts for Architectural and Engineering services that are awarded using ABA criteria; or

B. PCS contracts for **$10,000.00** total (i.e., compensation plus reimbursable expenses) or less

PCS contracts exceeding $10,000.00 total must have performance based standards, regardless of whether they are executed as "standard" PCS contracts or as stand-alone PO's.

II. Procedures

A. The division shall prepare proposed performance-based standards for each PCS contract except for exclusions listed previously.

B. The division preparing performance based standards shall submit the proposed standards and Scope of Work to CSS electronically for review and approval of the proposed standards.

C. CSS shall review the proposed performance based standards to determine if they violate any law or regulation applicable to DHS, that they will be enforceable, and that they adequately reflect all aspects of the Scope of Work. CSS shall indicate their approval electronically.

D. **Form DHS-1366-A** illustrates the required format for performance based standards. The performance based standards included in the contract are required to specify the following:

1. Program deliverables (also known as goals or benchmark objectives)
2. Performance Indicators
3. Acceptable performance levels
4. Remedies for unacceptable performance

E. There is no need for legal review by CSS if the contracting division certifies the following:

1. The contract is identical to an existing contract that has received CSS or OCC approval except as to contractor

and

2. The existing approved performance terms are satisfactory and have accomplished the outcomes desired.

Performance Based Contracting Certification, **Form DHS-1366,** can be used for this certification.

F. Inclusion of Performance Based Standards in PCS Contracts

1. **Standard PCS Contracts**

   a. Performance based standards shall be made legal attachments to the **Form OSP-1** in standard PCS contracts.

   b. CSS approval and division certification shall be included with the contract but not made a legal attachment

2. **Stand-alone PO's for Professional and Consultant Services**

   a. For each and every PCS contract that is executed as a stand-alone PO, and for which performance based standards are required, division shall attach the **Contractor Certification Concerning Performance**, **Forms DHHS-9353** or **DHHS-9354,** to which shall be attached a copy of the performance based standards.

   b. The **Form DHHS-9353** or **DHHS-9354** shall be retained in the Division files.

III. Performance Evaluation

A. During the term of the contract, the division shall complete sufficient performance evaluation(s) to determine if the contractor's performance is satisfactory or unsatisfactory.

Legislators, in Legislative Review and PEER Committee meetings, often ask division staff about the division's method(s) of monitoring performance and the overall success of the program.

B. Justification for the division's ultimate determination should be retained in the division files for a minimum of five years from the expiration date of the contract.

IV. Contract Amendments

A. When contract amendments require changes to the performance based standards, the division shall submit the revised performance based standards electronically to CSS for review and approval.

B. When contract amendments do NOT require changes to the performance based standards, the division shall certify that:

1. The amendment changes only quantity, price, or duration, **and**

2. The existing approved performance terms have previously been approved by CSS, are satisfactory, and have accomplished the outcomes desired.

Form DHS-1366 can be used for this certification.

NOTE:

Neither CSS approval nor division certification is required for amendments that **terminate** a contract.

C. If an amendment changes some but not all of the performance based standards in a PCS contract, CSS approval shall be obtained for those that are changing and the division shall certify for those that are not changing.

CHAPTER EIGHT
MATCHING FUNDS

I. Policy

A. Matching requirements are based on federal or state legislation or DHS policy decisions. If required by the terms of the contract, the contractor may certify that specific amounts of money, property, or services are available to match funds. .See **Financial Guidelines for Purchased Services, Section 3700** for more information.

B. Certain funding sources (e.g., Social Services Block Grant [SSBG]) have specific requirements regarding the source(s) of match that are available for utilization. See **Social Services Block Grant Program Manual, Section 5100** for more information.

II. Procedures

A. For all agreements that require matching funds, the terms (including associated percentages of state, local, or certified levels of participation) should be specified in the agreement. (**NOTE:** A section for the required match information is included in the standard, OCC-approved **Terms and Conditions**.)

B. When specified limits are exceeded or match rate changes, an amendment to the agreement should be executed.

CHAPTER NINE
RATE INCREASE APPROVAL

I. Policy

A.C.A. §20-76-212 and **§20-77-110** govern rate increases to DHS contractors.

II. Requirements

A. In many situations, it is prohibited to increase the contractor's reimbursement rate without first obtaining the approval of the Governor of Arkansas and the Chief Fiscal Officer, DFA.

B. New contracts procured through a competitive process (i.e., CB, CSP, or RFQ) are not subject to this requirement.

C. Some fixed rates that function as ceiling rates can allow for increases in payments that do not constitute a rate increase above the ceiling rate.

D. Administrative contracts or other PCS contracts entered into by the Medicaid program with individuals or corporations not as providers of medical service do not come within the scope of this regulation. These contracts already have a review process established which includes DFA and the legislature.

E. When a Medicaid rate increase is approved for a service that is in a PCS contract, DHS can pay the increased rate without having to request a rate increase through the Governor **IF** and only if the contract contains the following language:

> " (Listing of services) are Medicaid reimbursable services and the reimbursement rate will be equal to the Medicaid rate in effect at any given time."

F. Rate increases that were agreed to in the terms of the original procurement (if applicable) and the original contract do not require the Governor's approval.

G. In those cases where the Governor's approval is required, the implementation of rate increase will not be approved prior to the date of his/her signature on the **Reimbursement Rate Increase Approval Form**, **Form DHS-1951**.

III. Procedures

A. To request an increase in the reimbursement rate(s) for service(s), the division shall complete **Form DHS-1951** and submit it to CSS Assistant Director along with justification and supporting documentation. The **Form DHS-1951** requires an original signature by the division Director. One form should be completed for each contractor.

B. CSS Assistant Director or designee shall process the request and forward through DHS Chief Fiscal Officer to DHS Director.

C. Upon his approval, DHS Director shall route the request and the justification to the Governor's Office for approval. If he does not approve, DHS Director shall return the request to CSS Assistant Director.

D. Upon his approval, the Governor will return the signed request to CSS Assistant Director. CSS Assistant Director or designee shall notify the requesting division and ACO of the Governor's approval or disapproval.

For rate increase requests that relate solely to Medicaid and that are strictly under the auspices of DMS, the request originates within DMS for coordination through OFA and the DHHS Director's Office to DFA, Office of Budget and on to the Governor. These requests do NOT flow through CSS. All other rate increase requests SHOULD flow through CSS as outlined above.

CHAPTER TEN
PROFESSIONAL/CONSULTANT SERVICES CONTRACTS

I. Policy

See **A.C.A. §19-11-200** et seq., **§19-11-700** et seq., and **§19-11-10**00 et seq.

II. PCS Contracting Requirements

A. PCS Contracting Formats

1. **Standard PCS Contracts**

   a. All PCS contracts that exceed $25,000.00 in compensation (per contractor, per fiscal year, per cost center) shall be executed on the **Form OSP-1**. (All PCS contracts executed on the **Form OSP-1** are referred to in this Manual as **"standard PCS contracts."**)

   b. Standard PCS contracts that exceed $25,000.00 in compensation are required by Purchasing Law to be submitted to DFA for review and approval. DHS has opted, however, to submit ALL standard PCS contracts to DFA for review and approval.

   c. Standard PCS contracts that exceed $25,000.00 total (i.e., compensation plus reimbursable expenses) must also be reviewed by the Legislative Council (or Joint Budget Committee when legislature is in session).

      (1.) Those contracts with Arkansas state agencies must be presented to the **PEER Subcommittee** prior to approval by DFA and prior to the execution date of such contract.

      (2.) Those contracts with other than Arkansas state agencies must be presented to the **Review Subcommittee** prior to approval of DFA and prior to the execution date of such contract.

      (3.) The Legislative Council or the Joint Budget Committee may elect to review or exempt any contract or group of contracts.

2. **Stand-alone PCS PO's**

   a. PCS contracts that DO NOT exceed $25,000.00 in compensation may be executed on the PO format and are referred to in this Manual as "**stand-alone PO's"**. Agencies shall not, however, split known quantities into smaller ($25,000.00 and below) amounts to avoid a standard contract.

      A division may execute a PCS contract that does not exceed $25,000.00 in compensation as a standard PCS contract on the **Form OSP-1**, if preferred.

   b. Stand-alone PO's require neither DFA review and approval nor legislative review unless they exceed $25,000.00 total (compensation plus reimbursable). However, **multiple PO's to the same contractor in the same fiscal year from the same cost center MUST be reported to OSP** to assist OSP in determining whether an agency is issuing multiple PO's in an attempt to circumvent the requirement of establishing a standard PCS contract. (See **A.C.A. §19-11-1012**.)

B. Timeframes

1. All standard PCS contract proposals should be negotiated, developed, and submitted to CSS in sufficient time to allow for a thorough compliance review by CSS, approval by the division, and signature by the contractor. This review, approval, and signature is required prior to the routing of the proposal to DFA, if applicable, and prior to the effective date of the contract action.

2. For specific deadlines for the submission of authorizations to CSS and signed contracts to DFA, refer to the **Professional/Consultant Services Contract Critical Process Dates** that is available from CSS. Cooperation in meeting the published deadlines will avoid possible delays in service and Suspension of the Rules.

3. Contracts requiring legislative review that are submitted to DFA after the due date must be accompanied by a **Suspension of the Rules** letter from the DHS Director (see sample letter in Appendix). This letter should contain the following:

   a. Contractor's name
   b. Request for suspension of the rules
   c. Explanation for failure to submit the contract under regular procedures
   d. Description of the service(s) being purchased
   e. Consequences if the request is not granted

C. General requirements for all PCS contracts include, but are not limited to, the following:

1. DHS standard is that initial contracts shall not extend past the end of the fiscal year. Requests for initial contracts to extend past the end of the fiscal year will be considered by CSS on a case by case basis. In any case, the initial term of a PCS contract shall not extend past the end of the biennium.

2. PCS contracts may be amended to extend for a total period of no more than seven (7) years.

3. PCS contracts with <u>individuals</u> and <u>sole proprietorships</u> are **prohibited** unless approved by OCC and are, in any case, strongly discouraged. (A sole proprietor is one who owns all of the assets of the business and is solely liable for all the debts of the business.)

4. In many situations, it is prohibited to increase the contractor's reimbursement rate without first obtaining the approval of the Governor of Arkansas and the Chief Fiscal Officer, DFA. **Note:** New contracts procured through a competitive process are not subject to this requirement. Also, some fixed rates that function as ceiling rates for services can allow for increases in payments that do not constitute a rate increase above the ceiling rate. (See **Chapter Nine** of this Manual.)

5. For all contracts that were competitively procured and that exceed $25,000.00, the contractor must submit (or have on file with CSS) a copy of its Equal Employment Opportunity (EEO) policy. Contractors that do not have an established EEO policy must submit a written statement attesting that they do not have an EEO policy. This EEO policy, or statement, shall be made a part of the contract file and shall be submitted to DFA, if necessary.

6. Certain PCS contracts require additional approval beyond the normal procedure.

a. Construction-related contracts require review by and approval from CSU and ABA.

b. PCS contracts for information systems technology and services (including the purchase of computer equipment) require review by and approval memo from the DHS Office of Systems and Technology (OST) prior to the development of the contract (see **DHS Policy 1022** for details.) Re-approval is required for all amendments to applicable contracts.

c. Contracts for legal services to represent DHS require review by and approval from OCC, for coordination to DHS Director (see **DHS Policy 1073**).

7. Standard PCS contracts are not binding, and no payments will be made, until they are approved by both contracting parties (the contractor and the division Director), as well as by a representative of DFA when applicable. Stand-alone PO's are considered effective and, therefore, binding upon the contractor's acceptance of the terms.

8. Funding amounts based on Final Negotiated or Fixed unit rates should be computable to an even number of units whenever practical. If the contract amount cannot be computed to an even number of units, the number of full units possible should be indicated, with a notation made that payment cannot exceed the contract total. Funding amounts based on budgets should be exact, not rounded. Contract totals that include more than one funding source should reflect the exact total of the funding sources, not a rounded amount.

9. The prior written approval of OCC is required for the contractor to assign the contract in whole or in part or any payment arising out of it.

10. To be considered valid and binding, a stamped or automated signature by a contracting party must be:

    a. Unique;

    b. Capable of being verified; and

    c. Under the sole control of the signatory.

11. Contractors shall insure non-discrimination and equal opportunity by subcontractors in compliance with all applicable federal laws, regulations, executive orders and civil rights rules and regulations.

12. Standard PCS contracts with out-of-state vendors ("foreign corporations") who are transacting business in Arkansas shall include verification of the vendor's Certificate of Authority from the Arkansas Secretary of State.

D. Ethics in Public Contracting

1. Ethics in public contracting is addressed in **A.C.A. §19-11-701 through 717.**

2. DHS shall conform to high professional standards and stringent procurement practices to sustain public trust in their functions. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement process.

E. Reimbursement Guidelines

The contractor and division should agree upon the method of reimbursement before a contract is developed. The following methods are acceptable (see **Financial Guidelines for Purchased Services** for greater detail):

1. Fixed Rates

   a. Fixed rates are based on a rate schedule approved by DHS and standardized for a particular service or group of services. Rate schedules are developed by the division funding the program. The division should adhere to the DHS criteria for a cost study.

   b. The contractor rates should fall within the range of allowable rates shown on the approved rate schedule. Amendments to revise rates within this range are completed on a prospective basis from the effective date of the contract amendment. Fixed rates based on federal approved rates such as Medicaid may be effective on the date of approval by the federal agency.

   c. All payments are final and no settlement will be made upon expiration of the contract.

   d. Fixed rates are appropriate for services that can be objectively defined in the procurement and for which risk of performance is manageable. For example, if the service is measurable by hourly or daily rates, this method should be used. Fixed rate contracts are ideally suited for performance-based statements of work, measurable performance standards, and monitoring reports. When being reimbursed on a fixed rate basis, contractors tend to be motivated to find improved methods of performance in order to increase its profits.

2. Final Negotiated Rates

   As with fixed rates, final negotiated rates are appropriate for services that can be objectively defined in the procurement and for which risk of performance is manageable. Also, contractors reimbursed on a final negotiated rate basis tend to find improved methods of performance to increase their profits.

   There are a variety of approved methods to determine an estimate of reasonable and necessary expenditures per unit of service being purchased. These include, but are not limited to, the following:

   a. A total operational budget allocated to service component;

   b. The published rates of the contractor for non-contract clients;

   c. The established community rate for a similar service;

   d. The previous year's audit; and

   e. The contractor's cost study.

3. Actual Cost

   a. Actual cost reimbursement is based on a complete itemized listing of allowable program expenses.

   b. The total itemized listing should equal the total DHS funding in the contract.

c. Actual cost reimbursement is appropriate for services that can only be defined in general terms or for which the risk of performance is not reasonably manageable. For actual cost reimbursement, the division should seriously consider what costs are to be allowable and what costs are unallowable. This requires reliance on the division's experience, knowledge, and historical data from similar contracts.

d. Federal reporting has demonstrated that converting from actual cost reimbursement to a rate based reimbursement has significantly reduced contract prices.

4. Scheduled Reimbursement

a. Scheduled reimbursement – <u>actual cost basis</u>

(1.) Scheduled reimbursement on an actual cost basis is based on a schedule of costs or a line-item budget that is on file with the division. Schedule shall include a statement identifying the basis for reimbursement.

(2.) The schedule should include the total dollar amount allocated to each program with compensation and reimbursable indicated.

(3.) The schedule should clearly indicate that payments are based on actual expenditures incurred and no advance payments are allowed.

(4.) The schedule should indicate the anticipated date and amount of each payment.

(5.) Invoicing requirements, expenditure reporting and payment adjustments shall be addressed in the schedule as applicable.

(6.) As with actual cost reimbursement, scheduled reimbursement on an actual cost basis is appropriate for services that can only be defined in general terms or for which the risk of performance is not reasonably manageable.

(7.) Again, federally reporting indicates agencies significantly reduce their contract prices when converting from actual cost-based reimbursement to a rate based reimbursement.

b. Scheduled reimbursement – <u>fee basis</u>

(1.) The schedule shall include a statement identifying the basis for reimbursement.

(2.) The schedule should set payment limits for the funding sources listed.

(3.) Contractors should submit invoices with documentation of services provided applicable to each of the funding sources. Payment on each invoice is limited to the corresponding amount on the payment schedule.

(4.) The schedule should indicate the anticipated date of payment, amount of each payment, and total applicable funding

(5.) Payment adjustments shall be addressed in the Schedule if applicable.

F. Payment Limitations

The division may impose payment limitations on certain funding sources to be able to maintain payment capabilities to all contractors and/or to levelize payments to contractors throughout the contract period. Payment cuts to contractors necessitated by payment limitations are restored in subsequent payments within the contract period. Common payment limitations include Monthly Cumulative and Quarterly Cumulative.

1. Monthly Cumulative

   Payment to the contractor is limited to 1/11 or 1/12 (to be determined by the division) of the maximum annual contract liability for each month of the contract on a cumulative basis (e.g., at the end of the first month of a 12 month contract, the payment limitation is 1/12 of the contract liability; at the end of the second month the payment limitation for the two month period is 2/12 of the maximum liability, etc.)

2. Quarterly Cumulative

   Payment to the contractor is limited to one quarter of the maximum contract liability for each quarter of the contract on a cumulative basis (e.g., at the end of the first quarter, the payment limitation is 25% of the contract liability, at the end of the second quarter the payment limitation for the six month period is 50% of the maximum liability, etc.)

III. Development of Standard PCS Contracts (those executed on the Form OSP-1)

A. The DHS standard is that CSS develops all standard PCS contracts upon receipt of authorizations from the DHS divisions requesting such contracts.

NOTE:

CAP is the electronic system through which contracts are authorized, developed, reviewed, approved, and signed.

- The division requesting contract development shall submit ALL authorizations to CSS in electronic format.
- CSS shall develop and review contracts electronically.
- Division Director or designee shall review contracts and indicate approval of such electronically.
- ACO shall print contracts for manual signature by the contractors following electronic review and approval by division Director or designee.

B. The following procedures apply to development actions executed by CSS (for development actions executed by the division, proceed to **C**. below).

1. Division shall include the following in its authorization:

   a. Completed **Contract Authorization/Input Form, Form DHS-9190**

      (1.) Most contracts must be entered into Arkansas Administrative Statewide Information System (AASIS) as an outline agreement.

         (a.) If the contract is to be paid in AASIS through a PO and the division is doing its own AASIS entry, the division shall create the outline agreement in AASIS and enter the

outline agreement number on the **Form DHS-9190** as the contract number.

(b.) If the contract is to be paid in AASIS through a PO and CSS is doing the division's AASIS entry, the division shall leave blank the contract number field on the **Form DHS-9190.**

(2.) Some Medicaid-related contracts are paid through a third party and are NOT entered into AASIS as outline agreements, in which case the division shall leave the contract number field blank. CSS shall enter a unique, division-specific, ten-digit contract number on the **Form DHS-9190** upon receipt of the authorization. The contract number shall be in the following format:

- 3-digit agency number (710 or 645)
- 2-digit division identifier (as identified in **Form DHS-9190** instructions, e.g., DM, etc.)
- 2-digit state fiscal year identifier (e.g.,, SFY05 would be "05")

3-digit sequential numerical identifier starting with 001

(3.) Division shall clearly identify the geographical service coverage area in the space provided on the **DHS-9190**. Division shall identify the area in terms of actual counties served or geographical portion of the state (ex., northwest quadrant, etc.) as opposed to division-specific areas (ex., DCFS Area V, etc.) If the contract covers services for the entire state, division shall identify "statewide" as the service coverage area.

b. CSS-approved performance based standards and evidence of CSS approval or division certification;

c. A copy of the contractor's EEO policy (or approved alternate statement), if the contract were competitively procured and exceeds $25,000.00;

d. Any other legal attachments, including required financial information;

e. Any additional information necessary concerning billing, forms the contractor is required to use, procurement documentation, etc.

2. Upon receipt of the authorization, assigned CSS individual(s) shall review the authorization, consult with the contractor, complete the contract proposal, and review the completed proposal for technical compliance and completeness.

C. The complete standard PCS contract shall include the following items:

1. **Form OSP-1**;

a. **It is ABSOLUTELY CRITICAL**

- **that the funding tally to the penny,**
- **that the funding percentages are accurate, and**
- **that the procurement methodology is correctly indicated!!!**

Failure to have 100% accuracy in any of these three crucial areas will result in the legislative review staff rejecting the contract!!

b. The contract name should be the complete, legal name of the contractor as opposed to the "doing business as" name. For incorporated entities, the legal name is found on the contractor's incorporation papers and on the Arkansas Secretary of State website (for Arkansas incorporated entities). The contract address should be the address of the legal headquarters, as opposed to the "remit to" address.

2. **All attachments referenced on Form OSP-1**;

All attachments should be numbered in sequential and consistent form.

3. **Form PCS-D (for applicable contracts over $25,000.00)**;

a. All disclosures requiring pre-approval by DFA should be resolved prior to completion of the contract.

b. The **Form PCS-D** shall not be made a legal attachment.

4. **Performance Based Standards** (Required for applicable PCS contracts over $10,000.00);

a. Performance based standards require approval of CSS according to **DHS Policy 1066**. This approval should be in the form of electronic mail submission.

b. For amendments or contracts using previously approved performance based standards, the division shall provide certification of performance based standards, in accordance with **DHS Policy 1066**. If the division certifies for performance based standards previously approved by CSS (prior to the development of this contract), a copy of CSS' approval shall also be included.

c. Performance based standards shall be made a legal attachment. CSS' approval and division certification should be included in supporting documents.

5. **Terms and Conditions, Forms DHS-9193 and DHS-9194;**

a. This document contains the legal and financial terms of the contract. **Form DHS-9193** is for contracts with a non-state agency; **Form DHS-9194** is for contracts with a state agency.

NOTE: The state agency version (**Form DHS-9194**) is applicable to contracts with other states' agencies (ex., OK, TX, MS, etc.), not just Arkansas's state agencies.

b. The **Form DHS-9193** or **Form DHS-9194** shall be the current version provided by CSS (as will be evidenced by the release date at the bottom of each page of the form). Referral to and/or consultation with OCC is required if an alternate version is to be utilized.

c. This document shall be made a legal attachment.

6. **Budget/Rate Information**;

a. For contracts reimbursed on an **Actual Cost** basis

(1.) An itemized listing of allowable program expenses and justification are required elements. The total itemized listing should equal the total DHS funding in the contract.

(2.) Each line-item expense should be identified as either compensation or reimbursable expense, and the total compensation and total reimbursable expense should be indicated on the itemized listing.

(a.) If subcontractor costs are included in the contractor's budget AND if those subcontractors are reimbursed on an Actual Cost basis, the subcontractor costs should be split between compensation and reimbursable expenses as well, based on the subcontractor's budget that must be included in the contract. If subcontractor costs are paid on a fee basis, they shall be considered compensation.

(b.) Indirect Costs should normally be split between compensation and reimbursable expenses by the same percentages by which the Direct Costs are split between compensation and reimbursable expenses.

(3.) If the contract identifies purchased services to DHS clients, (i.e. indicates or refers to service(s) by service name and service code on the **Form DHS-9190**) the itemized listing should include:

(a.) service name(s);
(b.) service code(s); and
(c.) service unit definition(s).

(4.) The itemized listing of expenses shall be indicated on the **Form OSP-1** or made a legal attachment.

b. For contracts reimbursed on a **Fixed or Final Negotiated Rate** basis

(1.) The contracted fee/rate schedule shall be included.

(2.) If the contract identifies purchased services to DHS clients, (i.e. indicates or refers to service(s) by service name and service code on the **Form DHS-9190**) the itemized listing should include:

(a.) service name(s);
(b.) service code(s);
(c.) service unit definition(s); and
(d.) unit rate(s).

(3.) The schedule should indicate the number of units per service to be purchased, if applicable.

If the number of units per service cannot be evenly computed, the number of whole units possible should be indicated, along with a notation that payment cannot exceed the maximum liability.

(4.) For **budget-based Final Negotiated rates**, the rate schedule should include a notation that it is based on a budget that is on file with the division.

(5.) For **non-budget-based Final Negotiated rates**, the basis for the rate should be noted in the rate schedule.

(6.) Subcontractor costs should normally be considered as compensation for Fixed or Final Negotiated rate contracts.

(7.) The fee/rate schedule shall be indicated on the **Form OSP-1** or made a legal attachment.

Note: If the division has a specific request and justification for including program-specific budgets and/or a full-disclosure budget as a part of the contract, they may be added as legal attachments. CSS will review the program-specific budgets, but not the full-disclosure budgets.

c. For contracts reimbursed on a **Scheduled Reimbursement** basis

(1.) The schedule shall include a statement indicating the basis for the scheduled reimbursement (actual cost or fee basis).

(2.) For scheduled reimbursement on an actual cost basis, the total amount allocated to each program shall be indicated, with compensation and reimbursable identified.

(3.) The schedule shall indicate the total amount of applicable funding, the amount of each payment, and the dates of payments. The first payment should be no earlier than three weeks after the effective date of the contract.

(4.) The schedule of payments should include expenditure reporting requirements and payment adjustment conditions, if applicable.

(5.) The schedule shall be indicated on the **Form OSP-1** or made a legal attachment.

d. The method of reimbursement shall be correctly identified on the **Form DHS-9193** or **Form DHS-9194**.

D. Other elements may be required to complete the standard PCS contract. They include, but are not limited to:

1. **Sole Source Documentation**;

Sole Source PCS contracts, except for those for performing artists and lecturers, must be justified.

a. For **"Sole Source by law,"** reference the mandating legislation or the court order on page 1 of **Form OSP-1** and include a copy of the court order, if applicable, which has been de-identified for client's privacy.

b. For **"Sole Source by Intent to Award"**, include a copy of OCC's approval, the advertisement, and the dates the advertisement ran.

c. For **"Sole Source by Justification Approved by OSP,"** include a copy of the division's justification and of OSP's approval.

d. The Sole Source documentation shall not be made legal attachments.

2. **Prior Approval for RFQ Selection**;

a. Prior approval from DFA is required for RFQ procurements (except for contracts for architect, engineer, land surveying, or legal services, in the case of RFQ.)

b. This approval shall not be made a legal attachment.

3. **EEO Policy**;

a. Contracts that were competitively procured and that exceed $25,000.00 must include a copy of the contractor's EEO policy, or a statement from the contractor attesting that they do not have an EEO policy.

b. This information shall not be made a legal attachment.

4. **Certification Regarding Lobbying**;

a. Certification is required for all contractors that receive in excess of $100,000.00 in federal funds **per Federal fund source per fiscal year**. This pertains to **all** federal funds received by the contractor, not just the federal funds in this contract.

b. This certification is contained within the standard Terms and Conditions. If alternate Terms and Conditions are used that do not include this certification, certification shall be indicated on **Form DHS-9350**, if certification is required.

c. Certification requires an original signature and date by the contractor.

d. Certification shall be made a legal attachment to the contract.

5. **Funding Availability**;

a. A **Funding Availability** statement should be added to any contract that has funding within the contract with effective dates (beginning and/or ending dates) that differ from that of the overall contract.

b. The **Form DHS-9196, Funding Availability**, or any similar format that clearly states the necessary information, may be used for this purpose.

c. The **Form DHS-9196** (or alternate format for the same purpose) shall be made a legal attachment to the contract.

6. **Matching Terms**;

a. Specification of matching terms is required when funds included in the contract have a required match from state and/or local funds. (If the standard Terms and Conditions are utilized, no additional documentation regarding matching arrangements is required.)

b. This specification shall be made a legal attachment.

7. **Reimbursement Rate Increase Approval, Form DHS-1951**;

a. Rate increase approvals are not effective until the date of signature by the Governor of Arkansas on the **Form DHS-1951**.

b. An approved **Form DHS-1951** is required for rate increases for services. Note exceptions in **Chapter Nine** of this Manual.

c. The **Form DHS-1951** shall not be made a legal attachment.

8. **Independent Contractor Checklist, Form DHS-9356**;

a. If the contractor is an individual or sole proprietor, the division shall complete the **Independent Contractor Checklist, Form DHS-9356**, and shall obtain OCC's approval to contract with an individual or sole proprietor..

b. The purpose of this documentation is to assess and confirm the status of the individual or sole proprietor as an independent contractor rather than a DHS employee.

c. The **Form DHS-9356** and OCC approval shall not be made legal attachments.

9. **Waivers of Policy**;

a. The requesting division Director or designee should obtain approvals for waivers of any DHS promulgated policy from the DHS Chief Fiscal Officer or designee.

b. Waiver approvals shall not be made legal attachments.

10. **Certificate of Authority from the Secretary of State**;

a. The **Certificate of Authority** or documentation of its issuance is required for contracts with out-of-state corporations transacting business in Arkansas. (See **"Foreign Corporations Transacting Business in Arkansas"** in Appendix.)

b. If the out-of-state contractor does not provide services **in Arkansas** or is otherwise exempt (see "**Foreign Corporations Transacting Business in Arkansas"** in Appendix), a **Certificate of Authority** is not necessary.

c. This certificate shall not be made a legal attachment.

11. **Suspension of the Rules Letter** (see sample letter in Appendix);

a. This letter is required for all contracts requiring legislative review that are submitted to DFA after the date due to DFA.

b. This letter shall not be made a legal attachment.

12. **Business Associate Agreement (BAA), Form DHS-4001**;

a. BAA's, when required, are to be signed by the contractors to demonstrate their compliance with the Health Insurance Portability and Accountability Act (HIPAA) and included as legal attachments to the standard PCS contract.

b. BAA's are required for ALL new standard PCS contracts with the following divisions:

(1.) Division of Children and Family Services (DCFS);

(2.) Division of Developmental Disabilities Services (DDS);

(3.) Division of Behavioral Health (DBH);

(4.) Division of Youth Services (DYS); and

(5.) DMS.

c. BAA's are required for new standard PCS contracts with the following divisions ONLY IF those contracts deal with protected healthcare information (PHI):

(1.) DHS;

(2.) OFA; and

(3.) OCC

d. BAA's are NOT required for new standard PCS contracts with the following divisions:

(1.) Division of Childcare and Early Childhood Education (DCCECE);

(2.) Division of Services for the Blind (DSB);

(3.) Division of Volunteerism (DOV);

(4.) Division of County Operations (DCO); and

(5.) Division of Aging and Adult Services (DAAS).

13. **Tobacco Settlement Attachment**.

In accordance with Act 1586 of 2003 and Act 2310 of 2005, PCS contracts funded by Tobacco Settlement funds shall include a legal attachment stating:

> "The Division of _____ is not obligated to continue funding this contract paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the contract. State funds will not be used to replace Tobacco Settlement funds when such funds expire unless appropriated by the General Assembly and authorized by the Governor."

For standard PCS contracts, the source of funding shall be clearly identified on the **Form OSP-1** and the funding shall be categorized as "Other")

IV. Signing and Routing of Standard PCS Contracts

A. The division shall secure electronic approval of the division Director or designee on the contract proposal.

B. CSS ACO shall secure the signature of the contractor on the contract proposal.

C. CSS shall route the signed contract to Records Management Unit (RMU) for processing.

D. RMU shall route the contract to DFA.

V. Legislative Review and DFA Approval of Standard PCS Contracts

A. Following their review of the standard PCS contract, DFA will forward those contracts that are over $25,000.00 for legislative review at the next regularly scheduled Review or PEER subcommittee meeting.

a. Review Subcommittee usually meets the first Wednesday of each month.

b. PEER Subcommittee usually meets the first Thursday of each month.

B. It is very important for the division to have knowledgeable representatives in attendance at the committee meeting to answer programmatic and budgetary questions about the specific contracts on the agenda as well as more general questions concerning the entire program. Typical questions that can be anticipated include:

1. What was the procurement method?
2. If the procurement were Sole Source, why was a competitive method not utilized?
3. If the procurement were competitive, how many responses were received and how did the other responses compare to that of the selected entity (including, at times, the relative comparison of cost proposals)?
4. What are the services being provided and how will contractor performance be monitored?
5. Where are the services provided?
6. What source of funding is being utilized, and what are the future plans for this program?
7. If an out-of-state contractor were selected, what steps were made to find a qualified in-state vendor?

C. Upon completion of their review, the Review and PEER Subcommittees will send their recommendations to the Legislative Council for consideration.

D. Legislative Council, which usually meets the third Friday of each month, reviews the contract and provides OSP a report on their review and their findings as to the propriety of the contract.

E. Following receipt of the Legislative Council's report, DFA will approve or deny the PCS contract.

VI. Entry of Standard PCS Contracts into AASIS

A. For a standard PCS contract over $25,000.00:

1. Upon approval of the contract by DFA, division shall approve the outline agreement, if necessary.
2. CSS shall coordinate OSP's approval of the outline agreement.
3. Contract Management/Comprehensive Annual Financial Report Unit (CMU) or the division shall create the PO, if necessary.
4. CSS shall coordinate OSP's approval of the PO.

B. For a standard PCS contract $25,000.00 and under:

1. Upon approval of the contract by DFA, division shall approve the outline agreement, if necessary.
2. CMU or the division shall create the PO, if necessary.

NOTE: The PO must accurately reflect the standard PCS contract in every aspect, including the compensation/reimbursable breakout, contractor name and address, and total funding.

VII. Distribution of Standard PCS Contracts

A. Upon approval of the contract by DFA, RMU shall receive the original approved contract from DFA and post it to the DHS Contract Archival System (CAS).

B. RMU shall distribute a copy of the signed contract to the contractor.

C. RMU shall notify the division, the CSS Supervisor, and CMU that the contract is available in CAS.

D. RMU shall maintain the original contract on file in the Records Room. All requests for contract information from the RMU Records Room should reference the contract number.

VIII. Reporting to OSP on Standard PCS Contracts exceeding $5,000.00 but not exceeding $25,000.00

A. DHS shall report electronically to OSP, at least monthly, **ALL** PCS contracts that were created which exceeded $5,000.00 but which did not exceed $25,000.00.

B. The entity which created the outline agreement is the entity responsible for submitting the report.

C. Reports are to be made online on the OSP website. Divisions may consult with CSS for more detail.

IX. Amendments to Standard PCS Contracts

A. Timeframes

Amendments to standard PCS contracts should adhere to the same timeframes outlined for the development of new contracts.

B. General Amendment Requirements

1. Amendments to standard PCS contracts are required when any element on the **Form OSP-1** or any of the legal attachments is revised to the extent that it materially affects the contractor or DHS in any way. The contracting parties shall mutually agree upon amendments.

2. Contracts can NOT be amended to add services that are outside the realm of the procurement for the original contract (ex., a division CANNOT procure for counseling services, develop a contract for counseling services, then add therapy services to the contract at a later date just because the need arises.)

3. Minor revisions or administrative corrections that affect only the internal administration of a contract do not require an amendment; these may be accomplished as "change" actions.

4. Changing a contractor's Taxpayer Identification Number (TIN) cannot be accomplished as a change or an amendment. To change a contractor's TIN, the contract with the former TIN must be closed and a **new contract** with the new TIN must be created.

   For this to be allowable without re-procuring, however, the new contractor must be virtually the same as the former in every respect except for the TIN. The new contractor shall complete a **Form PCS-D**, if required, and an individual authorized by the contractor shall sign an affidavit attesting to the following:

   a. There has been no material change in ownership and the new contractor, although its corporate name may be different, is the same as the former contractor except for the TIN, AND

   b. The new contractor will abide by all terms stated in the underlying procurement document(s) and any response(s) made by the original contractor.

   If the new contractor is NOT virtually the same as the former contractor and/or the new contractor does not sign the affidavit, the division shall re-procure.

5. PCS contracts that have expired cannot be amended.

6. An amendment to extend a standard PCS contract into another state fiscal year is allowable ONLY if the following conditions are met:

   a. (*ONLY for contracts procured RFQ or Sole Source),* OSP Director has given his/her approval for extension(s);

   b. The procurement included information relative to the extension option(s); AND

c. The original contract contains language supporting the extension option(s) (the extension clause is found in Section 12 of the **Form OSP-1**.

NOTE: The extension period added to a contract by an amendment should not cross the biennium.

7. All amendments to standard PCS contracts that add money require an amendment to the corresponding outline agreement and PO in AASIS, if applicable.

8. For every amendment to applicable PCS contracts over $25,000.00, a current signed and dated **Form PCS-D** shall be submitted for the contractor and all subcontractors receiving over $25,000.00 who are affected by this amendment.

9. Amendments to PCS contracts are not binding until they are approved by the DHS Director or designee and contractor and approved by DFA, if applicable.

10. The effective date of an amendment to extend an otherwise expiring contract shall be **no later than** the expiration date of the expiring contract.

11. Divisions should initiate all amendments, except for those necessitated for administrative purposes only and for amendments to contracts for the Together We Can (TWC) program.

12. For every amendment, the division should submit an electronic authorization to CSS to develop the amendment. (In those instances where the division developed their own PCS contract, they shall also develop the amendments to that contract.)

C. Development of Amendments to Standard PCS Contracts

1. The following procedures apply to amendment development actions executed by CSS (for amendment development actions executed by the division, proceed to 2**.** below).

   a. The amendment authorization from the division is required to include:

      (1.) Completed **Form DHS-9190**

      (2.) Any revised or additional attachments to the **Form OSP-1**, if applicable

      (3.) Approval/certification of performance based standards

         (a.) **Performance Based Contracting Certification** must be completed by division staff, for current, unchanged performance based standards (the **Form DHS-1366** may be used for certification.)

         (b.) CSS approval is required for new or revised performance based standards.

   b. Upon receipt of the amendment authorization, assigned CSS individual(s) shall review the authorization, consult with the contractor, complete the amendment proposal, and review the completed amendment proposal for technical compliance and completeness.

2. The complete amendment package shall include, at a minimum, the **Form OSP-1A, Amendment to Professional/Consultant Services Contract**.

NOTE:

It is ABSOLUTELY CRITICAL that, if applicable,
- **the <u>funding tally to the penny</u> and**
- **the <u>funding percentages are accurate</u>!!!**

Failure to have 100% accuracy in either of these crucial areas will result in the legislative review staff rejecting the amendment!!!

3. Other elements that may be required to complete the amendment include but are not limited to the following:

   a. **Form PCS-D**

   All amendments to non-exempt standard PCS contracts greater than $25,000.00 require disclosure on the contractor and on all subcontractors receiving over $25,000.00 who are affected by the amendment.

   b. **Performance Based Contracting Certification**

   This is required from division for current performance based standards not changed by this amendment. **Form DHS-1366** may be used for this purpose.

   Note: <u>New or revised performance based standards</u> require current CSS approval.

   c. **New or Revised Attachments**

   Any new or revised attachments to the **Form OSP-1** should be included and referenced appropriately on the **Form OSP-1A.**

   (1.) An attachment is considered **"new"** when it is being added to the contract with this amendment. A new attachment "stands on its own" and does not replace any attachment that is already in the contract. A new attachment should be numbered consecutively in accordance with the existing attachments and should reflect an effective date commensurate with the effective date of the amendment.

   (2.) An attachment is considered a **"revision"** when it replaces an attachment that is already in the contract. It should be assigned the same attachment number as the attachment it replaces and should reflect an effective date commensurate with the effective date of the amendment.

   (3.) An attachment is considered an **"addendum"** to an existing attachment when it is being added to the contract with this amendment. An addendum is similar to a "new" attachment in that it does not replace any existing attachment BUT it closely relates to an existing attachment to which it is made an addendum. An addendum should be numbered as a subset of the relative attachment (ex., **Attachment 1a**, or **Attachment 1, Addendum 1**.) An addendum should reflect an effective date commensurate with the effective date of the amendment.

   d. **Reimbursement Rate Increase Approval, Form DHS-1951**

   An approved **Form DHS-1951** is required if the amendment increases rates for services. Note exceptions in **Chapter Nine** of this Manual.

   e. **Suspension of the Rules Letter**

This letter is required for all amendments requiring legislative review that are submitted to DFA after the date due to DFA (see sample letter in Appendix).

f. **Certification Regarding Lobbying, Form DHS-9350**

This certification is required if the amendment results in contractor's funding exceeding $100,000.00 in federal funds per federal fund source per fiscal year. Certification should be indicated on **Form DHS-9350**, unless provided elsewhere in the contract, i.e., on the **Form DHS-9193** or **Form DHS-9194**.

4. Signing and Routing of Amendments to Standard PCS Contracts

Same as for standard PCS contracts above.

5. Legislative and DFA Review of Amendments to Standard PCS Contracts

An amendment to a standard PCS contract requires review and approval by DFA, and review by the Review or PEER Subcommittee if, and only if:

a. The amendment involves a major change in the objectives and scope, ***OR***

b. The original contract required review and the amendment increases the dollar amount to a resultant total that is higher than any amount previously approved by DFA; ***OR***

c. The original contract did not require review but the amendment increases the total to exceed $25,000.00.

6. Entry of Amendment to Standard PCS Contracts into AASIS

Upon approval of the amendment, CMU or division shall revise the outline agreement and PO accordingly, if necessary.

7. Distribution of Amendment

a. Upon approval of the contract by DFA, RMU shall receive the original approved amendment from DFA and post it to CAS.

b. RMU shall distribute a copy of the signed amendment to the contractor.

c. RMU shall notify the division, the CSS Supervisor, and CMU that the contract is available on CAS.

d. RMU should maintain the original contract on file in the Records Room. All requests for contract information from the RMU Records Room should reference the contract number.

X. Changes to Standard PCS Contracts

A. Minor revisions or administrative corrections may be accomplished by a change action. Change actions affect only the internal administration of a contract and do not materially affect the contractor or DHS in any way.

B. Examples of actions that could appropriately be handled as "change" actions include:

1. A change in funding codes;

2. A change in address (IF the AASIS vendor number remains the same);

3. A line item adjustment

   a. If deviation from the amount budgeted will not exceed $500.00 or 10% of the line item from which funds are being moved, whichever is greater, no line item adjustment is necessary.

   b. A line item adjustment is allowable only if the total reimbursable and total compensation amounts are unchanged.

C. Change actions shall NOT be used for:

1. A change in total financial amount (either an increment or decrement);

2. A change in reimbursable and/or compensation amounts;

3. Any change in the percentage of state/federal funds;

4. A change in the overall rate per unit of service;

5. A change that adds a new funding source (fund, fund center, or commitment item)

D. The DHS standard is that CSS develops change actions for all standard PCS contracts upon receipt of authorizations from the division requesting such change actions. For those contracts that are developed by the division, the division shall develop the change action.

NOTE:
CAP is the electronic system through which change actions are authorized and developed.

- The division requesting a change action shall submit the authorization to CSS in electronic format.

- CSS shall process the change action electronically.

E. The following procedures apply to change actions executed by CSS (for change actions executed by the division, proceed to **F**. below).

1. Division shall submit authorization electronically. Required elements for the authorization for CSS to develop a change action include:

   a. **Form DHS-9190**;

   b. Explanatory memo explaining change, if necessary; and

   c. (For line item adjustments ONLY) Revised budget reflecting the change(s) to be made.

2. Upon receipt of the authorization, assigned CSS individual(s) shall review the authorization then discuss the authorization with the contractor, if necessary, to review the proposed changes. (For line item adjustments, ACO shall secure written documentation from the contractor confirming agreement with

the action.) Upon concurrence by the contractor, if necessary, ACO shall provide a copy to the contractor, if appropriate.

3. Upon completion of the assignment, ACO shall so notify appropriate CSS staff (including RMU) by e-mail. The complete change packet shall include, at a minimum:

   a. **Form DHS-9190**;

   b. Written documentation from the contractor evidencing concurrence (for line item adjustments ONLY)

4. Development ACO shall retain the hard copy of the completed change action in his/her file.

F. For change actions executed by the division, the division shall submit the completed change action to RMU electronically.

G. Processing of Completed Change Action by RMU

1. Upon receipt of notification by ACO (or a division) that a change action has been completed, RMU shall transfer the completed change action into CAS and notify appropriate staff when the transfer is complete.

2. Upon notification that the action is in CAS, CMU shall enter the change(s) into AASIS, if applicable.

XI. Stand-alone PO's for Professional and Consultant Services

A. General requirements for stand-alone PO's for professional and consultant services

1. Divisions typically negotiate with the contractor the terms of the stand-alone PO's.

2. Any PCS contract that DOES NOT exceed $25,000.00 in compensation may be executed in the stand-alone PO format. A division may, however, if preferred, execute a PCS contract that does not exceed $25,000.00 as a "standard PCS contract" on the **Form OSP-1**.

   Agencies shall NOT split known quantities into smaller ($25,000.00 and below) amounts to avoid a standard contract.

3. Stand-alone PO's normally require neither DFA review and approval nor legislative review. However, **multiple PO's to the same contractor in the same fiscal year from the same cost center MUST be reported to OSP** to assist OSP in determining whether an agency is issuing multiple PO's in an attempt to circumvent the requirement of establishing a standard PCS contract.

4. Procurement regulations apply to stand-alone PO's just as they do to standard PCS contracts, including the requirement for prior approval by OSP for any procurement method other than CB.

5. **Performance Based Standards**

   a. Performance based standards are required for stand-alone PCS PO's except for those which are as follows:

(1.) For Architectural and Engineering services, which are awarded using ABA criteria; or

(2.) For **$10,000.00** or less

b. Performance based standards, when required, shall be added to stand-alone PO's in the following manner:

(1.) The division/office shall complete the **Contractor Certification Concerning Performance,** (**Form DHS-9353** for a PO with a non-state agency or **Form DHS-9354** for a PO with a state agency) and attach a copy of the applicable Performance Based Standards as Attachment I.

(2.) The division/office shall review the **Contractor Certification Concerning Performance** and Performance Based Standards with the contractor and secure the contractor's signature on the **Certification.**

(a.) One original certification per contractor, for each set of performance indicators, per fiscal year is sufficient.

(b.) Copies shall be inserted in all subsequent contracts with that contractor for PO's with the same set of performance indicators executed in that fiscal year.

(c.) Contractor's signature certifies that he/she understands the signature is binding for ALL PO contracts utilizing those performance indicators during that fiscal year.

(3.) CSS approval of performance based standards is required, as it is for standard PCS contracts.

(4.) The division/office shall retain the **Certification** in the division/office files and give a copy to the contractor for each PO.

5. For those stand-alone PO's for professional and consultant services funded by SSBG, the division shall obtain the contractor's signature on the **Certification of Compliance for Social Services Block Grant (SSBG) Funding, Form DHS-9357**.

a. One signature per contractor per fiscal year is sufficient. If a contractor has more than one PO with SSBG funding, a copy of the signed certification for each subsequent PO is sufficient. Faxed signatures are acceptable.

b. The division shall retain the original **Form DHS-9357** in their files, giving a copy to the contractor.

c. In creating the PO in AASIS, the creator shall add the following text: **"Vendor must adhere to all State and Federal laws and regulations applicable to Social Services Block Grant funding."**

6. Stand-alone PO's for professional and consultant services require BAA's under the following conditions:

a. Those for the following divisions require BAA's IF the PO deals with PHI:

- DCFS
- DDS
- DBHS
- DYS

- DMS
- OFA
- OCC
- OST

b. Those for the following division do NOT require BAA's:

- DCCECE
- DSB
- DOV
- DCO
- DAAS

c. For stand-alone PCS PO's for TWC, division director signature is not required on the BAA. The division shall complete the division director portion of the form as follows:

(1.) Enter "NA" for "Signature of ADHS Program Authorized Representative".

(2.) Enter the date the form was signed by the contractor for "date".

(3.) Enter Director name and Division name for "Printed Name of ADHS Program Authorized Representative."

(4.) Enter "Director" for "Title".

7. For stand-alone PO's for professional and consultant services that contain **Tobacco Settlement funding**, division shall add the following text to the PO in AASIS:

> "The Division of _____ is not obligated to continue funding this contract paid from the proceeds of the Tobacco Settlement in the event that Tobacco Settlement funds are not sufficient to finance the contract. State funds will not be used to replace Tobacco Settlement funds when such funds expire unless appropriated by the General Assembly and authorized by the Governor."

B. Development of Stand-alone PO's for Professional and Consultant Services

1. Upon selection of a contractor through appropriate procurement means and after direct communication with the contractor concerning the terms of the agreement reached, the division shall enter a requisition into AASIS reflecting all of the details that need to be incorporated into the PO.

2. Division shall create their own PO in AASIS from the requisition or forward the requisition in AASIS to CSS for the creation of the PO.

C. Reporting to DFA on Stand-alone PO's for Professional and Consultant Services

1. DHS shall report electronically to OSP, at least monthly, **ALL** such stand-alone PO's that were created which exceeded $5,000.00 but which did not exceed $25,000.00.

2. The entity which created the PO is the entity responsible for submitting the report.

3. Reports are to be made online on the OSP website. Divisions may consult with CSS for more detail.

XII. Site Visits for PCS Contracts

A. Definition

Site visits are a means of on-site contract monitoring by CSS of the following:

1. All PCS contracts over $5,000.00 developed by CSS; and

2. Those PCS contracts over $5,000.00 that contain SSBG funding which are developed by the division.

Site visits are not required for ABA-related PCS contracts.

B. Purpose

The purpose of site visits is to monitor contract activity and assist contractors in achieving and maintaining compliance with billing and client eligibility requirements of the contract. Site visits address fiscal, administrative and legal advisories and eligibility/billing audits.

C. Policy

For each applicable PCS contract requiring a site visit, ACO should make a minimum of one site visit per contract year. This pertains to standard PCS contracts as well as stand-alone PCS PO's.

XIII. Billing for PCS Contracts

For those PCS contracts developed by CSS, CSS shall:

A. Provide instructions on billing, if necessary;

B. Explain any special requirements for specific funding sources (ex., SSBG);

C. Supply billing forms or letter bill format, if necessary

XIV. Records Retention for PCS Contracts

A. DHS should retain all PCS contract information for a minimum of five years after the contract ends or is terminated. Contracts containing HIPAA-related information must be retained for a minimum of six years. This includes, but is not limited to, the following information:

1. Original contract, amendments, and all related documents, correspondence, etc.;

2. Contractor billings;

3. Site visit reports;

4. Audit reports and findings; and

5. Procurement documentation.

B. In the event any audit, litigation, or other action is initiated before the end of the five year period, records should be retained until all issues arising out of the action are resolved or until the end of the five (or six) year period, whichever is later.

CHAPTER ELEVEN
INTRA-AGENCY AGREEMENTS

I. Policy

A. Intra-agency agreements are used when one DHS division purchases services from another DHS division.

B. In accordance with **ACA §19-11-203**, intra-agency agreements are exempt from the Arkansas Procurement Law and Regulations.

C. Intra-agency agreements require neither DFA nor Legislative review or approval.

D. General requirements for all intra-agency agreements include, but are not limited to, the following:

1. The initial term of an intra-agency agreement shall not extend past the end of the biennium.

2. Intra-agency agreements may be amended to extend for a total period of no more than seven (7) years.

E. Intra-agency agreements are NOT entered into AASIS as PO's. Instead, the service division is paid by the funding division by the funds transfer mechanism.

II. Procedures

A. The DHS standard is that CSS develops all intra-agency agreements upon receipt of authorizations from the funding division requesting such actions.

B. The authorization from the funding division is required to include:

1. Completed **Contract Authorization/Input Form, Form DHS-9190;**

2. If desired by the funding division, CSS-approved performance based standards and evidence of CSS approval or funding division certification; and

3. If desired by the funding division, any other legal attachments.

C. Upon receipt of the authorization from the funding division, assigned CSS individual(s) shall review the authorization, consult with the service division, complete the agreement proposal, and review the completed proposal for technical compliance and completeness.

D. The complete intra-agency agreement shall include the following items:

1. **Form DHS-9197, Intra-agency Agreement**

2. Any legal attachments required by the funding division

CHAPTER TWELVE
PCS CONTRACT INVOICING

I. Procedures

A. For those contract payments processed through CMU, It takes approximately seven to ten working days from the time an invoice reaches CMU for a warrant to be printed and ready to mail. Before any invoice is approved for those payments processed through CMU, the following requirements must be met:

1. CMU should have access to the legal document for use in monitoring the payment request. All original signed contracts should be on file in the CSS Records Room and available in the archival system.

2. Each contractor should have a **Request for Taxpayer Identification Number and Certification form (W-9)** on file with OFA before payment can be processed. **W-9 Forms** may be obtained from the Internal Revenue Service office.

3. Providers should comply with the DHS audit requirements as outlined in Arkansas Department of Human Services Audit Guidelines. Copies may be obtained from

   Arkansas Department of Human Services
   Office of Chief Counsel Audit Section
   P.O. Box 1437 – Slot S270
   Little Rock, Arkansas 72203-1437

4. Invoices should be submitted to the division with which the contractor has a legal agreement unless the contractor is given other instructions.

5. The division should check all invoices and indicate their approval with a full, legible signature, date, and the words “Approved to Pay”. These should be routed to CMU as soon as possible for processing.

B. Summary of DHS Invoice Procedures

1. An original invoice is required to process a payment. If the invoice is handwritten (as with smaller companies), the invoice must have an original signature, title, and date.

2. The name of the company or payee must be on each invoice.

3. The PO number shall be indicated on the invoice, if applicable.

4. All invoices must be billed to the agency.

5. The invoice must have a complete description of the goods or services being billed.

6. Invoices for services must have the date(s) of service.

7. The invoice must have the unit price and number of units billed or the lump sum price being billed; this information must agree with the terms of the

applicable contract or sub-grant. The invoice must also include the total amount billed.

8. If two or more names, corporate entities and/or addresses are printed on the invoice (for example, in the case of collaboratives, coalitions, etc.) the letterhead used for invoices must be that specifically of the payee, matching the applicable **Form W-9** and AASIS vendor number.

9. The invoice must not contain abbreviations. These are not standardized and may cause AP staff to return the invoice for explanation.

10. If the invoice is to be paid by direct deposit, the invoice should include the notation "DIRECT DEPOSIT" in the upper right hand corner.

11. If the invoice is to be paid separate and apart from other invoices, the invoice should include the notation "SEPARATE PAYMENT" in the upper right hand corner.

12. For contracts reimbursed on an actual cost basis, the invoice should identify all expenses as compensation or reimbursable.

13. CMU staff will correct payment requests submitted without all of the above information if possible. All verbal changes agreed to by the program division and the contractor/sub-grantee should be documented on the invoice. The CMU staff person should indicate "Approved to Pay," sign and date the request, and forward to AP.

14. Prior to the end of the state's fiscal year, CMU should submit information to all contract service providers and to all divisions regarding instructions for end-of-year billings.

II. Contractor Expenditure Reports

A. Contractors may be required by the terms of the contract to submit periodic expenditure reports. These reports should be submitted as required or payment requests will be held in a pending status. The format of the expenditure report should agree with the budget in the contract. Reports should be mailed to

Arkansas Department of Human Services
Contract Management/Comprehensive Annual Financial Report Unit
P.O. Box 1437 – Slot W205
Little Rock, Arkansas 72203-1437

B. For contracts reimbursed on a scheduled reimbursement basis, CMU may reconcile actual expenditures against the payment schedule and offset scheduled payments, if required by the terms of the contract.

III. Monitoring for Contract Compliance

Requests for payment not complying with all terms of the signed agreement will be held in pending status by CMU or AP until resolved.

IV. Recovery of Overpayments

All recognized overpayments should be forwarded to the Accounting Supervisor, CMU. The Accounting Supervisor will draft collections correspondence for signature by the Assistant Director, CSS, and route recovery of funds through AR.

V. Settlements

All agreements that require settlement should be reconciled as soon as possible following expiration of the agreement. Each contractor should be notified in writing of all amounts payable or receivable requirements and the procedures necessary to accomplish the settlement.

VI. Internal Revenue Service (IRS) Levies

All IRS levies will be forwarded to CMU. The CMU Accounting Supervisor will receive and forward all payments specified to the IRS until notified that the levy has been satisfied or released.

Appendix

State of Arkansas
SECRETARY OF STATE
State Capitol
Little Rock, Arkansas 72201-1094

FOREIGN CORPORATIONS TRANSACTING BUSINESS IN ARKANSAS

A foreign corporation may not transact business in this state until it obtains a Certificate of Authority from the Secretary of State.

The following activities, among others, do not constitute transacting business as stated in **A.C.A. §4-27-1501 (B):**

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of the board of directors or shareholders, or carrying on other activities concerning internal corporate affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

7. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

8. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

9. Owning, without more, real or personal property;

10. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

11. Transacting business in interstate commerce.

Corporations which fail to obtain a Certificate of Authority may not maintain a proceeding in any court in this state based on a cause of action arising from the transaction of business and may be found liable for civil penalties ranging from $100 to $5,000.

For information regarding the application seeking authorization to do business in this state please write,

Secretary of State
Corporation Department
Room 058
State Capitol
Little Rock, Arkansas 72201-1094
(501) 682-3409

(DHS Letterhead)

(date)

SUSPENSION OF THE RULES SAMPLE LETTER

The Honorable _____, Co-Chairman
The Honorable _____, Co-Chairman
Committee on Review
Arkansas Legislative Council
315 State Capitol Building
Little Rock, AR 72201

SUBJECT: REQUEST FOR SUSPENSION OF THE RULES
(CONTRACTOR NAME)

Dear Co-Chairmen:

I am requesting a suspension of the rules in conjunction with the required review process for the attached Professional Services contract because negotiation of the terms delayed its submission. Consequently a suspension of the rules is necessary in order to expedite the contract's effective date of _____.

This contract, developed by the Department of Human Services, Division of _____, proposes to provide _____(*service*)_____
_____.

(*Provide a clear explanation of the critical nature of the contract and the reason it could not be processed within the established timeframes*.)

Your favorable consideration and review of this contract is appreciated.

Sincerely,

_____,
(DHS Director)