

# DHS ADMINISTRATIVE PROCEDURES MANUAL

## Chapter 601

### Title: DHS Purchasing Authority General Provisions

- I. **PURPOSE:** To provide the Department of Human Services (DHS) with uniform departmental procedures for the acquisition of goods (commodities) and technical services, in accordance with Arkansas Procurement Law & Rules (Regulations) (Arkansas Code Annotated [A.C.A.] §§ 19-11-101 et seq.) and the Arkansas Building Services Act.
- II. **SCOPE:**
- A. These procedures are applicable to all DHS divisions, offices, and facilities\* .
  - B. The DHS, Office of Finance and Administration (OFA), Contract Support Section (CSS), Commodities Purchasing Unit (CPU) has the authority for purchasing for:
    - 1. The central offices and field offices, and
    - 2. The facilities\* , for those purchases exceeding \$25,000
  - C. The purchasing units for the DHS facilities have authority for purchasing for their facility all purchases that do NOT exceed \$25,000 (EXCEPT for **printing of any dollar amount**, which MUST be purchased by a CPU Purchasing Agent who has the proper delegation order from Office of State Procurement (OSP) to purchase printing, or by OSP.
  - D. The Office of Systems and Technology (OST) purchasing unit has authority for purchasing all computers, computer peripherals, and products/systems that are to be connected to the DHS network.

\* The term “ facilities”, as used in this Chapter, refers to the DHS Human Development Centers, Arkansas State Hospital, and Arkansas Health Center.

### III. **PROCEDURES: ETHICS**

- A. Ethics requirements in public contracting are found in A.C.A. §§ 19-11-701–716. Any employee who knowingly violates any of the Ethics provisions may be subject to criminal prosecution.
- B. The following statement must be included in all solicitations (procurements) and contracts (including purchase orders) for purchases exceeding \$5,000 (A.C.A. § 19-11-708):
  - “ It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage,

or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.”

#### IV. PROCEDURES: PURCHASING DOCUMENTS

##### NOTE:

- a.) As stated in the DFA Financial Management Guide, R2:19-4-1210, Department of Finance and Administration, Office of Accounting (DFA, OA) recommends using the “ vendor invoice with a purchase order” process whenever possible instead of the direct-invoice payment method.
  - b.) Agencies must prepare the proper purchasing documents BEFORE purchases are made.
  - c.) Arkansas Administrative Statewide Information System (AASIS) is the State system in which purchases are requested, purchase orders are created, and payment is made. The AASIS purchasing roles include:
    - Agency Procurement Technician
    - Agency Procurement Specialist
    - Agency Procurement Manager
  - d.) For proper separation of duties, individuals CANNOT possess purchasing roles that allow them to enter successive purchasing transactions in AASIS.
- A. Purchase Requisition
1. The first step in the purchase or procurement process is to formally request the purchase. In accordance with any and all purchasing requirements specific to the division, the Agency Procurement Technician shall enter the requisition into AASIS.
  2. The purchase requisition:
    - Establishes a commitment of appropriations when the requisition is created;
    - Creates a unique requisition number for each requisition;
    - Allows users to suggest several potential vendors for items;
    - Tracks the progress of the requisition through AASIS.
  3. An Agency Procurement Manager, with proper level of authority in AASIS, shall review and approve the requisition in AASIS as a legal expenditure of the State. For purchases that exceed \$25,000, a second approval by an Agency Procurement Manager with the proper level of authority in AASIS is required.
- B. Purchase Order
1. Once the purchase requisition has been entered and approved, the Agency Procurement Specialist (Purchasing Agent), in accordance with the Arkansas Procurement Law and Rules and DHS policy, shall create the purchase order.

- a. Purchasing Agents in CPU shall create the purchase orders for central office and field offices and for those facility purchases exceeding \$25,000.
  - b. Purchasing Agents in the facilities shall create their purchase orders for purchases not exceeding \$25,000 (EXCEPT for **printing of any dollar amount**, which MUST be purchased by a CPU Purchasing Agent who has the proper delegation order from OSP to purchase printing or by OSP).
2. The Agency Procurement Manager in CPU or the facility shall review and approve the purchase order in AASIS. For those purchase orders that are coded as Emergency or Sole Source, a second approval by OSP is required.
  3. Once the purchase order has been approved, the Agency Procurement Specialist (Purchasing Agent) shall print the purchase order and send a signed copy to the vendor.
  4. A purchase order is the basic document used to complete the contractual obligation between the buyer and seller. If cancellation of or change to a purchase order is necessary, the Purchasing Agent who created the purchase order should be the one to cancel or change it.

**V. PROCEDURES: APPROVALS**

A. The following purchases require prior approvals:

**1. Promotional Items**

a. These are items:

- (1.) That are provided as an incentive to an individual, or to recognize or reward an individual for something he/she has done. Items of this nature shall NOT be purchased for DHS employees; rather they may be purchased for clients, residents, volunteers, potential foster parents, and adoptive parents, OR
- (2.) That are for promotion of specific programs used in educating potential clients of available services.

b. Examples of promotional items include trophies, certificates, gifts, prizes, t-shirts, aprons, tote bags, refrigerator magnets, and coffee mugs.

c. In accordance with OSP Policy Directive #02-03, the purchase of promotional items is allowable ONLY under the following circumstances:

- (1.) It is authorized in a State or Federal grant, OR
- (2.) It is authorized by specific language in the agency's appropriation act.

d. Even if the purchase is allowable under either of the above two

circumstances, prior approval of the DHS Chief Fiscal Officer (CFO) is still required. The request for approval shall be submitted in the form of a memorandum or letter from the Division Director to the DHS CFO, providing enough information so it can be ascertained that the proposed expenditure is ultimately for the benefit of DHS clients.

- e. Requests for exceptions to this policy shall be in the form of a letter of justification signed by the Division Director, submitted to the DHS CFO for approval, and approved by the OSP Director.

2. **Prepayment for Goods and Services**

The Division Director must approve prepayments in a signed memorandum. The Purchasing Agent must attach the approval memorandum, with an invoice describing the purchase, cost, and the reason for prepayment, to the purchase order and submit it to Accounts Payable Unit for processing.

3. **Memberships and Subscriptions**

Agency membership may be paid when such membership is in the name of the agency and such membership is not in a community organization.

In the event the membership is in the name of an individual, or the membership is in a community organization, the Division Director must approve in writing the payment of such dues. The approval shall justify the payment, explaining how the payment for said membership is in the best interest of the State agency and necessary to carrying out the purposes of the agency. Such approval shall be included in the documentation (attached to the disbursing document) of the agency's financial records and made available for audit purposes.

4. **Tuition and Books for Clients and Employees**

- a. These expenses on behalf of **clients** are permissible as prescribed by law, regulation, policy, court order, or official program plan. The cost should be well documented in the case files as well as accounting records. The Division Director must approve them.
- b. Payment of tuition and books for **employees** will be made only as prescribed by official DHS personnel development policy. See DHS Policy 1048 and R1-19-4-1103, as found in the DFA Financial Management Guide, for more information.

5. **Uniforms and Clothing for Employees**

- a. In accordance with ACA §19-4-1601, purchase of uniforms and clothing for employees is allowed only when prescribed by State law in Special Language. Such a purchase requires the prior approval of the DHS CFO.
- b. Payments will not be made for the replacement of damaged clothing due to adverse incidents related to client work in

institutions; however, those employees have the right to file a claim for damages with the Arkansas State Claims Commission.

- c. Should an employee experience broken eyeglasses, dentures, or some other health or physical damage not covered by Workers Compensation benefits, the employee may file a request for reimbursement of such with the Division Director through proper management channels and provide an incident report to support the request. Upon his or her approval, the Division Director shall provide a memorandum or letter to the DHS CFO requesting that the employee be reimbursed for such expenses after appropriate receipts are provided.

**6. Goods and Technical Services Accepted/Rendered Prior to Date of Contract or Purchase Order**

- a. Goods and technical services shall not be accepted or rendered prior to the acceptance of a contractual agreement (i.e., purchase order or contract).
- b. In the event that goods or technical services not exceeding \$5,000 are rendered prior to the issuance of a contract/purchase order being in effect, Division Director shall prepare a request to the DHS CFO for approval of a post-delivery purchase order. The request shall address the following:
  - The reason the goods or technical services were provided without benefit of a contract/purchase order being in place;
  - The amount of the charges that were incurred without a contract/purchase order being in place;
  - Request for approval of charges incurred in violation of procurement law.
- c. In the event that goods or technical services exceeding \$5,000 are rendered prior to the issuance of a contract/purchase order being in effect, Division Director shall prepare a request to the OSP Director for ratification of charges that were incurred. The division shall submit the request to CPU for routing to OSP. The request shall address the following:
  - The reason the goods or technical services were provided without benefit of a contract/purchase order being in place;
  - The amount of the charges that were incurred without a contract/purchase order being in place;
  - Confirmation, if applicable, that neither the vendor nor the agency acted fraudulently or in bad faith;
  - The steps taken by the division to prevent such an occurrence in the future;

- Request for ratification of charges incurred in violation of procurement law.

#### 7. **Temporary Contract Labor**

- a. Occasionally, an agency undertakes special programs or is subject to seasonal fluctuations that temporarily increase the workload beyond the capabilities of the agency's regular staff. Such situations may necessitate utilizing contract labor from "Temporary Help" agencies to be paid out of the maintenance and operations line item of the agency's appropriation. The vendor will bill the user agency for the service at the end of the contract.
- b. In accordance with R3-19-4-1601 in the DFA Financial Management Guide, no agency may employ contract labor for a period longer than six consecutive weeks at intervals of no more than once per calendar quarter. An individual hired as contract labor may work a maximum of 240 hours per calendar quarter. The individual may work more than six consecutive weeks if less than 240 hours have been worked during the quarter, but he or she may NOT work more than 240 hours in any quarter. The only exception is legislative authority to exceed these limits.
- c. Prior approval of the Division Director is required if the temporary contract labor is **clerical**.

#### 8. **Funeral Expenses**

DHS will only pay funeral expenses of a client or individual in the custody or care of DHS. The Division Director must review and approve in writing each request for payment prior to issuance of a purchase order.

- B. Divisions must obtain all approvals before entering requisitions into AASIS. Upon the receipt in AASIS of incomplete requisitions or requisitions lacking proper approval, CPU shall retain the requisitions on their screens no longer than thirty days. If corrections have not been made or approvals have not been entered at the end of thirty days, Purchasing Agents may delete the requisition. Purchasing Agents shall notify the division of any requisitions they delete.

### VI. **PROCEDURES: MINORITY PURCHASES**

- A. The Minority Business Economic Development Act (A.C.A. §§ 15-4-312–319) established an annual procurement goal of ten percent for a State agency's minority purchases. Arkansas law defines "minority" as "African American, Hispanic American, American Indian, Asian American, or Pacific Islander American."
- B. When competitive bids are taken, at least one shall be from a minority business, if possible.

- C. CPU is responsible for creation of, and monitoring of progress in accordance with, the annual DHS Minority Purchasing Plan.

**VII. PROCEDURES: PURCHASE ORDER CLOSE-OUT**

- A. Prior to the end of each fiscal year, purchase orders with an outstanding balance must be reviewed, taking in consideration the 45-day rule. If the purchase orders remain open to take advantage of the 45-day rule or pay outstanding old year invoices, they should be closed after all old year invoices have been paid.
- B. DHS facility purchasing units shall close their own purchase orders. CPU shall close purchase orders for field offices and central office and central office, upon requests from the divisions.

**VIII. PROCEDURES: METHODS OF PROCUREMENT**

The following procurement methods shall be utilized in purchasing goods and technical services:

- A. **Small Procurement:** *(See A.C.A. §§ 19-11-231 and 19-11-204[12])*
  - 1. The Small Procurement (also known as the Small Order [SO]) method shall be used for those purchases that do not exceed a total purchase price of \$5,000 (per vendor, per commodity/service, per fiscal year), that are not subject to Amendment 54 to the Arkansas Constitution, and that are not included on State contract. SO purchases may be procured without seeking competitive bids; however, competition should be used to the maximum extent practicable.
  - 2. Procurements shall NOT be artificially divided so as to constitute Small Procurements.

**NOTE:** Purchase of commodities subject to Amendment 54 to the Arkansas Constitution (printing, stationery, and paper and ink used to produce stationery) must be procured in accordance with Competitive Bidding or Competitive Sealed Bidding, regardless of the amount.

- B. **Competitive Bidding:** *(See A.C.A. § 19-11-234)*
  - 1. The Competitive Bid method, at a minimum, shall be used for those purchases that exceed \$5,000 but do not exceed \$25,000 (per vendor, per commodity/service, per fiscal year). If circumstances warrant, the procurement official MAY utilize the more restrictive Competitive Sealed Bid for such purchases (see Competitive Sealed Bid below).
  - 2. Competitive Bidding shall NOT be used for legal, architectural, engineering, construction management, and land surveying.
  - 3. The bid request should be in written form, providing adequate detail to allow the bidder to make a reasonable bid. All terms and conditions that are intended to be included in the resultant agreement should be

included in the bid request. Bids should be requested ONLY from entities that offer or sell the goods or technical services to be purchased.

4. The bids should be in written form if at all possible. If the bidder does not or will not put his/her bid in writing, the Purchasing Agent should confirm the bid in writing to the bidder.
5. Purchasing Agent should record the bids on the Competitive Bid Quotation Form authorized by the OSP Director.
6. If three bids are not obtained, the Competitive Bid Quotation Form must show the names of at least three firms contacted or show why three firms were not contacted.
7. The award shall be given to the bidder who has submitted the lowest bid and who meets the requirements, criteria, and specifications.
8. Repeated SO procurements to circumvent the competitive bid limits are prohibited.
9. Goods and services may be procured by the competitive bid method, regardless of whether or not an option for extension(s) is included, as long as the value of the initial agreement does not exceed \$25,000 annually and none of the individual extension periods exceed \$25,000 annually.

**Details regarding the statutory and regulatory requirements are delineated in A.C.A. § 19-11-234 and must be followed.**

**C. Competitive Sealed Bidding:** *(See A.C.A. § 19-11-229)*

1. The Competitive Sealed Bidding method, at a minimum, must be used for those purchases that exceed \$25,000 per vendor, per service/commodity, per fiscal year.
2. OSP has authority for procurements for central office, field offices and facilities for purchases of goods and technical services that exceed \$25,000.
3. The Competitive Sealed Bidding method requires:
  - a. Issuance of an invitation for bids with a purchase description and all contractual terms and conditions applicable to the procurement
  - b. Public notice
  - c. Public, contemporaneous opening of bids at a pre-designated time and place
  - d. Unconditional acceptance of a bid without alteration or correction, from all "responsible", "responsive" bidders (i.e., those capable of performing the contract and those meeting the minimum requirements set forth in the procurement)

- e. Award to the responsible, responsive bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids
4. The notice inviting bids shall be published at least one time in at least one newspaper having general circulation in the State or posted by electronic media. Notice shall be given not fewer than five calendar days nor more than thirty calendar days preceding the date for the opening of bids.
5. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.
6. The invitation for bids shall set forth the evaluation criteria to be used in evaluation, and bids shall be evaluated solely on the requirements set forth in the invitation for bids.

**EXTENSIVE detail regarding the statutory and regulatory requirements is delineated in A.C.A. § 19-11-229 and must be followed.**

**D. Competitive Sealed Proposal** (See A.C.A. § 19-11-230)

1. With the Competitive Sealed Proposal method, award is made to the responsible respondent whose proposal is determined to be the most advantageous considering price AND the other evaluation criteria set forth in the request for proposals.
2. Public notice shall be given in the same manner as for the Competitive Sealed Bid method.
3. The request for proposals shall include a description of the item or service to be purchased, the specific criteria to be used to evaluate the proposals, the relative importance of price and other evaluation factors, the closing time and date, and other significant information.
4. Award shall be made to the responsible respondent whose proposal is determined to be the most advantageous to the State, taking into consideration price, the other evaluation factors set forth in the request for proposals, and the results of any discussions conducted with responsible respondents. No other factors or criteria shall be used in the evaluation.
5. Negotiation with respondents is allowable only upon the approval of the OSP Director.

**Extensive detail regarding the statutory and regulatory requirements is delineated in A.C.A. § 19-11-230 and must be followed.**

**E. Sole Source:** (See A.C.A. § 19-11-232)

1. The Sole Source method shall be used only when, by virtue of the performance specifications, the goods or services are available from a single source.

2. Brand name or design specifications shall not be sufficient explanation for sole source. Such procurements may include but shall not be limited to:
  - a. Requirements of performance compatibility with existing commodities or services, or
  - b. Repairs involving hidden damage
3. Use of the Sole Source method requires prior approval by the OSP Director. Documentation required to request prior approval includes:
  - a. A copy of the purchase order;
  - b. Justification;
    - 1.) The reason the goods/services are needed;
    - 2.) Methods used to determine that a lack of responsible/responsive competition exists for the goods/service;
    - 3.) How it was determined that the provider possesses exclusive capabilities;
    - 4.) Why the goods/service are unique;
    - 5.) Whether or not there are patent or proprietary rights which make the required goods/service unavailable from other sources;
    - 6.) What the agency would do if the provider/service were no longer available;
    - 7.) Any program considerations which make the use of a "Sole Source" critical to the successful completion of the agency's task.
  - c. "Contract and Grant Disclosure and Certification Form", if applicable.
4. For Central Office and Field Offices, and for facility purchases that exceed \$25,000, the division shall forward the detailed justification electronically to CPU along with the requisition in AASIS for processing. CPU shall enter the purchase order into AASIS as a Sole Source purchase order, attach the justification and "Contract and Grant Disclosure and Certification Form", and forward the request in AASIS to OSP for its review and approval.
5. For facility purchases that do not exceed \$25,000, the facility requestor shall electronically attach the Sole Source justification to the AASIS requisition and shall notify CPU Supervisor by telephone or by e-mail of the requisition number so he/she can go into AASIS and review the Sole Source justification. Upon his/her approval of the Sole Source justification, the CPU Supervisor shall notify the facility to proceed with

the processing of its Sole Source purchase order. CPU Supervisor shall also send an e-mail to OSP notifying them of his/her review and approval. Upon receipt of the Supervisor's approval AND of the purchase order in AASIS, OSP will review the purchase order and justification in AASIS. If OSP approves, they will approve the purchase order in AASIS.

**Details regarding the statutory and regulatory requirements are delineated in A.C.A. § 19-11-232 and must be followed.**

- F. **Exempt Purchases:** (See A.C.A. § 19-11-203 and ACA § 19-11-251)
1. Certain goods and technical services are exempt from the procurement law. A complete listing of the exempt goods and services can be found at A.C.A. § 19-11-203(14).
  2. State agencies and other governmental agencies are exempt from the procurement law and can, therefore, be utilized as providers of services or commodities without competitive procurement.
- G. **Emergency Purchases:** (See A.C.A. § 19-11-233)
1. Emergency purchases are those which, if not immediately initiated, will endanger human life or health, State property, or the functional capability of a State agency.
  2. CPU must be notified by telephone at the earliest possible time to register the emergency. Approvals and other procedures will be followed as circumstances permit.
  3. The division must submit justification for pre-approval by the OSP Director. This justification shall include:
    - a. A copy of the purchase order
    - b. A copy of the bid form, and
    - c. A written explanation of the emergency.
  4. The division must, at a minimum, receive three competitive bids unless the emergency is critical. If three bids are not obtained, the bid form must show the names of at least three firms contacted or show why three firms were not contacted.

**Note:** Approvals do not need to be given for an item that is "exempt from procurement" (EL), e.g., medical and physicians' fees. However, any purchase requires a purchase order or contract for payment unless a written request is submitted and approved by the OSP Director, on a case-by-case basis, justifying the services as a true emergency.

**IX. PROCEDURES: BUSINESS ASSOCIATE AGREEMENT**

- A. Purchasing Agent shall secure the vendor's signature on the Form DHS-4001, Business Associate Agreement (BAA) IF:

1. The division making the purchase is a “ covered entity” \* ;
  2. The vendor is acting for or on behalf of the agency; and
- B. If a BAA is required, the Purchasing Agent shall attach a copy of the signed form to the purchase order electronically and shall retain the signed form in his/her records.
- C. Some examples of purchases that WOULD typically involve protected healthcare information include copier equipment, pharmacy services, medical services, shredding services, drug screening services, and dental services.

\* “ Covered entity” divisions include **ALL EXCEPT** the following:

- Division of Child Care and Early Childhood Education;
- Division of Children and Family Services
- Division of Services for the Blind;
- Division of Community Service and Non-Profit Support

#### X. **PROCEDURES: RECEIVING**

Vendors will not be paid until the appropriate receipt of goods or services has been entered into AASIS.

#### XI. **PROCEDURES: SPLITTING PURCHASES**

Procurement units are responsible for consolidating requests for certain goods and services and then competitively procuring as appropriate. Repeated small procurements to circumvent the formal procurement threshold or failure to conduct procurement without justification are violations of the State Procurement Law .

#### XII. **PROCEDURES: VENDOR PERFORMANCE REPORT**

1. To report unsatisfactory performance by a vendor, staff should provide as much detail as possible to CPU (or to the facility purchasing unit, for facility purchases not exceeding \$25,000). After direct communication between the CPU or facility Purchasing Agent and the vendor, and if the vendor has failed to resolve the problem, the CPU or facility Purchasing Agent shall complete a **Vendor Performance Report** detailing the circumstances. **Vendor Performance Report** form can be found on the OSP website at <http://www.dfa.arkansas.gov/offices/procurement/Pages/forms.aspx>.
  - Facility Purchasing Agent shall forward the **Vendor Performance Report** to Commodities Purchasing Unit (CPU) Supervisor, Donaghey Plaza West, Slot W304.
2. Upon his/her review and concurrence with the appropriateness of the action, the CPU Supervisor shall forward the **Vendor Performance Report** to OSP and shall forward a copy to the contractor, giving the contractor seven calendar days to respond to the complaint(s) listed in the Report.

3. For those contracts they have procured, OSP shall issue a final ruling. For those contracts procured by DHS, DHS shall issue the final ruling.
4. **Vendor Performance Reports** become a permanent record in the vendor's file at OSP and may be reviewed when considering any future contract actions with the involved vendor.

**NOTE:** Vendor Performance Reports may also be used to report extraordinary performance by a vendor.

**XIII. PROCEDURES: DISCLOSURE TO COMPLY WITH EXECUTIVE ORDER 98-04**

- A. Executive Order 98-04 requires that any provider of goods and technical services receiving in excess of \$25,000, either as contractor or sub-contractor, must, as a condition of doing business with the State, complete a "Contract and Grant Disclosure and Certification Form" regarding past or present service as a legislator, constitutional officer, or State employee by the provider or his or her immediate family member(s).

**Note:** Governmental entities and public schools are exempt from the requirement to complete a "Contract and Grant Disclosure and Certification Form".

- B. CPU is responsible for ensuring the completion of the "Contract and Grant Disclosure and Certification Form" by the contractor on new contracts and on contract extensions, when applicable.
- C. Questions concerning completion of the forms shall be directed to CPU at P.O. Box 1437, Slot W302, Little Rock, AR 72203.

**XIV. PROCEDURES: ILLEGAL IMMIGRANT CERTIFICATION**

- A. Contracts/purchase orders for technical services exceeding \$25,000 require the contractors to certify on the OSP website that they do not contract with or employ any illegal immigrants.
- B. If the contract/purchase order is to exceed \$25,000.00 **AND** is for technical services, as opposed to goods (commodities), Purchasing Agent shall check the Illegal Immigrant Certification site on-line to determine if the contractor has certified.
  1. If the Purchasing Agent cannot determine that the contractor has a current certification on file, the Purchasing Agent shall notify the contractor that certification is a requirement for the contract (purchase order) to be finalized.

**NOTE:** "Current" is defined as having been entered by the contractor within three months prior to the date the Purchasing Agent checks the screen.

2. If the contractor has still not certified after 5 business days, Purchasing Agent shall consult with his/her Supervisor and shall notify the requestor

of the reason for the delay.

**XV. PROCEDURES: STATE CONTRACTS**

- A. Some goods are on State contracts which are procured and managed by OSP.
- B. Some State contracts are considered “mandatory”, in that the goods or services available on the contract MUST be bought from the vendor listed on the contract unless an exemption is granted from OSP.
- C. When feasible, items that are closely fitting in description to (or are the approved equal of) items on a State contract should be purchased from the State contract.

**XVI. PROCEDURES: MULTI-YEAR CONTRACTS (See A.C.A. § 19-11-238)**

- A. The original term of a multi-year contract shall terminate no later than the last day of the current period of legislative appropriation. Any renewals shall not exceed the next succeeding period of legislative appropriation.
- B. Unless otherwise provided by law, a contract for goods or services may continue for a total period of not more than seven years.
- C. Determination Prior to Use

Prior to the utilization of a multi-year contract, it shall be determined in writing that:

- 1. Estimated requirements cover the period of the contract and are reasonably firm and continuing;
  - 2. Such a contract will serve the best interest of the State by encouraging effective competition or otherwise promoting economies in State procurement;
  - 3. In the event of termination for any reason, the contract provides for cessation of services or surrender by the State of the goods (commodities) and repayment to the State of any accrued equity.
- D. Termination Due to Unavailability of Funds in Succeeding Years

Original terms of such multi-year contracts shall terminate on the last day of the current period of legislative appropriation and any renewals by the State based upon continuing appropriation shall not exceed the next succeeding period of legislative appropriation. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year shall be terminated and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods or services delivered under the contract. The cost of termination may be paid from:

1. Appropriations currently available for performance of the contract
2. Appropriations currently available for procurement of similar commodities or services and not otherwise obligated
3. Appropriations made specifically for the payment of such termination costs

**XVII. PROCEDURES: CONTRACT RENEWALS**

- A. Contracts for goods or services are sometimes procured with the option to renew for additional time periods. If a renewal is desired, the division must make a request in writing with its Assistant Director or Director's signature. The renewal option must be requested at least thirty days prior to the expiration of the contract. Renewals may require the approval of OSP or Arkansas Building Authority. The renewal is a mutual agreement between the Department and the vendor. Once the vendor accepts the terms for renewal, a written addendum is added to the contract. No contract can be extended once all the renewals authorized in the procurement have been depleted.
- B. A contract that is procured without a renewal option cannot be renewed in any instance. Offers by the original vendor to renew the contract cannot be accepted.