

**UNIVERSITY OF ARKANSAS AT PINE BLUFF  
FINANCE AND ADMINISTRATION  
BUSINESS PROCEDURES MANUAL**

**CONTRACTING**

**DEFINITIONS**

**GUIDELINES**

**INSTRUCTIONS**

**FORMS**

**DISCLAIMER**

**1. DEFINITIONS:**

**State Agency**

Under Procurement Regulations, part II, Chapter 10, the term **State agency** includes all departments, agencies, boards, commissions, and institutions of higher education of the State of Arkansas, other than the Arkansas State Highway and Transportation Department and contracts covered by the Federal Highway Administration, or wherein the cost and fee are established by competitive bidding.

**Contract**

A legally binding promise enforceable by law; 2) an agreement between parties with binding legal and moral force, usually the exchanging goods or services for money or other consideration. A contract is developed through the use of a procurement method.

**Amendment**

Any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract is an amendment. It may include, but is not limited to changes in scope, dollar amount and contract term. An Amendment to an existing Professional/Consultant Services (PSC) contract is done through the use of the standard State issued PCS amendment form.

## **Contract Term**

The contract term is the length of time for which a contract is in effect. Professional/Consultant services contracts are limited by state statute to one year.

## **Extension**

Extension is time added to the length of an existing contract through the use of the PCS amendment form.

## **Contractor**

The term contractor refers to any person or organization which executes a contract with a state agency under which “consultant services” to said state agency or agencies, and the individuals performing the services are not state employees occupying regular full-time, part-time or extra help positions, except as provided for by Arkansas Code 19-4-1701.

## **Professional Services Contract**

A Professional Services Contract between a state agency and a contractor is a contract in which the relationship between the contractor and the state agency is that of an independent contractor, rather than that of an employee. The services to be rendered consist of the personal services of an individual or individuals, which are professional in nature. Under such contracts, the agency does not have direct managerial control over the day-to-day activities of the individual or individuals providing the services and the contract will specify the **results expected from the rendering of services** rather than detailing the manner in which the services shall be rendered. Any contract under which the state agency retains day-to-day managerial control over the person or persons performing the services and in which the relationship between the contractor and agency is that of an employer and employee is not a **professional services contract**, is illegal and expressly prohibited. Services rendered under a professional services contract may be rendered to the agency itself or to a third party beneficiary.

## **Consultant Services Contract**

A Consultant Services Contract is a contract between a state agency and an individual or organization in which the service to be rendered to the state agency or to a third party beneficiary under the contract is primarily the giving of advice by the contractor on a particular problem or problems facing the agency or the third party beneficiary. The contractor shall have the relationship of an independent contractor with respect to the state agency. The state agency shall not exercise managerial control over the day-to-day activities of the contractor, but the contract shall specify the results expected from the services to be rendered by the contractor and the advice or assistance to be provided.

The principal purpose of a professional services or a consultant services contract shall be the **procurement of the services of an individual or individuals** by the state agency, rather than the procurement of commodities

Service contracts such as elevator, janitorial, pest control, etc. shall be governed by Arkansas Code 19-4-816 which requires each agency to keep a copy of such contracts on file.

### **Sole Source Contract**

A Sole Source Contract is a contract for professional or consultant services that is entered into by the agency and an individual or organization after it has been clearly determined that to contract otherwise would not be in the best interest of the state.

### **Technical Services Contracts**

These services are processed under the State Procurement Law and are for work accomplished by skilled vendors involving time, labor and a degree of expertise, where performance is evaluated based upon the quality of work and the results produced. Examples of technical services are advertising campaigns, radio and television spots, training, data entry, transport service, actuarial service, collection service, certain repair services, translation (interpreter) service, etc.

## **2. GUIDELINES**

No contract for procurement of professional services and consultant services may be entered into which requires the services of one or more individuals on a regular full-time or part-time work week basis for longer than one year. Provided, however, that in the unusual event that the best interest of the State would be served by a contract which exceeds one year, the Chief Fiscal Officer may approve such contract, having first received the review of the Legislative Council or the Joint Budget Committee. Provided further, that in no event shall any contract be entered into that would contemplate that payments under such contract be made beyond the expiration of the current biennial period, unless the General Assembly, prior to the expiration of the current biennial period, makes an appropriation for such purpose. Professional and consultant services contracts shall include a non-appropriation clause which specifies that in the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of the contract for the services to be provided by the contractor, the contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purpose.

One of the following methods should be utilized to receive and evaluate offers for professional and consultant services. The Office of State Procurement maintains a listing of professionals and consultants desiring to do business with the state.

- A. SBS CRITERIA: The guidelines and procedures established by the Arkansas State Building Services shall be used by all agencies, except those exempt from SBS review, in selecting architects, land surveyors and engineers for state construction projects.
- B. COMPETITIVE BID: A bid is a quotation from a respondent of his bid amount, duration of engagement, qualifications, and acceptance of responsibility to achieve the results as defined in a request for bids. This method is preferred.
- C. REQUEST FOR PROPOSAL (RFP): The RFP should include a complete description of the problem and/or circumstances as perceived by the agency, and any special requirements of the agency such as time limitations and should be submitted to several recognized experts. When the RFP is used, the agency should intend to select the respondent proposing the most effective solution for the price quoted. Discussions may be conducted with responsible offers whose proposals are most responsive to the criteria in the RFP.
- D. REQUEST FOR QUALIFICATIONS (RFQ): The Request for Qualifications is, in the absence of sole source justification, the procurement method required when contracting for architectural, engineering, land surveying and legal services. It may also be used, with prior approval from the Office of State Procurement, as the selection method for other P&CS contracts when it is determined to be the most suitable method of contracting. The RFQ is sent to those vendors whose work resume' indicates they are best suited to perform the work specified. The agency makes its initial selection based upon the respondent's qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussions may be conducted with responsible offers who based upon qualifications submitted are determined to be reasonably likely of being selected.
- E. PROFESSIONAL AND CONSULTANT SERVICES EXEMPT BY LAW: Although exempt from the competitive bidding process, the contracting for "professional services" for legal, architectural, engineering and land surveying will be conducted in accordance with § 19-11-801, which directs, "that the state shall negotiate contracts for professional services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices." By regulation, contracting for the above referenced exempt professional services will be made utilizing the Request for Qualifications contracting method.

F. SOLE SOURCE: The “single source” should only be used when all other methods of contracting are clearly not applicable. The agency’s chief fiscal officer or equivalent, director, division, director or deputy director of an agency, college or university may authorize the use of sole source purchases. Sole source professional and consultant service contracts, except for those exempt by law, those for performing artists and lectures, and those that are documented by sole source justification, may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation. The notice must clearly state the nature of the contract, the contracting agency, and the deadline by which interested providers must respond. Notification must also be posted on the agency’s or Office of State Procurement website.

G. SOLE SOURCE JUSTIFICATION: Sole Source professional and consultant service contracts, except for those exempt by law, those for performing artist and lecturer, and those that are published in a newspaper of statewide circulation, must be accompanied by written justification. The justification must clearly demonstrate that to contract otherwise would not be in the best interest of the state. The justification must fully address:

- why the service is needed;
- the methods used to determine that a lack of responsible/responsive competition exists for the service;
- how it was determined that the provider possesses exclusive capabilities;
- why the service is unique;
- whether or not there are patent or proprietary rights which make the required service unavailable from other sources;
- what the agency would do if the provider/service were no longer available, and;
- any program considerations, which make the use of a “Sole Source” critical to the successful completion of the agencies task.

H. EMERGENCY CONTRACTING: The agency’s chief fiscal officer or equivalent director, division director or deputy director of an agency, college or university may institute a request for emergency action review of a professional or consultant service contract by providing in writing a request to the Director of State Procurement. The request must detail that to procure using other methods would endanger human life or health, state property or the functional capacity of the agency. The State Procurement Director may then approve submission of the contract to the Legislative Council. Under its emergency action procedures, the Co-chairpersons of the Legislative Council Review Committee may review P&CS contracts on behalf of the Legislative Council, provided a written report of the review process is presented to the Legislative Council at its next regular meeting.

The head of the agency shall certify by his/her signature on each contract entered into by that agency that:

- (1) All information contained in the contract is true and correct to the best of his/her knowledge and belief;
- (2) All general guidelines prescribed by the Chief Fiscal Officer of the State and all specific regulations of the state agency governing such contracts have been complied with;
- (3) The services proposed to be provided under the contract are necessary for the operation of the State agency in fulfilling its legal responsibilities and cannot be provided by an existing State agency or institution;
- (4) The contractor is fully qualified to perform the services and has no vested interest in the subject matter of the contract which would constitute a conflict of interest and a bar to his providing services of a professional and disinterested quality;
- (5) The contract terms are reasonable and the benefits to be derived sufficient to warrant the expenditure of the funds called for in the contract.
- (6) No obligations will be incurred by a state agency unless sufficient funds are available to pay the obligations when they become due.

3. For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the state agency does not exceed \$5,000.00, a purchase order may be utilized in lieu of the standard contract form; provided that, should the agency enter into a subsequent contract or contracts with the same contractor during the same fiscal year, regardless of the nature of said contract or contracts, the details of the original contract which utilized a purchase order form and all subsequent contracts, regardless of the amount or type, shall be promptly reported to the Chief Fiscal Officer of the State.

4. Contracts with compensation and reimbursable expenses up to \$25,000 require approval of the Director of the Office of State Procurement before services can begin. Conversely, contracts over \$25,000 require review by the Legislative Council Review Committee and approval of the Legislative Council before the service can begin.

**3. INSTRUCTIONS:**

See following pages